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WTO ACCESSIONS AND DEVELOPMENT POLICIES

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I. Accession of Countries to the WTO

List of Abbreviations

acceding country	state or separate customs territory in the stage of accession to the WTO
acceded country	state or separate customs territory which has acceded to the WTO
ACP	African, Caribbean and Pacific Group of States
AMS	aggregate measure of support
CEFTA	Central European Free Trade Area
EC	European Community
EEZ	exclusive economic zone
EFTA	European Free Trade Association
EIT	economy in transition
EU	European Union
FDI	foreign direct investment
FTA	free-trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GSP	Generalized System of Preferences
IMF	International Monetary Fund
LDC	least developed country
Memorandum	Memorandum on Foreign Trade Regime
MFN	most –favoured nation
MTA	Multilateral Trade Agreements (Annexes 1, 2 and 3 to the Marrakesh Agreement Establishing the World Trade Organization)
NTMs	non-tariff measures
OECD	Organization for Economic Co-operation and Development
S&D treatment	special and differential treatment
SDR	special drawing rights
SOEs	state-owned enterprises
SPS	sanitary and phytosanitary measures
STE	state trading enterprise
TBT	technical barriers to trade
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UR	Uruguay Round
USTR	United States Trade Representative
WIPO	World Intellectual Property Organization
World Bank	International Bank for Reconstruction and Development
WP	Working Party (on accession)
WTO	World Trade Organization
WTO Agreement	The Marrakesh Agreement Establishing the World Trade Organization
WTO Agreements	The Marrakesh Agreement Establishing the World Trade Organization and Multilateral Trade Agreements (MTAs) annexed thereto

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The views expressed in the papers prepared by UNCTAD staff members are those of the authors and should not be construed as the official UNCTAD position on the issues concerned.

[1] Also managed the Development Account project "N" and project KAZ/98/001.

[2] Also managed projects NEP/96/010 and BYE/94/003.

[3] Also managed projects INT/99/A50 (Trust Fund for WTO Accessions), RUS/93/001 and RUS/00/009.

[4] Also managed projects CPR/91/543 and VIE/95/024.

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[7] Was Regional Coordinator for Arab Countries and also managed projects RAB/96/001 and ALG/98/001.

FOREWORD

Since the establishment of the World Trade Organization (WTO) in 1995, most of the countries that were not original members have applied for accession or at least indicated their interest in doing so in the future. For some of these countries, the advantages of membership are obvious, as it would enable them to avoid discrimination in key export sectors and to acquire rights to defend their interests in a multilateral framework. For other countries – particularly smaller developing countries whose foreign exchange earnings depend on exports of a few primary commodities or services, and which enjoy preferential treatment in their main export markets – the immediate benefits are less evident and are probably linked not to their current situation but to their wish to overcome it and to their long-term strategic interests. Some countries apparently consider that WTO membership will improve their credentials in efforts to attract the necessary investment for diversifying their production base and expanding their supply capacity. Membership can also be viewed as the consolidation of recently achieved democratic rule and of their transition to a market economy.

In general, the acceding countries realize that it is in their interest to participate effectively in the management of globalization so as to guarantee that its speed, nature and direction are compatible with their developmental, economic and financial needs. The only way for them to influence the decisions that will affect the course of globalization is through active participation in the institutions where global economic decision-making takes place. WTO membership permits every country to be an actor, however modest, in the forum that takes the decisions on key issues affecting international trade, and to design their development strategies in a more predictable and stable trading environment.

In the accession process, the country seeking accession is required to accept disciplines that imply economic, legislative and judicial reforms and to organize its administration so as to participate effectively in the accession negotiations and subsequently to implement its obligations as a WTO member. This process will contribute to building the country's institutional capacity as it establishes transparent and efficient economic and trade regimes and to enhancing its capacity to defend its rights in future negotiations at all levels. The terms accepted by the acceding country can have a major impact on the course of its future economic and social development. However, preparation for and participation in accession negotiations requires considerable financial and human resources – resources that many acceding countries, and LDCs in particular, lack. In addition, the accession process may have other, specific complications for those countries in the process of transition to a market economy.

The United Nations Conference on Trade and Development (UNCTAD) has been providing assistance to countries acceding to the GATT and subsequently to its successor, the WTO, since the 1980s. This role was confirmed at UNCTAD IX (Midrand, South Africa, 1996) and reconfirmed at UNCTAD X (Bangkok, Thailand, 2000). Many acceding countries, from such major trading powers as China and the Russian Federation to such small least developed countries (LDCs) as Bhutan and Yemen, have benefited from UNCTAD assistance.

From these activities, UNCTAD officials have gleaned an intimate knowledge of the trade regimes of acceding countries and the challenges they face in the accession process. In April 2001, an Ad Hoc Expert Group met under my chairmanship to permit an exchange of views among senior officials of countries that had recently acceded, or were in the process of acceding, to the WTO, with the participation of international experts and others who have played an important role in the accession process. The publication at hand contains the papers presented at that meeting and a summary of the discussions, as well as in-depth analysis by international experts and UNCTAD economists of the key aspects of the accession process to date, in terms of their impact on the development process.

At the Fourth WTO Ministerial Conference in Doha, Qatar, China and "Chinese Taipei"[8] both became members of the WTO, a major step toward making that organization truly universal. The conference also welcomed the accession of seven other new members since the Seattle Conference in 1999. At the same time, it noted "the extensive market access commitments already made by these countries on accession." This reflects the stringent terms that have been imposed on acceding countries – terms that were described by participants in the Ad Hoc Expert Group and are analysed in this publication. Some countries that have recently acceded to the WTO have submitted proposals aimed at alleviating the obligations they accepted on accession, in recognition of the fact that such terms do not adequately take into account the realities of their trade and development situation.

A major subject of discussion by the Ad Hoc Expert Group was the particular difficulties and frustrations faced by LDCs in acceding to the WTO, with the case of Vanuatu, the LDC that is the farthest along in the accession process, cited as an example. The Programme of Action adopted by the Third United Nations Conference on the LDCs (Brussels, May 2001) set forth a streamlined approach to facilitate the accession of LDCs and contained commitments to support the efforts of LDCs seeking to accede. In the Doha Declaration, Ministers recognized that accession of LDCs remained a priority and agreed to work to facilitate and accelerate negotiations with acceding LDCs, but it is still essential that this goal be incorporated in concrete terms into the work programme on LDCs and result in balanced terms of accession for these countries.

The Doha Declaration clearly opens the new multilateral negotiation process to acceding countries, permitting them to make requests of their trading partners and thus giving them leverage to break out of the strictly unilateral context of the accession negotiations. The commitments they undertake as part of their terms of accession should now be regarded as forming part of their contribution to the outcome of the multilateral negotiations.

This publication is probably the first to address comprehensively the issues relating to WTO accession. It is intended to contribute to a deeper understanding of the particular difficulties faced by acceding countries, particularly LDCs, and to strengthening support for their integration into the international trading system on balanced terms consistent with their

[8] Referred to as Taiwan Province of China in United Nations contexts.

development needs. I hope that it will be useful to the wide audience interested in the problems and challenges facing the multilateral trading system today.

In closing, I would like to extend my appreciation to the United Nations Development Programme (UNDP) and to the Governments of the United Kingdom and Japan for their financial support of UNCTAD's activities on WTO accession. Our special thanks go to the Government of Japan for making possible the issuance of this publication.

Rubens Ricupero,
Secretary-General of UNCTAD

INTRODUCTION

The United Nations Conference on Trade and Development (UNCTAD) has been dealing with the issue of accession to the GATT since the 1980s. (Its first such activity was a mission to China in October 1980.) Its role of supporting developing countries and economies in transition in the process of accession to the WTO was confirmed at UNCTAD IX (held in Midrand, South Africa, in 1996) and reconfirmed at UNCTAD X (held in Bangkok in February 2000). UNCTAD has provided extensive assistance to Member states with regard to their accession to the WTO through UNDP national projects such as those for Algeria, Belarus, China, Jordan, Kazakhstan, Lithuania, Nepal, the Russian Federation and Viet Nam. A number of other acceding countries have benefited from assistance under regional and interregional projects such as the UNDP/UNCTAD Project for Arab countries (RAB/96/001), the UNCTAD Trust Project for WTO accession (INT/99/A50) financed by the United Kingdom, and the project deriving from the development account of the General Assembly (Development Account project N), including Azerbaijan, Bhutan, Cambodia, Iran, the Lao People's Democratic Republic, Lebanon, the Libyan Arab Jamahiriya, the Palestinian Authority, Samoa, Sudan, Syria, the former Yugoslav Republic of Macedonia, Yemen and Yugoslavia. Given the nature of the accession process, assistance was normally directed to individual countries; however, in some cases regional and subregional activities were organized. The "Asian and Pacific Regional Training Seminar on the Implications of the WTO Accession for Development Policy Options" held in Manila, the Philippines, in December 1997 was one of the attempts to provide acceding countries in Asia and the Pacific with a forum for exchanging experiences and discussing policy options relating to their WTO accession. A seminar held subsequently in Amman, Jordan, in May 1999 for acceding Arab countries allowed participants to better understand the problems and issues regarding accession. An Ad Hoc Expert Group Meeting of the Secretary-General of UNCTAD on "Issues and Problems Arising from the Integration of Countries into the Multilateral Trading System" was held in Geneva from 9 to 10 April 2001 to discuss actual experiences in accession negotiations as well as terms of accession and negotiation strategies.

Article XII of the Marrakesh Agreement Establishing the WTO provides that a State or separate customs territory may accede to the WTO on terms to be agreed between it and the WTO members. The process of meeting these terms and conditions involves following a multilateral track whereby acceding countries must demonstrate to the members of the WTO Working Party on Accession that their trade regimes are, or will soon be, in conformity with WTO rules. It also involves a parallel bilateral track under which the acceding country negotiates tariff concessions as well as commitments with respect to agricultural subsidies and trade in services with any member of the Working Party wishing to enter into such negotiations. There are nevertheless no specific rules or disciplines concerning accession negotiations, or even generally accepted benchmarks. This has opened the door to problems that have complicated the accession process.

The process of accession to the WTO has become more difficult than that of accession to the GATT 1947 for several reasons. The first reason is simply the wider and more intrusive nature of WTO obligations: the trade regime must be in conformity with all the Multilateral

Trade Agreements (MTAs) and, in addition to the negotiation of tariff bindings, commitments must be made with respect to agricultural subsidies as well as trade in services, which can involve policies regarding investment, communications, and transportation, aspects of immigration laws, and so forth.

A second, perhaps less known source of difficulty arises from the modification of the WTO rules that permits a Member country to use the possibility of non-application of WTO Agreements to an acceding country (i.e. Article XIII of the WTO Agreement) as a negotiating lever in order to obtain concessions from this country in the "bilateral tracks" mentioned above. This was not permitted under Article XXXV of GATT 1947. Like many of the difficulties faced by acceding countries in their accession negotiations, such an amendment to the rules probably not only derived from the existing trade legislation of a major WTO member that does not grant unconditional most-favoured-nation treatment to the so-called non-market economies but also reflected a desire to avoid setting precedents that could be invoked by any acceding country whose accession to the WTO would have a particularly strong impact on the international trading system..

This "proxy" aspect of negotiations is, however, not confined to the "China factor". For example, acceding countries that are scheduled to join the European Union or are potential candidates for doing so were asked to make commitments in the audiovisual sector, where the European Union pursues a policy of "cultural exception". Thus, some of the positions taken in the Working Parties on accessions of individual countries appear to reflect elements of the future negotiating agenda of certain WTO members.

The accession negotiations are being carried out against the background of imbalance in the WTO rights and obligations themselves. For example, developed countries that continue to subsidize their production and exports of agricultural products are asking acceding countries to commit themselves to forgoing such measures. In some cases, demands for commitments have even gone beyond the scope of the WTO Agreements. Acceding countries have been asked to accept commitments with respect to privatization and economic reform, elimination of price and profit controls, and the binding of export duties, as well as to accept the plurilateral agreements contained in Annex 4 of the WTO Agreement, acceptance of which is optional. In some cases, acceding countries are being pressed to bind trade elements of structural adjustment programmes agreed to with the IMF/World Bank, although some of the practices discouraged under such programmes (for example, in the area of subsidies) are perfectly legitimate under the WTO Agreements. Further efforts to achieve greater coherence in global economic policy-making, pursuant to the relevant WTO Ministerial Decision, should address this contradiction.

Similarly, in addition to the general perception among developing countries that the provisions for special and differential treatment (S&D) in the Multilateral Trade Agreements are inadequate, especially those regarding the transitional periods, it has proven very difficult for acceding developing countries to benefit at least from such provisions. The net result of the approach by some countries is that the acceding developing countries will become subject to a set of obligations and commitments that they may be unable to implement (in fact, one country sought and obtained assistance from UNCTAD only after it had acceded and found

itself in this position). Other countries have submitted proposals in the context of the ongoing negotiations on agriculture designed to achieve modifications that would correct those provisions of their terms of accession that did not take into account the realities of their situation as developing countries or economies in transition. Paragraph 9 of the Doha Declaration welcomes the accession of Albania, Croatia, Georgia, Jordan, Lithuania, Moldova and Oman but notes the "extensive market-access commitments already made by these countries on accession".[9] The Doha Ministerial Conference also welcomed China and Chinese Taipei[10] as members of the WTO, a step towards universality of the WTO, which should change the character of the Organization (although, because of certain technical provisions in its protocol of accession, China will not enjoy full rights under all Agreements of the WTO for another 15 years).

The principle of an "entry fee" that the acceding country should "pay" for the right to enjoy the fruits of previous rounds of multilateral trade negotiations in which it did not take part, is universally accepted. At the domestic level, the government of the acceding country may be seen, however, as granting substantial concessions that affect important producing interests, without gaining any immediate tangible additional benefits in return. The private sector in acceding developing countries, fearing overwhelming foreign competition, has often expressed strong opposition to WTO membership. Such resistance tends to wane, however, when there is greater understanding by and involvement of all national actors in the accession negotiation process, which eventually enables acceding countries to maintain certain protection for sensitive sectors in accordance with WTO rules. Under GATT 1947, accession negotiations tended to coincide with multilateral rounds. This allowed the acceding country to make requests to GATT contracting parties and thus be seen domestically as obtaining additional benefits, while the tariff concessions negotiated as the "entry fee" for accession also counted as its contribution to the outcome of the multilateral round. In contrast to this, many developing countries and countries in transition made major efforts in recent years to accede to the WTO with the objective of being able to participate as full members in the launching of the next round. The Doha Declaration opens the negotiations to countries currently in the process of accession and thus provides them with the advantages noted above.

At present, nine least developed countries (LDCs) are in the process of accession to the WTO, and some others are considering doing this. LDCs face the same problems as other developing countries, but more acutely, in negotiating their accession to the WTO. Acceding LDCs also face the apparent reluctance of some WTO members to automatically extend to them the S&D provisions specifically provided for LDCs in the WTO Agreements. This implies that acceding LDCs must negotiate with the WTO members to benefit from such provisions on a case-by-case basis. For example, the case of Vanuatu, the only least developed acceding country whose Working Party meeting has been held, illustrates the extent of commitments sought from acceding LDCs. Thus, Vanuatu (with a population of around 160,000) was requested to join plurilateral Agreements on Government Procurement and on Trade in Civil Aircraft, which are nevertheless optional, as a condition for its WTO

[9] WTO, WT/MIN(01)/DEC/1, 20 Nov. 2001, para. 9.

[10] Referred to in United Nations contexts as Taiwan Province of China.

accession, while the S&D provisions available to 29 LDCs that were original Members of the WTO were substantially curtailed. In this context, Vanuatu noted that it should not be obliged to accept much more stringent commitments than those of the LDCs with original WTO Member status, thus avoiding setting a precedent unfavourable to other acceding LDCs.

UNCTAD has been advocating for clear and objective rules and disciplines for accession negotiations, with a view to ensuring that the accession process is not excessively costly for the LDCs and that the accession terms reflect their levels of development and, more importantly, their ability to meet their obligations. The LDCs submitted a proposal to the General Council of the WTO on procedures for their accession to the WTO as part of their proposals for the next multilateral negotiations. These emerged from the deliberations at the Coordinating Workshop for Senior Advisors to Ministers of Trade in LDCs organized by UNCTAD and UNDP in Sun City, South Africa, in June 1999. This followed a positive initiative by the European Union in March 1999 calling for acceleration of the WTO accession process. In particular, the proposal called for a "fast-track" accession procedure for LDCs with automatic granting of S&D provisions in the WTO Agreements, simple across-the-board bindings of tariffs at certain levels, exemption from reduction commitments on domestic support and export subsidies in agriculture, and undertaking of commitments in at least three services sectors. The Programme of Action of the Third United Nations Conference on LDCs, held in Brussels in May 2001, contained in its paragraph 68(o) a set of six commitments to facilitate the accession of LDCs to the WTO. These include a stipulation that WTO members should exercise restraint in seeking concessions in the negotiations regarding market access for goods and services, and should provide for automatic eligibility for all provisions on S&D treatment in existing WTO Agreements. The Doha Declaration states that "accession of LDCs remains a priority for the Membership" and that the Ministers "agree to work to facilitate and accelerate negotiations with acceding LDCs".[11]

The present publication stems largely from the technical assistance activities of UNCTAD in connection with WTO accession and consist of three chapters.

Chapter One contains the summary of the Ad Hoc Expert Group Meeting of the Secretary-General of UNCTAD in Geneva highlighting the particular problems and concerns of countries that are in the process of acceding to the WTO or are prospective applicants. It also contains the expert papers prepared for the meeting, which present the views and concerns of the countries currently negotiating their entry into the WTO on fair and reasonable terms and conditions. These papers may provide useful guidance to acceding countries and future applicants.

Chapter Two contains three papers by UNCTAD experts explaining in detail general issues of WTO accession, including procedures, major issues raised in WTO Working Parties on Accession and technical assistance by UNCTAD in connection with WTO accession. These papers also examine the terms on which a number of countries have acceded to the WTO.

[11] WTO, WT/MIN(01)/DEC/1, 20 Nov. 2001, para. 42.

Chapter Three, which deals with key issues involved in WTO accession, examines how offers on tariffs concessions and agricultural commitments (i.e. domestic support and export subsidies) have been prepared with a view to negotiating access. It also addresses issues relating to market access negotiations on goods in WTO accession from a technical point of view and notes the implications of the fact that non-members of the WTO account for over 50 per cent of world reserves petroleum and natural gas. It also examines some of the terms of accession of China, which acceded at the end of 2001.

This publication is probably the first to address in a comprehensive manner the issues relating to WTO accession. It is intended to contribute to a deeper understanding of the particular difficulties faced by acceding countries, particularly LDCs, and to the strengthening of support for their integration into the international trading system on balanced terms consistent with their development needs.

Murray Gibbs
Senior Advisor to the Secretary-General of UNCTAD

Chapter I

Ad Hoc Expert Group Meeting of the Secretary-General of UNCTAD

ISSUES AND PROBLEMS ARISING FROM THE INTEGRATION OF COUNTRIES INTO THE MULTILATERAL TRADING SYSTEM

Introductory remarks by the Secretary-General of UNCTAD

In proposing to convene the Ad Hoc Group of Experts, we at UNCTAD have of course understood the magnitude of the difficulties involved in addressing such a wide-ranging topic, which embraces many issues of strategic importance to development and trade policies as well as to a further evolution of the multilateral trading system.

The Ninth Conference of UNCTAD, held in Midrand, South Africa, in 1996, recognized that the integration of developing countries and economies in transition into the international trading system was a means for these countries to maximize their benefits from the process of globalization and liberalization. It agreed that the major role of UNCTAD in the area of trade was to promote and facilitate such integration. In this context, UNCTAD was given a specific mandate to assist developing countries and economies in transition in the process of accession to the WTO. At the Tenth Conference of UNCTAD, in Bangkok in 2000, UNCTAD's intergovernmental mandate on WTO accessions was reconfirmed and expanded, while our assistance to acceding countries has greatly intensified.

Today we are providing assistance, in one way or another, to 20 WTO-acceding countries, including practically all acceding least developed countries (LDCs). We also provide assistance to several developing countries that are considering applying for WTO accession. Such assistance covers all aspects of the accession negotiations but concentrates on long-term development concerns and the need to substantially improve the human and institutional capacities of acceding countries so as to enable them to use WTO membership effectively.

It should be emphasized that UNCTAD's work in this area is demand driven and that many Governments in the process of accession to the WTO have requested our assistance. Since the early 1990s, more than 30 have governments approached UNCTAD on this matter, and most of them have received and/or are receiving our assistance, although UNCTAD's resources have always been very limited. We have managed to establish good working relations with the WTO secretariat based on the complementary roles of the two organizations. UNCTAD's work in favour of acceding Governments is very much supported by the United Nations General Assembly, while a number of donor countries, particularly the Governments of Japan and the United Kingdom, have provided financial support to UNCTAD technical assistance programmes.

Thus, I can say that UNCTAD has made substantial efforts to provide effective technical assistance to acceding countries with a view to ensuring their rapid integration into the multilateral trading system on the basis of observance of WTO rules and disciplines. This is done through helping these countries shape their policies to conform to the multilateral trade rules; train their negotiators; and better prepare for the complex requirements of the WTO accession process.

On the other hand, based on our close relationships with these countries, our association with their problems and development challenges and our observation of

developments in the WTO accession process, we felt that ways to facilitate this process, especially for the acceding LDCs, should be sought. This cannot be done without more solidarity from WTO members and their better understanding of acceding countries' individual specificities and problems. It seems that in the recent years a kind of "standard" approach toward all acceding countries has been evolving, while many individual characteristics of these countries (e.g. their size, level of development, and inadequate supply and institutional capacities) are largely ignored.

On a more personal note, the idea to organize such an informal meeting came to my mind many times as I visited several acceding countries, from large competitive countries like China and energy exporters like Algeria to small, vulnerable LDCs. Quite often their leaders posed the same questions: What were the potential benefits for their countries of integration into the multilateral trading system? How would their accession to the WTO affect their development? Why did some WTO members demand from them a very high price for entry? Although I did not have full answers to these questions, I tried to present the following views:

- Membership in the WTO allows countries to design their development strategies and trade policies in a more predictable and stable trading environment.

- Accession to the WTO must be seen not as an end in itself but as a key element in the pursuit of national development policy objectives; these objectives should be clearly defined before beginning the accession process, so that the terms of accession, notably the specific concessions and commitments relating to foreign access to markets for goods and services, as well as other commitments under the WTO Agreements (agricultural and industrial subsidies, trade-related investment policies, intellectual property rights, etc.) fall within the parameters of these policies.

- Accession, if it is to be achieved on balanced terms, should be recognized as a difficult and complicated process that may take a long time and require high-level preparations and coordination among government agencies and a broad political consensus within the acceding countries. In the past, the accession of many developing countries to the GATT 1947, was much easier because it occurred de facto. For example, many African countries became GATT contracting parties through sponsorship under Article XXVI and thus were not obliged to engage in accession negotiations. While this fact facilitated the process of accession to GATT 1947, it also meant that these countries did not have, and were thus not able to develop, their negotiating skills to the extent required by the intricacies of the accession process and later of WTO membership.

- Our work with many acceding countries indicates that certain problems are shared by most acceding countries: inadequate technical knowledge and understanding of the WTO Agreements and their implications for the economy

and development; lack of adequate negotiating strategies based on national development, financial and trade needs; lack of human and financial resources; and lack of the analytical tools needed to prepare for negotiations, including insufficient data and information management systems. All these issues should be addressed by acceding governments before they enter into negotiations.

- The strategic choice facing developing countries and transition economies is to negotiate appropriate conditions for their growing integration into a single system of trading and financial relations. The only way to have any possibility to influence the decisions that will affect the course of globalization is through active participation in the institutions in which decision-making takes place.

- On the other hand, countries have different perceptions of the expected gains from globalization based on their individual interests, situations and experiences. This diversity should be fully respected in the international decision-making process, with a particular ethical emphasis on the situation of countries that are marginalized, weak and poor.

Furthermore, in my personal contacts with several present and former ambassadors in Geneva, the idea to have an informal discussion to review the experiences of acceding countries was raised many times. Concerns over problems and difficulties faced by acceding countries were expressed first by several developing-country WTO members during 1998–1999, and later, in December 2000, by the Informal Group of Developing Countries in the WTO General Council.

In light of the above, we finally concluded that the best approach would be to invite a group of exceptionally qualified persons with different perspectives to share their experiences of the last few years in the context of an informal forum. We explored this idea with the WTO secretariat and received its support for the initiative.

The merit of such a meeting, in our view, is that it is strictly outside the negotiating context and can offer an interesting opportunity to share the respective experiences of both WTO members and acceding countries. Such a discussion may have distinct added value and make a positive contribution to the WTO process by:

- Contributing to a better understanding of the problems faced by acceding countries;

- Clarifying the vision of WTO members for the future universal multilateral trading system;

- Analyzing the interaction of multilateral integration with ongoing regional trade processes as well as with developments in the WTO, such as new negotiations on agriculture and services;

- Sharing the experiences of countries that have acceded to the WTO in order to identify "best practices"; and

- Focusing on the capacity of acceding countries to implement their WTO obligations given the difficulties faced by developing-country members in this respect (as expressed, for example, by several countries that have only recently become WTO members in the new negotiations on agriculture).

The meeting could also generate valuable suggestions from the participants for the continuation of UNCTAD technical assistance programmes in favour of acceding countries, including finding better ways to coordinate UNCTAD's efforts with those of other technical assistance providers.

My special request to participants is to place special emphasis on finding ways to facilitate the WTO accessions of the LDCs which is an important practical objective on the eve of the Third United Nations Conference on LDCs taking place in Brussels next month. As was emphasized by several developing and developed members at the WTO General Council meeting in December 2000, there is a clear need to make the accession process more manageable for these countries.

The Ad Hoc Expert Meeting of the Secretary-General of UNCTAD is not an intergovernmental meeting. In accordance with long-standing practice in UNCTAD, this informal meeting is convened under the secretariat's responsibility to complement the expertise available in-house on specific issues in the area of trade and development. In view of the importance of the topics under discussion, the secretariat considered it appropriate to make the meeting rather open-ended and informed member states accordingly.

Given the informal format of this meeting, no conclusions are foreseen. The secretariat envisages to include all written contributions by experts, as well as to reflect the expressed views of all participants, in its forthcoming publication devoted to the topics under discussion.

To facilitate the discussion, the secretariat circulated a brief informal discussion note that focuses on several questions and provides some substantive comments as well as background data.

Against this background, several general topics are proposed for discussion as summarized in the secretariat's note.

Summary of the Meeting

The Ad Hoc Expert Group meeting of the Secretary-General of UNCTAD on "Issues and Problems Arising from the Integration of Countries into the Multilateral Trading System" was held in Geneva from 9 to 10 April 2001. More than 30 experts participated in this informal meeting in their personal capacity, expressing different views from various perspectives. The list of the participants and the programme of the meeting are attached. (See the Annexes to Chapter 1.)

The meeting provided a good opportunity for a comprehensive exchange of views from a development perspective on the process of the integration of developing countries and countries with economies in transition into the multilateral trading system, and it focused on countries' experiences in the WTO accession negotiations.

The views expressed by the participants can be summarized as follows:

1. Accession to the WTO can be improved through specific actions by the WTO and by acceding countries. The issue needs to be handled with caution and should be addressed from the perspective of strengthening rather than weakening the WTO. Article XII of the WTO Agreement is, however, being used by some members to pursue their long-term negotiating strategies. On the other hand, acceding countries are unable to modify such practices, as they cannot influence the decision-making process within the WTO. They can only request that WTO members agree on a code of good conduct to be observed in the accession process; such a code would facilitate the WTO accession process.

2. Within the WTO, accession should become a matter of priority so that the stated objective of universality of the WTO can be attained as soon as possible. The WTO will not be a universal organization as long as many potential members such as the Russian Federation, Saudi Arabia and other acceding countries remain outside. Objective criteria are also needed for the magnitude of concessions sought from acceding countries in bilateral negotiations. Objectivity means concessions that are not excessive but are consistent with the development needs of the countries concerned (which is a fundamental principle of the WTO, as stated in the Marrakesh Final Act[12]). The concessions sought should not exceed the actual obligations of original WTO members. Developing countries and countries in transition that are original members of the WTO should be encouraged to support the accession of new members on terms and conditions similar to their own commitments and obligations. Solidarity among developing countries and countries in transition is very important in this regard. There is need for a set of policy rules (beyond the improved set of procedures for accession, as described below) to be applied equally to all acceding countries, with the exception of LDCs, which require special treatment. Specific features of an economic, cultural or other nature should be taken into account in each accession case. This can be facilitated by the conduct of special "hearings" in the WTO's General Council.

[12] Marrakesh Agreement establishing the World Trade Organization.

3. The procedures for accession to the WTO have been improved through various guidelines provided by the WTO secretariat with the consent of members, such as WT/ACC/1 (guidelines), WT/ACC/4 (agriculture), WT/ACC/5 (services), WT/ACC/8 (TBT and SPS) and WT/ACC/9 (TRIPS). Legislative action plans and synoptic tables are being used to help acceding countries assess the requirements they have to meet for compliance and the legislative changes they have to make, and to set up a structured process of undertaking necessary adaptations and adjustments. More transparency is also necessary in the accession proceedings, but the confidentiality of bilateral market access negotiations should be preserved and guaranteed. Acceding countries must be aware that some members may desire to streamline the accession process, while others seek to tighten the rules further. There is peer pressure in Working Party meetings, where some members show restraint in their demands while others do not. There appears to be some informal understanding among members on relaxing the procedures being applied to LDCs.

4. The accession process has a systemic impact in that acceding countries would accept terms and conditions that need to be implemented through national legislation. On the other hand, the pressures of liberalization in the process of WTO accessions give rise to the need for an effective trade remedy institutional capacity so as to avoid resorting to protectionism or other measures inconsistent with the principles of the WTO.

5. The institutional governmental machinery intended to support accession negotiations is an important factor in their success. It should include not only a national committee on WTO accession but also well-staffed and equipped units in various ministries dealing with matters related to the accession issue, linked up with the main ministry unit managing the country's WTO accession. These units may establish networks with similar units in other acceding countries in order to share views and experiences, as well as to launch a dialogue with WTO members.

6. The private sector in developing countries and countries in transition is often not well-structured enough to influence the countries' accession negotiations. The sector needs to be effectively mobilized so that its views, which often conflict with the official view, can be harmonized and integrated into the strategies of such negotiations conducted by governments.

7. Political commitment at the highest government level to the smooth progress of accession negotiations is necessary. In view of the possible high social costs of accession, a similar commitment should also be sought from the private sector and civil society.

8. It is important for acceding countries to guard against acceding to the WTO at "any cost". Accession is becoming costly as newly acceding countries undertake obligations and grant concessions that were often not required from WTO members.

9. Accession negotiations could be made easier by organizing them during a new round of multilateral trade negotiations, depending on the nature of such a round (e.g. if negotiations are comprehensive, as in the case of the Uruguay Round).

10. Regarding the accession of LDCs, it was noted that no LDC had managed to accede to the WTO since the organization's establishment in 1995, and that only one LDC could be seen as having reached an advanced stage in its accession negotiations. Acceding LDCs, like many other acceding developing countries and countries with economies in transition, are facing serious difficulties in their efforts to join the multilateral trading system. Increased solidarity from WTO members as well as their better understanding of the specificities and problems of individual acceding LDCs are needed. Some participants proposed to set up a non-binding code of good conduct for WTO members regarding the accession of LDCs in order to observe their special status and to fully acknowledge their specific development, financial, institutional and human capacity needs. In this regard, many participants called for the revival of the proposal by the European Union in the pre-Seattle preparatory process for "a fast-track procedure" for acceding LDCs.[13]

11. Regional trade agreements are important for the accession process and the future development of the trade of acceding countries. Acceding countries should enter into as many regional trade agreements as possible, while respecting relevant WTO rules. This would help to carry out economic reforms, lower barriers to trade, and strengthen ties and relations with other countries whose support could be useful in WTO accession negotiations. There is some scrutiny of regional trade agreements in the accession process, but not like the more in-depth examination carried out by the WTO Committee on Regional Trade Agreements.

12. The work of UNCTAD in the area of analytical and technical assistance on WTO accession is appreciated and welcomed. Further work by UNCTAD in this area might include:

- Drawing up model rules or a code of good conduct for WTO accessions, to be applied equitably to all acceding countries (with the exception of LDCs, for which special treatment is needed). This recommendation could eventually be submitted for consideration to the General Council of the WTO;

- Carrying on with awareness-building activities regarding the WTO and the potential impact of WTO membership on governments, the private sector and civil society of acceding countries;

- Focusing technical assistance also on the "pre-accession" phase;

- Continuing advisory services and training in trade negotiations; and

- Supporting institutional capacity-building in acceding countries to effectively manage their accession process, while coordinating activities in this area with those of the WTO secretariat.

[13] WTO doc. WT/GC/W/153, 8 March 1999.

Submissions and interventions by experts

Issues and problems arising from the integration of Cambodia into the WTO

Sok Sopheak*

After the general elections sponsored by the United Nations in 1993, the Royal Government of Cambodia fully acknowledged that the best way to accelerate economic growth and development is to continue to integrate its economy into the regional and global trading system. Cambodia also understands that trade liberalization and investment throughout the world economy are creating opportunities for millions of new jobs, increasing business activities and bringing to Cambodia the skills and disciplines necessary to increase the negotiating power of Cambodia in the world economy. In this regard, Cambodia has already taken some major steps towards trade liberalization and has dismantled a number of features of its previous trade regime that would not comply with WTO Agreements. However, the Royal Government of Cambodia has at present a limited capacity to play a full role in seizing the opportunities mentioned. These difficulties are due to the consequences of the civil war, which lasted from 1970 to 1998.

Preparation for WTO accession in Cambodia

Cambodia applied for membership in the WTO on 19 November 1994. The Working Party on Accession of Cambodia was established on 21 December 1994. Because of budgetary difficulties, Cambodia has no permanent representation in Geneva. However, as an observer least developed country, Cambodia has opportunities to attend many major WTO meetings and events such as the Singapore Ministerial Conference, the High-Level Meeting on LDCs' Trade Development, the Geneva Ministerial Conference, the Seattle Ministerial Conference and other seminars, workshops and training activities organized by the WTO and UNCTAD.

In preparation for joining the WTO, Cambodia has taken the following steps:

Institutions

The WTO Division was established in 1997 within the Ministry of Commerce of Cambodia. There are around nine officials. Most of them were educated and trained in the former socialist countries. Therefore, English-language skills and training in market economies are needed to increase their working capacity.

In September 1997, the Council of Ministers established the Inter-ministerial Coordination Committee on WTO Accession of Cambodia, which is in charge of preparing

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the country memorandum on foreign trade regime and other necessary documents required by WTO members. This Committee is chaired by the Minister of Commerce, who has overall responsibility for managing and coordinating the accession process, and is made up of 14 ministries and other government entities. Within this committee, there are six working teams, which drafted the various parts of memorandum and answered the questions raised by Australia, the European Union, Japan and the United States.

On 2 April 2001, the Government of Cambodia established a Negotiation Team led by the Minister of Commerce and made up of senior officials from 18 ministries. This team should remain in place until Cambodia becomes a member of the WTO.

Documents

Cambodia submitted the memorandum on its foreign trade regime to the WTO on 21 May 1999. In addition, the replies to the questions of WTO members were submitted on 8 November 2000. In preparation for bilateral and multilateral meetings, Cambodia has also prepared some other major documents such as an initial tariff offer, a checklist on agriculture and subsidies (WT/ACC/4), a checklist on standards and SPS (WT/ACC/8), and a checklist on TRIPS.

Tariff structure

At present, Cambodia has simplified its tariff structure into four major bands of 50 per cent (for consumer goods), 35 per cent (for infant industries), 15 per cent (for capital goods) and 7 per cent (for inputs of domestic industry). 80 per cent of imports are estimated to be subject to the 15 per cent import duty. In comparison with the average tariff rate of other countries, this is not very high. However, tariff revenue accounts for around 65 per cent of government revenue. Thus, the tariff reduction within the WTO context may cause a problem due to the revenue impact. In order to mitigate the trade liberalization and revenue impact, the government of Cambodia is gradually reforming the taxation system by introducing the self-assessment method, and the new taxpayers are identified.

Industry, supply capacity, and regulatory framework

The government policy is focusing on the development of agro-industry and other light industries, but the major industry in Cambodia at present is the garment and textile industry. Although Cambodia is securing the most-favoured-nation and Generalized System of Preferences status provided by the European Union, the United States and another 20 trade partners, the export commodities and sectors have not yet broadly diversified. In addition to a limited supply capacity for exports, Cambodia is facing the challenge of establishing the regulatory infrastructure for sanitary and phytosanitary measures (SPS) and technical standards. The framework and institutional body for SPS and standards are not yet fully put in place. Most processed and unprocessed agriculture products, including fish products, cannot be exported to developed countries because they do not meet the safety criteria and high standard requirements.

With assistance from the international community, Cambodia is currently revising and preparing major laws and regulations in order to comply with the rules and agreements of the multilateral trading system, including a customs code, a law on trade mark, a competition law, an accounting law, a law on cooperatives, a land management law, and others.

Possible issues and problems arising from WTO accession

Fiscal impact

The experience of trade liberalization in AFTA/ASEAN has demonstrated that the revenue impact arising from tariff reductions cannot be avoided. The average imports from ASEAN countries account for only 40 per cent of the total imports. Within ASEAN, the tariff reduction scheme is not as dramatically cut as tariff reductions required by WTO members. The government has also identified other revenue sources to compensate for the revenue losses arising from tariff cuts, such as customs and tax reforms, curbing smuggling, and so on. Even though customs and taxation reform is going on, the increased revenue resulting from tax reform does not counterbalance the revenue lost because of the tariff cuts.

Impacts on legal framework and institutions

The current trade regime has a number of laws that do not comply fully with the WTO Agreements. More time is needed for revising the existing laws and adopting new legislation. As was mentioned earlier, each relevant government institution has a limited capacity to draft new laws. Also, these institutions, like the private sector, are not familiar with the WTO Agreements. It is somewhat hard to get national consensus on revising laws as well as policy formulation.

Industrial impact

While trade liberalization may encourage increase trade opportunities, it may also cause industrial difficulties. Some industrial sectors may benefit from cheap inputs, while some other infant industries may suffer from similar cheap imported products. Although the government is trying to revise the investment law to encourage domestic and foreign investment, most industries, except the garment industry, are in an infant stage. Policy support and time are needed to strengthen the competitive capacity of those industries. At the moment, the sensitive industrial sectors are not yet fully identified.

Need to accelerate the accession process

The Negotiating Team of Cambodia met with members at the first meeting of the Working Party in May 2001. Although the negotiating capacity of the team has been improving with simulation training, its quality does not yet meet the requirements. In particular, more assistance is needed from WTO members. As a least developed country, Cambodia is in favour of a fast-track procedure for its accession.

In preparing for accession and for implementation of the WTO Agreements, Cambodia urgently needs further assistance in building institutional and human capacities,

specifically in the following areas: training on trade policy, market access, studying the impact of WTO accession, reviews of the conformity of existing laws and regulations with WTO rules, SPS and technical standards, development and negotiation strategies, and others.

At present, the entry fee for WTO accession is very high. For LDCs, the price to be paid is much higher than the price paid by the former GATT members.

Accession to the WTO of the Lao People's Democratic Republic

Khemmani Pholsena*

Let me begin by congratulating UNCTAD for organizing this meeting. It is particularly well-timed to coordinate with the Third United Nations conference on LDCs coming up in Brussels in May and the Fourth Ministerial Conference in Qatar in November. This meeting is an important opportunity for all of us to discuss the issues and problems arising from integration of countries into the multilateral trading system, especially for acceding least developed countries (LDCs) like the Lao People's Democratic Republic (Lao PDR).

I intend to concentrate on two major aspects: Challenges and difficulties for the Lao PDR in connection with accession to the WTO, and technical assistance requirements to facilitate the accession process.

I. Accession to the WTO: Challenges and difficulties for the Lao PDR

Introduction

The Lao PDR lodged its application of accession in 1997 and the Working Party was established in 1998. With assistance from UNDP (as a part of the Integrated Framework, committed by the six core agencies), it then set out a program to plan for accession. The next step in accession, the submission of the Memorandum on the Foreign Trade Regime, was achieved in March 2001.

Lessons from the accession process

The WTO secretariat produced an exhaustive analysis of accessions and revised it in November 2000 (WT/ACC/7/Rev.2). In January 2001, the Subcommittee on LDCs prepared a compilation of the state of play of LDC accession (WT/LDC/SWG/IF/11). In addition, UNCTAD prepared an analysis of the implications of the accession process for LDCs in chapter 2 of the 1998 report on LDCs. These papers have been studied. They have provided Lao PDR officials with detailed information on what happens in the accession process and have conveyed key lessons.

Key lessons are:

- The pace of preparation for accession is determined by the applicant.

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- When memorandums are very detailed, much less time is taken with follow-up requests for further information.
- After the information-gathering phase is finished, several separate negotiations start. In the case of goods and services, these negotiations begin only after the applicant puts proposals on the table.

- Developing-country applicants do not automatically receive the same rights as existing developing-country members of the WTO.

Initial steps to prepare for accession

The Lao PDR recognized that accession would be a difficult, technically demanding and resource-intensive exercise.

UNDP set up a project to support our accession, which provided technical assistance. It entailed the provision of expert assistance with technical questions and funding for training.

The Government committed resources to create new units to handle WTO issues and, most importantly, created a very high-level interagency group to coordinate preparations for accession. A comprehensive strategy to prepare for accession was developed.

An accession strategy

The Lao PDR lodged its memorandum of accession in March 2001. The accession process has automatic steps that create milestones for the Lao PDR to work towards in the next phase.

These steps are: (1) supply answers to the questions about the information in the memorandum; (2) attend the first meeting of the Working Party; (3) complete the information-gathering phase, usually providing answers to follow-up questions; (4) commit to specific changes to Lao PDR laws and regulations; (5) prepare a schedule for Lao PDR tariffs; (6) prepare a schedule on agriculture; and (7) prepare a schedule on services. A program for completing each of those steps has been prepared.

Other action by the Lao PDR government to support accession is necessary. There is a need to expand understanding of the WTO and accession within the Government and the community. A program to provide a steady stream of information about the WTO and the benefits of accession to the Lao PDR is being developed. This entails translation of the WTO Agreements into Lao, preparation of speeches by senior government officials on the WTO and distribution of information about the WTO.

There is also a need to deepen the knowledge and expertise of senior government officials in line agencies concerning WTO obligations. A program is being implemented to send officials from relevant ministries to training courses about the WTO and WTO issues and to have visiting experts on WTO issues conduct seminars in the Lao PDR.

Key challenges for the Lao PDR

The key challenges for the Government of the Lao PDR have been to create new machinery in government to handle WTO accession and WTO issues, to broaden understanding of the WTO in the Lao PDR and to alter laws and regulations to comply with WTO obligations.

New machinery of the Government

In addition to the creation of a high-level interagency group of ministers and vice ministers to coordinate accession, a standing committee of officials to support that group has been assembled. It oversaw the preparation of the Memorandum of Accession and is overseeing the accession process. It meets once a month on average.

A new unit has been created in the Ministry of Commerce and Tourism to handle multilateral trade affairs, and new staff have been recruited and trained to staff it.

Broadening understanding of the WTO

This is an ongoing process. Further seminars and briefings are planned in order to expand understanding of the WTO and the implications of accession outside the circle of officials directly involved to include provincial officials, members of the National Assembly and the private sector.

Altering laws and regulations

A review of what changes are required for WTO membership has been undertaken and the amount of work involved has been assessed. Some important basic work has already been undertaken. In acceding to the ASEAN Free Trade Area in 1998, the Lao PDR was required to reorganize tariff classification to meet ASEAN standards and to make commitments on bindings. Meeting WTO requirements will not, accordingly, be very complicated, and the WTO processes are better understood in some circumstances

Work will be required to ensure that non-tariff measures are consistent with WTO rules. In the areas of sanitary and phytosanitary measures (SPS), technical barriers (TBT), customs valuation and intellectual property, the compliance requirements have been assessed and quantified. Existing programs to reform customs administration and improve intellectual property law can be adjusted to meet WTO requirements. Lao PDR law on standards is philosophically close to the requirements of the Agreement on Technical Barriers to Trade, and additional changes to fully comply with TBT requirements are not complex. Some training will be required to enable compliance with the procedures stipulated in the SPS Agreement. A number of changes will be required to Lao PDR laws and regulations.

From an administrative standpoint, altering laws and practices will be the biggest challenge. The processes of legislative change in the Lao PDR can take time because of the processes of consultation that are required.

II. Further technical assistance requirements to facilitate the accession process

The real accession process has just begun along with the submission of the Memorandum on Foreign Trade Regime. The scope of the work that the government is undertaking is unprecedented. Already at this stage we have come to realize what requirements – if only in terms of furnishing information – we face and what resources are necessary to meet them.

And last but not least is the participation of acceding countries in the new round of negotiations. The participation of acceding countries in the multilateral negotiations would strengthen the global trading system and would encourage acceding countries to undertake significant market-opening commitments multilaterally. Furthermore, the Lao PDR and other acceding countries could contribute their experiences and their expectations in terms of promoting world trade and investment. Excluding from participation LDCs that are seeking entry into the WTO would further marginalize our economies and slow down our integration into the world economy and the process of globalization.

Conclusion

Accession to the WTO requires a considerable input of resources and technical capacity, which the Lao PDR does not have within its own resources. It is grateful for the assistance from the WTO, donor governments (particularly Australia) and other international bodies, particularly UNCTAD, IMF, WIPO, FAO, the European Union and ASEAN. I may not be able to list all donors and international organizations, but I would like to express our appreciation for their support and assistance in our accession effort.

Accession to the WTO will benefit the Lao PDR, not just because of the benefits to be derived from membership of the WTO, but because the process of accession requires reform and modernization of a number of laws and practices in the Lao PDR, each of which will bring its own benefit.

We are not certain if we will meet the expectations of the members of the Working Party on Accession. We do not have an exhaustive list of requirements to meet for completing accession, but the human capacities are posing serious limitations. Since we do not want to compromise the quality of inputs and information provided, the speed with which we can advance preparation for negotiations is a serious concern. We are lacking national expertise and suffer from the lack of awareness about the WTO issues among different line ministries and agencies of the government. The WTO Secretariat has supported the establishment of a Reference Centre, which was much appreciated. We are happy that the WTO and UNCTAD were able to provide training for a few Lao nationals, but this will not significantly improve the situation. Training activities (both in Geneva and in Vientiane) are crucial, as is participation in any regional activities that the WTO and other organizations might sponsor.

The WTO Secretariat provides regular (monthly) briefings on developments in the WTO that are of direct relevance to the acceding developing countries, including LDCs. The

flow of information is highly appreciated, but it exceeds our capacity to absorb it in the most useful and effective way. This problem is particularly acute for the countries without representation in Geneva. The WTO Secretariat could also help in obtaining bilateral technical assistance from other WTO member countries in the areas where the need is particularly acute. This also includes support in institution-building. We would appreciate it if the WTO Secretariat could facilitate exchanges among acceding countries for sharing best experiences in conducting of negotiations and identifying ways to expedite the process of accession. I cannot underestimate the role of UNCTAD's support in all aspects of the accession negotiations. We count on the continuous involvement of UNCTAD in technical assistance projects.

Sudan's accession to the WTO: Experiences and problems arising from implementation of economic reform programs

Azhari Basbar*

First I would like to thank the Secretariat of UNCTAD for giving me this opportunity to participate in this important meeting. I would also like to thank the honourable participants for the useful information on their country experiences which we have heard today and yesterday.

Historical background

Sudan is a least developed country (LDC). Despite its huge resources and human potential, the performance of the economy has been poor and has been declining over the last three decades. The current difficulties from which the Sudan economy suffers have their roots in the historical, cultural, political and economic background of the country. These historical factors are so complex and intertwined that it would be too difficult to disentangle them, but obviously they are major factors that shaped the current status of the economy. Of course, this is not an excuse for a country such as Sudan not to make efforts to develop itself, but with growing globalization the ability of the country to design its own policy framework is becoming increasingly restricted. It is now widely agreed that promoting development in a country such as Sudan is the responsibility not only of the country itself but of the international community as well.

After Sudan become independent in 1956, the first national government started to apply a largely liberal trade regime, while it also suffered a lot from severe problems inherited from colonization, such as the civil war in the south, a problem that still continues to afflict severe damage on the country's political, social and economic conditions. In 1969, a military regime came into power and started to implement a stringent centrally planned economic policy, with the support of the former Soviet Union. All foreign investments and big national companies were nationalized.

Despite its anti-market orientation, that government received huge external assistance and loans, solely for political reasons. These loans, taken during that time, came to constitute the bulk of the present outstanding external debt of the country. Because of these developments, I believe the responsibility for the currently mounting foreign debt should not be attached only to our governments, as donors too are responsible. Paradoxically, external assistance and loans have become very scarce since the Sudan started to apply a more liberal economic policy since the late 1980s. Unfortunately, it is political interest rather than the welfare of the poor that seems to govern the flow of assistance to Sudan.

In 1992, before its application for WTO membership, the government of Sudan adopted and implemented a series of economic policy reforms within the context of the three-

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year National Economic Salvation Program (1991–1993) and the Comprehensive National Strategy (CNS) (1992–2002).

The main objective of the CNS is to liberalize the economy so that economic activities are guided more by market forces. The measures undertaken by the government so far are to a large extent compatible with the rules and objectives of the WTO. I personally believe that these reforms have helped to put the country in a much better position to integrate itself into the world economy.

Notwithstanding the above statement, in reality these reforms have not led to the expected improvement in the performance of the economy, and the country has continued to suffer from a number of economic difficulties, including the following:

1. Inadequate foreign financing to implement developmental programmes;

2. Mounting foreign debts;

3. Weak private-sector response due to lack of capital, institutional constraints, lack of access to current information, and so forth;

4. Continuous shortage of basic energy sources, including electricity and petroleum products;

5. Frequent droughts and natural hazards that affect the agricultural sector (the leading sector of the economy);

6. Continuous shortages and untimely provision of intermediate inputs to both the agricultural and manufacturing sectors;

7. Infrastructure problems;

8. Limited access to foreign markets; and

9. Social complications:

    - The destructive effects of the civil war in the south;

    - Increasing poverty and undernourishment, particularly in the rural areas and the war-affected and drought-stricken areas;

    - A shortage of resources for social safety funds established to contain the above-mentioned problems (funds for supporting students, retirement funds, social insurance funds, etc.); and

- The destructive effects of the problems inherited from colonialism (e.g. the civil war in the south).

Sudan's accession experience

Sudan applied to join the WTO in 1994 and submitted its memorandum of foreign trade regime in 1998. Since that date, it has received many questions, of which some have been answered and some are still to be answered.

Sudan has been faced with several problems during the six-year period of its preparation for accession, some of them internal, others external. Because of its strong commitment to implementing a liberal economic regime and to accelerating the accession process, the Government of Sudan decided in 2000 to establish a central unit to coordinate activities between the different Ministries and organizations, and to attract foreign assistance in the area of technical and human capacity-building, as well as to coordinate with the WTO Secretariat. If the main objectives of the WTO and the former GATT are to liberalize the world economy for optimal utilization of the world's resources, Sudan has done more than required to become a member of the WTO.

Internal problems

1. Lack of coordination between the concerned Ministries and other public and private entities;

2. Inadequate understanding of the Agreements, especially by higher officials;

3. Internal resistance, especially by some high-level civil servants; and

4. Lack of proper, well-organized and up-to-date information.

External problems

1. Inadequate training and facilities provided by various organizations; and

2. Inability to attend some of the important external meetings held on various occasions, especially to follow the new negotiations.

Recommendations

General recommendations

Irrespective of its accession position, Sudan, like most other LDCs, needs external assistance in order to implement its developmental programs and to sustain its economic growth, *inter alia*, through: (i) adequate foreign financing; (ii) encouraging foreign direct investment (FDI); (iii) significant debt relief assistance; (iv) improving access to foreign markets, particularly for its key agricultural products, including semi-processed products; and

(v) maintaining the current special and differential treatment for LDCs to enable these countries to diversify and improve their production capabilities and support the poor.

In the area of accession

1. Expedite the process of accession for LDCs. There is a real need for Sudan to start negotiating its accession to the WTO, and I believe accession terms should be made more transparent and should not be left to the results of bilateral negotiations. For LDCs, I believe that accession should be based on terms not less favourable than those obtained by developing countries that acceded during the Uruguay Round;

2. LDCs should be credited for the reforms they have undertaken, rather than having to pay a price for accession;

3. Commitments made by the countries in the context of agreements with multilateral financial institutions (e.g. the IMF and the World Bank) should not be taken as a basis for negotiating long-term commitments within the framework of the WTO; and

4. Technical assistance should be organized and should become part of the budget of the concerned organization.

Yemen's accession to the WTO

Nagib Hamim*

Since early 1998, the Republic of Yemen has undertaken several serious initial steps towards the completion of its accession to the WTO. On 7 February 1998, a Ministerial Committee was established to study the suitability of Yemen's accession to the WTO. The Committee's recommendation has led to the adaptation of the principle of Yemen's accession to the WTO. The new Government (of May 1998) acted positively on the committee's recommendation and, for the first time, incorporated "accession to the WTO" into its new official Government Programme, which was submitted to the House of Representatives (Parliament) on 1 June 1998.

The Government undertook to (i) prepare plans, policies, and programmes aiming at enhancing Yemen's negotiating ability to accede to the WTO and (ii) conduct studies to identify the positive and negative aspects of accession, identify means of assisting the production and trading sectors, and prepare for the establishment of a National Committee for preparation and negotiation with the WTO.

The Government's commitment to accede to the WTO was manifested in its application for observer status with the WTO. Hence, on 14 April 1999, Yemen became an Observer to the WTO. One year later, Yemen applied for full membership status. And on 17 July 2000, the WTO General Council accepted Yemen's formal application for WTO membership.

Locally, a national mechanism was established to oversee the accession process within the Government of Yemen, including the private sector and civil society organizations.

A successful Local Authorities' Election was conducted on 20 February 2001. Subsequently, H.E. Abdul Kader Abdul Rahman Ba Jamal was entrusted with the task of forming a new government.

The newly appointed Minister for Industry and Trade, Mr. Abdul Rahman Mohamed Ali Othman, is quite familiar with the process of Yemen's accession to the WTO. Actually, he was the Minister of Supply and Trade who, back in early 1998, headed the Ministerial Committee that initially proposed Yemen's accession to the WTO. Therefore, he is fully committed to the accession process and capable of leading it and overseeing the smooth integration of Yemen's economy into the international trading system.

A comprehensive Structural Adjustment Programme, locally known as the "Economic, Financial, and Administrative Reform", implemented since early 1995, has actually eased the path for WTO accession. The achievements of the Programme, on both macro and trade-related issues, were looked upon as essential prerequisites to full integration

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into the global economy and the completion of the WTO accession process. However, there are many essential requirements for fulfilling this process.

To reach this goal, the Decision on Measures in Favour of Least Developed Countries (LDCs) needs to be fully implemented. This is particularly important in respect of LDCs' accession to the WTO, where LDCs need "only be required to undertake commitments and concessions consistent with their development, financial, and trade needs, or their administrative and institutional capacities".

Good intentions, commitment, and hard work would definitely need full support and assistance in an accession case such as Yemen's. Since Yemen is an LDC, its need for technical assistance is a priority in order to secure a smooth accession and integration process.

The following technical assistance areas are of high priority to Yemen:

- Preparation of the Memorandum on Foreign Trade Regime (MFTR), the first prerequisite for initiating the accession process;
- Training in the field of understanding and implementing the WTO Agreements in order to build and implement a national policy for negotiations and accession to the WTO;
- Access to WTO information and resource persons;
- Studies on the impact of WTO accession on the production and service sectors, labour, national income, consumption, government resources, etc.;
- Establishment of a medium-term strategy for Yemen's trade policy, to implement a national Work Plan for the development of Yemen's international trade;
- Creation of a well-developed database able to serve both the industrial and trade sectors' needs, including the establishment of trade points within the Ministry of Industry and Trade and Yemen's Chambers of Commerce;
- Technical and financial support for the following entities:

    i. Communication and Coordination Office with the WTO (CCO WTO), in terms of technical and administrative assistance, to enhance its capacity to become the central unit for the accession process;

    ii. The Customs Authority, to facilitate the implementation of the Customs Agreement, trade facilitation measures, and building customs personnel capacities;

iii. The General Authority for Standardization and Quality Control, to enhance its ability to implement the Technical Barriers to Trade Agreement;

iv. The Intellectual Property Protection Offices at the Ministry of Industry and Trade and Ministry of Culture, as well as enhancing the capacity of the Judicial Trade Courts and customs personnel in respect of intellectual property rights protection;

- Establishment of a qualified Anti-Dumping and Unfair Trade Practices Department within the Ministry of Industry and Trade;

- Preparation of aggregate measure of support tables for agricultural products;

- Establishment of a qualified department within the Ministry of Agriculture and Irrigation in relation to the implementation of the SPS Agreement, technical support to Agricultural Export and Import Supervision Centers, and the development of a medium-term agricultural export strategy;

- Execution of programmes pertaining to preserving and protecting environmental diversity and promoting ecotourism;

- Specific studies on trade-related areas within the realm of intellectual property rights protection;

- Amendment and/or creation of new laws necessary for compliance with WTO rules and commitments;

- Enhancing the negotiation skills and techniques of the Yemeni Negotiating Team for accession to the WTO; and

- Assistance in increasing general awareness of the Multilateral Trading System, especially among the private sector, legislators, civil society organizations, and academia.

The accession of Vanuatu to the WTO: Lessons for the multilateral trading system[*]

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Introduction

At present nine least developed countries (LDCs) have formally sought accession to the World Trade Organization (WTO). This paper examines the accession process of Vanuatu, a small LDC in the Western Pacific,[14] an experience that brings to the fore two fundamental – or perhaps over-arching – weaknesses of WTO accession under the terms of Article XII of the Marrakesh Agreement.[15] The process normally proceeds through two logical stages. In the first, referred to as the "protocol or multilateral stage", members examine the trade regime of individual applicants, seeking clarification of, and often reforms to, the conduct of trade where they deem aspects to be in violation of existing WTO rules. Clearly, this stage of the accession process – wherein self-interested WTO members examine the WTO conformity of an applicant's trade regime, with neither the operation of any rules for the process of examination nor the applicant's having right of recourse to any review – is akin to having a complainant at a panel act as the sole panellist. It is this first and most significant of the inherent flaws in the accession process, and the ensuing abuse of power, that has resulted in the proliferation of "WTO-plus" demands on new WTO applicants.

In the second stage, commonly referred to as the "bilateral stage", applicants negotiate with individual WTO members on the terms of their goods offer, agricultural schedules and service sector commitments. While it remains one of the enduring convenient clichés of the multilateral trading system that the WTO is a "rule-based system", in reality accession is inherently power based and hence antithetical to the WTO's credo. The reality of all laws and rules is that they mask power relations in a society, and certainly the WTO is no exception. Consequently it should come as no surprise that this bilateral stage of the accession process is flawed because the negotiation of accession, unlike normal GATT and WTO negotiations, offers the applicant no possibility of imposing a marginal cost on the *demandeur*.

The central thesis of this paper is that in their submissions to the Seattle Ministerial Conference, the European Union[16] and the Melanesian Spearhead Group[17] have taken a

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∗ The views expressed in this paper are those of the authors and not necessarily the views of the Forum Secretariat or any of its member Governments, nor of the Government of Vanuatu.

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[14] Vanuatu, at the time of writing, was still classified by ECOSOC as a least developed country but was under threat of graduation to developing country status from 1997.

[15] Article XII states: 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.

[16] WT/GC/W/153.

misguided approach to the reform of the accession process. The weakness of their approach lies in the fact that it fails to focus on the nature of the inherent flaws of the process itself, focusing instead on the development status of the applicant (i.e. whether it is an LDC or a developing country). The length and costliness of the WTO accession process are explained by the two inherent flaws in it, rather than by the development status of a particular applicant. Accession is biased against the applicant and the process gives enormous powers to the WTO members to extract concessions that would not be possible in a genuinely rule-based system. Indeed, the reason the process is unlikely ever to be reformed lies in these inherent flaws and the power they give as a consequence to the large WTO members (i.e. the Quad—the United States, the European Union, Japan and Canada) vis-à-vis developing countries and countries in transition (the categories to which recent WTO applicants normally belong). But it is also one of the reasons why the process must be reformed if the WTO is to establish its legitimacy as a real rule-based system that serves all members and not just the most powerful.

The Vanuatu economy

Vanuatu is both small and highly dispersed, with 80 islands covering a land area of 12,189 square kilometres spread over an exclusive economic zone of 710,000 square kilometres of ocean.[18] The country's economy is minuscule (the total 1997 GDP was US$200 million) and equally characterized by smallness and dispersion (a population of 170,000 shared a per-capita GDP of US$1,200). The economy is highly dualistic in nature, the vast majority of the population living in rural subsistence. Real GDP has grown at 3 per cent since independence and the population has grown at 2.9 per cent, resulting in a virtually stagnant real per-capita income over the period. Vanuatu's main exports are beef, copra and cocoa. Agriculture accounts for approximately 25 per cent of GDP. The main markets for Vanuatu exports are the European Union and Japan. Indeed, for a country that has been independent from the United Kingdom and France for 20 years, Vanuatu remains almost unnaturally dependent on trade with the European Union, largely as a result on the one hand of access to European Union imports via neighbouring New Caledonia, and the viability of copra exports to the European Union because of Stabex and the Lomé Convention on the other. This dependence, though, has dropped sharply in the last five years.

Increasingly the service sector has come to dominate the economy. Tourism and earnings from the Finance Centre constitute the largest sources of foreign exchange earnings. Also growing in importance has been housing construction in Port Vila, where there is a significant and high-income expatriate population.[19] This accounts for the high GDP per

[17] WT/GC/W/378.

[18] Vanuatu became an independent country only in 1980, following an intervention by Papua New Guinea military forces to put down an insurrection by French separatists on the island of Espiritu Santo. Until then the country had been ruled as an Anglo-French condominium since 1906, after some 20 years of a joint Anglo-French naval commission that attempted to safeguard a degree of order after turbulent years of mission, trading and 'blackbirding' activity.

[19] The presence of this high-income expatriate community in Port Vila greatly skews the economic indicators for Vanuatu. The resultant GDP/capita may well lead the UN's Economic and Social Commission (ECOSOC) to graduate Vanuatu to developing country status, thus further compounding the nation's difficulties with accession to the WTO.

capita in comparison to the country's other Melanesian neighbours, the Solomon Islands and Papua New Guinea (PNG).[20]

One of the most significant structural features of the economy has been the absence of any direct taxes. Vanuatu is one of the few tax havens to maintain no domestic internal direct taxes alongside the system of no taxes in the tax haven. This absence of income taxes – and until the economic reforms that began in 1997, the absence of any other significant source of government tax revenue – was to shape the nature of the reform program and the bilateral WTO accession negotiations. Furthermore, given the tax structure, it was evident that, with applied rates that were not only high but often in the triple digits, a fundamental reform of the Vanuatu taxation system would be a precondition for WTO accession.[21]

In 1998 Vanuatu signed an agreement with the Asian Development Bank (ADB) for the implementation of the Comprehensive Reform Program (CRP). This structural adjustment program stemmed from a crisis of economic and political governance in which:

- The Vanuatu public service had become increasingly politicised and less professional;
- Decisions regarding investment and work permits were seen as increasingly politicized and highly arbitrary in nature;
- Governments changed through parliamentary votes of no-confidence an average of two times in any one year in the period 1996–98;
- A series of very damaging reports regarding the public misconduct of several leaders was published by the Ombudsman in 1996–97; and
- Rioting occurred in the capital Port Vila in January 1998 as a result of revelations that funds from the Vanuatu National Provident Fund (VNPF) had been improperly used by political leaders. The consequent run on the VNPF funds necessitated government injections that would raise the deficit to an unparalleled 14 per cent of GDP.[22]

This combination of events, in conjunction with an abortive attempt to devalue the local currency in late March 1998, led to a collapse of economic and political confidence in

[20] In 1997 the Solomon Islands GDP/capita was US$ 640 and the PNG GDP/capita was US$ 1,200. However, the Asian economic crisis has resulted in a collapse of the local unit in PNG, which will see GDP/capita fall to approximately US$ 700–800 in 1999.

[21] For the most recent and comprehensive economic analysis of the Vanuatu economy, see Asian Development Bank (ADB), Vanuatu: Economic Performance, Policy and Reform Issues, (Manila: Asian Development Bank, 1997).

[22] B. Knapman & C. Saldanha, Reforms in the Pacific: An Assessment of the Asian Development Bank's Assistance for the Reform Programs in the Pacific, (Manila: Asian Development Bank, 1999), p. 144.

Vanuatu.[23] In order to restore public confidence in the beleaguered processes of political and economic governance, the Government of Vanuatu agreed to the implementation of the CRP. This was regarded as a *sine qua non* for accession to the WTO, because many of the reforms, while not directly trade related, were certainly investment related.

The process of accession

Systemic and protocol issues: from WTO to "WTO plus"

The accession of Vanuatu has gone ahead very much alongside the country's more significant reform process, undertaken in conjunction with the Asian Development Bank, which has acted as the multilateral agency responsible for the small island states of the Western and Central Pacific.[24] This reform process, still underway in Vanuatu, formed the basis of the trade, investment and general commercial reforms that have been at the heart of Vanuatu's WTO accession. The fact that Vanuatu is undergoing a structural reform process under the supervision of a multilateral agency while simultaneously negotiating accession to the WTO is a situation shared with most applicants to the WTO.[25] In fact accession, which involves a series of at best politically incomprehensible and often unpopular commercial and economic reforms, is best disguised under a structural adjustment or a round of multilateral trade negotiations. Trying to explain to any public and its political leadership the range of necessary reforms to bring a trade regime into conformity with its WTO obligations is extremely difficult, no less so in developing countries, especially following the negative publicity in the wake of the Seattle Ministerial Conference.

As all applicants must, Vanuatu submitted to the WTO Working Party a memorandum of foreign trade in 1996. The data gathering involved in the preparation of this memorandum of foreign trade was extremely useful because it forced Vanuatu to examine trade policies as well as serving to complement many of the reforms that were contemplated under the CRP. This section of the paper reviews the trade and investment regime in place at the commencement of the accession process, and the reforms agreed to and requested by WTO members.

(a) The trade regime

In 1996 almost two-thirds of total tax revenue was generated through international trade taxes. This trade-based tax represented approximately one-half of total government revenue, making Vanuatu one of the most trade-tax-dependent economies in the region.

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[23] On the morning of Friday, 27 March 1998, the Governor of the Reserve Bank of Vanuatu devalued the currency by 20 per cent without the permission of the Minister of Finance or the Prime Minister (on what was the last day of his appointment and that of the Government). That afternoon the Minister of Finance reversed the devaluation. A new government sworn in on 30 March upheld the reversal of the devaluation.

[24] Only when the structural adjustment programs are for the largest economies of the Central and Western Pacific (Papua New Guinea, Fiji and Solomon Islands) is the intervention of the World Bank deemed necessary. In the recent structural adjustment programs of the smallest states (Vanuatu, Cook Islands, Marshall Islands and Federated States of Micronesia), the ADB has acted as the lead agency.

[25] UNCTAD, 'Accession to the World Trade Organization: The Process and Issues', Discussion Paper, May 1998.

Moreover, the official figure masked the fact that many other taxes, such as business licences and service taxes, were in fact surcharges on import duty.

The trade taxes were both import and export taxes. Import duties prior to the reform process were in 54 different bands and ranged from zero to 207 per cent. The range of nominal taxes by broad economic classification is depicted in table 1.

The high dependence on import duties had three separate effects. (i) It raised the cost structure and made exports less competitive. (ii) It provided what were often inadvertent incentives to highly inefficient import substituting industries. (iii) In order to provide incentives to investment, a system of exemptions from import duties (as there were no direct taxes) further complicated and rendered opaque the system of taxes. The latter two effects came to constitute serious impediments to Vanuatu's accession, even after its reform program had been put in place.

The other source of trade tax revenue lay in the existence of export taxes. In 1990, Vanuatu levied export taxes of 8 per cent on copra and 7 per cent on cocoa exports. Taxes on exports were lowered to 3 per cent in 1995, and Vanuatu continued to maintain export taxes of 3 per cent on a range of exports. Higher rates of export taxes existed on unprocessed timber exports and trochus shell. Like so many of Vanuatu's tax measures, this one was clearly not intended to be a disincentive to exports. Without direct taxes it was not possible to tax in any other way the quasi-rents being derived from resource sectors, and the government's measures were meant to capture part of the economic rents being derived by exporters. In the process this tax also acted as a further disincentive to exports.

The reform program begun at the behest of the ADB made significant advances towards resolving many of the WTO accession issues. Import duties were simplified and dramatically lowered although, as will become evident, in the subsequent bilateral negotiations several significant tariff peaks remained. However, while the ADB eliminated the business licence regime and export taxes, phased out service taxes and simplified the import duty system, the actual effect was to make Vanuatu dependent on a very narrow range of taxes. Subsequent to the reforms, value-added tax (VAT) and import duties have become the principal sources of revenue. Without this reform no credible goods offer was possible; but following the reform, the narrowing of the range of taxes rendered it more difficult for Vanuatu to make bilateral concessions that would further limit import duties.

The trade regime in Vanuatu also contained several elements that were of doubtful WTO compatibility. The first requiring reform was the 3 per cent surcharge paid for imports of five staple products: flour, rice, fish, tobacco and sugar.[26] This particular provision meant, as a revenue-raising measure, that those with import licences for these products were paying a commission to the Vanuatu Cooperative Federation. In 1999, the Government of Vanuatu abolished the import licences for these products, as well as the surcharge. There are presently no import licences in Vanuatu.[27]

[26] Laws of Vanuatu, Import of Goods Control Act [Cap.176].

[27] Perhaps one of the most interesting experiences of Vanuatu with WTO liberalization measures was the

The powers granted to Vanuatu provincial governments to raise taxes on imports constituted a second measure requiring reform.[28] Given the very narrow tax base and the very weak administrative capacity in the field of taxation, the then-existing practice of provincial governments' raising import duties would not be WTO compatible. The Government of Vanuatu made a commitment in its protocol not to allow sub-national governments to raise import duties.[29]

The power of the Minister of Trade to use import restrictions in a manner inconsistent with WTO rules was also limited by protocol agreement. In the past the minister was empowered to limit imports where this was deemed to be in the national interest.[30] The use of these powers has been limited to WTO-compatible quantitative restrictions as permitted under Article XX and the various safety contingency provisions. Vanuatu maintained no other quantitative restrictions on trade.[31]

The existence of the so-called "service tax" at 7 per cent of imports was also called into question by WTO members. Clearly, as the tax was well in excess of any conceivable ports and services charge based on a user-pays system, it was quite correctly seen as a surcharge on import duties. The tax was eliminated and replaced by the 12.5 per cent value-added tax.

Several institutional issues that are protocol matters arose from the very outset. The absence of WTO-compatible customs valuation legislation, as well as legislation recognizing the Agreement on Rules of Origin, was seen by WTO members as an area requiring reform.[32] It was here that the most profound differences of view began to emerge between Vanuatu and

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elimination of import licences for rice. Following the reform of the trade regime, the Government began to issue licenses freely and in 1999 twenty-six licenses were offered, as opposed to the monopoly arrangement that existed prior to WTO reforms. Despite the liberalization, the elimination of monopoly and the lowering of duties, rice imports continue to be handled by only one trader—the same monopolist as prior to the reforms. The reason is that the Australian exporter is unwilling to sell to small local buyers who have a limited track record. Prices have not changed and, given the Vanuatu preference for Australian 'Calrose' rice, there is unlikely to be a diversion to other sources of supply such as Thailand. Thus far the liberalization of trade in staple products seems to have had no visible effect.

[28] Laws of Vanuatu, Provincial Government Act 1994.

[29] This matter was resolved by a protocol commitment not to allow sub-national governments to impose taxes that are in violation of WTO obligations. This procedure can be policed because all revenue raising measures of sub-national governments must be approved by the Vanuatu national government.

[30] Over a period of two years WTO members raised a considerable number of questions over the import ban on potatoes, which had been imposed to help develop the Irish potato production capacity of the island of Tanna. The Trade division agreed in 1998 to tarifficate the measure, only to be informed subsequently by the Customs Department that the restriction had been officially rescinded in 1993. In small countries with high staff and government turnover, this lack of knowledge about the conduct of policy is common. The WTO is most useful in providing the clarity and transparency that is often missing because in a particular country knowledge of the institutions of trade is widely dispersed.

[31] The only trade restriction maintained is on the import of T-shirts with a Vanuatu motif, a measure that existed to protect the local and tourist-oriented screen print industry. This ban has now been replaced with a high tariff.

[32] Until its revision of legislation, Vanuatu continued to use the Brussels valuation system.

WTO Working Party members.[33] Developing countries should implement the *Agreement on the Interpretation of Article VII of GATT 1994* by 2000. Some WTO members, despite public protestations to the contrary, remain unsympathetic to the special and differential treatment (SDT) provisions and in some cases are hostile to them. Vanuatu, recognizing this fact and in order to minimize the hostility from Working Party members, decided to pursue only those SDT provisions that were necessary to assure efficient implementation. It was also clear that WTO members were, during accession negotiations, totally uninterested in the question of the development status of Vanuatu. This was particularly so of some of the largest WTO members. Thus, when Vanuatu requested a two-year transition to allow for training, the United States, though appearing willing to accept a shorter transition, did not accept this request.

(b) The investment regime

The investment regime in Vanuatu prior to the implementation of the Comprehensive Reform Program was described by the ADB as "uninviting".[34] Prior to the reforms, decisions regarding business licences for foreign investment and work permits were often highly political. Decisions were made either at the ministerial level or even at the level of the council of ministers. Business licences and work permits were subject to regular renewal and decisions on their renewal and continuation were widely seen by the business community in Vanuatu as political in nature, arbitrary and often opaque.[35]

By making specific access commitments under the terms of GATS, WTO applicants and members by definition make express commitments regarding the movement of capital.[36] WTO applicants frequently do not understand this: it was certainly not clear at the beginning of accession that Vanuatu had to create transparent and open investment rules in order to become a member of the WTO. What were seen as highly intrusive demands were justified on the grounds that without an appropriate investment climate all GATS obligations in terms of mode 1 and 3 access were meaningless. In a bargaining situation for WTO accession where the applicant has no power, this, of course, raises the question of what are the proper

[33] The Working Party on the Accession of Vanuatu is normally composed of the Quad (the United States, the European Community, Japan and Canada) with Australia, New Zealand and Switzerland in attendance. In general only the larger and better-financed WTO members with global trade interests are able to devote resources to the accession of small States. In late 1999 the three WTO members of the Melanesian Spearhead Group (Papua New Guinea, Solomon Islands and Fiji) also joined the Working Party. Nevertheless, the Working Party is in large measure driven by the Quad and Australia and New Zealand.

[34] ADB, op. cit., p.89.

[35] Vanuatu, prior to the CRP, had become infamous for the 'Green letter', which gave the Minister of Immigration the right to remove residence permits, without reason or the right of appeal. This arbitrary right has now been removed: all work permits now carry terms of termination specified in law and all work permit holders have a clear right of appeal.

[36] GATS, Article XVI, para 1, footnote 8 states: "If a member undertakes a market access commitment in relation to the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of that service itself, that member is thereby committed to allow such movement of capital . . ." Because the implications of this footnote have not been the subject to interpretation by a panel, there is no jurisprudence to act as a guide. However, a very broad interpretation of the obligation to 'allow such movement of capital' could well be expected once the matter is tested.

limits to the demands of WTO members. On the basis of experience, the response unfortunately seems to be: whatever can be extracted from the applicant.

Perhaps the most sensitive issue raised during the protocol stage of Vanuatu's accession was the issue of land. Members of the Working Party during the protocol or multilateral stage argued that Vanuatu should consider a revision of its land laws, as they did not provide for adequate access to and protection of property. Vanuatu, perhaps even more so than other countries of Melanesia, has a particular sensitivity with regard to the nature and significance of land ownership. Freehold land was abolished at independence, and all previously privately owned land, which was mainly in the hands of European colonialists, reverted to its traditional owners.[37] Despite an initial shock to investor confidence, the absence of freehold has not acted as a constraint on very substantial foreign investment in real estate in Vanuatu. Conflicts over delineation of property rights under traditional title do act as a constraint on investment, but no government in Melanesia has successfully managed to deal with the matter, which would involve the state in the delineation of often overlapping traditional titles. WTO members also wanted to see some improvement in land law administration. Whether or not such sensitive issues are now properly within the purview of the WTO raises very serious issues for the countries of Melanesia, the Pacific Islands and the developing world in general. However, it seems fair to say that any government in Melanesia in general or Vanuatu in particular that attempts to reform land laws and delineate custom title can count its longevity in days, if not shorter units.

(c) Other protocol issues

A host of multilateral issues arose relating to the implementation of agreements. Vanuatu was asked by the United States to join both the *Agreement on Government Procurement* and the *Agreement on Civil Aircraft.* These demands, like so many other United States demands to small acceding countries at the WTO, were systemic in nature. They did not in any way reflect a perception that United States trade interests were otherwise likely to be impaired: Vanuatu, as an LDC, neither has any government procurement contracts of sufficient value to induce any United States interest in tendering[38] nor does it buy or produce aircraft.[39] Vanuatu has thus far refused to accede to these discriminatory and largely irrelevant plurilateral agreements.

The United States has also refused the request by Vanuatu for a two-year transition for the implementation of TRIPS. Vanuatu offered to WTO members to have the TRIPS legislation in place on the date of accession but is unwilling to commit to full implementation in less than two years because it lacks an agency and the proper level of training to make such a goal achievable.[40]

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[37] The name Vanuatu, literally 'our land', was chosen as an expression of the indissoluble spiritual relationship between the Vanuatu population and their land.

[38] Virtually all large (i.e. greater than US$ 1 million) construction and procurement contracts are normally made using the procurement rules of the donor agency involved.

[39] Air Vanuatu, the national carrier, either leases or wet leases aircraft.

[40] Vanuatu is the biological home of one of the world's most fashionable 'green' indigenous sedatives, the root crop 'kava'. Kava as a traditional beverage has been consumed by ni-Vanuatu and many other Pacific islanders

In the area of agriculture, several issues of some importance arose. Vanuatu was prohibited from joining the WTO if it insisted on using Special Safeguard Provisions (Article 5). WTO members argued that these, as "Uruguay Round methodologies", were not available to acceding countries.[41] Vanuatu, having "tarifficated" its quantitative restrictions in potatoes, felt that it should have rights to use SSG provisions. WTO members, despite the LDC status of Vanuatu, denied this request.

The most difficult agricultural area was that of export subsidies. Vanuatu occasionally offers agricultural price supports to some of its poorest copra farmers when prices fall to catastrophically low levels. Given that large WTO members such as the European Union and the United States offer massive subsidies to temperate edible oils, the US$1 million in price supports that had been offered for copra producers in 1996 should not have been problematic. However, because these were funded by Stabex funds under the Lomé IV Convention,[42] it was argued that since the money was aid, it could not be used as a subsidy. Thus Vanuatu was in the paradoxical position of having to argue that it was subsidizing exports even though, given that the European Union funds could be used in any of a number of ways, their use as subsidy was a matter of choice for the government. The European Union does not oblige African, Caribbean and Pacific Group (ACP) countries to use Stabex funds for export subsidies, though this is accepted as part of the Stabex Framework of Mutual Obligations agreed between the European Union and the ACP recipient.[43]

Some WTO members have publicly stated that they would not permit any country with agricultural export subsidies to join the WTO. This position has no grounding in WTO rules because LDCs are not obliged to make export subsidy commitments.[44] In the end,

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since long before the arrival of Europeans. Its sedative qualities were known throughout the Pacific region. However, large pharmaceutical companies in the United States and the European Community now produce, and have patented, kava pills. Apart from the export of the unprocessed root, Vanuatu gains nothing from this high-value and increasingly popular natural sedative. Its implementation of TRIPS compliant legislation will also do nothing to protect the one IPR issue it has, namely indigenous intellectual property rights. Article 27.3 of the TRIPS provides for sui generis legislation that can protect, through national legislation, against the piracy of indigenous intellectual property. However, in the absence of an international standard for the protection of such IPRs, Vanuatu has no claim in the national courts of those large developed countries that do not recognize such collectively owned rights.

[41] This prohibitive stance is not factually defensible as both Bulgaria and Panama acceded with SSG provisions in their schedule.

[42] Throughout the four Lomé Conventions, Stabex funding was amongst the most innovative instruments devised by the European Community, for it provided funding to compensate exporters for shortfalls of earnings for their exports to the European Community. This helped stabilize export earnings in ACP countries while simultaneously assuring European Community access to agricultural exports, which was a high policy priority in the 1970s. Because Stabex was paid only to those who exported to the European Community, it was responsible for the continuation of the copra trade between Vanuatu and the European Community. With the advent of the all-destinations derogation in the Stabex provisions of Lomé IV (article 189, paras 2 &3) this incentive to export to the European Community declined after 1980. Stabex was abolished at the end of Lomé IV and is not found in the successor Convention signed in 2000.

[43] Lomé IV, Article 186, para 2.

[44] Article 9, Agreement on Agriculture, does not prohibit export subsidies. Article 15 excludes LDCs from all reduction commitments under the agreement.

Vanuatu decided that it would not be able to join the WTO if its ES1 schedule contained any export subsidies and, for this reason, accepted the interpretation that Stabex was aid. In the future, some of the poorest farmers in Vanuatu will have to bear the full brunt of price fluctuations in a distorted and volatile edible oil market solely because this was in the interests of WTO members.

Bilateral issues: Goods offer and service commitments

At an informal Working Party meeting in October 1999, Vanuatu presented a complete package for its accession to the WTO.[45] This package included a draft goods offer, service sector commitments and agricultural schedules as well as a draft Protocol of accession. By the standards of other WTO members of a similar development status, Vanuatu's offer was extremely generous. Yet, despite successful bilateral trade negotiations with all of its trading partners, the negotiations with the United States – which does not trade with the tiny nation[46] – failed in key areas that remain vital to Vanuatu's trade and economic interests.

The disagreements with the United States were over a range of issues, including the broad parameters of the goods offer, the extent of service commitment, and several crucial protocol issues pertaining to the transition periods of LDCs. However, United States objections, which stem from the nation's vital trade interests, have nothing to do with bilateral trade with Vanuatu. The problem lies rather in the fact that any concession the United States might offer to Vanuatu might be urged as a precedent for extension to other more significant WTO applicants.

While Vanuatu has resolved many of the outstanding issues with its bilateral partners, its failure to do so with the United States is also in many ways systemic. Given that the United States places the greatest demands on acceding countries – and this is well known among accession negotiators – assumptions have developed regarding United States behaviour that allow WTO members to play what accession negotiators now term "good cop–bad cop". Other Quad members and the Cairns group, aware that the United States will take a hard line with applicants, are able to make less strident demands. This strategy will minimize the political costs of attempting to extract concessions from acceding countries, some of which are close political allies.

The goods offer

Vanuatu's goods offer in the October 1999 package to the WTO involved binding the entire tariff at an average rate of duty of 39 per cent plus a 10 per cent bound rate for other duties and charges (ODC). Following bilateral negotiations with the European Union it was agreed to roll the ODC into the bound rate. Over 60 per cent of bound tariffs in the Vanuatu offer (see table 2) are below the applied rates that existed at the time of the commencement of

[45] The WTO frequently argues that it attempts to keep Working Party meetings to a minimum for LDCs, usually two. This is factually correct, but there is a need for numerous 'informal' meetings, some of which the applicant has no resources to attend.

[46] Total bilateral trade between Vanuatu and the United States was less than US$1 million in 1998.

the accession negotiations in 1995. Vanuatu's structure of bound tariffs is also common for an enclave economy in that it has a clear "reverse escalation" in its offer. This stems from high rates of duty for competing agricultural products and very high rates of duty for sin goods (chapters 22 and 24). The average rate of duty on agricultural products was 58 per cent, decreasing to 31 per cent for intermediate goods (chapters 25–60) and 30 per cent for final goods.

However, Vanuatu not only agreed to a very moderate bound rate of tariff given its continuing reliance on import duty revenue, it has offered a rate very similar to that of countries in the region that applied to join the GATT/WTO only several months prior to Vanuatu. Table 3 presents the average rate of bound *ad-valorem* duty in the tariff offers of various Pacific Island WTO members. It demonstrates that Vanuatu has made offers not dissimilar to those made by much larger and more developed countries in the region, and much lower than offers made by LDCs such as the Solomon Islands.[47]

Vanuatu has also agreed to zero-for-zero commitments in more than 160 tariff lines and is in full conformity with zero-for-zero initiatives in information technology. It has offered to provide duty-free access for aircraft and parts and pharmaceuticals by 2005. No other LDC made offers even remotely close to those of Vanuatu during the Uruguay Round.

Service sector commitments

In the service sector the commitments made by Vanuatu are far more extensive than those made by other WTO members from the region. Table 4 summarizes the number of areas covered in GATS commitments by Pacific Island countries during the Uruguay Round.

Thus Vanuatu, an LDC, has made service sector commitments with clear and unambiguous market opening commitments in 18 areas. This is more than four times the average for LDCs and twice that of the Solomon Islands, which is the most obvious case for comparison.

Bilateral negotiations

Following the presentation of its package to the WTO Working Party, Vanuatu began bilateral negotiations with WTO members. In the space of two days negotiations were virtually completed with the European Union, Australia, New Zealand, Japan, Canada and Switzerland. In the case of some countries, the issues under negotiation were systemic and had nothing to do with bilateral issues.[48] With other countries – such as Australia and New

[47] Both Vanuatu and Solomon Islands were de facto GATT members prior to the completion of the Uruguay Round. However, Vanuatu moved at a slower pace to submit its application to the GATT before the expiry of the de facto provisions. As a result, it was subject to WTO rather than GATT standards of accession, which have grown progressively more demanding since 1995 under pressure from the Quad.

[48] Many of the bilateral negotiations concerned a standard set of Initial Negotiating Rights (INR) that had little to do with actual bilateral trade. In some cases, such as the Canadian demand that canola oil be treated the same as other edible oils, they were pro forma demands made of all acceding countries to assure that Canada's market position in the edible oil market is not eroded vis-à-vis competing products from the United States.

Zealand, which are major sources of imports for Vanuatu – the negotiations were more substantive. In none of these cases were the negotiations particularly difficult, as they resulted in no substantive demands from bilateral trading partners for Vanuatu to move away from its essential position as outlined in its October 1999 accession package.

Only in negotiations with the United States were the demands such that no agreement was possible. The United States demanded that Vanuatu lower its bound tariff to around 15–25 per cent from its current average of 49 per cent. The United States demand for a reduction of the bound rate of import duty to 25 per cent would result in a complete loss of flexibility in the taxation system. Should there be a particularly severe natural disaster (a relatively common cause of decreased revenue and increased expenditure in this part of the world), the Government of Vanuatu would not be in a position to raise import duties. This is particularly significant because, as noted, Vanuatu in its Comprehensive Reform Program introduced a VAT and eliminated a host of other taxes such as business licences and service tax. This has meant that the government is now heavily dependent on import duties and a VAT that still has administrative teething problems. Understandably, the complete elimination of flexibility in the taxation regime that acceptance of the United States demands would mean is unacceptable to the Government of Vanuatu.

The United States has objected to the tariff peaks in chapters 22, 24 and 93. It has become one of the clichés of accession negotiations that in the end the negotiations always come down to "booze and cigarettes"; but now the United States, clearly under pressure from its own gun lobby, is putting pressure on acceding countries to liberalize the trade in weapons. The United States has argued that if Vanuatu wishes to restrict the trade in any of the categories of commodities – alcohol, tobacco and weapons – then tariffs are an inappropriate measure. The USTR, arguing that restrictions should be undertaken using other trade-neutral taxes, has insisted on removal of the tariff peaks in these areas of vital United States trade interest. The unacceptability of allowing such tariff peaks clearly rests on the implications that would flow thence for other accession negotiations. While there are revenue concerns on tobacco and alcohol and a desire to prohibit weapons completely, there is a protective interest in alcohol. In a counter-offer to the United States, Vanuatu has agreed to impose a trade-neutral excise tax in these three areas and leave the tariff peak at 50 per cent in the case of chapters 24 and 93, in addition agreeing to bind all alcohol tariffs at their applied rate. Given the structure of its economy and its high vulnerability, Vanuatu cannot accept the United States demands on general tariffs.

In the service sector the United States has added a further demand for the opening of the telecommunications sector. In Vanuatu this is not legally possible as France Telecom and Cable and Wireless, the two strategic partners in Vanuatu's telecommunications condominium arrangement, have an ironclad "gateway monopoly" until 2012. A United States counter-proposal has demanded that Vanuatu make commitments to open the telecommunications sector in 2012. Vanuatu has replied that to do so would discourage the strategic partners from investing further in the improvement of the telecommunications infrastructure.

Vanuatu has requested transitional arrangements, only for two years, in the application of the *Agreement on Customs Valuation* and the TRIPS, though a much longer time is permitted to LDC WTO members. The United States has not agreed even to these moderate requests for transition. Vanuatu has indicated that unless there is a moderation of United States demands, it will this year withdraw its application for WTO membership.

Conclusion

The United States has no bilateral trading interest in Vanuatu. Its demands are systemic in nature rather than country specific. The placing of these demands on an LDC is occurring only because of the precedent that not doing so would create vis-à-vis other applicants to the WTO. This is not a conclusion drawn by Vanuatu negotiators; rather, it comes as a verbal *mea culpa* from developed-country negotiators trying to explain why such patently unreasonable demands are being placed on an LDC that is of no economic significance. Vanuatu is simply collateral damage in the so-called rule-based system, a system that when it comes to the accession process is in reality based purely on power.

WTO officials are fond of saying that the multilateral trading system is a rule-based system. Yet the accession process has no rules, except precedent and power, and is the very antithesis of what the members publicly state to be the intention and design of the WTO. Accession, because the applicant is not a WTO member and has no rights, is power based. More importantly, the applicant cannot inflict any marginal cost on the WTO members when they demand progressively more trade concessions. The accession process is inherently flawed by this latter factor rather than simply by the size disparity between LDCs and small vulnerable states like Vanuatu on the one hand and large WTO members such as the United States, the European Union and Japan on the other.

One of the most used of the many clichés repeated at WTO ministerial conferences is the desire of members “to integrate the least developed countries into the multilateral trading system”. Yet the experience of Vanuatu has been the exact opposite. Once ministers have finished their diplomatic speeches, the job of trade officials is “business as usual”, to wit the extraction of the maximum concessions possible irrespective of the development needs or status of the applicant.

Not until the WTO lives by its promises and creates a genuinely rule-based system will least developed and highly vulnerable countries be able to take their proper place in the WTO. At present, accession is a power-based process within which the applicant – even the largest and seemingly most powerful, such as China – has no real power to inflict any marginal cost on a *demandeur*. The negotiation of WTO accession, fundamentally flawed and lawless, is in desperate need of reform, for it only serves to undermine further the credibility – in tatters since Seattle – of the “rule-based” multilateral trading system.

Two simple and completely WTO-compatible reforms to the accession process would bring to an end much of the current power-based system. WTO members in the protocol or multilateral stage have a perfectly legitimate right to assure themselves that the trade regime of an applicant is in conformity with its WTO obligations. However, as was mentioned in the

introduction, the enormous power that this bestows on WTO members must eventually be abused whenever a complainant acts as judge. The result has been obvious and predictable: the proliferation of "WTO-plus" demands on new applicants. The reform that would resolve this would be to have a panel of experts decide whether an applicant's trade regime is in conformity with existing WTO rules. This is exactly the right bestowed on all WTO members during a dispute, and no WTO member would countenance a system where panellists reviewing the WTO compatibility of their trade regime were complainants. Thus a report of a panel of experts would fulfil the perfectly legitimate demands of WTO members that there be a review of the trade regime of applicants. This report could then act as the basis for negotiation of necessary reforms of the trade regime of WTO applicants.

While extension of the system of panel reports to WTO applicants would greatly relieve the multilateral track, an equally simple reform would end the excessive bilateral demands in the goods sector. Under the GATT system, in order to facilitate negotiations and simultaneously keep small members out of tariff negotiations, members applied the provisions of Article XVIII limiting negotiations to principal suppliers only.[49] This would mean that countries supplying only negligible quantities of imports to an applicant would not have negotiating rights in the bilateral stage of negotiations.

Only those who are extraordinarily naive would believe that the system of accession will be reformed. The reasons are simple. First, the beneficiaries of the reform, namely countries applying for WTO access, have no voice in the WTO, as they are by definition outside the multilateral trading system. Once they become members, they rarely wish to discuss what is an embarrassing and highly intrusive process. Second, those who would have to pay for the reforms would be the WTO proponents, who gain nothing and have to expend scarce political capital in the organization's reform. The losers would also be the WTO members, who would no longer be able to extract trade concessions from applicants. Indeed, given the very large countries currently attempting to gain access, there can be no doubt that few WTO members would wish to see such reform. The accession process will remain power based, because WTO members benefit from that state of affairs. This will only further undermine the credibility of the rule-based system.

Epilogue

Despite lengthy accession negotiations, Vanuatu remains an observer at the WTO. While many of the service-sector differences with the United States have been resolved, in particular the question of access to the telecommunications market, other matters such as the general level of tariff binding remain intractable. This stems in large measure from the unwillingness of Vanuatu to lower bindings closer to applied rates of tariffs. This objection in turn stems from Vanuatu's complete dependence on import duties and VAT as revenue.

[49] The principal supplier is the country with the largest portion of the GATT market for a particular product. This proposal has already been made in the context of submissions for accelerating the accession negotiations for LDCs. It was made in preparation for the Seattle Ministerial Conference by Fiji, Papua New Guinea and Solomon Islands (WT/GC/W/378).

Table 1

Duty rates by broad economic classification

	1990	**1995**
Consumer	47.0	36.5
Intermediate	17.7	23.1
Capital	8.0	10.6
Fuel (motor spirits)	128.7	151.7
Cars	19.3	21.0
Total	25.1	26.1

Source: Statistics Office, Trade Statistics, 1996.

Table 2

Simple average rates of ad-valorem duty by HS chapter, offer of October 1999

HS 96 Chapter	Average rate	HS 96 Chapter	Average rate	HS 96 Chapter	Average rate	HS 96 Chapter	Average rate
1	30	25	30	49	33	73	30
2	28	26	30	50	30	74	30
3	55	27	63	51	30	75	30
4	30	28	30	52	30	76	36
5	30	29	30	53	30	77	30
6	55	30	25	54	30	78	30
7	54	31	30	55	30	79	30
8	30	32	36	56	30	80	30
9	30	33	30	57	30	81	30
10	30	34	40	58	30	82	30
11	30	35	30	59	30	83	50
12	30	36	30	60	30	84	27
13	30	37	30	61	32	85	26
14	30	38	30	62	30	86	30
15	30	39	32	63	30	87	32
16	30	40	30	64	30	88	0
17	30	41	30	65	30	89	37
18	30	42	30	66	30	90	33
19	30	43	30	67	30	91	45
20	39	44	30	68	30	92	35
21	34	45	30	69	30	93	200
22	205	46	30	70	30	94	55
23	30	47	30	71	30	95	35
24	450	48	30	72	30	96	30
Average for agriculture	**58**	**Average for intermediate goods**	**31**	**Average for final goods**	**30**	**97**	**30**

Table 3
Average rate of WTO-bound ad-valorem tariffs for various pacific island WTO members

	Development status	**Recent GDP/capita (in US$)**	**Average bound rate of tariff (per cent)**	**Year of WTO membership**
Fiji	Developing	2,200	40	1995
Papua New Guinea	Developing	1,020	40* 45 (for agriculture)	1995
Solomon Islands	Least developed	700	80	1995
Vanuatu	Least developed	1,020	49	1999 offer

*Papua New Guinea average bound rates for non-agricultural goods are scheduled to decrease to 30 per cent by 2007.

Table 4
Service sector commitment by Pacific Island countries

	Number of areas covered by commitments
Fiji	2
Papua New Guinea	18
Solomon Islands	9
Vanuatu	18

Algeria's experience and perspective regarding the difficulties of the WTO accession negotiations and successful integration into the multilateral trading system

Mourad Medelci*

Taking part in this meeting, Algeria wishes first of all to express its deep gratitude to Mr. Rubens Ricupero, Secretary-General of UNCTAD, for his initiative to convene an Ad Hoc group of experts to discuss and exchange views on the sensitive and important question of the integration of countries in the multilateral trading system. Without any doubts, this initiative follows the recommendations contained in the Bangkok Plan of Action adopted in February 2000 by UNCTAD X and creates a special opportunity to discuss concrete experiences of a major topic in international economic and commercial relations and development; a subject which has been at the heart of the working program of UNCTAD since its creation.

Certainly, from the point of view of Algeria, integration in the multilateral trading system is one of the fundamental economic challenges of development policy. The political, economic and technological changes which the world has witnessed during the last 10 or 15 years have considerably transformed our perception of economic and trade relations at the global level. Strengthening the interdependence between the economies of our respective countries, these changes contributed to establishing a tremendous interest in the multilateral trade dialogue which is at the centre of the new World Trade Organization established in 1995.

As a country candidate for accession to the WTO, Algeria has a certain number of concerns regarding the current status of accessions to the WTO. These concerns are connected mainly with the more and more perceptible gap between, on the one hand, the efforts required by a developing country wishing to anchor itself definitively in the globalized economy and to benefit from it for its long-term economic and social development and, on the other hand, the drastic conditions placed on candidates acceding to the WTO. Advantages deriving from WTO membership (e.g. predictability and stability of the internal and external trading environment) are meaningful only when they contribute to consolidating the strategies of economic and social development.

In this spirit, it should be clearly established that the applicant countries have to get ready and undertake officially to assume all the obligations and all the disciplines stipulated in the Multilateral Trade Agreements. The acceding countries naturally have to assure their partners within the WTO of their unambiguous desire to assume all the commitments inherent in membership in the organization. In return, it seems neither fair nor justified to ask an acceding country to make commitments going beyond the written decisions agreed within the framework of the current WTO Agreements.

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In the same way, the bilateral negotiations, imposing not too heavy commitments regarding market access in trade of goods and services, should not impose on acceding countries obligations disproportionate to what they can reasonably fulfil in view of their appropriate economic conditions. Analysis clearly shows that the size of the market-access commitments which acceding countries have to undertake at the end of the race is only the result of negotiating pressures which some member countries exert in an uneven confrontation. Indeed, it is not in the interest either of the WTO as an entity or of its members to force an acceding country to accept commitments which would threaten its economic and social stability or which would alienate the indispensable support of its companies and citizens.

At the end of the race, because of the complex and unbalanced procedures of accession, the sincere desire expressed by numerous countries to join the multilateral trading system does not seem to meet the encouraging response which should be expected from member countries.

The clear fact is that the present procedure of accession to the WTO is not precise or clear. Only Article XII of the Agreement establishing the WTO governs this important matter by stating, without any clarification, that “State or separate customs territory may accede to WTO on terms to be agreed between it and WTO members”. In practice, there is ambiguity which raises a problem, since it leaves space for all kinds of pressures. The victims – acceding countries – can complain about this situation but cannot act concretely to correct it. Is it necessary to continue to “punish” them only because they later in joining this international organization?

The situation should be, according to logic, corrected by developing some simple and fair rules and processes. The objective of such rules should be not only to reaffirm the commitments that the acceding country should undertake, but also to clarify the conditions of accession negotiations. Necessary clarifications should be made in this area. These would also serve the interests of all WTO member countries, strengthen the transparency of multilateral rules and widen the sphere of impact of the multilateral trading system by moving the organization closer to universality.

Algeria, for its part, considers that the mere fact of its WTO observership and acceding-country status already binds it “morally” to the disciplines of the WTO. Algeria has begun to introduce these disciplines gradually in its legislation and its internal economic policies before being able to adopt them more formally through an internationally binding protocol of accession. This effort, which Algeria undertakes voluntarily, flows from its confidence in the benefits of economic liberalization and trade openness. Accession to the WTO is an economic challenge even before it becomes an international legal constraint. From this perspective, it would be rather regrettable if this desire for openness could not converge with the movement which stimulates the multilateral trading system.

Certainly, matters of accessions are the Achilles’ heel of the multilateral trading system. At the moment, when numerous developing countries are already members of the WTO, the debate concentrates on the imbalances of this system, on its future and its answers

to the crucial problems of development. Therefore, it is not reasonable that the answers to all these questions differ from those challenges faced by acceding countries only because the latter have not yet acquired the status of full-fledged members.

China's accession to the WTO and developing countries' participation in the multilateral trading system

Zhang Xiangchen*

In the new millennium, the issue of development has received redoubled attention from various countries in the world. I would like to avail myself of this opportunity to brief you on China's accession to the WTO and developing countries' participation in the multilateral trading system.

China's accession to the WTO has become the focus of worldwide attention. In the last two years, the process of China's accession has obviously been accelerated. Among the 140 WTO members, 37 have requested bilateral talks with China. After several Working Party Meetings, including the 15th meeting convened earlier this year, we have finally come to the last phase of accession. We believe it will not be long before China becomes a full member of the WTO.

China's accession to the WTO can benefit not only the development of China's economy but also that of the world economy; not only the developed countries' economies but also developing countries' economies. China has a population of over 1.2 billion; it is the world's seventh largest economy and the eighth largest trading nation. For seven years in a row, China has been the developing country with the biggest amount of FDI utilization. For two decades and more, China's economy has demonstrated vigour and vitality with an annual average growth rate of 9.7 per cent. China has become one of the world's fastest-growing economies. China's entry into the WTO will provide unprecedented opportunities for the healthy development of China's economy, and it will make a new contribution to the prosperity of developing countries' economies and even the world economy.

Mankind is entering the 21st century and is driven by the revolution in science and technology, with the world economy undergoing broad and profound changes. Facing the trend of accelerated economic globalization, we believe that all countries, in particular developing countries, should take active part in the economic globalization process, grasping opportunities to develop ourselves, and should at the same time, taking the actual situation of our respective countries as a starting point, bring our own advantages into play, fostering strength and circumventing weaknesses to face the challenges headlong.

Today we are glad to see the more active participation of the developing countries in a multilateral trading system such as the WTO, which faces great challenges because of changes in the constitution of its membership. Half a century ago, there were only eight developing-country members among the contracting parties of the GATT, one third of the total of 23. With the growth of the multilateral system, 52 developing countries became WTO members on 1 January 1995, the day that the Uruguay Round Agreement came into effect. As

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of now, this number has more than doubled, which indicates that more than five-sixths of WTO members are from developing countries. This significant change not only refers to the constitution but also shows how different is the current international economic situation. We believe that the WTO should adapt to the change immediately so that it can perform better in the future. More and more developing countries have realized that the existing WTO rules and regulations, as well as the agreements on market access, mostly benefit developed countries, enabling them to make good use of their "comparative advantages". Thus, the common target of all the WTO members is to make the rules and regulations more balanced. After entry into the WTO, China will devote itself to strengthening the cooperation between the developing countries as well as the talks between South and North.

Developed countries should realize that the economic trend in the world is towards closer ties between countries. If they ignore the profits of the developing countries, wealthy members will find their own profits injured in return. What they have eventually got is an open market without consumers. Only when the developing countries have boosted their economies and made their people rich can developed countries gain an immense market with real purchasing power. That will be success – a "win-win" result. That is why we set up the multilateral trading system.

After entry into the WTO, China will play a constructive role in perfecting the multilateral rules, which is a very important aspect of China's involvement in the economic globalization. I would hereby like to reaffirm China's holding principles regarding the new WTO round:

l. The new round of negotiations should reflect the interests and requirements of both developed and developing countries.

2. The developed nations should earnestly implement the commitments they undertook in the Uruguay Round Agreement and improve the environment of market access for developing countries.

3. The formulation of new trade rules should have the equal participation of developing countries and their economic development objectives, and a corresponding market-opening model should be taken into careful consideration.

4. Coordination among developing countries should be strengthened, and their collective negotiation ability in the multilateral trading system should be improved.

5. The new round of multilateral trade negotiations should concentrate on issues directly related to trade.

China is willing to join hands with other WTO members to actively promote the establishment of a fair, reasonable new international economic order in order to let more

countries, including developing ones, share in the opportunities and benefits brought about by the multilateral trading system.

WTO accession: The Russian perspective

Maxim Medvedkov*

Any acceding country, when deciding whether or not to join the WTO, should evaluate all the pluses and minuses of this exercise.

Some countries are driven by political considerations, some by economic ones and some by a combination of both. In most cases, economic arguments probably prevail.

Those arguments are very specific for each acceding country. They may, for example, take into account better market access for a country's goods and services, or the positive influence of membership on domestic legislation and hence on the business and investment climate.

Under any accession scenario, a candidate will hardly immediately feel the benefits of its membership.

The accession process does not provide the acceding countries with the possibility of solving problems they face in the markets of WTO members. This opportunity comes only after membership and may take years to materialize. The current legal framework of international trade differs substantially from that of the late 1940s, when the GATT came into being. Today, almost all acceding countries enjoy most-favoured-nation treatment in overseas markets as established by respective bilateral trade agreements. Hence the positive outside effects for an acceding country will be mainly associated not with improved market access but rather with the possibility of participating in WTO decision-making.

On the other hand, WTO members start enjoying benefits almost the day after the candidate accedes, having better market access resulting from the tariff and services schedules of new members. They also start operations in a friendlier legislative environment similar to that in which they operate among themselves. For acceding-country economic operators, some time will be needed to adapt themselves to changes arising from the accession.

One may conclude that early accession is in favour of WTO members, thus enlarging the scope of application of multilateral trade rules to new markets with more predictability and transparency.

In fact, those arguments are rarely taken into account by WTO members. Rather, they strive to get more concessions from the candidate, and to delay accession until they are fully satisfied with the level of concessions and obligations. Negotiations may take years, and

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during this period neither the acceding country nor the members may be able to get any benefits from the accession negotiations.

There are several approaches to accession as declared and implemented by several WTO members.

Commercial viability

Accessions are conditioned upon agreement of commercially viable terms of accession. This approach may be sound only in cases when the commercial viability principle is valid not only for the members but also for the acceding country. Otherwise, the acceding country may be losing a substantive incentive to join the WTO, also because it will be unable to demonstrate domestically the benefits of accession. Most acceding countries are in the process of modernizing and restructuring their industries, and transition periods are needed to adapt their tariff and other trade policies to the changing environment. Hence, accession may be commercially viable to an acceding country only if it contributes to internal development policies.

WTO-plus requirements

Acceding countries are required to make commitments which go beyond the standard WTO package. In the area of goods, these are "tariff sectoral initiatives" or plurilateral agreements like the Agreement on Government Procurement or the Agreement on Trade in Civil Aircraft, or bindings of all tariff lines. In services, commitments in areas where members have not yet reached agreement among themselves (such as maritime or traffic rights in aviation) are requested. On systemic issues, requirements may go far beyond the WTO's competence – for example, in the area of investments or privatization. In tariffs and services, when asking for commitments, some members are not in a position to demonstrate why they are making this or that request. There are many cases where members request to open a specific market of an acceding country even though they do not have their own industry which could benefit from such an opening.

Another dangerous development is connected with the denial to some acceding countries of members' rights established by respective WTO Agreements, like those on anti-dumping or safeguards.

All these additional requirements are not based on the legal norms of the WTO, and they do not take into account the actual situation in acceding countries. Furthermore, acceding countries are required to make bigger commitments than the original members were. This creates a two-tiered system of rights and obligations for different members, thus substantially damaging the main principles of the WTO: non-discrimination, equal rights and transparency.

There is a clear lack of reasonable explanations for such approaches. If the WTO system is to serve the world trading community, it should not differentiate between members with regard to basic obligations, and it should duly take into account the actual economic and

social situations in developing countries and countries in transition, where, in fact, a "WTO-minus" principle should be implemented in order to promote fair and optimal conditions for their economic development.

In the case of Russia, the situation is very similar. We are not requesting something special which is not in compliance with standard WTO requirements. However, for us it would be difficult and even unacceptable to agree with any request which goes beyond the rules and procedures presently embodied in the WTO.

Two examples

Agriculture. Those members which have a policy of substantially limiting state support for agriculture request that acceding countries implement similar or even lower supports. However, they are probably forgetting that they themselves have used state interventions in the past to create a competitive agriculture sector and that this support now enables them to operate in more liberal conditions. If an acceding country agrees to such requests, its agriculture will be placed at a clear disadvantage and will be endangered – for example, by imports from those members supporting the principle of multifunctionality of agriculture.

Legislation. Acceding countries are required to bring their domestic legislation into full conformity with the WTO commitments long before actual accession takes place. However, the Marrakesh Agreement requires that this be done by the time of accession. Since the length of the accession process is not subject to any limits, implementation of this requirement will again place the acceding country in an unfavourable position. It may thus implement de facto major WTO commitments with respect to requesting members on a unilateral basis, without any reciprocity from the latter, which obviously may continue to implement WTO-inconsistent trade legislation and trade barriers vis-à-vis the acceding country.

Such approaches should be changed. All nations in the world are equal, and the WTO should ensure full implementation of this principle as well as the principles of universality in its daily activities. Only then we may speak about the WTO as truly universal, fair and transparent.

Some practical problems and needs of Viet Nam in connection with joining the multilateral trading system

Dao Huy Giam*

It is a privilege for me to participate in this meeting. I would like to express my deep gratitude to Mr. Secretary-General and the secretariat of UNCTAD for giving me, a worker in the area of international trade policy, this excellent opportunity and in particular for the invaluable assistance and encouragement you have extended to Viet Nam in the process of negotiations for accession to the WTO, as well as in other activities in which we take part as a member of UNCTAD.

Viet Nam started an open-door policy in 1986 and its encouraging, even though initial results have led our country out of long-lasting economic crises. Viet Nam recognized the objective need for economic integration with the world. In the process of WTO accession negotiations, we have almost concluded the reading of the memorandum on the foreign trade regime of Viet Nam and are preparing for market access negotiations.

I would like to make five points: Let me first mention the difficulties that we are experiencing during the transition to integration into the world economy in general and accession to the WTO in particular. For a country with a level of economic development as low as Viet Nam's, the first but paramount difficulty lies in maintaining dynamism through a transparent, consistent and systematic legal framework and administrative adaptability. Reform has been conducted on a continuous basis by the Government of Viet Nam to meet these criteria. We are convinced that the reforms of the economy and trade policy will reach a high level of effectiveness only when the legal framework and trade policy system are built on clearly set and stable standards corresponding to those of the multilateral trading system; the interest of our country requires that it enhance its capacity to effectively enforce major rules of the world trading system, which would be the catalyst for efficiency in the administration and control of trade activities.

Viet Nam is facing multifaceted problems, but we are determined to implement the above basic standards. Viet Nam takes the fundamental rules of the world trading system as the foundation for trade policy-making, and in addition we are trying to learn how WTO member countries implement and enforce the rules to adapt them to their own economic development realities. In the process of integration into the WTO, we need to understand the rules correctly, and to determine the appropriate level of market-access commitments in responding to the double concern: creating momentum for a national economy still at a low level of development while meeting the commitments for accession to the WTO.

With an economy in transition, experienced that administrative and non-tariff, non-fiscal trade measures have been the only tools for regulating international trade, Viet Nam

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introduced customs tariffs at the border in 1990. Despite many efforts to accelerate trade policy reform, we still have difficulties and shortcomings in the following areas:

- Finalizing and applying the tariff schedule, which is to be further adapted to the HS 1996 system;

- Inefficiency in the non-tariff fiscal system, which discourages any program of tariff reduction, as that risks weakening sources of budget revenue;

- Lack of the expertise and management skills needed to implement the customs valuation agreement;

- The standards applicable to both goods and services can merely meet immediate requirements and are still short of meeting the administrative needs of our international trade activities, which are fast expanding in volume;

- Poor knowledge of and information support regarding the business practices and policy measures applicable by the import market authorities;

- Absence of the information network needed to support trade policy, trade activities and consumers; and

- Increasing problems with the intra-government coordinating mechanism and competence among trade policy-makers and international negotiators.

The above are major difficulties in the economy's transition process and to the negotiation of WTO membership. Viet Nam looks forward to receiving assistance from WTO members and the international community, in particular international economic and trade organizations like UNCTAD, the WTO, WIPO and the OECD. Efforts by developing countries, especially those at low level of economic development, to reform trade policy should be recognized, encouraged and supported by the developed countries by way of concrete programmes of activities. A panoply of clearer and simpler criteria would be of great help to the acceding countries in their trade policy reforms such as preparation for accession and market access negotiation. 16 applicants have acceded to the WTO since its establishment. Studies have shown that, in general, commitments by newly acceded members are higher than those of WTO members at comparable levels of development. In my view excessively high standards may stand for non-standards. A non-standard basis can never be a correct reference point for acceding countries in reforming and scheduling their trade policy.

The reform of trade policy and the finalization of accession negotiations would be accelerated and more successfully conducted if joint activities were done to evaluate the commitments of newly acceded countries and their experiences in implementing them, in order to establish points of reference. WTO members should be invited to encourage acceding countries to implement comprehensive and effective trade policy reform and expedite their negotiations for WTO membership. That, in my view, is a positive way to

confirm the universality of the WTO and its dynamism for development. Since the great majority of WTO members are UNCTAD members, the latter is in a position to take a central role in coordinating such an initiative with the WTO and other organizations friendly to such an initiative. Third, narrowing the gap of levels of economic development among WTO members is an increasingly important necessity. The objective of development is omnipresent in the multilateral trading system; more than ever development problems are critical and pressing. Gaps in economic development, standards of living and opportunities are widening between countries and regions. I believe that countries with low development levels, with people living in poverty or threatened with a return to poverty, expect from the multilateral trading system opportunities to achieve a better life and definitively escape from underdevelopment.

We have strong reason to believe that WTO members, and first and foremost developed-country members, should take the lead in establishing material and effective measures to enhance the efficiency of trade policy and trade opportunities as real instruments of and for development.

These issues are of great concern to many of the countries in the process of accession to the WTO. It would be unfair to get from countries at a low level of economic development, in particular those substantially depending on agriculture, commitments incompatible with the implementation of their development policy. An example involves commitments requiring the elimination of direct support (certain product-specific supports or export subsidies), when agriculture is a country's major economic sector. Moreover, while they may be pressed to do so, they lose access to certain practical subsidies and supports because they have been too poor to afford their own programs of supports. In order to conclude the accession negotiations, a developing country like Viet Nam needs to outline and evaluate the effects, in concrete terms, of international trade expansion on the employment, real revenues and standard of living of its people.

The experiences of WTO members are invaluable for us. Viet Nam wishes very much to learn from those countries' experiences in trade policy-making and implementation, their administration and the way they provide supports and incentives for trade development in order to maximize very limited resources. Fourth, Viet Nam estimates that great efficiency has resulted from many technical assistance programs or projects and/or implementation in a variety of modalities. I take this opportunity to express our deep gratitude. We have received, during recent years, support and assistance from countries including Switzerland, the European Union, Australia, Japan, the ASEAN countries and other partners and individuals. Fifth, countries in the process of accession to the WTO are, more than ever, in need of technical assistance. We need information about the fundamental rules and issues of the multilateral studies that members and international organizations such as UNCTAD and the OECD have been conducting; particularly urgent needs include training and human resources development, capacity- and institution-building, and skills and competence in institutional coordination with regard to policy-making and implementation, legislation and enforcement.

Some issues involved in WTO accession

Harald Kreid*

Having listened with interest to the discussion, I want to formulate a number of observations from my own viewpoint. First of all, it is quite obvious that applicants to the WTO enjoy two types of benefits, namely pre-accession and post-accession benefits. The pre-accession benefits are those deriving from a necessary reform of the economic system, the introduction of rules and regulations compatible with the multilateral trading system and the strengthening of the institutional and administrative basis. All these reforms are in a country's interest independently of whether or not it will join the WTO, because it will end up in better shape with regard to its trading capacity and its competitive advantage.

As to the post-accession benefits, their immediacy and scope should perhaps not be overestimated. If a country expects to be immediately catapulted to major export performance or expects that investors will scramble to put their money into its economy, it may be disappointed. But in the medium and longer term, belonging to the WTO and thus being on an equal footing with the majority of the world's trading nations carries with it, if consistently applied, considerable economic rewards.

Of course, the negotiation process is carried out on two different levels: the multilateral and the bilateral one. For the multilateral level, we have a matrix. There is a reasonable amount of transparency and, on the whole, one could say that this process helps the acceding country align its economy with the requirements of WTO membership.

The bilateral process is, of course, somewhat different. Here the government of an acceding country can find itself exposed to pressures to make concessions that may not be in its perceived national interests. Indeed, the question is whether this bilateral process is always necessary, particularly for LDCs. The European Union has been suggesting that for LDCs a "fast-track approach" should be applied. Perhaps the term "fast track" is not a good description of what is meant. The idea is not that the process should be speeded up but rather that it should be simplified. One way of simplifying the process could be to reduce or eliminate the bilateral negotiations. Of course, this cannot mean that one should skip certain reforms which are necessary in order to be properly prepared for confronting the challenge of integration into the trading system. If not properly prepared, a country would pay a high price and would not derive the expected advantages.

The European Union gave some hints about what it meant by this fast track in defining minimum criteria and procedures: (i) automatic eligibility of all acceding LDCs for all provisions for special and differential treatment in existing WTO Agreements; (ii) taking full account of the constraints under which LDCs act when seeking concessions from them; and (iii) providing adequate technical support during the accession process.

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Technical support is, of course, of major relevance to this group of countries. Who is to say whether the price that is asked from them in order to join the WTO is too high? They frequently do not have the appropriate expertise. If they turn to the WTO and UNCTAD secretariats they can tap these organizations' wealth of experience in preparing candidate countries for accession. But, indeed, we must keep in mind that the secretariats are acting impartially and are not in a position to express themselves in a partisan manner. Therefore, it might be useful also to examine the experiences of governments of countries of a similar profile which either are further along in the process or have recently joined the WTO.

What is the proper timeframe for accession? I do not believe that there is a general rule. Delays may be encountered because the negotiation process is too demanding. By this I mean that some member States are asking a high price of entry. Another reason frequently encountered is that reforms take more time than foreseen. Finally, there might be a conflict of interest between the demands of the WTO on the one hand and the demands of the IMF and other institutions on the other hand. Therefore, the cohesion of a reform process must be kept in mind.

If demands, particularly to small and vulnerable economies, are unreasonable, I do think that it is appropriate for the Chairman of the Working Party to exert his influence on member States in order to mitigate their demands by making clear to them that they are putting too big a burden on the acceding economy. On the other hand, it seems obvious that certain areas such as TRIPS might be sensitive and not negotiable, so that there will be little flexibility even with regard to LDCs, apart from their being offered longer periods of transition.

I would also like to refer to the issue of protection and gradual opening up of a market, which, of course, plays a major role in accession to the WTO. Again, one would need to look at comparable country situations and derive guidance from them. It seems important to fix one's priorities and to make sure that the process is a gradual one which does not overburden the institutions. There is, indeed, a case for protection, provided it is temporary, focused and accompanied by developmental policies to strengthen the sector so that the protective barriers can gradually be removed. This is the meaning of special and differential treatment: to allow a sector to become competitive on the world market.

What are the consequences of opening up? In other words, is liberalization a panacea? Certainly not. One cannot rush into it; liberalization needs to be accompanied by supportive policies in such areas as the exchange rate, investment agreements and export capacity formation, but also by political stability and predictable government policies. Liberalization could thus be called one of the important goals of integration into the world economy, but it should be pursued with discretion and discernment.

Ambassador Naray in his intervention rightly pointed to the importance of property laws and the existence of the social safety net, and he told us that societies which do not even have a clear definition of what belongs to whom will be unable to perform successfully on the world market. I fully agree with him, but I would like to add that a country needs functioning

property laws and a social safety net anyway, if it wants to move ahead in its development, whether or not it plans to join the WTO.

Now, one might ask whether a country should or could aspire to join the WTO without having undergone this entire reform process. Again, in theory it would, of course, be commendable to have these reforms in place, not only as laws but actually implemented. But in practical terms, this might lead to long delays. The very fact of joining the WTO could provide a motor of modernization, as was said by Mr. Lawrence. He correctly reminded us that governments tend not to take difficult decisions unless there is a time constraint. So the answer is that, while a country needs to make preparations, it might also benefit from the pressure exerted by the WTO in order to bring the reform process to fruition.

Finally, let me say that the WTO is not a development organization and we do not want to transform it into one. However, it has acquired a developmental dimension, which is becoming more important with the attainment of universal membership.

I do not hesitate to state that I consider it a core function of UNCTAD to provide technical assistance to developing countries seeking admission to the WTO. The Bangkok Plan of Action explicitly says that UNCTAD should provide advice to countries negotiating accession to the WTO.

Now, what repercussion will this have on the organization itself? No doubt the major actors in the WTO need to be more sensitized and need to become aware that more attention – which also means more resources – has to be dedicated to the concerns of the weaker economies. Actually, this is already being done to some extent. Questions of implementation of the Marrakesh Agreement by the developing countries are a main area of discussion in the WTO. Another example is the Advisory Centre on WTO Law, which has been created with the intention of providing developing countries, in particular LDCs lacking the necessary resources, with legal advice for dispute settlement questions. In other words, I see no insurmountable barriers to making the WTO more responsive to this developmental dimension without, however, losing sight of its core function of a rule maker and norm setter in the area of trade.

Iran's accession to the WTO

S. Jalal Alavi*

We would like to thank the Secretary-General for convening this important informal meeting. Because of UNCTAD's relevance, this important subject deserves formal meetings as well, and we hope that the outcome of this meeting can be built on.

Here are some experiences of the Islamic Republic of Iran with regard to the accession scenario: We have not yet, indeed, experienced substantive difficulties in our accession, because we have been facing a very anomalous procedural problem which has cost us five years in our efforts to join the system. Because of this anomaly, it is not quite clear whether we are an acceding country by the WTO's definition. Although the WTO-accession-related works and documents remain silent on the situation of Iran, our understanding is that Iran is an acceding country which differs from other acceding countries in the nature of the barriers we are encountering. The WTO-recognized acceding countries are facing substantive difficulties in their negotiations, while Iran has been halted since the very beginning of the accession process on a purely procedural, and, in our view, unnecessary basis. This situation the result of the unnecessary application of the consensus rule to the procedural part of Article XII of the WTO Agreement.

We do not call into question the usefulness of consensus-based decision-making in the WTO. It has proved its advantages for the whole system. The principle of consensus is a workable mechanism among member states, not to be used against non-members who would like to join the system. If this is the case, as it was for us, one member will be in a position to prevent non-members from accession forever, simply by preventing the General Council from considering the non-member's formal application for membership. How, in that case, can universality be guaranteed? We have not been alone in our understanding of the situation, and nearly all the WTO membership shares this concern. Very recently the issue was raised by the Informal Group of Developing Countries in the General Council. We remain hopeful that, through this collective effort, we can start our negotiations in the near future. But there is a need to prevent once and for all any possible recurrence of such rule-based abuses.

Following are some general difficulties faced by acceding countries: Accession is a multi-year and, in some cases, decades-long process, and this is self-explanatory. There are sufficient proven instances as referred to in the discussions at this meeting. In this very rapid and dynamic international trading system, how can acceding countries afford to be left behind for a long time, cooling their heels as they wait to join the Organization? How will they be able to abide by an international trading system which they are not involved in establishing? We partly agree with those distinguished speakers who referred to the benefits arising from the accession process itself, but at the same time we believe that there is a need to make the process as short as rationally possible. There is no doubt that this requires not only appropriate national policies and adjustments by the acceding countries but a constructive

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push by the WTO membership through reforming the accession process. It seems that the accession procedure needs streamlining with a view to accelerating the realization of the universality of the system.

As was rightly mentioned in the discussion note by the secretariat, a few leading members formulate and implement criteria for the terms of accession. One of the distinguished speakers highlighted the unnecessary bilateral negotiations conducted in the case of Vanuatu. The General Council should set the norms for this important issue. I think the rules are flexible enough for that purpose and that clear guidelines by the General Council can make the accession process more functional and streamlined, as was recently requested by the Informal Group of Developing Countries in WTO. Of course, such a change requires the political will of the entire membership, and we remain hopeful that it will occur as soon as possible. Accessions should not be considered subordinate to other issues in the system, even current negotiations on specific issues or the question of whether or not to have a new round. The discussion note is quite clear on this. One distinguished expert said that accession is at the bottom of the list of priorities of member states. This is very unfortunate. The accession of the remaining countries can contribute to the eventual success of the trading system as much as can resolution of the other prevailing issues. In other words, achieving universality of the WTO through ensuring the full membership of the acceding countries should be an integral part of any attempt to rectify the imbalances and inadequacies of the existing trading system. Therefore, accession should remain at the top of the agenda of the Organization.

By the same token, acceding countries should not be subjected to onerous demands while negotiating the terms of their accession. In the discussion note by the secretariat, a reference is made to the "standard terms" with minor variations. We do not think that these standard terms are now being applied in a standard manner. Apparently, this will affect only the acceding countries, who should envisage a higher "membership fee", but it will have its adverse repercussions for the multilateral trading system as well. As one of the experts argued, the longer the accession process, the higher the price of membership. The question is what will happen if acceding countries are not able to afford this soaring membership fee. The system should consider a workable solution for this problem as soon as possible.

UNCTAD should continue to play its important role in assisting acceding countries in their efforts to join the WTO. We appreciate what has been done so far by the secretariat and remain hopeful that its role can be expanded. We would like to propose that UNCTAD organize an "Accession Week" in Geneva at least twice a year, during which representatives of acceding countries can exchange information and share their experiences with accession. This would undoubtedly help acceding countries in their ongoing negotiations with the member States.

Bulgaria's experience with WTO accession and the first years of membership

Georgia Pirinski*

1. Historical overview of the efforts to join the WTO before 1989

On 8 September 1986, Bulgaria officially announced its desire to accede to the GATT. The General Council of the GATT reviewed Bulgaria's application on 27 October and 6 November of the same year. At the first of those meetings no decision was taken to launch an accession process, because of the objection of the United States. At the second meeting of the GATT Council, it proved possible to adopt a decision "to follow the usual procedure for examining applications for accession and to establish a Working Party". The Council also agreed that, upon submission of the Memorandum presenting *inter alia* the new economic and trade legislation, it would lay out the procedural rules for the Working Party.

Meanwhile, in the course of 1987 and 1988 three seminars were held in Graz, Washington and Brussels on "Bulgaria and the GATT" in order to present Bulgaria's economic and trade legislation. At the meeting of the General Council in July 1988, Bulgaria officially presented its Memorandum for accession. On two subsequent occasions – on 20 July and again on 19–20 October – the Council considered the Bulgarian application in light of the Memorandum. Once again no agreement was reached, and the issue was postponed until at least the beginning of 1989.

Further rounds of unofficial consultations were held between January and March of 1989. The draft terms of reference proposed by the Chairman of the Working Party continued to depart from the standard form. They contained an additional clause requiring that the Working Party examine the whole foreign trade regime of Bulgaria and its compatibility with the GATT regarding national treatment, non-discrimination, state trading, subsidies and countervailing measures. The main objections against standard terms were again raised by the United States.

In the course of April–June 1989, Bulgaria presented new information on its new economic and trade policies embodied in Decree No. 56 of January 1989 and an addendum to the Memorandum outlining the latest changes in legislation and economic policy (doc. L/6512, 8 June 1989).

The next round of unofficial consultations within the Working Party, held in mid-July, was preceded by intensive discussions in Washington by a high-level Bulgarian delegation. These discussions had seemingly led the office of the United States Trade Representative (USTR) to put forward, in the framework of inter-agency coordination, proposals for an updated United States position. Yet, because of opposition on the part of the Department of State, no new proposals were put forward at the consultations on 13 July in Geneva. In the opinion of the Chairman of the Working Party, due to "well-known reasons" no evolution

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could be expected. Therefore it was felt that contacts could not be resumed before autumn of the same year.

2. The place of accession in strategies for transition towards the market and the integration of the country into the world economy in the period after 1989

Late autumn of 1989, however, saw the beginning, after 10 November, of fundamental change and profound reform in Bulgaria as one of the East European countries embarking on a transition to pluralistic democracy, the rule of law and a market-oriented economy. The new government voted into office in February 1990 began implementation of a broad program for stabilization, structural adjustment and economic reform. A principal component of this program was the opening of the economy to world markets outside the Council for Mutual Economic Assistance (CMEA).

As part of the elaboration of a strategy to implement such an opening in an orderly and systematic fashion, the government engaged in substantive consultations with a high-level delegation of the GATT Secretariat, which visited Sofia from 28 February to 1 March 1990. A rereading of the main messages conveyed at that time clearly shows that even then there existed full awareness both of the potential benefits as well as in particular of the pitfalls and challenges of transition and of accession to the multilateral trading system for a country in Bulgaria's position. At the time it was specifically noted that:

- In the drive for change towards market economies in Eastern Europe, there was seen to be evidence of a potentially misleading combination of fact and expectations. It was important to remember that there existed no single definition of "market economy". People saw the features of consumer societies, yet almost completely overlooked the individual sacrifices which members of these societies made in order to make these features possible;

- An immediate priority of the government would have to be reforming the educational system, enabling it to turn out graduates capable of implementing economic reform on the basis of new approaches;

- It was particularly important not to underestimate the key role of government in the proper functioning of market economies. Essential elements in this regard were a powerful central bank and an authoritative ministry of the economy setting trade policy and determining tariff protection and competition rules;

- It would be necessary to undertake a step-by-step process of introducing market economy rules and practices, which could begin immediately in the sectors of agriculture, tourism and small and medium-sized enterprises;

- Transformation of the price system was vital for creating a competitive environment for economic agents. There would thus have to be broad price liberalization. An additional reason making such liberalization a must was the need to develop capital markets, which would prove impossible if old methods of

administered price formation were partially retained. The most effective policy for countering the monopoly positions of individual enterprises and for controlling and reducing subsidies was determined and unswerving price liberalization;

- It would be proper to regard tariffs as the only practicable means of market protection. Internal pressures for other types of protection had to be denied on grounds of GATT commitments and obligations. Any other instruments of protection, such as quotas, created conditions conducive to distortions and corruption – that is, might encourage development of the "negative side" of a market economy; and

- Taxes needed to be completely redesigned along principles of neutrality of treatment and non-discrimination between domestic and foreign suppliers.

The whole issue of restructuring CMEA trade was seen as fundamentally important for the integration of a country like Bulgaria into the world economy and trading system. In general, colossal structural adjustments would have to be expected due to the high shares of mutual intra-CMEA trade volumes, the lack of currency convertibility and the desire of each of the countries to quickly integrate into world markets. In order to meet such a challenge, a number of approaches were seen as useful and necessary:

- Internally, a clear timetable for achieving currency convertibility needed to be adopted;

- However, it would also be advisable to accord priority attention to the post-war experience of Western Europe under the European Payments Union as a major positive factor for successfully shifting to convertibility; and

- The creation of a standard free trade zone among CMEA member countries would be the most logical means of giving legal recognition to the de facto trade flows and patterns between CMEA countries.

Overall, it was recognized that the common denominator of mutual interest both for the GATT and for Bulgaria was to have the latter become a GATT contracting party as an economy with increasingly competitive exports and imports. In such a case Bulgaria would truly be a full-fledged member, able to both benefit from and contribute to the multilateral trading system. This would also mean introducing those multilateral rules into national legislation which served as means for countering abuses of the market economy.

However, further events in 1990 made the implementation of such a systematic approach to accession virtually impossible. At the end of March, Bulgaria was forced to suspend servicing of its foreign debt because of almost complete depletion of its foreign exchange reserves, and because since November 1989 the country had been completely new financing from both private and official sources.

The next government voted into office after the first post-1989 general elections for Parliament was not able to start implementation of its program due to the severe political crisis of late 1990.

Price Liberalization. Thus, since early 1990, regardless of political upheavals, Bulgaria embarked on a transformation course of fundamental political and economic change. Successive Bulgarian governments in the ensuing period undertook a series of policy measures for macroeconomic stabilization and structural reform.

The state-owned sector was decentralized and the process of privatization was launched. Basic changes were introduced in the financial sector and in agriculture.

Foreign Trade Regime. The state monopoly on foreign trade was eliminated as early as 1989. Trade reform opened the economy to external competition and to foreign investors. All firms, private and public, acquired the right to engage directly and independently in foreign trade. The old comprehensive licensing system was eliminated.

Convertibility. The national currency, the lev, attained internal convertibility for current account transactions. Free access to foreign exchange for such transactions was introduced. The exchange rate quoted by the Central Bank began to serve only as a reference for licensed commercial banks and exchange bureaux.

Europe Association Agreement. The Free Trade Area agreement with the greatest importance for Bulgaria was concluded with the European Union in the framework of the Europe Association Agreement. Intensive work on the
Agreement began in early 1992 (which, because of the shortage of expert personnel, meant a certain slowing down of preparations for GATT accession). The Agreement was concluded in March of 1993.

The trade part of the Agreement – that is, the Free Trade Area and the related trade and economic aspects – entered into force on 31 December 1993, thanks to the so-called Interim Agreement. The latter was based on the relevant international rules and in particular on the provisions of Article XXIV of the GATT. The Free Trade Area was to be established over a period of 10 years. The Agreement envisaged full liberalization of trade in industrial goods and partial liberalization of agricultural trade on an asymmetrical basis. Bulgaria succeeded in including in the Agreement the preferential market access that it had enjoyed for some agricultural products under the unilateral Generalized System of Preferences (GSP) scheme of the European Union.

The Agreement contained the usual provisions for “standstill” as to new restrictions concerning safeguards and anti-dumping measures and procedures. In certain specially defined cases – such as infant industries and sectors undergoing restructuring – Bulgaria acquired the right to introduce higher import duties for temporary protection. As a result of the Agreement, Bulgaria was deleted from the European Union’s list of “state-trading” countries and in all European Union legislation was accorded the same treatment as market-economy countries under standard procedures.

Agreement with the States Members of the EFTA. The Agreement with the European Free Trade Association was signed in 1993. At that time EFTA had seven member states –Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland. The Agreement envisaged full liberalization of industrial goods trade (on an asymmetrical basis) and partial liberalization of trade in agriculture on the basis of bilateral agreements with each individual EFTA member.

3. Internal preparations for membership: Introduction of effective customs tariffs, changes in national legislation, etc.

Customs tariff. The new Customs Tariff came into force on 1 July 1992. It was based on the Harmonized Commodity Description and Coding System. It contained 96 chapters, 1,241 four-digit headings, 5,018 six-digit headings and 845 eight-digit headings. The tariff contained two columns. The first one specified rates under Bulgaria's Generalized System of Preferences Scheme. The second column specified most-favoured-nation (MFN) rates. Imports from least developed countries (LDCs) were subject to zero tariff rates. The tariff for countries not applying MFN treatment in favour of Bulgaria were set at 200 per cent of the MFN rate. The average nominal tariff rate was set at 17.96 per cent – 16.69 per cent for industrial goods and 25.97 per cent for agricultural products. The trade-weighted average at the time of introduction of the tariff for MFN imports came to 13.72 per cent – 12.50 per cent for industrial goods and 30.91 per cent for agricultural imports. The tariff had five basic MFN rates ranging from 5 to 40 per cent. The most common rate, representing one third of all tariff lines, was 25 per cent. The greatest share of imports – 34 per cent – fell under the lowest rate of 5 per cent. Only 8 per cent of tariff lines came under the 40 per cent rate, and they accounted for no more than 5 per cent of total 1992 imports.

National Legislation. Regardless of political difficulties and economic setbacks, in the early 1990s Bulgaria embarked on a fundamental revision of its trade and economic legislation. By the mid-1990s trade reform had opened the economy to external competition. The Law on the Economic Activity of Foreign Economic Persons and on the Protection of Foreign Investments had also exposed the economy to foreign investors. As was noted above, the state monopoly on foreign trade had been eliminated as early as 1989; free access to foreign exchange for foreign trade transactions had been introduced in 1991. Besides, reforms had also given the customs tariff a central role as a trade policy instrument and had caused the virtual removal of quantitative restrictions on imports, the rationalization of taxation and the decentralization of the state-owned sector. The complex process of transfer of productive property to the private sector was also launched.

4. Experiences from the negotiations: Challenges and achievements, and the balance between protection and liberalization

The new government voted into office in January 1995 attempted to stabilize industry and agriculture and to further integrate the country into the international economy. In this context, it also activated the process of accession to the WTO. In line with its overall policy goals regarding WTO accession, it set itself two main trade policy objectives: (i) to move towards a sustainable external position including revival of foreign trade, diversification of

markets and growth of international reserves, and thus towards resolving the external debt situation; and (ii) to progress towards restoring macroeconomic equilibrium sustained by an appropriate mix of fiscal, monetary and incomes policies.

Advantages

The advantages of joining the multilateral trading system as incorporated in the WTO were, by the mid-1990s, seen in essence as coming down to providing investors, employers, employees and consumers with a business environment which encouraged trade, investment and job creation as well as choice and low prices in the marketplace. Such an environment needed to be stable and predictable, particularly if businesses were to invest and thrive.

Further, the fundamental principle of most-nation-nation treatment was seen to be of particular importance for developing countries and other countries with little economic leverage because of the possibility it provided them of benefiting freely from the best trading conditions wherever and whenever they were negotiated.

National offer and compatibility of legislation

Thus as early as October 1994 Bulgaria submitted to the members of the Working Party its offer on services, Spec(94)46/26.10.94. Somewhat later, in January 1995, Bulgaria submitted to the members of the Working Party a national offer on agriculture, Spec(95)4/21.02.95. At that time also it made its offer on industrial goods. On this basis bilateral negotiations were undertaken.

On 29 May 1995, Bulgaria submitted extensive information on the consistency of its foreign trade regime with the WTO Multilateral Trade Agreements as well as notes on TRIPS and on trade in services.

Challenges

In practical terms, the challenges confronted by Bulgaria in seeking accession came down to the requirements and expectations of the members of the Working Party concerning the offers and the information submitted by Bulgaria. One set of challenges was of a systemic nature or had to do with the level of economic development of Bulgaria:

1. One principal expectation was that Bulgaria make clear the relationship between the state and its trade and industry. Transparency and dialogue were made minimum requirements which were to be addressed specifically in the protocol package. A guarantee of periodic updates covering privatization of and trade by state-owned enterprises was also requested. Similarly prompt publication of all laws and acts related to trade as required under Article X was expected. Specific requests were made for the provision of full details of the role of the state in management and decision-making in enterprises wholly or substantially owned by the state and for the products which they traded – in particular for tobacco and tobacco products (Bulgartabac) and for wines and spirits (Vinimpex).

2. Another principal challenge that Bulgaria had to face was the expectation that in entering accession deliberations for accession to the GATT it would have to contemplate the expansion of negotiations to encompass the expanded scope of GATT institutions under the WTO. That meant that a protocol package would have to include an agricultural schedule (with commitments on market access, domestic support and export subsidies) and commitments on market access for goods and services. This expectation also meant that negotiations would have to include the initial submissions/notifications required by the WTO Agreements on import licensing procedures, technical barriers to trade, customs valuation and the TRIMs Agreement. Further, it meant the package would have to include a list of non-tariff barriers by tariff line subject to restrictions requiring WTO justification (import or export quotas, licensing requirements, certifications, surcharges, taxes or any other such restrictions) in order to (i) comply with the Agreements on Import Licensing Procedures and (ii) negotiate, as necessary, their elimination or adaptation for WTO conformity. Besides, requests were made as to commitments on intellectual property rights and intentions for participation in the Agreement on TRIPS and in the GATS.

3. Expectations were also put forward that Bulgaria define the status which it wished to adopt as a country seeking accession. It was pointed out that seeking to gain recognition as a developing country would in the long run bring no real benefit. In the meantime, such an attempt would raise grave doubts among contracting parties as to the seriousness of Bulgaria's commitment to undertake and implement in full the obligations of membership. Furthermore, in the sector of priority interest for Bulgaria – agriculture – no preferential terms could be expected to be achieved through this status.

Besides challenges of a more general nature, the full range of conditions and requirements were put forward concerning the trade policy regime and measures applied by Bulgaria:

- In bilateral tariff negotiations, Bulgaria would be requested to bind its whole tariff and make other additional tariff concessions at a rate commensurate with Bulgaria's development level and participation in world trade. Existing excessively high tariff rates needed justification and would have to be reduced.

- In case Bulgaria was indeed contemplating accession to the WTO Agreement, the protocol package would have to further include a commitment to WTO-consistent application of taxes and charges applied to imports and of non-tariff restrictions on imports and exports. Regarding taxes and charges, information and commitments were requested on: (i) temporary import surcharges – the 5 per cent temporary charge in force since June 1996; (ii) import taxes – the remaining 10 per cent tax on second-hand cars over 10 years old; (iii) duty exemptions – applied for social and ecological reasons; (iv) allocation of tariff rate quotas – list of products; (v) customs fees – conformity with Article VIII

of GATT; and (vi) export taxes – for relieving critical shortages of foodstuffs and supplies for industry.

- Regarding taxation, two concrete expectations were put forward: (i) that the significantly more heavy taxation of volume imports of certain distilled spirits be reduced; and (ii) that border charges not consistent with GATT 1994 be either modified or eliminated under the protocol of accession.

- Concerning the requirement on non-tariff measures (NTMs) for provision of a list of measures by tariff lines, including licensing, quotas and any other restrictions, expectations were that: (i) quotas and licensing requirements on tobacco, citrus fruits and similar items be brought into substantive and procedural conformity with WTO obligations; (ii) import quotas be consistent with the GATT 1994; and (iii) the base levels for the application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing (the quantitative restrictions maintained by WTO members on imports of textiles and clothing products originating from Bulgaria that were in force on the date prior to the date of accession of Bulgaria to the WTO) be notified to the Textiles Monitoring Body (TMB).

- It was expected that the provisions on safeguards and unfair trade practices (conversion of currencies, sales below cost, price averaging, domestic judicial review, time limits, etc.) in national legislation made available to the Working Party would be made precise so as to reflect the respective requirements of the Agreement on Subsidies and Countervailing Measures and the Agreement on Antidumping.

- Clarification was required concerning the non-application of export subsidies, namely in the sense that they should be not contingent on export performance, that there were no government export credits at better than ordinary rates or tax exemption schemes related to the production and distribution of exported products.

- Clarifications were also requested concerning Bulgaria's Safeguards regime and in particular concerning the conformity of designations used (e.g. critical circumstances, market disruption, broad section of consumers, provisional measures) to the provisions of the WTO Agreement on Safeguards.

- Regarding Technical Barriers to Trade and Sanitary and Phytosanitary Measures, clarification was requested concerning (i) the manner in which Bulgaria intended to implement the requirements of the Agreement on TBT; and (2) application of the requirements of the Agreement on SPS.

- Clarification was requested concerning the Free Trade Zones in Bulgaria.

- Regarding customs valuation, the request was made that discrepancies between national regulations and the terminology of the WTO Agreement on the implementation of Article VII of the GATT 1994 (Customs Valuation Agreement) be eliminated. In particular, clarification and improvement of the regulations were necessary concerning (i) goods "declared for free circulation in Bulgaria"; (ii) references to transaction value; (iii) who is ultimately responsible for providing the information necessary for appraisement of the imported goods; and (iv) the definition of a sale for exportation.

- Regarding rules of origin, additional information was requested since it was felt that the amount provided by Bulgaria was not adequate to assess the consistency of Bulgaria's laws and regulations on rules of origin with the WTO Agreement. In particular, further information was requested on procedural protection and the basis for determination of origin.

- Regarding the GATS, information was requested concerning emergency safeguard measures and restrictions on international payments and transfers for current transactions. The following requests were also made: (i) determination of whether clarifications could be made when the draft schedule was verified from a technical point of view; (ii) basic telecommunications needed to be included in the commitments; and (iii) commitments on financial leasing in financial services were deemed necessary.

In response to these challenges, Bulgaria undertook the corresponding commitments and obligations.

Bulgaria was able to receive acceptance and confirmation of its positions regarding concerns of a more general, systemic nature expressed in the course of negotiations:

1. Regarding the expectations for further clarification of the relationship of the state to trade and industry and the requirement for transparency and prompt information, Bulgaria undertook to ensure such transparency, including the broader background of national and economic development. However, Bulgaria was able to gain acceptance of the understanding that this commitment was not to be regarded as a basis for the imposition of specific obligations under the Agreements or as a basis for the adoption of new special policy commitments beyond the regular membership obligations.

2. As a country that had sought accession to the GATT 1947, Bulgaria had been associated with the concluding phase of the Uruguay Round of multilateral trade negotiations. Ever since that time it had envisaged commencing accession to the Agreement establishing the WTO as an original member in accordance with Article XI provisions. Therefore it had been expected that the concessions on market access that Bulgaria had been negotiating under the GATT 1947 would lead to the establishment of a schedule of commitments to be approved as leading to accession to the Agreement Establishing the WTO.

3. Even though in 1992 GDP per capita amounted to only US$983, Bulgaria had chosen not to claim developing-country status. This underscored the seriousness of Bulgaria's intention to participate fully in and contribute materially to the multilateral trading system. At the same time, recognition was gained for the transition status of the Bulgarian economy. In addition to the general systemic difficulties of such a transition, Bulgaria had been sustaining severe direct and indirect losses due to the strict observance of United Nations trade sanctions on Serbia and Montenegro.

Bulgaria thus regarded the prompt conclusion of accession proceedings as a means of indirect compensation for some of these losses. Further, its incorporation into the multilateral trading system was regarded as a step towards consolidating the democratization of Bulgarian society.

Commitments on policy instruments and the trade regime

- Bulgaria was able to justify the relatively high tariff levels in its customs tariff. These levels were recognized as warranted by the profound price reform, the removal of virtually all import restrictions and the drastic changes in import licensing.

- Bulgaria justified the introduction of a temporary import surcharge for balance-of-payments reasons that it had undertaken on two occasions in the mid-1990s. The first was a 3 per cent charge on 1 August 1993 (progressively reduced to 2 per cent in 1994 and 1 per cent in 1995 and eliminated as of 1 January 1996 in accordance with the schedule of elimination announced at the time of introduction) in order to forestall the imminent threat of serious decline in foreign exchange reserves. However, the seriously deteriorating situation of the balance of payments in 1995–96 necessitated a new 5 per cent surcharge, which had been introduced as of 4 June 1996. Bulgaria was able to gain acceptance for maintaining the surcharge on the grounds of full conformity to WTO requirements. Thus it announced a schedule for progressive annual 1 per cent reductions leading to the surcharge's final elimination on 30 June 2000. The surcharge would not alter the commitments undertaken in the Schedule of Concessions on Goods. Furthermore, after accession to the WTO the government undertook to immediately enter into consultations to review the measure within the framework of WTO provisions governing the application of measures for balance-of-payments purposes contained in Article XII of the GATT 1994 and the WTO Understanding on the Application of Measures for balance-of-payments purposes. If it were to be determined in the course of any such consultations that Bulgaria was no longer justified in applying such measures, the government would advance the elimination of the surcharge.

- In general, Bulgaria undertook, upon accession, to apply taxes and surcharges on imports and exports in conformity with the provisions of GATT 1994, in particular Articles III, VI, VIII, XII, XVIII and XIX.

- As to taxation and customs fees, (i) Bulgaria undertook, as of 31 December 1997, to apply its excise tax rates on beer, wines, distilled spirits and tobacco products in strict

compliance with Article III of the GATT 1994 in a non-discriminatory manner to imported and domestically produced goods; and (ii) Bulgaria also confirmed that as of the same date it would bring its customs clearance fee into conformity with Article VIII of the GATT 1994. From that time on, revenues from this fee would be used solely for the operation of customs clearance of imports and exports to which the fee was applied. (iii) Concerning export taxes, Bulgaria was able to gain acceptance of its position that these were necessary on a temporary basis in order to prevent or relieve critical shortages of foodstuffs and other essential products and that they were being applied in a manner consistent with Article XI of the GATT 1994. It undertook upon accession to apply any such taxes in accordance with the provisions of the WTO.

- Regarding NTMs and import/export licensing, Bulgaria undertook to implement the disciplines of the GATT 1994 and the WTO Agreements. Thus it confirmed that in such cases it would exercise its authority to suspend, prohibit or otherwise restrict the quantity of these measures in conformity with Articles XI, XII, XXIII, XIX, XX and XXI. It further undertook to eliminate its discretionary licensing regime on tobacco imports and other agricultural products.

- Bulgaria stated its intent to ensure that its legislation conformed to the provisions of the WTO Agreements on Anti-Dumping and Subsidies and Countervailing Measures, as well as that upon accession and notwithstanding the degree of development of national legislation, Bulgaria would administer all proceedings and measures for such purposes in full conformity with WTO provisions.

- Regarding subsidies, Bulgaria was able to reach agreement to benefit, as a country in transition, from the specific treatment provided in Article 29 of the Subsidies and Countervailing Measures Agreement. This was necessary in order to give support to the energy and the agricultural sectors as particularly heavily affected by transition problems. It further gained recognition of its position that it did not maintain subsidies falling under the definition of a prohibited subsidy according to Article 3 of the Agreement on Subsidies and Countervailing Measures and would therefore not invoke provisions of the Agreement that provide for the progressive elimination of such measures within a fixed period of time.

- Regarding safeguards, Bulgaria undertook to bring its legislation into full conformity with the Agreement on Safeguard Measures, including regulations concerning provisional safeguard measures.

- Bulgaria committed itself to apply the WTO Agreements on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures from the date of its accession and without recourse to any transition period. It also confirmed its intent to apply such measures in a non-discriminatory fashion regarding imports and domestic products and agreed not to use them in a restrictive or arbitrary manner.
- Bulgaria gained acceptance of the free trade zone regime in force in the country.

- Regarding customs valuation, Bulgaria undertook to fully apply the relevant WTO provisions from the date of accession, including, in addition to the Agreement on Implementation of Article VII of the GATT 1994, the provisions of the Valuation of Carrier Media Bearing Software for Data Processing Equipment and the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods.

- Bulgaria confirmed that it would remedy any departures from conformity with the WTO Agreement on Rule of Origin prior to its accession and that by the time of such accession Bulgaria's application of rules of origin both for MFN and for preferential trade would be administered in conformity with the provisions of the agreement.

Negotiations on trade in goods

In contrast to the review of the foreign trade regime and of national legislation, in bilateral tariff negotiations there are no similar clear criteria for the applying country to abide by. In principle, member countries sought to achieve tariff reductions in negotiations with Bulgaria in line with the levels of tariff protection established as a result of the several consecutive rounds of trade negotiations. These had resulted in a reduction of average tariff levels for industrial goods from 35 per cent in 1947 to 3.8 per cent after the Uruguay Round.

Despite the lack of formal criteria, the Bulgarian delegation in the course of bilateral negotiations referred to the precedent established with other countries and the criteria applied during preceding rounds of multilateral trade negotiations. The general approach of the Bulgarian side was that it ought to be treated in the same way as other comparable countries. Other East European countries in transition as well as developing countries with comparable per-capita GDP levels were indicated as "comparable countries".

Tariff negotiations were conducted with Australia, Canada, New Zealand, Mexico, the United States, Turkey, the Czech Republic and Japan. Bulgaria as a result bound its whole tariff. In the industrial goods sector, concrete item-by-item negotiations were held on some 2,481 tariff positions. Out of them Bulgaria bound its rates at the existing levels on 1,213 positions. On another 759 positions it undertook to lower the rates in effect at the moment. Finally, on 509 positions Bulgaria acquired the right to introduce increases in agreed-upon rate levels. Besides, on all other positions which were not subject to negotiations, amounting to 41.8 per cent of all positions in the Bulgarian customs tariff, Bulgaria achieved binding above the average level in force at the moment – 35 per cent.

To achieve this result, Bulgaria referred to the precedents set in the cases of certain developing countries which had achieved agreement on "ceiling bindings" of their tariffs at 35 per cent.

TRIPS

In order to become a member of the WTO, Bulgaria committed itself to accepting the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS).

GATS

In 1995–96, Bulgaria submitted initial information and revised draft commitments towards a schedule of initial commitments on trade in services to be annexed to the GATS. It further declared that as to energy safeguard measures and restrictions on current payments and transfers, it would comply with the GATS and the requirements specified there under. This approach and the extent of concessions in the offer put forward by Bulgaria met with broad acceptance on the part of the members of the Working Group.

This doubtless facilitated acceptance of Bulgaria's position and expectations regarding services, namely that as a transition country it would require transition periods for allowing foreign companies to establish commercial presence in the domestic market. Given the level of commitments undertaken by Bulgaria, the inclusion of a transition period was approved as follows:

- For the period up to 31 December 2000, Bulgaria received the right to suspend fulfilment of its commitments under the GATS if that was necessary to permit a foreign service supplier to establish an initial or additional commercial presence in Bulgaria.

- The maximum duration of any suspension could be two years, but no such suspension could be maintained beyond 31 December 2001 (except regarding foreign suppliers who had already established presence prior to the date of implementation of the suspension).

- For any such measures as described above Bulgaria had to inform the GATS Council two months in advance. It also had to be ready to engage in consultations upon the request of the parties concerned.

The decision on accession

On 20 September 1996, the Working Party reached the conclusion that Bulgaria should be invited to accede to the WTO Agreement under the provisions of Article XII. For this purpose it prepared a draft Protocol of Accession and took note of Bulgaria's schedules of concessions and the commitments on goods and services annexed to it.

On 2 October 1996, the General Council adopted a Decision (WT/ACC/BGR/6) that the Government of Bulgaria could accede to the WTO Agreement on the terms set out in the Protocol for Accession, which was itself approved by the Council on the same date.

On 24 October 1996, the Bulgarian Parliament adopted the law on the country's accession to the WTO and to the Agreements on the Purchase of Civil Aircraft and on Telecommunications Services. As of 1 December 1996 – 13 days after deposing the documents of ratification – Bulgaria became the 127th member of the WTO.

The balance

The weighted average level of duties for the whole customs tariff for 1992–94 was about 13 per cent. If only agreed reductions were to be effected, this average would be reduced to some 11.5 per cent. If, however, the rights for increases are also utilized, the weighted average could grow to about 20 per cent. Only for industrial goods these averages came respectively to 12 per cent for all trade over the period 1992–94 and to 10.5 per cent if only agreed reductions are implemented, and it could go as high as 16 per cent if all possibilities for increases are utilized.

The negotiations in the agricultural sector, evaluation of the results

At the outset of negotiations, requirements of a systemic nature were put forward concerning agricultural prices. Such prices needed to respond to the following requirements:

- Elimination of the system of reference prices; and

- Clarification of the terms applied – administered prices, external reference price and product-specific bonus.

As to the offer of tariff concessions, Bulgaria's offer envisaged substantive concessions combined with the necessary degree of due protection. Bulgaria presented a tariff concessions offer covering the complete range of positions in the agricultural sector of its customs tariff. A schedule of tariff concession was agreed upon as a result of bilateral negotiations.

Under this schedule most rates were bound at levels well above the ones previously in force. It was estimated that out of a total of 856 agricultural positions 189 were bound at levels lower than the hitherto effective ones, 212 at existing levels and the remaining 455 at levels above those previously in force.

The arithmetic average for basic tariff rates for binding of agricultural products included in Bulgaria's offer is 76 per cent. This is more than three times the arithmetic average level of basic EU rates (25 per cent).

As a result of the implementation of the Uruguay Round commitments, the arithmetic average rate for agricultural products is being progressively reduced and will reach 58 per cent in the sixth year of reductions (2002 for Bulgaria).

This means that Bulgaria will enter the next round of trade negotiations with a comparatively high base rate average, which provides for an appropriate degree of borderline protection corresponding to its low level of economic development.

The nominal averages for base rates for the four main sections of the agricultural part of the Schedule are quite diverse:

- The highest rates are provided for in the section "live animals and livestock products" – 83.6 per cent.

- The section "foodstuffs" has an average 57.7 per cent tariff rate.

- Plant products are provided protection at a 45.6 per cent arithmetic average tariff rate.

- The lowest protection is envisaged for "fats of animal and plant origin"- an 25.7 per cent average rate.

However, the true potential for tariff protection of Bulgaria's agricultural products can be assessed only at the lowest possible level of aggregation and by comparing the bound rates for the main agricultural products in Bulgaria, the European Union and the other Associated Member countries. A 12-product analysis reveals the following comparative levels of protection (figures in brackets indicate the percentage rates for the first and sixth year of commitments: Ist year/VIth year):

- Wheat (50/50) – The basic bound rate is 50 per cent and is lower than rates in the European Union, Poland, Romania and Slovenia. It is, however, higher than rates in the Czech Republic, Hungary and Slovakia. Since the 50 per cent level remains unchanged, in the sixth year it becomes almost equal to the European Union rate and substantially higher than the rates in the latter three countries.

- Barley (127/109) – In calculating the rate of protection, the minimum tariff rate was taken into consideration. This, when transformed, considerably exceeds the *ad-valorem* rate of binding. At the end of the six-year period the rate reaches parity with the one for Poland and approximately equals the European Union rate while remaining substantially lower than the one for Romania.

- Maize (212/119) – When the specific rate was transformed into an *ad-valorem* one, it turned out that, excluding Romania's rate, the rate for Bulgaria is the highest one and remains so at the end of the six-year period.

- Rape seed (15/10) – The level of protection in Bulgaria is lower than the ones in the Czech Republic, Poland, Romania and Slovakia but is higher than the level in the European Union and Hungary, which have zero rates.

- Sunflower seed (50/50) – Here Bulgaria shares the highest levels with Romania, while the European Union and Hungary have duty-free imports.

- White refined sugar (127/84) – The *ad-valorem* equivalent of the specific duty is lower than those in the European Union, Poland, Romania and Slovenia but considerably higher than those in the Czech Republic, Hungary and Slovakia.

- Bovine meat (171/95) – Bulgaria's base rate is lower than those of Poland and Romania, almost equal to the European Union rate and higher than the Czech, Hungarian, Slovak and Slovenian rates.

- Pork meat (120/120) – The Bulgarian rate remains second highest after the Romanian one both for the beginning and the end of the period.

- Poultry meat (96/96) – Almost the same is true for poultry as for pork, with only Poland and Romania maintaining a higher rate of protection than Bulgaria.

- Butter (120/60) – From an intermediary level at the beginning of the period between the higher rates in the European Union, Hungary, Poland, Romania and Slovenia and the lower Czech and Slovak ones, at the end of the sixth year the Bulgarian rate becomes the lowest one of all.

- Dry milk (64/64) – The Bulgarian rate of protection is initially at a lower level than the one in the European Union, Hungary, Poland, Slovakia and Slovenia, while at the end of the period it becomes equal to the one for the European Union and surpasses the rate in the four countries indicated.

- White cheese (135/65) – At the beginning the Bulgarian rate is higher than the rates in Czech Republic, Hungary and Slovakia, while at the end only the Hungarian one becomes equal to it.

- The differentials between the rates for Bulgaria and for the European Union and the other accession countries are: at the beginning in the first year; the greatest differences between base rates for Bulgaria and the European Union existed for rape seed and sunflower seed, maize and poultry meat. For wheat, sugar, pork, dry milk, butter and barley there is less of a difference. For bovine meat and cheese the rates are almost the same.

- Perhaps the co-relations obtaining at the end of the period are of greater significance, since they shape the basis for reductions of tariff protection in the course of the next trade round: the level of rates for wheat, bovine meat, dry milk, cheese and barley is almost the same. There is a substantial margin above European Union rates remaining for maize, rape seed and sunflower seed, pork and poultry meat. The smallest possibilities for reductions exist regarding sugar and butter, since even now the level of protection in Bulgaria is lower than that in the European Union.

The figures for the weighted average mean for tariff rates in the last year of Uruguay Round reductions also demonstrate the considerable level of protection achieved under the Bulgarian offer. For the 1993 composition of imports, this mean comes to 88.7 per cent; for that of 1994 – 76.25 per cent; for 1995 – 66.63 per cent; for 1996 – 60.04 per cent; and for 1997 – 68.49 per cent.

The weighted average for tariff rates on agricultural commodities for 1992–94 amounted to 24 per cent. If all reductions agreed on are implemented, this average will fall to 22 per cent. If, however, all possible increases are introduced the weighted average will rise to 67 per cent.

The reason why Bulgaria asked for binding of agricultural rates above existing levels was the difficult situation of the agricultural sector. A number of arguments were put forward in this regard. It was argued that this increase should be regarded as a kind of "tariffication" of the state monopoly on foreign trade and the system of comprehensive non-automatic licensing for foreign trade transactions, both of which had previously been abolished.

Besides, agricultural subsidies continued to be extensively applied in general throughout the world and in Europe in particular. At the same time Bulgaria was faced with the challenge of providing equal conditions for its producers vis-à-vis heavily subsidized imports during a period of very difficult restructuring for them.

In general, the analysis of tariff protection for the agricultural sector under varying criteria indicates a number of substantive features:

- Despite joining the GATT/WTO significantly later than most other East European countries and having to make major concessions, Bulgaria was able to achieve a significant degree of nominal tariff protection.

- The values of basic indicators for measuring protection are comparable to the ones for East European countries in transition and are substantially greater than those for the developed-market economies – the European Union, the United States and Japan.

- The high levels of bound rates are a favourable basis for a new WTO round of tariff negotiations for liberalizing agricultural trade.

In general, the fact that recognition was gained of the need to provide substantive tariff relief in place of previously existing foreign trade regimes represented a significant achievement. Furthermore, in a number of cases tariff concessions were made only within tariff quotas. This also was achieved after overcoming initial objections that such quotas could not be invoked by countries that had not taken part in the Uruguay Round of negotiations. As a result, the criteria of the Uruguay Round were applied in preserving current market access and for determining minimum access of 3 per cent with the possibility of increase up to 5 per cent of internal consumption.

Thus as to the succeeding period, when shaping the tariff and foreign trade policies of the country, two basic considerations were to be respected and balanced: the comparative advantages of the agricultural sector and food-processing industries on the one hand and the strategy for joining the European Union on the other. The second consideration required that

the sizeable differences in tariff rates between Bulgaria and the European Union be gradually reduced.

Policy formulation would also have to take into full consideration the parameters of real tariff protection, the realistic scope for possible tariff rate increases in the second half of the 1990s and the fulfilment of commitments under the other elements of the schedule on agriculture, including areas such as internal and export subsidies, special safeguards, export restrictions and preferential quotas.

Conclusions

1. The conduct and outcome of the WTO accession negotiations gave Bulgaria an important chance to defend, on the whole successfully, its trade and economic interests and to achieve workable terms of accession to the WTO. In tariff negotiations, it successfully argued its case for the need to bind tariff rates at levels high enough to take into account the need for adequate protection in conditions of transition crises and the dismantling of the role of the state in industry and foreign trade. In line with transition-country status, more favourable treatment was achieved concerning subsidies and market access in services. GATT and WTO conformity was recognized for most trade policy measures applied by Bulgaria. It gained recognition as a serious and responsible trading partner by deciding not to seek developing-country status. At the same time, it was successful in overcoming attempts to impose additional commitments and concessions having to do with the process of privatization and broader aspects of the national economy.

2. However, the degree of needed tariff protection achieved has been largely made irrelevant by the conclusion of a series of regional and bilateral free-trade agreements (FTAs), in particular with the Central European Free Trade Area (CEFTA) states and Turkey. The effect of these agreements has been to significantly increase imports of industrial and agricultural goods from these countries to Bulgaria. Furthermore, in most cases these imports have been in direct competition with locally produced goods. Because of the lower competitiveness of Bulgarian industry and agriculture, the country not only has not been able to take advantage of lower import tariffs in partner countries but has seen imports drive locally produced goods off the domestic market.

3. In the post-accession period of 1997–2001, Bulgaria's experiences were decisively influenced by the arrangements with the International Monetary Fund (IMF). These were made necessary because of the dire economic situation in late 1996 and early 1997. Yet they seemingly were utilized as a means to achieve a further "quick march" to complete openness of the economy. Many of the trade policy instruments ensuing from WTO membership were set beyond the number of applicable remedies for alleviating the situation of the economy. Thus, the temporary import surcharge for balance-of-payments reasons was discontinued well ahead of WTO-agreed schedules. Tariff reductions were also significantly accelerated as compared to WTO obligations. Obviously preference was given to "hard" remedies like the Currency Board with a pegged exchange rate, hard budget constraints and the direct competitive pressures of

international markets on local producers. The results after three years, while demonstrating success in maintaining financial stability, indicate that the basic objectives of trade growth and diversification, trade surplus and increasing external viability for alleviating the debt burden as well as for job creation and income growth remain no closer to being reached than at the outset of the previous four-year period.

4. Therefore, at present there is a growing realization that Bulgaria needs a well-developed national strategy for increased competitiveness and development of key industrial branches and of foreign trade and investment. This requires establishing a "shopping list" of industries which the country wishes to develop on a priority basis, building on existing or acquired comparative advantages. Successive governments over the past years have refrained from engaging in such a policy because of supposed conflict with market economy principles. However, today this is proving to be a short-sighted and doctrinaire point of view with particularly negative consequences for economic prospects. Even more harmful has been the propensity to make up for the lack of a well-thought-out strategy by seeking external support and, in fact, favours in the economic and trade area as a kind of compensation for political behaviour. To some extent, this tendency appeared in the course of WTO accession negotiations. However, in that case it was not a decisive factor and did not have to compensate for deficiencies in expertise or for a lack of technical preparedness or resolve to pursue hard negotiations to an equitable outcome.

5. Besides a general industrial competitiveness strategy at the national level, there is also an urgent need for a practical program for active export promotion and constructive interaction with government agencies in gaining market access and attracting productive investment from abroad. No less urgently needed are (i) the rapid development of trade policy expertise so that Bulgaria and local exporters and producers are able to take proper advantage of preferential trade opportunities under FTAs, and (ii) the implementation of legally authorized protections for the domestic market against unfair and/or disruptive foreign competition.

6. Thus, at present Bulgaria finds itself at a key juncture in its progress in transition to an open market economy. In negotiations with the European Union, Bulgaria is about to enter into the most substantive chapters dealing with the single market and the four freedoms of movement. The arrangement with the IMF is about to expire, with no clear perspective as to future arrangements. At the same time, Bulgaria is faced with the challenge of participation in the new round of multilateral trade negotiations as a full-fledged WTO member country. In this context, the WTO should perhaps utilize the new round of multilateral trade negotiations to update and expand its modalities and measures for support of transition economies in their effort to build viable external sectors of their economies, permitting them to also actively contribute to the growth of international trade and investment and thus to share the burden of efforts to alleviate poverty and deprivation. Bulgaria today stands both prepared and in need of support to achieve decisive breakthrough to sustainable trade and economic expansion permitting the job creation and increases in welfare that are sorely required in view of the current extremely depressed employment and income levels. Bulgaria's therefore

is one more case where proactive international policies are of vital importance. It is to be hoped that this time around international institutions, and now the WTO as one of the most important among them, will rise to the challenge of their new responsibilities for the years ahead and evolve effective market-based responses towards more equitable world trade and economic growth and development.

Why demands on acceding countries increase over time: A three-dimensional analysis of multilateral trade diplomacy

Craig VanGrasstek*

Introduction

Accession to the World Trade Organization (WTO) or its predecessor, the General Agreement on Tariffs and Trade (GATT), can be quite lengthy and difficult, with the existing WTO members setting ever higher standards for the new applicants to meet. The members sometimes approach these negotiations as yet another opportunity to advance issues of interest to them, a fact that can undercut the potential benefits of accession for the aspiring members. The accession process can be seen as almost a reverse form of special and differential (S&D) treatment for developing countries. While the GATT rules negotiated in the 1960s and 1970s provided for various forms of preferential treatment for developing countries, including enhanced access to industrialized countries' markets and less rigorous application of rules and disciplines, the new environment of the WTO is much more demanding. It sometimes obliges acceding countries to shoulder burdens that are not shared by countries that joined in earlier decades.

This chapter reviews the evolving character of GATT and WTO accessions, as well as the changing approaches taken towards developing and transitional economies in the global trade regime. It does so by examining the shifting emphasis on three distinct dimensions of the system: the height of global tariff walls and other border measures, the width of country membership in the system, and the depth of issues that fall within its jurisdiction. It is my argument that after the major industrialized countries had all joined the GATT, their policies regarding the width of the regime (i.e. accession) were largely determined by their priorities along the other two dimensions. Concerns over the height of the tariff wall dominated trade negotiations among the industrialized countries from the 1950s through the 1970s, and depth has been their main concern since the 1980s. Accession was relatively easy back when height was the chief concern, and the small markets of the developing countries attracted little attention. Quite the opposite is true today, now that new issues are under debate and the major players miss no opportunity to set a precedent. This desire to set precedents can greatly complicate the accessions of new countries. The demands made in each successive negotiation tend to increase, irrespective of the specific status or conditions of the acceding country.

While the WTO is approaching universal membership, its approach towards accession is far different from that of most other international organizations. These institutions generally operate under a principle by which, in the absence of truly egregious political problems or especially intractable diplomatic difficulties, all sovereign states have a presumptive right of membership. There may be agreements to sign, dues to pay, and other obligations to meet, but the process of accession is neither burdensome nor lengthy. It

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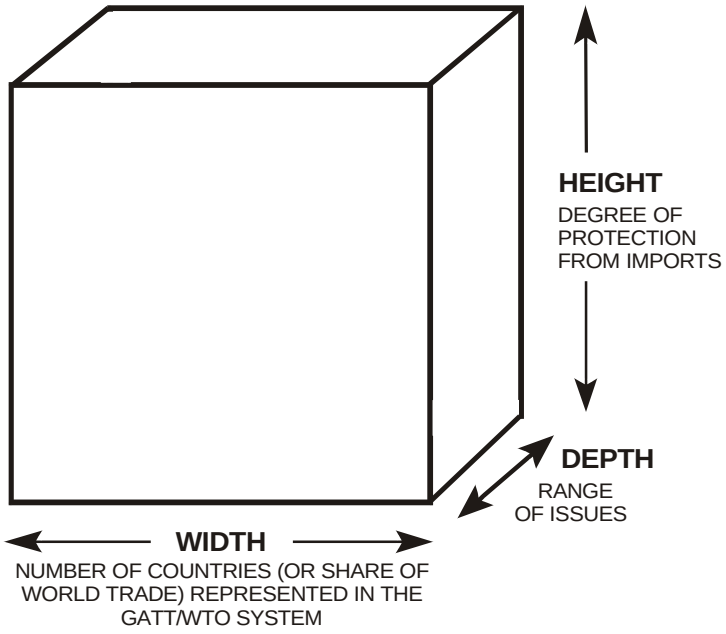
generally involves little or no formal scrutiny of the country's existing laws and policies and even fewer demands for changes in these laws and policies (at least as an initial condition of membership). Examples of such universalist institutions include the United Nations, the International Labour Organization, the World Bank, the International Monetary Fund, and the World Health Organization. By contrast, the WTO operates more like a club to which countries can claim no presumption of membership, and must instead meet whatever standards and demands might be set by the existing members. In this respect it is more akin to the Organisation for Economic Co-operation and Development. Even the club metaphor may be too gentle from the perspective of acceding countries' diplomats, for whom accession to the WTO can sometimes seem more like the hazing rituals of college fraternities. Perhaps the only international economic body that places higher demands on prospective members is the European Union, which generally requires major realignments of a country's laws, policies and institutions that can take more than a decade to negotiate.

The process of acceding to the WTO is a deliberately one-sided affair, with all of the requests and demands coming from the existing members and the full burden of adjustment falling on the acceding country. The applicant is not entitled to request additional benefits or concessions in excess of those stipulated in the WTO Agreements, nor can it seek tariff concessions or services commitments from the existing members. WTO Article XII and its GATT predecessor (Article XXXIII) establish a framework within which accession negotiations are conducted. The deliberately spare language of this article provides that "any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations ... may accede to this Agreement, on terms to be agreed between it and the WTO." The provision does not specify the precise commitments expected from acceding countries, nor does it establish clear standards for which compliance is sought or identify the scope and extent of demands that could be made. The rules are marked by ambiguities that place the entire accession process in a negotiating context. This ambiguity is in some sense positive, insofar as it allows for a degree of flexibility, but —– for reasons discussed below – the leading members of the institution are much less inclined to employ that flexibility now than they were in decades past.

One might rhetorically ask why countries are willing to subject themselves to such a process. The costs and benefits of acceding to the WTO can be properly understood only if one views the advantages of membership in their larger context. It can be somewhat misleading and even disheartening to employ the common terminology of trade negotiators, in which the commitments that countries make are deemed to be "concessions" and hence imply that the country is surrendering something of value. These unfortunate terms seem to cast trade relations in a zero-sum, neomercantilist framework in which any one country's gain can come only at another country's expense. The ultimate objective of accession is to enhance a country's competitiveness within a global economy that – notwithstanding the archaic terminology that negotiators employ – offers opportunities for mutually beneficial

Figure 1
The Three Dimensions of the GATT/WTO System



trade and investment. One may, however, legitimately question whether the current approach adequately balances the needs of the regime with the capacities of the acceding countries, and whether it encourages or complicates the process of economic reform.

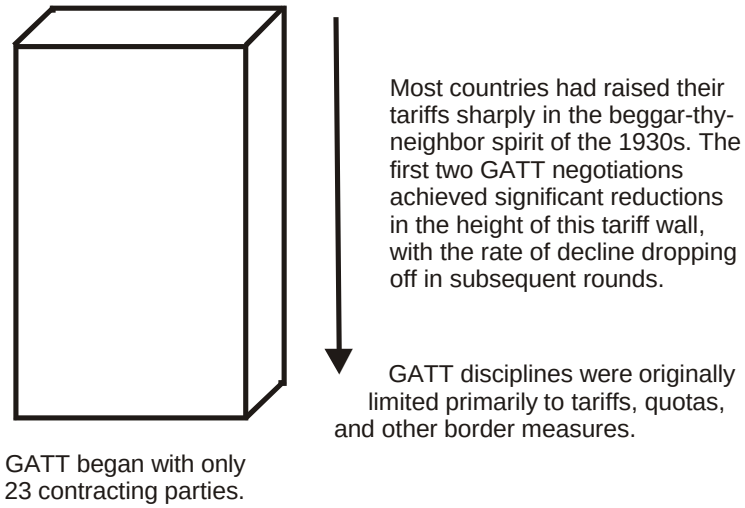
The evolving geometry of GATT and WTO accessions

Let us begin by reviewing the evolution of the global trading regime in the decades since the Second World War. The regime's treatment of developing countries and non-market economies has changed markedly over the years, primarily in response to changing priorities in trade relations among the industrialized countries. Those changes can be illustrated in geometric form.

As portrayed in figure 1, the shape of the WTO regime is like a three-dimensional object whose facets are analogous to the height, depth and width of a cube. The first of these

dimensions is the most traditional. It can be thought of as the tariff wall, although tariffs are not the only type of barrier at issue. The various border measures that countries impose on imports, as well as beyond-the-border measures through which governments intervene in

Figure 2
The Key Dimension of Height in Early GATT History



markets, can range from high (more restrictive or interventionist) to low (less restrictive or interventionist). The principal aim of most trade agreements is to bring down the height of this wall through tariff reductions and related concessions. The second dimension is the width, which measures the extent of WTO membership. It can be either narrow (many countries remain outside the system) or wide (most or all countries are in). The third dimension – the depth – is defined by the range of issues that fall within the jurisdiction of trade rules. This dimension can be either shallow (trade is defined solely as the cross-border movement of goods) or deep (trade is defined expansively to include a greater range of issues and measures).

All three of these dimensions have changed over the course of GATT and WTO history. To simplify, the major focus of attention has shifted from the first dimension to the third. Trade policy was once devoted solely to the regulation of border measures, whether unilaterally or through international agreements. The GATT negotiations concentrated primarily on the height of the tariff wall, and the earliest talks made the most dramatic progress towards its reduction. Attention began to turn towards other matters by the mid-1960s, but it was not until the Uruguay Round (1986–1994) that the major players paid more attention to the depth of the system than they did to its height. Both in the early and the late history of GATT, however, these two dimensions mattered more to the leading countries than did the width of the system. The GATT started with fewer than two dozen countries that nevertheless accounted for the majority of trade in a world recovering from war. The

countries inside the system have always been responsible for more trade than countries outside it, and in most cases the individual applicants have been quite small. This smallness has had very different implications for the treatment of applicants during different periods of GATT/WTO history, as is discussed below.

When height mattered most: Accession and succession, 1949–1979

The illustration in figure 2 emphasizes the principal direction of GATT negotiations in the early years of the regime, when much of the protectionist and interventionist detritus that had accumulated in the pre-war years had yet to be removed. Average tariff rates in the years immediately following the Second World War were much higher than they had been just after the First World War, and the most immediate task – in addition to reconstruction, the elimination of exchange controls and the "dollar shortage" – was to bring tariffs below confiscatory levels. The GATT was more successful in this enterprise than many feared it would be, and on a percentage basis the tariff cuts in the first few years were much greater than those achieved in the ensuing decades.

The GATT accessions during these early years were conducted as one might expect in a system dominated by considerations of height: The countries that accounted for larger shares of actual or anticipated trade attracted much greater attention than did the smaller states. This was especially true before the Kennedy Round (1962–1967) and the advent of the formula-cut approach to tariff negotiations. At a time when talks were still conducted under the labour-intensive method of request and offer, the rational negotiator in Geneva would be well-advised to concentrate on larger and wealthier countries. It was in the interests of the original GATT countries such as Canada, France, the United Kingdom and the United States to set relatively high standards in the accessions of other large countries such as Italy (acceded in 1949), Sweden (1949), Germany (1951) and Japan (1955), but they had much less incentive to bargain hard with smaller acceding countries.

The first set of accession negotiations was conducted in the Annecy Round in 1949, when 10 new countries sought adherence to the GATT. The applicants were obliged in their protocols of accession to accept the rules of the GATT, abide by additional commitments made by contracting parties in the Annecy Round, and negotiate with existing contracting parties to establish their own schedules of concessions. The accessions negotiated in the Annecy Round set two important precedents. In the great majority of GATT accessions, the applicant's "entry fee" was negotiated concurrently with one of the eight rounds of multilateral trade negotiations conducted under the auspices of the GATT. This eased the domestic politics of accessions for many countries, insofar as their negotiators could seek tariff concessions or other commitments from the existing countries as soon as their own accession negotiations were completed. (That same rule has not been applied in the WTO for the simple reason that there has not yet been a round conducted by the new organization.) Furthermore, the concessions made by the Annecy Round applicants were not particularly onerous, involving relatively small numbers of tariff concessions. Most of the accessions through the end of the Tokyo Round (1973–1979) followed a similar pattern and were comparatively easy for smaller applicant countries.

Over the ensuing half-century of GATT experience, the contracting parties developed a fairly regular process for GATT accessions. The basic outlines of this process remain in effect today; from a purely procedural standpoint, the only major difference is that a wider array of issues are subject to negotiation in the WTO than was the case in the GATT. The process has both multilateral and bilateral components. The multilateral aspects begin with the formation of a Working Party, composed of existing GATT contracting parties (now WTO members), to which the applicant country submits a memorandum outlining its trade policy. The Working Party then examines this memorandum and addresses a series of questions to the applicant. In these communications, the Working Party acts collectively to negotiate the non-tariff aspects of the applicant country's terms of accession. When the Working Party is satisfied with the arrangements, these are recorded in a protocol and a Working Party Report. Taken together, these two documents lay out the terms under which the country accedes. There are also bilateral tariff negotiations conducted concurrently with the Working Party's activities. The applicant country also negotiates a schedule of tariff concessions with interested contracting parties; since the advent of the WTO, it has also negotiated schedules of commitments on services and agriculture. Once the talks are concluded, the protocol of accession is opened for signature by the acceding government and the contracting parties. The rules formally provide that a two-thirds majority is required for acceptance, but in actual practice accessions – like virtually all other GATT decisions – are conducted on the basis of consensus. This means that each of the existing members of the club has the ability to "blackball" any new applicant. This rule effectively blocked the attempted Soviet and Bulgarian accessions to the GATT during the Cold War, and Iranian accession to the WTO is similarly prevented today. In all three cases it was the United States that exercised the veto (joined in the Iranian case by Israel).

Accession soon became an issue only for developing and non-market economies, as nearly all industrialized countries had joined GATT within a decade of its establishment. The only laggard was Switzerland, the GATT host country that finally acceded in 1967. Most negotiations with developing countries during this period were tempered by pragmatism and compromise, with the major players accommodating requests for S&D treatment. Special terms were also developed for the few non-market economies that acceded before the end of the Cold War.

The majority of developing countries that joined the GATT did not actually *accede*, but rather *succeeded* to GATT status. Many of the countries that gained their independence from colonial powers in the post-war period – including most of the Caribbean and Africa, as well as parts of Asia – had the option of entering GATT under the special terms of Article XXVI:5(c). This provision, which now has no equivalent in the WTO, offered a very easy route by which former colonies of GATT contracting parties could acquire *de facto* GATT status on achieving independence. A country could then convert this *de facto* status into full GATT contracting party status by succession, a process that involved much less stringent scrutiny of its trade regime and fewer new commitments than did the ordinary accession process of GATT Article XXXIII. Of the 128 countries that joined the GATT, fully half (64) did so through accession. Some countries succeeded to the GATT shortly after gaining

independence, while others waited years before taking this step.[50] Several of the countries that are currently negotiating for accession to the WTO must now regret that they did not take advantage of this option. Some of them rejected GATT and/or the succession route on ideological grounds, viewing both the institution and the rule as vestiges of colonialism. Laos and Viet Nam formally renounced their status as *de facto* contracting parties, and Algeria opted not to employ the succession route when it first applied for GATT accession in 1987.[51]

The arrangements made with certain non-market economies during this period also demonstrated the willingness of GATT countries to adapt the rules to special cases. The most significant of these adaptations was the acceptance of countries' non-market status. The GATT system met these countries halfway, but they were nevertheless obliged to make pledges that were outside the normal scope of commitments. When Poland acceded to the GATT in 1967, for example, it made an undertaking to increase the total value of its imports from GATT contracting parties by not less than 7 percent each year. Poland also agreed to a special bilateral safeguard clause which permitted the other contracting parties to maintain quantitative restrictions against imports from Poland during an undefined transition period. Such safeguard actions would not be bound by the terms of the ordinary GATT safeguard mechanism as defined under GATT Article XIX. Romania made comparable commitments in its 1971 accession, including a pledge to increase its imports from the contracting parties "at a rate not smaller than the growth of total Romanian imports provided in its Five-Year Plans," and a special bilateral safeguards clause. Hungary was not obliged to make an imports undertaking in its 1973 protocol of accession but did accept a selective safeguard clause. Special arrangements of this sort are no longer sought from acceding countries, nor are accessions based on the assumption that non-market status is a permanent condition.

When depth became critical: Accessions since the mid-1980s

In later decades the focus of GATT negotiations shifted from the height of trade barriers to the depth of the system. What had started as a contract among countries to reduce tariffs eventually became a much deeper regime that goes beyond border measures, covering such diverse economic activities as services, intellectual property rights and agricultural subsidies. The proposed expansion in the scope of trade disciplines was not universally accepted in the 1980s, and disagreements erupted not only between industrialized and developing countries but also among the industrialized countries. Countries had once agreed on the basic principle that tariffs must be reduced, but had bargained hard over how this principle should be implemented for tariffs on specific items; the new negotiating environment led to more profound disagreements over the principles themselves.

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[50] The experience of countries under GATT Article XXVI:5(c) varied considerably. Gambia succeeded to the GATT just four days after achieving independence in 1965, while Lesotho allowed more than 11 years to pass between the acquisition of *de facto* GATT status and its succession to GATT. GATT Secretariat, "De Facto Status and Succession: Article XXVI.5(c); Note by the Secretariat," MTN.GNG/NG7/W/40 (1988), *passim.*

[51] The case of Cambodia is especially convoluted. Although the country enjoyed *de facto* status as a GATT contracting party, Cambodia made a very serious effort to accede to GATT on its own by negotiating under GATT Article XXXIII. The country concluded negotiations over its protocol of accession, but never completed the domestic ratification procedures. Like its Indochinese neighbors and other former colonies, Cambodia is now negotiating for accession under the much more rigorous rules and procedures of the WTO.

This change had major implications for the conduct of accessions. The smallness of most acceding countries meant obscurity and inattention when the principal focus was on reductions in the height of tariff barriers and other border measures that restricted trade. Even a huge reduction in a small country's tariff wall would have less practical effect than a seemingly small reduction in the tariffs imposed by a large country, and negotiators allocated their time and political capital accordingly. Their calculations are quite different in a depth-dominated system, in which the principal point of contention between the major players is over what issues will come within the scope of the regime. Put another way, countries that are highly unequal in their economic size will nevertheless enjoy a juridical equality when it comes to the precedents that they might set. A very small economy may account for a negligible share of global trade and thus attract a commensurately small amount of attention from negotiators, but those same negotiators may devote a great deal of attention to an accession when it appears to offer a good opportunity to set a good precedent or block a bad one. The result is that acceding countries come under much more intense scrutiny, and the terms of their accessions are correspondingly strict.

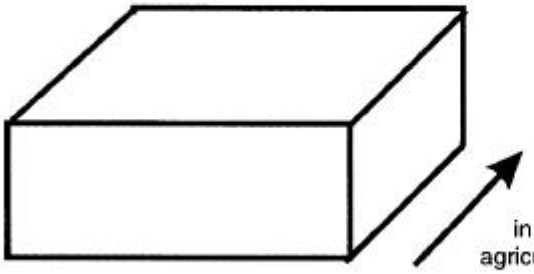
These new developments were further reinforced by three other critical developments in the 1980s and 1990s: further erosion of already tenuous support for the S&D principle, the end of the Cold War and the establishment of the WTO. All of these developments served to elevate the perceived importance of accession negotiations and the demands made on developing and transitional countries.

The decline of the S&D principle coincided with a growing understanding that many developing countries had been ill served by the trade strategies they had adopted in the 1960s and 1970s. The extension of special privileges was perceived to contribute to a growing free-rider problem in the GATT, in which developing countries were seen not only to be shirking their own responsibilities in trade liberalization but also to be isolating themselves from the benefits of a global market. Nor can the changing status of the S&D principle be attributed entirely to the declining interest of industrialized countries in granting it. In the early 1980s developing countries "began to perceive that the positive discrimination received under S&D treatment had become outweighed by increasing negative discrimination against their trade," and they turned towards "defending the integrity of the unconditional MFN clause, obtaining MFN tariff reductions, and strengthening the disciplines of GATT."[52] Developing countries also came to realize that in actual practice this principle generally produced very limited concessions that amounted to little more than tokenism. These views were reflected in the changing approach to S&D treatment in the Uruguay Round, where negotiators avoided special derogations and dispensations from generally applicable rules. They instead approved various provisions that allow longer periods for implementing obligations, more favourable thresholds for undertaking certain commitments, and greater flexibility in the implementation of agreements and procedures. Emphasis is now placed on the special needs of the *least*-developed countries, for which many more exceptions are now provided. The principle of a

[52] Murray Gibbs, "Special and differential treatment in the context of globalization," in *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, UNCTAD/ITCD/TSB/10 (Geneva: UNCTAD, 2000), 75.

single undertaking, or "package deal," further reinforced this aspect of the Uruguay Round agreements. In contrast to prior rounds, developing countries could not avoid the regime's obligations either by invoking a general principle of S&D treatment or by opting not to implement specific agreements that they considered to be incompatible with their development strategies.

Figure 3
The Key Dimension of Depth
In Recent GATT/WTO History



Most industrialized countries' tariffs on products other than labor-intensive items were cut to low levels by the end of the Tokyo Round phase-in period.

The GATT regime first handled services, intellectual property rights, and investment in the Uruguay Round, and dealt effectively with agricultural trade and subsidization for the first time.

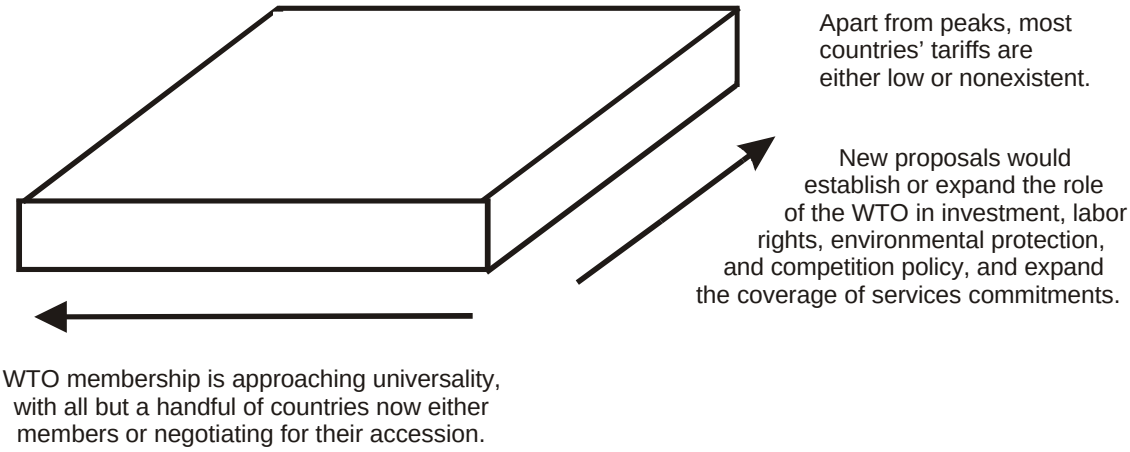
By 1990 the only major economies outside of GATT were China, Taiwan, Province of China, the ex-USSR, and several oil states.

Many of the countries that acceded to the GATT during the 1980s found the process to be more demanding, in large measure because of a change in policy on the part of major trading countries. Negotiators from these countries – most notably the United States – grew increasingly insistent during the 1980s on using the GATT accession process as a means of ensuring that a country's trade regime was consistent with the rules and principles of the system.

One need only observe the Mexican example to appreciate the differences between GATT accession practices before and after the change in policy. Mexico had negotiated for accession during the Tokyo Round, decided in 1980 not to implement the protocol of accession that it had negotiated the year before, and then changed direction once again in the mid-1980s. The protocol of accession that was negotiated in 1985 was much more exacting than its 1979 predecessor. Whereas the earlier protocol consisted of little more than a list of tariff concessions and the obligatory pledge to comply with GATT rules, the latter agreement entailed (i) binding the entire tariff schedule at 50 percent; (ii) agreeing to 373 concessions on tariffs below this ceiling (more than half of which were made in response to United States requests) and (iii) making several other non-tariff commitments, including pledges to adhere to GATT codes relating to Subsidies and Countervailing Measures, Licensing Procedures, Antidumping, Standards and Customs Valuation. The second protocol was also less permissive than the earlier document with respect to certain sectoral exclusions that Mexico sought.

The negotiation of the second Mexican protocol can be seen as a real turning point for the GATT system. Coming a decade before the establishment of the WTO, which further

Figure 4
The Three Dimensions in Current WTO Relations: Both Depth and Width Are Expanding



institutionalized both the emphasis on depth and the decline of S&D, this negotiation set the pattern for the 12 developing-country accessions that were concluded during the Uruguay Round.[53] These accessions were more difficult than those conducted during the 1949–1979 period, but less comprehensive than accessions to the WTO. The principal difference is that the GATT regime had not yet incorporated the new issues that were under negotiation in that round, and hence the acceding countries were under no obligation to make commitments on services, intellectual property, and investment, or on agricultural issues other than tariffs. That did not, however, prevent some negotiators from raising these issues in the talks.

The end of the Cold War is another key development that coincided with these changes in the trade regime. The collapse of Communism had many direct and indirect consequences for the system, not the least of them being the applications for accession that soon came from Eastern Europe and most of the states of the former Soviet Union. The change was not merely quantitative, but qualitative: The operating assumption of older GATT accessions had been that a non-market economy was seeking a *modus vivendi* for trade with market economies, but now negotiations were conducted on the principle that the acceding country was in an irrevocable transition from non-market to market economy status. Those countries, now known as economies in transition (EIT), are thus required to adopt all of the same commitments that apply to other countries. While some temporary

[53] Note that this figure counts only the accessions concluded under GATT Article XXXIII. There were also 26 successions to GATT under the terms of Article XXVI:5(c) during the Uruguay Round.

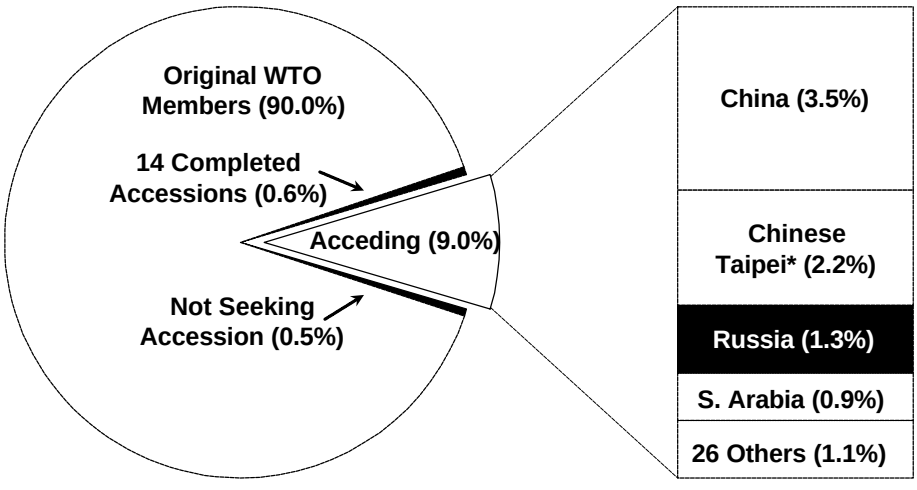
accommodations might be made to the needs of the EIT, the applicant would bear most of the burden of adjustment. The end of the Cold War also led to accession negotiations with two countries of considerable size. While most of the countries that acceded to GATT during the 1970s and 1980s were quite small (with some notable exceptions such as Mexico, Thailand and Venezuela), the same cannot be said for China and the Russian Federation. Together with Taiwan Province of China and Saudi Arabia, these are among the few acceding countries that individually represent significant shares of global trade. The prospect of negotiating with these countries may have reinforced the industrialized countries' stance in the accessions of smaller countries, with the expectation that any precedents set with these countries – no matter how small they might be – could then be applied to negotiations with major trading countries such as China and the Russian Federation.

The expanding depth and width of the WTO regime

Following the conclusion of the Uruguay Round, the array of issues in the system — and hence the scope for commitments in accession negotiations — has gone much deeper. The intensification of accession negotiations that began in the mid-1980s reached a new level with the inauguration of the WTO in 1995. In addition to being subject to the same demands that faced countries that acceded to GATT, applicants to the new organization are obliged to make commitments on intellectual property rights, services, agriculture, and (to a limited extent) investment.

Figure 5
Relative Size of Countries by Pre-Doha WTO Status

Countries' Share of Global Exports, 1999



Calculated from UNCTAD data.
** : Taiwan Province of China.*

The width of the WTO is expanding at least as rapidly as the depth. The data in figure 5 illustrate the relative weights of WTO members and acceding countries in the global trading system. The figure shows that, while there are four applicants of relatively large size, all of

the other countries that have acceded to the WTO or are currently negotiating for their accession represent very small shares of world trade. For reasons discussed above, however, this does not mean that the existing WTO members are disposed to give these countries a "free pass" into the organization. Even the smallest country is important when countries make a fetish of precedent.

The diplomacy of accession has grown more contentious, with applicants and recently acceding countries having raised concerns over the process and its consequences. In a review of the debate among member countries over the accession process, a note by the WTO Secretariat stated:

> It was pointed out that the accession process was often lengthy and too demanding for certain acceding governments; the fact-finding stage, particularly, appeared to be unduly long, inquisitorial and frequently repetitive. Many speakers said that many accessions were moving too slowly, some adding that the process should be simplified. Other speakers acknowledged that few accessions had taken place recently but said that this did not mean that the system was not working … However, it appeared generally agreed that the WTO should look for ways to expedite the current accession processes so that applicants are not kept waiting longer than necessary.[54]

The process is much more time-consuming than it was in years past. The average WTO accession thus far has had an elapsed time of just over five years from the establishment of a Working Party to membership. This figure masks the considerable range of experience among acceding countries, where negotiations have ranged between three and 10 years, and fails to take into account the much longer periods experienced by some of the countries that have not yet completed the process. The completion of China's accession is a major accomplishment, but one that was 15 years in the making. Algeria and Nepal have been at it since 1987 and 1989, respectively.

Developing-country applicants are especially concerned over the apparent invalidation of established S&D principles in specific WTO Agreements. Some aspects of the Uruguay Round agreements provide for preferential treatment for developing countries, but these rules are more limited in scope than the older GATT provisions. Many of the more substantive provisions of the WTO Agreements provide for longer transition periods for developing countries and LDCs, but do not provide for permanent exemptions. Some provide for two-year transitions (the agreements on Sanitary and Phytosanitary Measures and Import Licensing) and others for five years (the agreements on Customs Valuation, Trade-Related Investment Measures, and Trade-Related Aspects of Intellectual Property Rights). In accession negotiations conducted so far, however, developing and transitional countries have found their partners extremely reluctant to permit them to use these transitional provisions. The United States in particular takes the position that only original WTO members are entitled to use the transition periods, while some other members are willing to consider transition periods as negotiable possibilities.

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[54] WTO, "Technical Note on the Accession Process", WT/ACC/7/Rev.2 (1 November 2000), page 6.

The perspectives of the Quad countries

The stricter approach taken towards accession is ultimately attributable to a policy decision on the part of the four WTO members that compose the Quad. The United States is *primus inter pares* within this informal leadership group, which also includes Canada, the European Union and Japan. Together with Australia and a few other countries, they account for the great majority of the questions that are posed to the acceding countries and the demands that are made of them. The United States especially treats these negotiations in a regime context, meaning that the commitments that it seeks from each acceding country are viewed in the broader framework of the rules that the United States negotiators want to see applied uniformly to all WTO members. This sometimes leads negotiators to emphasize certain matters that may appear to be relatively unimportant in the bilateral relationship *per se* but are of very great importance in the United States' relations with other countries that either are WTO members or are negotiating for their own accession.

Perhaps the most difficult position in which an acceding country can find itself is a dispute between Quad countries over the place of an issue in the trading system. France convinced Albania to withdraw audiovisual commitments that it had made to the United States by threatening to block the country's WTO accession. French officials were reportedly concerned that the Albanian concession "could provide a back-door entry into Europe for the United States productions."[55] While Albania ultimately made commitments on cinema theatre operation services and four other cultural sectors, it made none on cinema or television production.

The European Union has also drawn a sharper distinction between the least developed countries (LDCs) and ordinary developing countries than has the United States. This might be partly attributable to the fact that five of the nine LDCs currently seeking accession (Cambodia, Cape Verde, the Lao PDR, Samoa and Vanuatu) are former European colonies.[56] They might have had the option of simply succeeding to GATT, but under WTO rules and practice they are subject to the same accession procedures as all other countries. Whatever the reason, the European Union proposed in 1999 that a "fast-track" procedure be established to facilitate the accession of LDCs. This proposal suggested that the accession of LDCs "could be expedited by agreeing with other WTO Working Party members on a range of minimum criteria" and a "flexible, streamlined approach" that would "speed up the process for them all without discrimination." Under this proposal the following criteria would apply:

- *Industrial tariffs:* LDCs could bind at a level something like 30 per cent across the board over a maximum five-year period (i.e. to 1 January 2004), with the possibility remaining to agree to a limited number of higher tariffs on "exceptional" products.

[55] Robert Evans , "Croatia Blasts EU for Blocking WTO Entry Talks" (Reuters wire story), 1999.

[56] Bhutan, Nepal, Sudan, and Yemen are LDCs seeking accession that would not have had the option of succeeding to the GATT.

- *Agricultural sector:* LDCs could aim at 40 per cent across the board. LDCs should not be asked to undertake reduction commitments as regards domestic support and export subsidies. Their commitments in these areas should be inscribed directly in their schedules. Any problems regarding specific products of LDCs should be addressed in a flexible manner.

- *Services*: LDCs could be asked to make commitments in at least three services sectors. As far as horizontal commitments are concerned, the European Union does attach great importance to good commitments in Mode 3 (commercial presence), in particular in foreign capital participation and employment requirements, and in Mode 4 (movement of personnel).

- *Alignment with WTO rules*: WTO members could agree on the automatic applicability of transition periods agreed in the Uruguay Round for LDCs towards full compliance with WTO Agreements. Candidate countries would, however, be expected to provide a work programme for the completion of legislative alignment. We should intensify technical assistance efforts to ensure that compliance is achieved.[57]

The proposal did not get far because of opposition from the United States. The United States negotiators take the position that, while other WTO members are free to establish their own policies toward the accession of LDCs, including reduced demands on these countries, they should not be granted substantially easier terms of accession. The only area in which the United States negotiators seem prepared to "cut some slack" for the LDCs is in the number of Working Party meetings, which they believe can be held to two or three. They otherwise insist that these countries be required to provide all of the same information that other applicants submit, and that LDCs be obliged to make commitments bringing their regimes into conformity with WTO rules. Even in some areas where the WTO Agreements explicitly provide for special treatment, such as the transition period for intellectual property rights or the exemption from commitments on agricultural subsidies, the United States negotiators are likely to request that LDCs undertake disciplines that go beyond the letter of the WTO Agreements.

Two perspectives for acceding countries

Accession to the WTO is clearly a difficult undertaking, and – for reasons explained above – one that has gotten lengthier and more complex over time. How might the countries that are currently seeking accession best handle the negotiations? One approach would be to protest against the apparent inequities of the system, and to insist that countries undergoing major economic and (in many cases) political transitions should not be expected to meet all of the standards that industrialized countries have reached among themselves over more than half a century of negotiations in the GATT and the WTO. While such an approach might be founded in justice, its grounding in reality is less certain. The more demanding approach that

[57] "Accessions to the WTO: Communication from the European Community", WT/GC/W/153 (March 8, 1999).

is now taken towards acceding countries is a natural consequence of the three-dimensional evolution of the trading system, and it is to be expected that precedent will be given a high priority in a rules-based system. The rules are defined primarily by the larger and more influential countries in the system, and those countries show little proclivity to change course.

It seems inevitable, therefore, that the accession process will remain demanding. If the acceding countries cannot expect to change the process itself, how might they best position themselves in it? There are two essential points of view that negotiators might adopt, alternatively approaching these talks from the perspective of a diplomat/trade lawyer on the one hand, or an economist/reformer on the other. While each of these approaches offers a valid means of assessing options and devising strategy, the latter perspective may be the more appropriate one.

The diplomat/trade lawyer's approach

One option is to treat accessions as an exercise in diplomacy and law, emphasizing both the political dignity and the legal rights of the country. Membership in this key international organization is now an important issue of international status, such that any country that remains outside of the WTO carries a taint of second-class citizenship in the global community. The acceding country may therefore adopt an approach that stresses the political necessity of early entry, while also insisting that its commitments be limited. This approach is commonly adopted by countries, often in response to impasses that they have reached in a negotiation over particularly difficult points. Trading partners sometimes hope that their disputes can be solved by taking matters to the highest levels of government. Quite to the contrary, the effort to "kick a negotiation upstairs" can work more to the benefit of the existing countries than the acceding country. If they know that their interlocutor is under strong political pressure back home to secure accession at any cost, the negotiators in Geneva will feel even more secure in setting a high price. A country might theoretically conclude an agreement over accession on a much faster schedule, provided that it were prepared to accept without hesitation or revision all of the requests made by the members of its WTO accession Working Party. The end results, however, might be hard for the negotiators to explain to their masters. The Kyrgyzstan accession negotiation was the quickest on record, taking just 34 months, but it also led to the adoption of many commitments that have proven difficult to fulfil.

It is not surprising that many acceding countries approach these negotiations in the same manner that lawyers will approach a contract negotiation. When viewed through the eyes of a trade lawyer, a country's accession process might be compared to negotiations over a purchasing contract, a divorce, or other legal proceedings in which each side seeks to attain maximum advantage at minimum cost. Seen from this point of view, the goal is to ensure that a country makes as few commitments as possible and is bound by the least onerous conditions. This approach is clearly reflected in the terminology that trade negotiators employ, in which the commitments that countries make are deemed to be "concessions." This word implies that the country is surrendering something of value whenever it agrees to a specific condition in its accession, or otherwise makes a commitment in a WTO-sponsored negotiation. The trade lawyer's advice would be simple: Concede as little as possible to the

countries with which you negotiate, make these concessions only after ensuring that they are unavoidable, and try if possible to construe any commitments narrowly.

The principal problem with this approach is that the typical acceding country has little or no leverage over the existing WTO members. The applicant will almost always feel much greater pressure in these negotiations than do its negotiating partners; while the applicant may greatly desire to win its seat at the table, those who are already there perceive no urgency in setting another place. Many of the usual tools in the negotiator's bag are rendered ineffective in this environment, where stonewalling merely means delaying the process while the price of admission continues to rise.

The economist/reformer's approach

An alternative approach is to look past the apparently unfair nature of the accession process and concentrate more on the ends than the means. From this perspective, accession is an opportunity to reinforce the country's economic reform process. This view is more readily adopted if policy makers look past the usual terminology of trade negotiators. When all commitments are described as concessions, trade relations appear to be defined in a zero-sum, neomercantilist framework. To a liberal economist, it is seriously wrong to suggest that one country's gain can come only at another country's loss. It is important to bear in mind throughout the process that the ultimate objective is to enhance a country's competitiveness within a global economy that – notwithstanding the archaic terminology employed by negotiators – offers opportunities for mutually beneficial trade and investment. The reformer's approach is based more on economic than political/legal considerations, but also requires that negotiators make a realistic assessment of what can be achieved.

The costs and benefits of acceding to the WTO can be properly understood only if one views the advantages of membership in their larger context. From this point of view, the most critical consideration is not the sum of rules by which an economy operates but what they mean for a country's investment, productivity and competitiveness. These can be enhanced only if a country can attract and maintain the confidence of investors. To appreciate the importance of instilling confidence in domestic and foreign investors, one need only compare the examples of market-oriented Asian economies such as Singapore (which acceded in 1973) and Korea (which acceded in 1967) with the protectionist policies followed by many Latin American countries from the 1950s through the early 1980s. The Asian countries had few resources other than people, and neither enjoyed more favourable market access than other developing economies, but they have grown at phenomenal rates in the past half century. This success is often attributed to the confidence that domestic and foreign investors felt in the permanence of their free-market policies. By contrast, most Latin American countries either adopted policies that were perceived to be hostile toward investors, or failed to persuade investors that their market reforms were irrevocable. Even when these countries began to adopt reforms almost 20 years ago, based largely on the realization that they had fallen far behind their Asian competitors, investors doubted the commitment to these policy changes until they were enshrined in trade agreements.

The solution that many Latin American countries adopted was to make their reforms permanent by incorporating them in international agreements. National economic reforms are made more credible when they are bound by such pacts. The agreement gives assurance to domestic and foreign investors that the improved business climate is not an ephemeral development that might be abandoned as quickly as it was adopted. By negotiating multilateral accords such as GATT accession in the mid-1980s and the North American Free Trade Agreement (NAFTA) in the early 1990s, these countries gave convincing evidence that they would not revert quickly to more protectionist policies. In the case of NAFTA, for example, the agreement actually made relatively few changes in Mexico's access to the United States market, but it made a huge difference in the perceived openness of the Mexican economy, the permanence of the Mexican reforms and the degree of official United States support for these changes. By entering into an agreement with major trading countries such as the United States, a country can enhance the private sector's confidence in the permanence of economic reforms and encourage new foreign investment. An economist may even suggest that negotiators should welcome the opportunity to make numerous commitments in an accession negotiation. In some countries – especially democracies – it can be difficult to win approval for economic reforms from the legislative branch. It can sometimes be easier to "sell" reforms to legislators when they are presented as commitments that were made in international negotiations, and that the country is honour-bound to implement.

WTO accessions and other trade negotiations may play a similar role for other acceding countries. Any economic reforms that they have enacted can be incorporated into the terms of the WTO accession commitments, and be further supported through additional pledges made in response to the demands of existing WTO members. Viewed in this context, commitments made in the course of accession to the WTO should not necessarily be deemed "concessions." From this perspective, it might be more accurate (and politically palatable) to conceive of them as *investments,* insofar as they are payments made today in the expectation that they will produce rewards in the future. The liberal economist's advice to negotiators would therefore be quite different from what a trade lawyer would advise. A country should approach its accession negotiations as an opportunity rather than a risk, and be prepared to make whatever changes are appropriate – and not merely those that are necessary – in order to take full advantage of this opportunity.

Conclusion

The message in this chapter can be reduced to a simple if seemingly contradictory pair of statements. On the one hand, there is an identifiable element of unfairness in the accession process. Notwithstanding the juridical equality of states, the acceding countries are required to bear burdens set by the richer, larger and more powerful WTO members. On the other hand, countries would be well advised to look past the unfairness and approach the negotiations with pragmatism. This advice, though harsh, is merely a modern manifestation of what (according to Thucydides) the Athenians told the Melians: "You know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must". [58]

[58] Thucydides, *The Peloponnesian War,* Book V Chapter XVII.

Countries would do well to view the accession process from the perspective of a reformist, but must also take due account of political reality. If the trade lawyer's approach is followed to the letter, a country may find that its accession negotiations last for many years. While a good bargain can be worth the wait, that delay could prove costly. Conversely, blind adherence to the liberal economist's approach could leave a country too vulnerable to external shocks. The economic perspective thus requires some tempering. A country should try to retain some leverage for those negotiations that will take place after its accession, and also reserve the flexibility to adjust its economic policies in response to future contingencies.

Negotiators should enter talks with clear notions of what might be asked of them, and why these demands are made. For reasons explored above, that means understanding the broader views of their negotiating partners. Countries must also know how far they are willing to go in their commitments. Negotiators should attempt to devise a reasoned package of commitments that complements the national reform program. They should neither oppose all requests from the outset nor cave in too quickly. Ideally, they should enter the talks with a plan that distinguishes between the types of commitments that a country might be asked to make. Beyond identifying those commitments that are mandatory (i.e. represent truly minimal adherence to WTO principles), negotiators should consider what types of commitments might complement a country's reform plans and what commitments might complicate those plans, and be prepared to respond accordingly. Above all else, negotiators should devise an overarching plan in which the relationship between national economic objectives and international trade commitments is clearly understood.

Integration of countries into the multilateral trading system: The role of institutions and the human factor

Peter Naray*

Aspects of economic and institutional integration into the WTO

The contribution of the GATT/WTO system to the development of the world economy

In recent years, the process of globalization and the World Trade Organization, as one of the main vehicles of globalization, has been subjected to heavy criticism by many civil society organizations. The blunt, unsophisticated criticism is misplaced because it completely ignores the decisive contribution of the GATT/WTO system to the rapid development of world trade and the world economy in the last more than 50 years. The rules of the new multilateral trading system (MTS), after the turbulent years of the inter-war period, have promoted the cause of trade liberalization and introduced a great deal of much-required stability, predictability and transparency into international trade relations. Without the WTO, globalization would be much more painful. The obvious success of the GATT/WTO system explains why its membership has continuously expanded. At present, the WTO has 144 members, with about 30 more countries waiting for accession. Within a couple of years, the WTO may become a universal trade organization with its rules governing the international flow of goods and services and some other related matters.

Despite the advantages of the MTS, the smooth integration of all groups of countries into it is far from satisfactory. While all developed industrialized countries have, one could say by definition, been well integrated into the system, among developing countries the picture is diverse. Though many of them, particularly in South-East Asia and Latin America, have been firmly integrated into the system, and while actually their rapid economic development has resulted to a substantial extent from their participation in the GATT, a large number of developing countries – including almost all countries in Sub-Saharan Africa, many transition economies in Eastern Europe and Asia and all LDCs – can still be considered as not or not adequately integrated into the MTS. The issue of economic and trade integration is of particular importance and urgency because the powerful forces behind globalization do not tolerate outsiders which do not open their markets to the rest of the world. It is not difficult to foresee that the lack of integration into the world economy will remain on the political and economic agenda of countries and international organizations. Trade and economic integration are important issues for the political and economic stability of the world. Therefore, the identification and analysis of factors preventing countries from integrating themselves into the MTS, and through that into the world economy, is of general interest. We should start this analysis by examining the origin of the GATT/WTO system.

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The origins of the present multilateral trading system

The present architecture of multilateral trading relations has been designed by the western industrialized countries. The smooth functioning of the MTS presupposes not only strong economic units but also the availability of institutions. Most WTO-relevant institutions are the result of centuries-long political, economic, legal and institutional developments mainly in Western Europe and in countries with cultures of European origin.[59] This fact explains why these countries can integrate smoothly into the system, and why for many others the system contains alien or unknown elements the absorption of which is not without difficulties and needs time. Therefore, a short look back is very useful because it helps highlight the roots of the present integration-related problems of countries with divergent historical heritages.

The cornerstone of developed capitalism was the establishment of a concept of private property which provides the main economic incentive for legally independent individuals and groups of individuals to engage in business activities in competition with other domestic and foreign economic units. The economic relationship, which may take the form of competition but also economic co-operation between independent economic units, is driven by market forces, with the help and guarantees provided by a highly developed legal system and related institutions. The commercial law which started to develop in feudal times in city-states on the basis of Roman law, together with the relevant judicial and enforcement mechanisms, ensures the enforcement of contracts. The development of the law on business associations facilitated the concentration of individual economic powers through the creation of large business undertakings, which have played an increasingly important role since the 1600s. A sophisticated property law was indispensable for a number of reasons, including the development of the financial system, as it made property-backed lending possible. With the increasing importance of international economic relations, the internationalization of national legal institutions accelerated. Bilateral and, later, multilateral international treaties played a growing role in supporting international trade relations.

The legal and institutional developments outlined above were supported by appropriate changes in governing religious and secular ideologies. The Christian religion, which put small families and private property at the centre of economic and social life, reinforced the commercialization of human relations. The Reformation further streamlined the Western Christian ideology and made it more pragmatic through the promotion of values such as hard work, honesty, seriousness, the thrifty use of money, appreciation of time and trust in others. This development made a decisive contribution to the establishment of modern capitalism in Northern Europe between the 16th and 18th centuries. The Enlightenment promoted rationalism, education, innovation and science. Revolutions since the 19th century have contributed to the democratization of institutions and the development of the concept of human rights and the separation of power between church and state. It is important to note the supporting changes in other spheres – for example, family relations – which also promoted the development of commercial relations. From the end of the 19th century, more and more

[59] These countries constitute the core of OECD membership. Japan, Republic of Korea, Mexico and Turkey are also OECD members because of their special development path in the last few decades, which has left them with institutions comparable to those of the other members of this group.

attention was paid to the support of the individual by the state, as family help based on collectivist principles was less and less available. The introduction of a social safety net included support for individuals in the form of unemployment benefits, retraining, pensions, sickness insurance and assistance for business undertakings to mitigate the adverse effects of income loss and ease the difficulties resulting from competition-driven structural adjustments. These developments led to the formation of individuals who had strong motivations for individual financial success, which shaped their priorities and their approaches to all basic issues of life (education, family relations, work ethic, private life, etc.). As a result, the human factor needed by the capitalist economy was at the disposal of society.[60]

The history of centuries-long international trade relations, the ups and downs of trade liberalization efforts (which included long periods dominated by protectionist trade policies in all developed countries) and the development of economic thinking led to the establishment of the GATT in 1948. It was recognized that international trade relations needed stable rules and a system providing for systematic trade liberalization.

It goes without saying that developed industrial countries could and can, since the GATT and later the WTO were modelled on their institutions, more easily ensure the conformity of their laws, regulations and judicial and administrative procedures with the obligations stemming from their membership in the GATT/WTO system than can other countries.

The major weakness of the WTO system: it is based on the assumption that all countries are similar.

Problems related to WTO compatibility

The two main obligations of WTO members are to ensure the conformity of their laws, regulations and administrative procedures with the agreements and to participate in trade liberalization rounds. It follows from the origins of the GATT/WTO system that both obligations constitute difficulties for all developing countries, though in different forms and degrees, depending on the level of economic and institutional development.

The history of countries whose paths have diverged from those of countries in Western Europe has shaped their trade-related institutions differently, meaning that to bring these laws into conformity with WTO requirements and operate them accordingly is not an easy task. In East Asia, for example, the role of law was subordinated to those of family and other personal ties. Formal laws existed, but these were based on foreign models and were imposed on Asian societies by foreign powers. This was one of the reasons why the local business communities had no trust in these laws. This special East Asian approach to law explains the difficulties in understanding the special elements in Japan's trade regime and their compatibility with GATT/WTO rules. This difference is also relevant in China's accession negotiations. Probably, the East Asian approach to the rule of law concept has

[60] For an interdisciplinary account of the role of culture in the shaping of economic performance see, for example, D. Lal, *Unintended Consequences,* The MIT Press, Cambridge, Massachusetts, London, 1999, p. 287.

played a role in the development of "crony capitalism", which was a major contributory factor in the 1997/1998 Asian financial crisis. Globalization, in the form of WTO rules, is testing all legal systems from the point of view of their compatibility with the requirements of global business. One can assume that systems based on the abstract rule of law concept will clear the hurdles raised by e-commerce and other modern requirements more easily than systems based on local values such as personal or family ties.[61]

If we take the examples of Sub-Saharan Africa or most LDCs, the contrast is even more evident. Home-grown tribal laws and institutions do not meet the requirements of the WTO, while the implementation of imported laws leaves much to desire. Therefore, in these countries, WTO compatibility in a number of areas, at least those which require substantial sophistication (TRIPS, for example), is illusionary. To give transition periods in terms of five or eight years does not offer appropriate remedies to these problems. This situation explains some of the implementation problems in the WTO.

Russia's special history, the poorly developed capitalist system and the more than 70 years of Soviet socialism have resulted in an underdeveloped trade-related legal and institutional system. This explains the difficulties in introducing a market economy regime and the long process of WTO accession. The situation is similar (or worse) in Eastern Europe and most other CIS countries. But countries in Central Europe were part of the Western European development process described above, albeit less fully than countries to the West. Therefore, in these countries the transition to a market economy has been a less painful process and compatibility with the WTO has represented a problem to which solutions could be found.[62]

Problems related to trade liberalization

Beyond WTO compatibility, the other objective of the WTO is to eliminate or reduce existing trade barriers, the underlying philosophy being that economic operators react to the reduction of trade barriers with more competition and increased efficiency. This concept implies that freer trade, or universal and uniform trade liberalization as interpreted by some major WTO members, is to the benefit of all WTO members, irrespective of their economic development, and that economic units in all member countries can utilize the improved conditions of competition to the same extent. This is, however, an overstatement.

The above analysis suggests that, at present, only the developed countries and some advanced developing countries can fully enjoy the advantages of trade liberalization. Why? The explanation is relatively simple. Economic units in developed countries have all the conditions necessary for the realization of the opportunities offered by reductions in trade barriers. They have motivated economic undertakings and the appropriate infrastructural

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[61] For more details see D. H. Perkins, "Law, Family Ties, and the East Asian Way of Business", pp.232-243; L. W. Pye, "Asian Values: From Dynamos to Dominoes?", pp. 244-255; Tu Wei-Ming, "Multiple Modernities: A Preliminary Inquiry into the Implications of East Asian Modernity", pp. 256-266, in *Culture Matters,* ed. by L. E. Harrison and S. P. Huntington, Basic Books, New York, 2000.

[62] See P. Naray, *Russia and the World Trade Organization,* Palgrave, London, 2001.

conditions to meet the challenge in both export- and import-related business. But in many developing countries and in all LDCs, this positive environment is missing.

Following are some of the export- and import-related problems these countries face: lack of economic sophistication and a diversified industrial and service sector; small economic units and the absence of legal and cultural backgrounds conducive to forming larger economic associations; confused ownership relations; difficulties in raising capital,[63] completely missing social safety nets, including structural adjustment assistance to economic units to meet import competition; the availability of the required manpower with an appropriate education and work culture; and plenty of infrastructure-related problems such as crime and corruption, weak enforcement mechanisms and the absence of a professional administration and judicial system. As a result, these countries cannot or can only partially utilize the new opportunities offered by other members, while their more developed trading partners can take full advantage of the concessions given by them. This may lead to worsening trade positions and increasing poverty. Of course, the situation varies from country to country. In some cases trade liberalization promotes the domestic economy even in very poor countries and may attract foreign direct investments, creating at least some islands of prosperity with beneficial effects for the rest of the economy, while in other places liberalization is not leading to prosperity.

To conclude: In general, at the theoretical level, free trade may be the best policy to follow. However, with respect to a specific country, in a specific time frame, this statement is not necessarily true. The advantages of freer trade, as suggested by the historical examples of developed countries, can be realized after a country has achieved a certain level of economic and institutional development and integration into the international economy. Normally, this level can be reached through some kind of provisional trade protection and active institution-building. After that stage, full participation in trade liberalization efforts offers more advantages than disadvantages. By implication, the assumption that trade liberalization offers similar advantages to all countries is not confirmed.

[63] A recently highlighted problem is that in many African and Latin American countries owners of real estate have no formal title to their property due to the lack of appropriate property laws, including land registration. Therefore owners cannot borrow money from banks because they cannot prove that they own the real estate they use. In Malawi, for example, where about two-thirds of the land is owned this way the village chief adjudicates in disputes about boundaries. If a family offends gravely against the rules of the tribe, the chief can take their land away and give it to someone else. In case of land purchase, the contract is signed by the local chief, but no bank accepts this as collateral, because it is not enforceable in a court of law. For similar reasons, millions of third-world 'home owners' cannot obtain telephone or electricity lines. In countries where formal property rights are available, the related procedures are prohibitively complicated and costly. *The Economist*, 31 March - 6 April 2001, pp.19–22.

Accession to the WTO: recent accessions

The use of double standards

Recent accession protocols are based on the concept of universal and uniform liberalization, with little regard to the specificity of the acceding country. Almost all accession protocols impose stringent obligations on new members. They are required to comply with WTO rules by the time of their accession, and they are also required to undertake substantial trade liberalization. The level of bound tariffs of new WTO members is very low, normally much lower than that of original WTO members of similar economic development. In agriculture, the main requirement is to restrict domestic support to the *de minimis* level and rule out provision of export subsidies. In services, new members have entered commitments in a large number of sectors, unlike some original members in the Uruguay Round. Many developing-country members questioned the "WTO plus" policy imposed on new members, which also involves the obligation to sign plurilateral agreements.

The present WTO accession practice constitutes the use of double standards. Many developed countries still maintain high trade barriers in agriculture and textiles that are certainly not consistent with general WTO principles. Agricultural export subsidies and domestic supports distort world market conditions, and their elimination is not yet in sight. Developed countries which maintain these restrictions justify them by the specificities of these sectors and the political, economic and social problems which would result from early liberalization. But the "transition periods in these matters have already spanned decades, while newly acceding countries are required to comply with WTO rules upon accession or within a very short period of time. Their political, social and other (e.g. institutional) problems relating to accession are routinely disregarded.

The universality of the WTO or the use of the "great leap forward" policy in accessions

To have a universal WTO where all members adhere to WTO disciplines and have entered substantial and comparable liberalization is a justified objective. The question is, however, is it possible at present?

The first issue to be clarified is the staging of trade liberalization in the context of accessions. Can substantial and universal trade liberalization be introduced at any moment, or is some sequencing required depending on the economic and institutional development of acceding countries? As we have seen, nearly half a century or more has not been enough for developed countries to bring some important sectors under the GATT discipline. They preferred a gradualist approach. The GATT/WTO liberalization examples have revealed that trade liberalization is a very complex process. It requires the existence and smooth functioning of a number of interrelated institutions, which facilitate the implementation of liberalization measures at the lowest possible social and political costs. (To mention just a few of the institutions required: a social safety net for those who become unemployed; retraining for the labour force which is becoming redundant; assistance for business entities

in introducing the necessary structural adjustments; and labour mobility to facilitate the movement of labour among different regions of the country).

These institutions exist in all developed countries, while most of them are completely missing in many developing countries, LDCs and transition economies. If developed countries, despite their financial strength and institutional arsenal, are not willing to implement a "great leap forward policy", then why are acceding countries expected to do so? During the accession process, the existence of the institutions which make quick liberalization less painful is not examined under the motto that trade liberalization is always beneficial for the acceding country. Of course, the acceding country is faced with the problems associated with quick liberalization and WTO compliance, and the related stakes are very similar to those in developed countries. Because of the great outside pressure to undertake liberal commitments and the substantial interest of acceding countries in WTO accession, they accept the accession conditions even if they are not sure of being able to implement them fully. Therefore, there is a danger that the present accession policy will produce members which are WTO-compatible only on paper. It is obvious that this tendency, together with the already very serious implementation problems generated by the Uruguay Round, constitutes a threat to the whole system.

In conclusion, the "great leap forward" policy is not to be applied in accession matters. Acceding countries should not be requested to accept more commitments than they can fulfil. Not liberalization, but sustainable liberalization should be the objective. Transition periods should be granted when they are required in a specific accession case.

How to address accession challenges?

Obviously, there are no quick solutions to the problems raised. Overcoming institutional deficiencies requires time. An additional problem is that many aspects of the issue go beyond the competence of the WTO. But the acceding countries, which normally do not realize the complexity of the matter, deserve more assistance. This assistance should not be restricted to the explanation of WTO accession requirements, but should also cover the challenges to be expected during the implementation phase, including the impact of accession on development. An analysis could be prepared which would cover all issues from the point of view of the acceding country. That analysis, to be undertaken by an international organization other than the WTO or by independent experts, would be obligatory in case of LDCs' accession. Acceding developing countries and transition economies could request the preparation of such a study.

However, at present the WTO's small, member-driven Secretariat is not in a position to take a broader approach in accession matters. Therefore, the first step should be to make the Secretariat suitable to meet at least partially such requirements. Much accession-related information is already available through other international organizations, including UNCTAD and other United Nations organizations. (For example, the mechanisms dealing with the implementation of the International Covenant on Economic, Social and Cultural Rights have substantial information on many institutional matters.) It would be very

important to establish some sort of substantive co-operation between the United Nations and the WTO.

The content of accession protocols could be revised accordingly. For example, if more transition periods are granted, their length and the different conditions attached to them should be stipulated in a transparent way. Appropriate WTO monitoring mechanisms should be created to prevent unjustified delays in introducing WTO compatibility and the required liberalization measures. Otherwise, protectionist forces in acceding countries could prevent the correct implementation of the provisions of the accession protocols.

UNCTAD could play a very important role in this process as it could become the focal point for all matters with a bearing on the integration of developing countries and transition economies into the WTO.

In the preparation of analytical reports on the acceding country, attention should be given to the gradual implementation of obligations when that is required by the specific circumstances. The WTO and other international organizations could also provide assistance to the acceding country in legal and institutional areas. Therefore, the notion of WTO-related technical assistance should be reconsidered.

Attention should be paid to the examination of the business implications of WTO Agreements and the improvement of the quality of the interaction between business and government bodies on issues related to multilateral trade negotiations.

About a new WTO Round

Hopefully, the WTO can agree on a new round of trade negotiations. It follows from the analysis presented above that the new round should differ substantially from the Uruguay Round. Beyond the traditional items, it should address developmental aspects and all issues relating to the problems of implementation of existing WTO obligations and the integration of developing countries and transition economies into the WTO system.

Conclusions

LDCs, many developing countries and transition economies are not yet integrated fully into the MTS. The international community should address the impediments to the integration of many of its members into the MTS, including problems related to WTO accession. The solution of these problems requires a broader approach, including the consideration of conditions for trade liberalization and the concerned economic and legal institutions.

Countries which have not yet fully integrated into the MTS should also undertake a thorough self-examination and determine which elements in their system are preventing their integration and diminishing their potential for enjoying the advantages of globalization.

Annexes to Chapter 1

I. MEETING PROGRAMME

Monday, 9 April 2001

14:30 – 15:00	Introduction by the Secretary-General of UNCTAD
15:00 – 16:15	**Topic 1:** Steps in the integration of developing countries and countries with economies in transition into the international trading system. The impacts of globalization on the integration process, and the relevance of trade instruments in confronting the challenges of globalization. The relation between "economic" and "institutional" integration. Overview of existing experiences from a development perspective, including impacts on development strategies, contributions to more effective trade policies and expansion of trading opportunities.
16:15 – 16:30	Coffee break
16:30 – 18:00	Continuation of discussion on Topic 1
18:15	Cocktails offered by the Secretary-General of UNCTAD

Tuesday, 10 April 2001

10:00 – 10:45	**Topic 2:** Overview of the WTO accessions: towards the universalization of the WTO. What are the main difficulties faced by acceding countries, the major substantive problem areas from the perspective of acceding countries and WTO members? Are any improvements needed to facilitate WTO accessions, particularly those of the least developed countries?
10:45 – 11:00	Coffee break
11:00 – 13:00	Continuation of discussion on Topic 2
13:00 – 15:00	Lunch break
15:00 – 16:00	**Topic 3:** Contribution of regional and subregional trading arrangements to the process of integration.
16:15 – 16:30	Coffee break

16:30 – 17:30 **Topic 4:** Building of institutional and human capacities: assessment of existing technical assistance programmes and the respective needs of developing countries, particularly those acceding to the WTO.

Concluding remarks by the Secretary-General of UNCTAD

II. LIST OF PARTICIPANTS

H.E. Mrs. Fayza Aboulnaja
Ambassador, Permanent Mission of Egypt, Geneva

Mr. Cato Adrian
Counsellor, WTO Secretariat, Geneva

H.E. Mr. Munir Akram
Ambassador, Permanent Mission of Pakistan, Geneva

Mr. Bhagirath Lal Das
Former Ambassador, India

H.E. Mrs. Tamam El-Ghul
Minister of Social Development, Amman, Jordan

Mr. Dao Huy Giam
Deputy Director-General of the Multilateral Trade Policy Department, Hanoi, Viet Nam

Mr. Dimitrij Grcar
State Undersecretary, Head of Division, Ministry of Economic Relations and Development, Slovenia

Mr. Roman Grynberg
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Mr. Nagib Hamim
Advisor to the Minister on WTO Affairs, Ministry of Industry and Trade, Yemen

H.E. Mr. Harald Kreid
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Mr. Roger Lawrence
Resident Trade Expert, Commercial Law Development Program
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Mr. Maxim Medvedkov
Deputy Minister of Economic Development and Trade, Russian Federation

Mr. Peter Naray
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Mrs. Khemmani Pholsena
Director-General, Ministry of Trade and Tourism, Lao PDR

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Chapter II

GENERAL ISSUES IN WTO ACCESSIONS

UNCTAD's role in the WTO accession process

Murray Gibbs*

UNCTAD's first experience in the process of accession to the GATT came through its involvement with China. As early as 1980, an UNCTAD mission was sent to Beijing to lecture on the GATT, the results of the Tokyo Round and the Multifibre Arrangement (MFA).[64] Shortly after this mission a decision was taken by China to associate itself with those developing countries seeking to coordinate their efforts in the negotiations of the second renewal of the MFA. This was the first substantive step in China's reintegration into the multilateral trading system. This association with China has continued until now, initially in the context of the Asian component of UNDP-financed programme to provide technical assistance to developing countries in the Uruguay Round. This activity was succeeded by another UNCTAD-executed project at the national level to support China in its accession to the GATT and subsequently to the WTO.

In the mid-1980s UNCTAD provided ad hoc assistance to certain Latin American countries, notably Venezuela, on accession to the GATT.[65] The Latin American component of the above-mentioned Uruguay Round project also provided advice to other Latin American countries which also acceded to the GATT during the Uruguay Round.

In the early 1990s a national project was established in the former Soviet Union, followed by activities in a number of other countries in transition. Similar projects were set up in Belarus, Kazakhstan and most recently Azerbaijan, while other countries such as Lithuania and Moldova have been also able to benefit from UNCTAD's assistance. A major national project has been established in Viet Nam. Assistance has also been provided to acceding LDCs through a national project in Nepal, and activities have been carried out to support the accession of Bhutan, Cambodia, the Lao People's Democratic Republic and Sudan, while Ethiopia, which has not yet applied for WTO accession, has been provided with advisory services to facilitate national decision-making on WTO issues.

A regional project for Arab countries has enabled UNCTAD to assist many countries in that region which are not yet members of the WTO. For example, a regional seminar for all acceding Arab countries was held in Amman, Jordan, in May 1999. UNCTAD-executed national projects have been set up in Jordan, which has recently acceded to the WTO, as well as in Algeria. Lebanon, the Libyan Arab Jamahiriya, the Palestinian Authority, Sudan and Yemen have also received assistance.

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* Senior Advisor to the Secretary-General of UNCTAD.

[64] In October 1980, I visited Beijing to lecture on these subjects. This contact with UNCTAD was perhaps the first concrete step in China's reintegration into the international trading system.

[65] In 1985, I addressed government officials, the business community and media in Venezuela on the implication and merits of accession to GATT.

Many of these activities were initiated after UNCTAD received its specific mandate at UNCTAD IX to support developing countries and countries in transition in the process of accession to the WTO; most of these activities have been carried out with the financial support of UNDP. However, individual donor countries have also provided financial support and collaborated with UNCTAD in other ways. For example, the Government of Japan has generously supported the WTO Accession Seminar in Manila and the preparation of the background papers, upon which this publication is largely based. Switzerland has financed a substantial part of the national project in Viet Nam. The Government of the United Kingdom has provided resources for an umbrella project that has enabled UNCTAD to assist developing countries immediately on request, without having to go through the time-consuming procedure of establishing a national project. The United Nations Development Account was also a major source of resources. At the technical level, UNCTAD has collaborated with a Canadian project in the Russian Federation and with an Australian team in the Lao People's Democratic Republic. In all these activities UNCTAD has been able to count on the active and constructive collaboration of the Accession Division of the WTO secretariat.

What is the need for assistance to which UNCTAD is responding? The difficulties that acceding countries have encountered fall essentially into two categories: (i) those resulting from their own weaknesses, and (ii) those arising from the positions and attitudes of their negotiating partners, the WTO members. UNCTAD's assistance addresses the former category of problems.

The countries acceding to the WTO are invariably developing countries, LDCs or countries in transition, most of which enter the accession negotiations with a set of serious handicaps. The first is in the area of human capacity. Government officials usually do not possess much experience in trade negotiations and lack familiarity with the Multilateral Trade Agreements (MTAs), as well as with the operation of the system and its peculiar process of negotiation. Countries in transition to a market economy are placed at an added disadvantage as many have little experience in the operation of the classic mechanisms of the trade regime of a market economy, that is, those which are subject to the WTO disciplines. Some have been independent states for a relatively short time.

The process of accession to the WTO is in itself a crucial training process, which, if viewed and treated as such, would leave the new member with a team of experienced trade negotiators able to pursue national interests and defend acquired rights effectively in the WTO and in other trade negotiations. For some countries, over reliance on foreign assistance has prevented capacity-building in the country. While bilateral assistance programmes have employed skilled and enthusiastic experts, often the training of the national officials has not kept pace. UNCTAD's assistance gives top priority to human capacity-building through seminars, workshops, and particularly in-house training in the UNCTAD secretariat or in practitioner's offices.

Acceding countries often lack the capacity to clearly identify the conflicts between their existing laws, regulations and administrative practices and the obligations of the WTO Agreements. UNCTAD has provided effective assistance in such cases. However, this problem is exacerbated when there are no clear government policies in place. This lack of policy direction can often be discerned in the Memorandum on the Foreign Trade Regime (Memorandum) and usually becomes evident in the question-and-answer exercise in the Working Party. Behind this scenario, there is usually a debate among various interests at the national level, some of which are using the pressures of their trading partners in the WTO to shape national trade policy along the lines they prefer.

Furthermore, many countries find themselves with a trade and economic regime shaped largely by their structural adjustment programmes with the Bretton Woods institutions. Often the difference between these programmes (which are of a temporary nature and involve only their relations with the institution concerned) and the obligations under the WTO Agreements (which are permanent and entail rights for over 140 trading partners) is not fully taken into account.

Another serious challenge facing acceding countries is to improve the administrative infrastructure and coordination mechanisms. The degree of interministerial coordination required to effectively participate in the Uruguay Round, and subsequently in the WTO, placed strains on even the most sophisticated administrations. Many acceding countries find that it is difficult to explain the requirements of WTO membership and obtain the necessary cooperation from the various ministries. Apart from the training mentioned above, UNCTAD's assistance through workshops and technical missions can often act as a catalyst in this coordination process. In certain cases, studies have been conducted to guide acceding governments in making the modifications to their administrative structures that will be required by the WTO accession process and WTO membership.

Most acceding countries share a characteristic common to most developing countries and countries in transition to a market economy: the absence of a domestic debate on trade issues. Neither the various interest groups in the population nor their representatives in the legislature are equipped to enter into an effective dialogue with the government on trade issues. This can lead to situations where, on the one hand, the private sector may firmly oppose WTO accession, based often on a misunderstanding of the requirements of WTO membership. On the other hand, the government may accept commitments or other provisions which adversely affect the interests of particular groups that are unable to mount a coherent challenge to the acceptance of such commitments. Many acceding countries have taken steps to establish new mechanisms specifically designed to obtain the views of the economic operators to assist them in formulating their negotiating strategy. In this connection, UNCTAD has designed its Commercial Diplomacy Programme to address the needs of the private sector and parliamentarians.

The process of dealing with domestic interests is facilitated by economic studies on the impact of WTO membership. The technical assistance provided by UNCTAD has included such studies, usually of a sectoral nature or linked to a specific Agreement such as TRIPS or GATS,. and often suggesting policy changes aimed at facilitating the process of

adapting to the exigencies of the Agreements. Accession to the WTO presents a particular challenge to petroleum-exporting countries in that the economies and trade regimes of these countries are often distorted by their dependence on the export of one commodity and the neglect of certain key sectors of the economy, notably agriculture. These countries must also understand the limits which the WTO rules place on the use of their energy resources as a means to increase the competitiveness of their exports. It should be noted that countries currently seeking accession account for 45 per cent of world petroleum exports.[66]

The accession process obliges the government of an acceding country to prepare voluminous documents for submission (i.e., the Memorandum, comprehensive replies to the questions raised by the WTO members, texts of trade-related legislation in one of the official WTO languages,[67] market access offers on tariffs and services as well as agricultural subsidies, and other information requested by WTO members). In the cases of the ongoing accession negotiations, the number of questions raised on the Memorandum has amounted on average to at least several hundred.[68] The preparation of these documents requires substantial resources and expertise, which many acceding countries lack.

UNCTAD's technical assistance services devote much effort to helping acceding governments prepare their replies to the questions raised in the Working Party. The main concern is to satisfy the delegation posing the question with the first answer. Answers that do not clearly explain national policy and legislation, or that suggest that the acceding country government might not completely perceive that some elements of its legislation or administrative practices are in conflict with WTO obligations, inevitably lead to follow-up questions which unnecessarily slow down the accession process.

Obviously, one of the main problems facing most acceding countries, particularly LDCs, is the lack of financial resources needed to prepare for and pursue the accession negotiations. For example, preparations for these negotiations should logically include attendance at various WTO meetings, including the Working Parties on the accession of other countries. Also, when the work of the Working Party on Accession starts, country representatives should have frequent contacts and negotiations with the members of the Working Party. However, many acceding countries have extremely limited staffing in their capitals and permanent missions in Geneva, while several acceding countries do not even have representations in Geneva.[69]

Acceding countries have to submit detailed economic and trade data, including information on domestic and export subsidies in agriculture, industrial subsidies and state trading enterprises. In many instances, acceding countries do not have the required data and have to initiate its collection. Moreover, detailed information on the regulatory regime and

[66] See UNCTAD, "Trade Agreements, Petroleum and Energy Policies", UNCTAD/ITCD/TSB/9, 2000.

[67] In English, French or Spanish.

[68] In the accession negotiation of China, more than 5,000 questions have been submitted since 1987, and for the Russian Federation about 4,000 have been submitted since 1994. Recently, Viet Nam had to reply to nearly 1,300 questions.

[69] E.g. Cambodia, the Lao PDR, Samoa, Seychelles, Tonga, Uzbekistan and Vanuatu.

the judicial system is sought concerning the services sector, contingency protection measures, technical standards, sanitary and phytosanitary systems, protection of intellectual property and competition policies. Information is requested by the WTO members to examine the compatibility of domestic regulatory and legal systems with the WTO Agreements. A common problem of acceding countries is that their regulatory and legal infrastructures have not been well developed in these areas. Therefore, in addition to making the existing systems conform to the WTO Agreements, these countries need to establish laws, regulations and a regulatory and institutional framework.

Since different ministries and government agencies are concerned with the WTO Agreements, the leading ministry needs to coordinate with them the tasks involved in accession negotiations. However, acceding countries often lack the necessary infrastructure and mechanisms for such coordination. In addition, lack of knowledge about the WTO Agreements and limited experience in the administration of WTO matters hinder the progress of the work required for WTO accession.

Preparation for accession negotiations can also involve examination of commitments by the WTO members for comparative purposes; calculation of revenue losses caused by tariff reductions; analysis of the impact of reduced domestic support measures on agriculture; examination of the employment consequences of commitments, and so on. Acceding countries often lack the tools needed for these analyses, including numerical data and information management systems.

The fast-track proposal made by the European Union,[70] which has been further elaborated on by the LDCs[71] and subregional groupings,[72] found its way into the Plan of Action emerging from the Third United Nations Conference on LDCs. Implementation of the relevant commitments of the Plan of Action, which have been reaffirmed in the Doha Declaration, is crucial if the LDCs are to be able to accede to the WTO within a reasonable time frame and on terms consistent with their level of development.

Many acceding countries made a determined effort to complete the accession process before the Fourth WTO Ministerial Conference, with the expectation that they would thus be full participants in the next round of multilateral trade negotiations. Some other countries have sought to become members before their main trading partners so as to be able to negotiate with these partners as WTO members in the accession negotiations of the latter. While most acceding countries are already receiving most-favoured-nation treatment from the major trading entities and many even benefit from preferential treatment under the Lomé Convention or Generalized System of Preferences schemes, for some this treatment is non-contractual, and a few acceding countries do not receive such treatment for residual political reasons. In some cases, the acceding countries have entered into bilateral agreements before completing the process of accession to obtain MFN treatment. Often these bilateral

[70] WTO, WT/GC/W/153, 8 March 1999.

[71] WTO, WT/GC/W/251, 13 July 1999 (Communication from Bangladesh).

[72] WTO, WT/GC/W/378, 26 October 1999 (Communication from Fiji, Papua New Guinea and Solomon Islands).

agreements go beyond the scope of WTO obligations to include commitments in areas such as investment and labour rights.

Nine LDCs are in the process of negotiating accession and soliciting the assistance of UNCTAD, which has emphasized that the accession process should be orderly and unhurried. While all available facilities for technical and financial assistance should be utilized, the absorption capacity of the government must be taken into account. A top priority should be to build the capacity of the negotiating team and facilitate the interministerial coordination process. The main lesson that has been learned from this experience to date is that these negotiations should not be hurried; the first priority of the acceding country should be to train trade negotiators to participate effectively in the negotiations, and government officials to implement the WTO obligations. There is also a need to sensitize traders and the private sector in general to the advantages and constraints of WTO membership. Countries which acceded to GATT immediately before and during the Uruguay Round developed a strong capacity to defend national interests in subsequent negotiations and disputes.

Thus, while an acceding country should draw on all the technical assistance facilities available from multilateral institutions and bilateral donors, it is important that such assistance not overtake the capacity of the government to absorb it. In this regard, it has also been observed that where foreign experts were left to do all the work, the result was that, when the Working Party met, the national team was not able to explain or defend its position. Furthermore, a prerequisite to the preparation of the Memorandum is to ensure that clear policies are in place in the various areas covered. Some delegations have found themselves in difficulties in the Working Party when their replies indicated that the government had not established a clear policy for a certain area or sector, and/or that it did not fully understand whether its policies were consistent with WTO obligations. This situation provokes additional questions and slows down the process. It is very useful for the acceding country to have a clear understanding of the attitude of the major trading countries towards its accession, not only with respect to the trade interests involved but also with respect to the political background, which is of particular interest for those acceding countries whose political relationships with some of the major trading countries may include the residual political or legal aspect mentioned above. In the case of China, for example, the accession negotiations have had to address not only the commitments that would be accepted by China but also commitments by certain WTO members to phase out residual discrimination against that country.

A truly universal multilateral trading system is thus within reach, and UNCTAD is giving priority to contributing to this objective. Universal membership could be expected to modify the character of the WTO somewhat. First, the presence of China and the Russian Federation will alter the political balance in the decision-making process; the traditionally dominant position of the Quad can be expected to decline. China in particular can be expected to continue its struggle against discrimination. There will be four Chinese-speaking entities among the top contributors to the budget, which will eventually be reflected in the composition of the secretariat.

Developing-country members of the WTO are beginning to take a more active role in providing potential support to acceding developing countries, partly from a sense of solidarity but also because of a perception that the WTO-plus demands placed on developing countries in the accession negotiations may set precedents for similar demands on all developing countries in future multilateral trade negotiations. The WTO negotiations under the "built-in agenda" (agriculture and services) have been underway for two years. The *Fourth* Ministerial Conference held in Doha, Qatar, in November 2001 launched multilateral negotiations in many areas and provided for the initiation of new negotiations within two years. These negotiations are open to the countries presently in the accession process, and it would seem essential that they take an active role and ensure that their commitments made under the terms of accession are acknowledged as their contribution to these negotiations. In Doha, a group of recently acceded countries were able to obtain recognition in the text of the Ministerial Declaration of the "extensive market access commitments" they had made on accession. In addition, there will be a new group of petroleum-exporting countries in the WTO which might find they have common interests. There will also be an important group of Arab countries, which have never before reached the critical mass necessary to influence the debate.[73]

About one quarter of the members of a universal WTO would be LDCs, which will create an even more acute demand for technical assistance and training if these countries are to be given the chance to participate effectively.

The universality of membership in the WTO could be expected to be reflected in the goals of the organization's work. The Uruguay Round was dominated by the major trading countries and was aimed at setting up the legal framework needed to enable their producers and traders, mainly the transnational corporations (TNCs), to expand their operations to a global level – that is, to provide a legal basis for the globalization that had already been rendered feasible by technological advances. This objective was furthered by the results of the post-Uruguay Round negotiations on financial services and basic telecommunications. It was obviously crucial that the multilateral trade rules keep up with technological advances and the realities of trade. However, most of the members of a universal WTO will not be in a position to extract much benefit from these instruments, since they do not own the intellectual property rights, they do not have much capacity to export in services (especially through a commercial presence) and they do not engage in foreign direct investment. The challenge, then, will be to devise a programme of universal interest for an organization of universal membership. The Work Programme established at Doha provides both a major challenge and an opportunity for developing countries to fashion the multilateral trading system to better suit their needs and aspirations.

[73] See UNCTAD, "Trade Agreements, Petroleum and Energy Policies", UNCTAD/ITCD/TSB/9, 2000.

Accession to the WTO: The process and selected issues

Victor Ognivtsev,* Eila Jounela,* Xiaobing Tang*

Introduction

Membership in the WTO allows countries to design their development strategies and trade policies in a more predictable and stable trading environment. Accession to the WTO must be seen not as an end in itself but as a key element in the pursuit of national development policy objectives; these objectives should be clearly defined before a country begins the accession process, so that the terms of accession, notably the specific concessions and commitments relating to foreign access to markets for goods and services, as well as other commitments under the WTO Agreements (agricultural and industrial subsidies, trade-related investment policies and intellectual property rights, etc.) (see box 1), fall within the parameters of these policies. Accession, if it is to be achieved on balanced terms, should be recognized as a difficult and complicated process, which may be lengthy, requiring high-level preparations and coordination among government agencies and a broad political consensus in order to effectively pursue and defend national interests. It will also require tough negotiations with major WTO members. Such negotiations involve strategic and long-term issues which could affect the trade and development policies of countries concerned for years to come.

Accession to the WTO involves a considerably more complex and difficult process than that for accession to the GATT 1947. First, the WTO Multilateral Trade Agreements (MTAs) involve more stringent and detailed rules and disciplines covering trade in goods, and the scope of these rules and disciplines has been expanded to cover trade in services (which could cover investment, transport, communication, the movement of persons, etc.) as well as the protection of intellectual property rights. Acceding countries are required to accept all the MTAs (only the two Plurilateral Agreements are formally optional, but, as is discussed below, acceding countries are required to accept them as a matter for negotiation by major WTO members). These new rules and disciplines intrude further into areas traditionally perceived as belonging to domestic policy. In addition to bringing their trade regime into conformity with the multilateral disciplines, acceding countries are required to negotiate concessions on reduction and bindings of tariffs, commitments on agricultural subsidies, and specific commitments on trade in various services sectors. Second, the attitude of the major trading countries vis-à-vis acceding countries has become more demanding, thus effectively increasing the "standard of accession". Some have taken the position that acceding countries should accept a level of obligations higher than that accepted by the original members of the WTO. In practice, this has meant that acceding countries have had to accept a degree of tariff bindings and commitments on services comparable to that of the most advanced countries, and that they have not been able to benefit from all the relevant special and differential (S&D) provisions in favour of developing countries and economies in transition, and have been required to accept some of the "plurilateral" agreements.

∗ UNCTAD staff members.

Box 1

Agreement establishing the World Trade Organization

Annex 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Annex 1B: General Agreement on Trade in Services and Annexes

Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

Annex 2
Understanding on Rules and Procedures Governing the Settlement of Disputes

Annex 3
Trade Policy Review Mechanism

Annex 4
Plurilateral Trade Agreements
Agreement on Trade in Civil Aircraft
Agreement on Government Procurement

The general rule governing accession is provided in Article XII, paragraph 1 of the Marrakesh Agreement Establishing the WTO (hereafter referred to as the WTO Agreement) (see box 2), stating that a State or separate customs territory may accede to the WTO on terms to be agreed between it and WTO members. In practice this means that, while the rules and disciplines of MTAs provide reference levels of obligations, many issues under MTAs may be subject to negotiations and pressures from WTO members in the accession process.

Box 2
Provisions of Article XII of the Marrakesh Agreement Establishing the World Trade Organization (WTO)
"Article XII*[*]*

Accession

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 of Article XII are:[**]
Agreement on Trade in Civil Aircraft
Agreement on Government Procurement

Accession to these Agreements is not obligatory for WTO members, but in the course of accession it is likely that major WTO members will insist that an acceding country make a commitment at least with regard to the Agreement on Government Procurement.

[*] See the results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts; first published in June 1994 by the GATT secretariat; reprinted by the WTO in 1995.

[**] The International Bovine Meat Agreement and International Dairy Agreement were terminated and deleted from the plurilateral agreements on 31 December 1997.

The establishment of the WTO has increased the security and predictability of the trading system, and the liberalization attained in the Uruguay Round offers expanded trading opportunities for all countries. However, to the extent that the benefits are enjoyed only by member countries of the WTO, non-member countries, which include developing countries, especially least developed countries (LDCs) and economies in transition, could be placed at a considerable disadvantage in the future. The complexities described above, combined with the large number of countries applying for membership, have made the process of accession since 1995 slow. As of 1 January 2002, 15 countries[74] and one separate customs territory[75] have completed accession negotiations under Article XII of the WTO Agreement (see Annexes for a list of currently acceding countries). In fact, broader political factors may have influenced the decision of many acceding countries to apply for WTO accession shortly before or immediately after the establishment of this new organization on 1 January 1995. The economic and commercial interests of countries concerned may have been the principal motives for the initiation of this process. Moreover, for many countries the accession negotiations have coincided with systemic structural reforms or with formulation of their economic and trade policies. Hence, inadequacies in their administrative infrastructures and

[74] Albania, Bulgaria, China, Croatia, Ecuador, Estonia, Georgia, Jordan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Oman and Panama.

[75] Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) which is referred to in the United Nations as Taiwan Province of China.

financial or human resources have affected their technical capability to effectively conduct an unprecedentedly complex accession process.

Advantages and challenges of WTO membership

The advantages of WTO membership can be summarized as follows:

(i) Implementation of WTO Agreements generally makes possible an expansion of trading opportunities for member countries.

(ii) More stringent multilateral disciplines ensure a more secure and predictable trading environment and lessen uncertainty in trade relations.

(iii) Only member countries can exercise the rights embodied in the WTO Agreements.

(iv) The WTO Agreements substantially improve the transparency of the trade policies and practices of trading partners, thus enhancing the security of trade relations.

(v) Members have access to the WTO dispute settlement mechanism to defend their trade rights and interests.

(vi) Membership enables the advancement of the trade and economic interests of members through effective participation in the WTO multilateral trade negotiations and ensures that any new rules or amendments of existing rules are compatible with members' interests.

In some cases, tariff concessions, services commitments and other advantages negotiated by WTO members may be extended to non-member countries under existing regional and bilateral agreements. But in other instances, developing countries and countries in transition which currently are not members of the WTO may be disadvantaged. In fact, for most acceding countries it appears that the specific disadvantages of not being a WTO member, together with the unfavourable image (particularly from the perspective of potential investors) of remaining outside the system have motivated their decision to start the accession process. Areas where non-membership could have an immediate adverse trade impact include the following:

Textiles and clothing. Non-member countries do not benefit from the WTO Agreement on Textiles and Clothing, in particular from the phasing-out of the MFA- and non-MFA types of quotas for textile and clothing products, as well as from the increases in growth rates for the quotas of the products still remaining under restrictions during the 10-year transition period. Furthermore, non-member countries can face, and indeed have faced, new restrictions on their exports of textiles and clothing without any time limits.

Agriculture. In most cases, non-member countries will not benefit from the current and minimum access opportunities provided for under the WTO Agreement on Agriculture and the WTO members' Market Access Schedules as available to WTO members. On the other hand, their exports of agricultural products will be subject to high tariff rates as a result of the tariffication process by WTO members. Moreover, while the WTO Agreement on Agriculture prohibits the application of quantitative restrictions on imports of agricultural products from WTO members, the Uruguay Round implementing legislation of some major trading countries preserves their previous practices of imposing quantitative restrictions on imports of agricultural products from non-member countries.

Anti-dumping and countervailing measures. Under the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures, all WTO members are entitled to an injury test in anti-dumping and countervailing duty investigations. According to the implementing legislations of some major trading countries, the injury test will not be applied to products imported from non-member countries. Furthermore, certain non-member countries find themselves facing discriminatory anti-dumping measures designed to deal with non-market economies, against which they have very limited recourse.

Safeguard measures. The basic provisions of the WTO Agreement on Safeguards (i.e. MFN application of safeguards with clearly defined limited exceptions; phasing out of voluntary export restraint arrangements; strict procedures for consultations and notification in applying safeguard measures) will not apply to non-members, and this may increase the discrimination against them in the international trading system.

Some major trading countries continue to maintain additional discriminatory measures against the so-called "state-trading" countries or "non-market economy" countries (i.e. former centrally planned economies). These measures cannot be applied to WTO member countries under the WTO rules and disciplines, unless the acceding country acquiesces to the specific inclusion of such discrimination in the report of its Working Party and its Protocol of Accession, which is an unlikely event, or if a non-application clause in Article XIII of the WTO Agreement is invoked between this country and a WTO member applying such measures.

Another problem faced by a number of countries wishing to accede to the WTO or initially to obtain observer status (see box 3) is that of overcoming the substantial political opposition of some major WTO members. In some cases this opposition is supported by national legislation aimed at isolating these countries in international relations, in particular by means of economic and trade measures, thus effectively precluding their integration into the multilateral trading system.

Box 3

The rules of procedure for sessions of the Ministerial Conference and meetings of the General Council provide that representatives of States or separate customs territories may attend the meetings as observers on the invitation of the Ministerial Conference in accordance with special guidelines adopted by the General Council. The general purpose of observer status in the WTO is to allow a government to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO. In this context, there is a requirement that an observer government has to provide WTO members with any additional information it considers relevant concerning developments in its economic and trade policies. Another requirement is that normally observer status is granted for five years, during which accession negotiations should be initiated, but this period may be extended by the General Council upon the written request of the observer government, which should also give evidence of its future plans for initiating accession negotiations. An observer government has access to the main WTO document series and may also request technical assistance from the WTO secretariat in relation to the operation of the WTO system in general, as well as to negotiations on accession to the WTO. Representatives of observer governments may be invited to speak at WTO meetings (normally after the WTO members have spoken). This right to speak does not include the right to make proposals, unless an observer government is specifically invited to do so, or to participate in WTO decision-making. Observer governments are required to make minimal financial contributions for services provided to them (in the amount of 50 per cent of the minimum assessment for a WTO member). The financial regulations of the WTO (Regulation 15) provide that observer states or customs territories may accede to the WTO only if their financial obligations as observers have been fully discharged.

In practical terms, non-member countries may not necessarily face the discrimination mentioned above by virtue of bilateral MFN agreements with the WTO member countries concerned, or because the latters' implementing legislation does not contemplate any discriminatory application. However, in some cases, notably a provision in the legislation of the United States, WTO treatment does not necessarily have to be extended under bilateral MFN agreements. Beyond the above considerations, the main disadvantage of non-membership is that the non-member country does not have access to the WTO dispute settlement mechanism to defend its rights in case of discrimination against it, and its possible actions are limited to bilateral political and trade measures.

The accession process

Accession to the WTO, as before to the GATT 1947, reflects the organization's institutional specificity as an "umbrella" organization for the administration, implementation and negotiation of intergovernmental contractual obligations with regard to multilateral trade relations. This is not the case with respect to other international organizations, including the United Nations, the International Monetary Fund and the World Bank. Within the WTO, members undertake to comply with the rules and disciplines of the Multilateral Trade Agreements, which bear directly on their trade policies and practices. The accession process is a unilateral procedure in the sense that all requests and demands are placed by WTO members on the acceding country, while the acceding country cannot submit requests to WTO members. The acceding country is required to conform to the rules of the WTO Agreements and to pay a "membership fee" in terms of specific concessions on tariff rates, commitments on agricultural subsidies and commitments on trade in services in return for its right to enjoy the benefits resulting from the liberalization achieved in previous multilateral

trade negotiations. Once it becomes a WTO member, a country will be able to participate in future negotiations under the WTO's aegis on an equal basis according to the principle of reciprocity and mutual benefit (i.e. concessions will be made in return for reciprocal concessions by its trading partners). Moreover, it will be entitled to full WTO treatment. WTO members maintaining discriminatory measures against the acceding country will be obliged to remove them upon the accession of the latter, unless a special provision is made in the Protocol of Accession or a non-application clause is invoked (Article XIII of the WTO Agreement). It is often difficult to explain in the domestic political context this unilateral character of the accession negotiations. For this reason, acceding countries have in the past attempted to mitigate the unilateral aspects by negotiating their accession to the GATT 1947 during a multilateral round of negotiations. This was the case for 12 developing countries that acceded to the GATT 1947 during the Uruguay Round under Article XXIII of the GATT 1947.[76]

The procedure for WTO accession is summarized in the flow chart at the end of this paper with some annotations, mainly based on a note on WTO Accession Procedure prepared by the WTO secretariat.[77]

Following the application for WTO accession and the establishment of a Working Party on Accession, including adoption of its terms of reference and nomination of its chairman, the accession negotiation technically consist of three interrelated tracks: a systemic or multilateral track, a market access in goods track and a market access in services track.

The ***systemic or multilateral*** track provides for the examination of the foreign trade regime and economic system of the acceding country and their compatibility with the MTAs. This examination is made on the basis of the Memorandum on the Foreign Trade Regime (hereafter "Memorandum") 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. This track is conducted on a multilateral basis, with the participation of all interested WTO members, although some issues regarding trade regimes may require informal bilateral and/or plurilateral negotiations between the acceding country and individual WTO members. An acceding country should anticipate that there may be a substantial number of very detailed questions from WTO members on any aspect of respective trade and economic policies and legislation, accompanied by requests for full copies of relevant national legislation and regulations in one of the three official WTO languages (English, French and Spanish).

[76] Conducted under the accession provision, Article XXXIII of the GATT 1947. Another 26 countries became GATT contracting parties by declaration under Article XXVI:5 (c) of the GATT 1947.

[77] WTO, Accession to the World Trade Organization, WT/ACC/l, 24 March 1995.

For example, in the accession cases in 1995–2001 many detailed questions were submitted in the following areas:

pricing practices and regulations

taxation system

subsidies to specific sectors of the economy, particularly agriculture

regime for foreign investment

balance of payments

customs import tariffs, including any preferential tariffs, customs fees, tariff exemptions, etc.

safeguard measures and other trade remedies (anti-dumping and countervailing measures)

import licensing

export regulations

state trading enterprises

standardization and certification of imported goods; sanitary and phytosanitary standards

foreign exchange operations

statistics and publication systems relating to foreign trade

systems of protection of intellectual property rights

In addition, a large number of detailed questions are likely to be submitted concerning the regulation of trade in services in general ("horizontal" legislation and policies) and individual services sectors such as financial services, basic telecommunications, transport, professional services, and so forth. The majority of questions are likely to be submitted by the major trading countries. Furthermore, acceding countries are requested to respond to several WTO notification requirements, while some WTO members request that responses to all WTO notifications be submitted. When the examination of the foreign trade regime is sufficiently advanced, members of the Working Party may initiate bilateral market access negotiations on goods and services. It is understood that fact-finding work on the foreign trade regime and the negotiating phase can overlap and proceed in parallel.

The ***market access in 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 (principal and substantive suppliers) of an acceding country. The list of such concessions in a WTO format

(a table) forms an integral part of the Protocol of Accession, and those concessions should be extended on an unconditional MFN basis to all other WTO members, including commitments in agriculture (i.e. market access, export subsidies and domestic support).[78]

The ***market access in 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. These commitments should also be extended to other WTO members on an MFN basis.

The procedures for negotiating schedules on concessions and commitments on goods and specific commitments on services may be summarized as follows:

(i) In the case of goods, either interested members submit requests and the applicant then tables initial offers, or, as a means of expediting the work, the applicant tables its draft Schedule of Concessions and Commitments to provide the basis for negotiations.

(ii) In the case of services, either interested members submit requests and the applicant then tables its draft Schedule of Specific Commitments, or the tabling of a draft Schedule by the applicant is followed by requests from interested members.[79]

(iii) Following the conclusions of bilateral negotiations between interested WTO members and the applicant, the Schedule of Concessions and Commitments to the GATT 1994 and the Schedule of Specific Commitments to the General Agreement on Trade in Services (GATS) are reviewed multilaterally in the Working Party and annexed to the draft Protocol of Accession as integral parts.

Once the negotiations on the schedules on goods and services are concluded and the Working Party has completed its mandate, the Working Party submits its Report, together with the draft Decision and Protocol of Accession, to the WTO General Council/Ministerial Conference. Following the General Council/Ministerial Conference's adoption of the Report of the Working Party and the approval of the draft decision by a two-thirds majority of the WTO members' positive vote,[80] the Protocol of Accession enters into force 30 days after acceptance by the applicant, either by signature or by deposit of the instrument of ratification, if parliamentary approval is required.

[78] See, WTO, WT/ACC/4, 18 March 1996.

[79] See, WTO, WT/ACC/5, 31 October 1996.

[80] In practice, however, a decision is adopted on the basis of consensus. In GATT or WTO, there have been no cases of voting on accessions.

Selected issues in the accession negotiations

In the multilateral track the room for manoeuvring is rather narrow, being limited to the length of phase-in periods and the possibility of temporarily maintaining practices not in conformity with the MTAs. Under the bilateral tracks, the acceding country has a much greater margin for manoeuvring, and an authentic process of negotiation takes place, with the limitation that the acceding country's concessions are unilateral in nature, as was explained above.

As was also noted above, the more stringent and detailed rules and disciplines in the WTO Agreements make accession negotiations very complex. They provide limited flexibility for developing countries and countries in transition, while WTO members tend to ask more concessions from acceding countries with regard to reduction and binding of tariffs, specific commitments in agriculture (improved market access, reduction of domestic support and export subsidies), and commitments in trade in services. In many respects, the WTO accession negotiations require from developing countries and countries in transition substantial concessions which could have an immediate effect on the access of foreign products to their markets (e.g. tariff reductions and bindings) and have substantive implications for the domestic policy options, while the benefits of membership in the WTO in terms of increased market access to other markets and multilateral trading rights could be felt in a longer term. In addition, experience to date has shown that in some cases, acceding countries may be requested by some major WTO members to accept obligations extending beyond those contained in the MTAs and/or to undertake specific commitments with respect to measures falling outside the scope of those Agreements (e.g. privatization). As was noted above, some WTO countries have even taken the position that acceding countries should accept a higher level of obligation than the original WTO members.[81]

Special and differential treatment

In general, the WTO Agreements, with some exceptions, provide for special and differential (S&D) treatment in favour of developing-country members of the WTO. However, all Uruguay Round obligations, including the GATT 1994, the GATS and the TRIPS Agreement, are contained in a single legal instrument (as Annexes to the WTO Agreement), which must be accepted in its entirety. This has the effect of (i) establishing roughly the same set of obligations for all WTO members; and (ii) linking all such rights and obligations to trade concessions. The only flexibility enjoyed by developing countries will be that spelled out in the relevant Agreements themselves. There are also "horizontal" Ministerial Decisions stipulating special measures in favour of LDCs and defining measures concerning the possible negative effects of the reform programme in agriculture on least developed and net-food-importing developing countries.

In practice, however, the acceding developing countries (and, where applicable, countries in transition) have had difficulty benefiting from the S&D provisions provided for in the WTO MTAs and related Marrakesh Ministerial Decisions. It is likely that acquisition

[81] See in more detail "Terms of WTO Accession" below.

of such provisions would require tough negotiations and justification on the part of an acceding country. To some extent, this situation is created by Article XII:1 of the WTO Agreement, which stipulates that such accession will be on terms agreed by an acceding country and the WTO (i.e. every issue in accession may be negotiated on the basis of the respective positions of an acceding country and interested WTO members). In addition, acceding countries have been requested to accept the optional plurilateral agreements (particularly the Agreements on Government Procurement and, in some cases, on Civil Aircraft) and have even had trouble obtaining recognition of their developing-country status. Acceding countries should make major attempts to secure the differential and more favourable treatment under the MTAs. Their position may be strengthened by the Ministerial Declaration, adopted by the Doha WTO Ministerial Conference, which explicitly recognizes that "provisions for special and differential treatment are an integral part of the WTO Agreements".[82]

Acceding countries fall into at least one of the four categories of countries, each of which is subject to some form of differential and more favourable provisions: (i) least-developed countries, (ii) developing countries, (iii) net-food-importing developing countries, and (iii) countries in the process of transformation into a market economy. Only the least-developed category is clearly identified in accordance with the United Nations decisions, although a list of net-food-importing countries is being developed by the Committee on Agriculture.[83] Acceding countries considering themselves to be in these categories should ensure that specific reference is made to their status in the Working Party Report. However, it is very likely that their status will also be a subject of negotiations with major WTO members.

Least developed countries

So far, no LDC has acceded to the WTO under the provisions of Article XII of the WTO Agreement, although nine LDCs are in the process of doing so.[84] The challenge facing these countries is to ensure that they are given full access to all the special measures in favour of LDCs. This should be specifically recognized in the Protocol of Accession and/or the Working Party Report.

Several recommendations were made at the Third United Nations Conference on the Least Developed Countries to reduce the obligations required for accession of LDCs (without compromising the rule-based discipline of the WTO) (see box 4).

[73] See, WTO, WT/MIN(01)/DEC/1, 20 November 2001, paragraph 44.

[83] See, WTO doc. G/AG/5/Rev.3, 28 June 1999.

[84] Bhutan, Cambodia, Cape Verde, Lao PDR, Nepal, Samoa, Sudan, Vanuatu and Yemen.

Box 4

Paragraph 68(o) of the Programme of Action for the Least Developed Countries for the Decade 2001–2010

(Adopted on 20 May 2001 at the Third United Nations Conference on the Least Developed Countries)

1. 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;

2. Providing for automatic eligibility of all acceding LDCs for all provisions on special and differential treatment in existing WTO Agreements;

3. 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 Least Developed Countries;

4. Seeking from LDCs in the accession stage only commitments that are commensurate with their level of development;

5. Continuing to provide adequate and predictable assistance to LDCs for their accession process, including technical, financial or other forms of assistance;

6. Accelerating the accession process for LDCs that are in the process of accession to WTO.

In addition, the so-called Quad countries (Canada, the European Union, Japan and the United States) adopted a special communication aimed at facilitating accessions of LDCs (see box 5). A Meeting of the Ministers responsible for Trade of the Least Developed Countries held in Zanzibar, United Republic of Tanzania, in July 2001 called on the Fourth WTO Ministerial Conference to agree on facilitating the accession of LDCs to the WTO with a more streamlined process of accession, under terms consistent with their development, financial and trade needs and commitments not higher than those undertaken by WTO members, including transition periods mandated by WTO Agreements starting from the date of accession.

Box 5

Excerpt from the Communication by Canada, the European Community, Japan and the United States on the accession of LDCs to the WTO as a contribution to the Third UN Conference on the Least Developed Countries

(adopted on 17 May 2001 at the Third United Nations Conference on the Least Developed Countries)

...We are committed to improving and accelerating the negotiating process for those least developed countries that have signalled their readiness to undertake a protocol package of commitments to provide market access and adopt and enforce trade rules.

Nine least-developed countries currently are negotiating admission to the WTO....The accession of each country to the WTO must be assessed on its own merit and allowed to proceed at its own pace. Sufficient flexibility in the negotiating schedules is required to ensure that variable resource capabilities and capacities for effective implementation are taken into account.

We have agreed to consider ways to facilitate the accession negotiations further, taking into account Article XII of the WTO Agreement, the Uruguay Round *Decision on Measures in Favour of Least-Developed Countries*, and other provisions for special and differential treatment in the WTO Agreements. Our goal is to ensure that the accession negotiations complement the broader mainstreaming effort, and take into account the broader development context. In this regard, we attach priority to four main points, and will work with the WTO Secretariat and other Members:

- *Expedite the process:* We will work to ensure that the accession process is more effective and less onerous for LDCs and tailored to their specific economic conditions, taking into consideration limited administrative capacities, by streamlining procedures and documentation required, minimising the number of Geneva meetings and consolidating Members' exchanges with LDC applicants.
- *Market access commitments:* We will seek reasonable schedules of commitments on goods and services. In doing so we will take into consideration that LDCs should only undertake commitments that are commensurate with and reflect the current and often unique situation in each acceding country.
- *Rules and their implementation:* Make full use of the flexibility foreseen under the WTO Agreement for LDCs. The WTO Agreement includes a number of specific provisions concerning LDCs, like the granting of transitional periods for the full implementation of specific rules. While the goal should be the adoption of WTO provisions upon accession, these transitional periods may be applied to the acceding LDCs upon request and presentation of a detailed plan of action for assuring compliance with WTO rules, to be included in the protocol of accession. The implementation of the action plans could be supported by technical assistance.
- *Strengthen technical assistance and capacity-building:* We will take advantage of the Poverty Reduction Strategy Programs, the Integrated Framework and bilateral and other multilateral assistance programs to ensure that programmes of assistance currently in place respond adequately to the needs of the acceding country and that there is an effective co-ordination among the different bilateral and multilateral assistance programmes. We note that several least developed countries are already participating in the IF pilot programs. In addition, some countries have established parallel activities complementary to the pilot scheme.

The Fourth WTO Ministerial Conference, held on 9–14 November 2001 in Doha, recognized the special situation of LDCs and confirmed the important commitments made at the Third United Nations Conference for LDCs, which will be integrated in the WTO work programme. S&D treatment provisions will be reviewed with the objective of strengthening them and making them more precise, effective and operational, so as to help LDCs integrate in the multilateral trading system (see box 6).

Box 6
Paragraph 42 of the Ministerial Declaration
(adopted on 14 November 2001)

42. We acknowledge the seriousness of the concerns expressed by the least-developed countries (LDCs) in the Zanzibar Declaration adopted by their Ministers in July 2001. We recognize that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity-building. We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs. In this regard, we welcome the significant market access improvements by WTO Members in advance of the Third UN Conference on LDCs (LDC-III), in Brussels, May 2001. We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs. Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs' accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO's mandate, adopted at LDC-III. We instruct the Sub-Committee for Least-Developed Countries to design such a work programme and to report on the agreed work programme to the General Council at its first meeting in 2002.

Countries in transition

To a certain extent, the specific problems of countries in transition were recognized during the Uruguay Round negotiations. Three of the WTO Agreements embody provisions to take specific account of the special situation of economies in transition. Thus, Article 29 the Agreement on Subsidies and Countervailing Measures contains positive and flexible provisions for signatories "in the process of transformation from a centrally-planned into a market, free enterprise economy", to apply programmes and measures necessary for such a transformation (including prohibited types of subsidies) during a seven-year transition period. In addition, Article 65:3 of the TRIPS Agreement provides that economies in transition, like developing countries, may benefit from a five-year delay period in the implementation of this Agreement, with certain exceptions. However, these provisions make references only to WTO members, not to acceding countries. Furthermore, the above transition periods are calculated from the entry into force of the WTO Agreement (i.e. 1 January 1995). In practice, as may be illustrated by the accession terms of Bulgaria, Georgia, Kyrgyzstan, Latvia, and others, these transition periods are either not granted at all or granted for a more limited length of time.

In the GATS, Article XII on restrictions to safeguard the balance of payments recognized that a member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

The systemic structural reforms in many countries in transition are still going on, which makes, for example, the identification of sectors needing tariff protection an especially

challenging task. The same applies to other trade policy measures, including subsidies. With regard to institutional challenges, these countries may also experience problems in complying with the so-called "transparency" obligations under the WTO Agreements (e.g. notification requirements), since their trade legislation and statistical and information systems are not yet fully in place. Another matter of concern for them would be the new areas now within the WTO's purview (i.e. trade in services and protection of intellectual property rights), where many essential aspects of foreign trade regime, legislation and regulations may be still missing, as national policies in those areas are still being developed.

On the other hand, it is anticipated both by the acceding economies in transition and by WTO members that accession to the WTO will contribute substantially to the former group's transition to a market-oriented economy. In view of this goal, it would be desirable that more emphasis be given in the accession negotiations to such systemic transformation of these countries than to traditionally focused trade liberalization (e.g. reduction of tariffs and other restrictions on trade). Given the past political and socio-economic systems of these countries and their present difficult economic and social realities, it is essential for them that the WTO accession negotiations result in shaping foreign trade regimes, legislation and regulatory frameworks consistent with WTO requirements. This would allow these countries, as members of the WTO, to pursue further trade liberalization in an effective manner, taking into account internal developments such as resumption of economic growth, structural adjustment processes and actions aimed at increasing the capacities of their economies to compete internationally.

Acceding countries in transition would be required to resolve two major problems in achieving balanced terms of WTO membership that would enable them to become full participants in the multilateral trading system. (i) They should convince WTO members that their trade regimes and economic systems in general are compatible with the WTO obligations, while some aspects of their trade policies and instruments, if any, would be gradually brought into conformity with the WTO Agreements. In other words, they should be able to persuade their negotiating partners that they would not need any "non-standard" terms of accession which would distinguish them from "normal" WTO members and emphasize their "systemic" inconsistencies with the multilateral rules and obligations, as was the case with some Eastern European countries (Hungary, Poland and Romania) when they negotiated accession to the GATT in the 1960s and 1970s.[85] (ii) They should strive to achieve balanced market access concessions in goods and services that would enable them to protect priority sectors in accordance with the WTO rules and develop competitiveness of these and

[85] The protocols of accessions of Poland, Romania and Hungary contained "non-standard" GATT obligations, in particular special (selective) safeguard clauses contrary to GATT Article XIX, which GATT contracting parties could apply against imports from these countries. In addition, Poland undertook to increase the total value of its imports from GATT contracting parties by not less than 7 per cent per annum (later this formula was to cover three-year periods), while Romania made a more general obligation in the same direction. Under the terms of accession, special GATT working parties were set up to monitor trade regimes of these three countries. As a result, the "quality" of GATT membership of these countries was substantially reduced, and they were treated differently as compared to "normal" GATT contracting parties. In the early 1990s, GATT working parties on the renegotiation of the terms of accession of Poland, Romania and Hungary were set up, but did not produce any results.

"infant" production and services sectors, while, on the other hand, undertaking trade liberalization commitments and domestic market openings satisfactory to their trading partners. In addition, in accession negotiations these countries should aim to phase out "residual" discriminatory elements of trade regimes in major developed countries, including the denial by a major trading country of unconditional most-favoured-nation treatment, which is the cornerstone of the WTO.[86] The latter issue, if not resolved by the time of accession, would mean that this major trading country would have to invoke a WTO non-application provision (as described in Article XIII of the WTO Agreement) with respect to such new WTO members.

In the 1990s, the major developed countries undertook substantive measures to open their markets to countries in transition which are not WTO members, in particular by eliminating or liberalizing quantitative restrictions in the European Union. Many of these economies in transition are receiving Generalized System of Preferences (GSP) treatment from some developed countries. However, in spite of the progress achieved, these economies in transition still face a number of non-tariff measures applied against their exports, including quantitative restrictions in major markets for agricultural products, textiles, clothing and other industrial exports. Furthermore, other residual elements of trade regimes previously applied to imports from these countries are still in force and remain an important obstacle to their integration into the international trading system:

Selective (bilateral) safeguards clauses, which provide for emergency safeguard action to prevent injury to domestic producers, are applied against imports only from the country concerned and not all other suppliers as required by Article XIX of the GATT; in addition, these clauses contain criteria for action of that kind which are weaker than the measures required by Article XIX of the GATT 1994 and applied with respect to market-economy countries. In this context, the WTO Agreement on Safeguards represents a balanced instrument to deal with the situations that might arise in cases of imports from economies in transition.

The use of special criteria for the imposition of anti-dumping measures based on prices in third market-economy countries or on constructed values or even on domestic prices of like products in the importing country. Anti-dumping measures are the most frequent access barriers encountered by exporters from economies in transition in their major markets, including to an increasing degree those of developing countries, and they are increasingly prevalent. It should be noted that the measures described above were intended to deal with the special problems of trade with "centrally planned economies", and many of them had a mainly political motivation. In the present context, the continuation of such measures could be defended on the ground that these countries are not WTO members. However, the

[86] Conditional MFN status is granted by the United States to the so-called non-market economies under Title IV of the 1974 Trade Act, subject to compliance with the freedom of emigration provisions (Jackson-Vanik Amendment, Section 402 of the Trade Act) and conclusion of a bilateral trade agreement with the United States providing reciprocal treatment (Section 405). Countries currently subject to these provisions are Armenia, Azerbaijan, Belarus, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Viet Nam.

systemic dimension of the accession process (i.e. whether these countries could be considered market economies or not) is certainly a major issue in the integration of these countries into the multilateral trading system.

Acceptance of plurilateral agreements

The two Plurilateral Agreements[87] contained in Annex 4 to the WTO Agreement were not multilateralized during the Uruguay Round, and thus the rights and obligations contained therein apply only among the signatories to these Agreements. However, as part of their general approach to acceding countries, some WTO members have been insisting that the acceding countries agree to accept, or at least enter into negotiations, to accede to the Agreement on Government Procurement and in some cases to the Agreement on Civil Aircraft. Some of the countries which have acceded to the WTO have made commitments in this regard.[88]

National treatment

Another concern of the WTO members has been the principle of national treatment, a cornerstone of the WTO system for imports of goods. As provided in Article III of the GATT l994, national treatment requires that foreign products be accorded treatment no less favourable than that accorded to like products of national origin. The principle has two main areas of application: laws or regulations effecting the sale, processing and use of products; and taxation. The aim is simply to prevent imposition within the importing country of what would be equivalent to a protective tariff. No product imported from a WTO member, whether subject to a bound tariff or not, may be subjected, directly or indirectly, to internal taxes or other charges higher than those imposed on domestic products. All laws, regulations and requirements affecting the sale, offer for sale, purchase, transportation, distribution or use of products imported from WTO members must be as favourable as that affecting domestic products. The use of internal regulations requiring, directly or indirectly, that specified amounts or proportions of domestic products be used in the mixture, processing or use of products is prohibited. The national treatment rules do not apply to purchases by governments for their own use, nor do they prevent the granting of subsidies exclusively to domestic producers.

In the accession negotiations, WTO members have been particularly vigilant with respect to value-added or excise taxes which they consider to discriminate against imported products, or between products from different sources, which led to commitments on the part of acceding countries to equalize taxation of domestic and imported products either upon accession to the WTO or within a very short time (e.g. six months or a year) thereafter.

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[87] On 30 September 1997, the parties to the WTO International Bovine Meat Agreement and the WTO International Dairy Agreement agreed to terminate them at the end of 1997 (WTO PRESS/78,30 September 1997).

[88] For example, some of the newly acceded countries made a commitment that, upon accession, they would notify the Committee on Government Procurement of their intention to accede to the Agreement on Government Procurement, and also initiate negotiations for membership in the Agreement prior to a specified date.

Other duties, charges and fees

In addition to ordinary customs duties, many countries regularly impose further taxes and charges of various kinds only on imports. Some of these may be considered as being effectively supplementary protective duties. The aim is mostly to increase government revenue, in particular in developing countries and countries in transition, where tax evasion and inefficient collection of taxes are a widespread problem in the domestic sphere.

The Uruguay Round "Understanding on the Interpretation of Article II: l(b) of the GATT 1994" has closed a loophole in the rules that enabled governments to increase protection above bound tariffs by introducing supplementary duties or charges in the guise of surtaxes of various kinds. Any such duties and charges imposed on products for which the tariff level has been bound are now themselves listed and bound in national goods schedules.

Governments may also charge fees to cover the cost of facilities and formalities involved in the importation of goods. Examples are customs user fees or cost of collection of import statistics. However, the charge must not exceed the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. Detailed rules are laid down in Article VIII of the GATT l994. A similar provision in Article V (which requires that governments give freedom of transit for goods and that in traffic transit be covered by the MFN rule) stipulates that traffic in transit should be exempted from charges except charges for transit and the cost of services for transit.

The issue of such fees arises almost in all accession cases. The result is that acceding countries undertake either to eliminate such fees (as was the case with consular fees in Panama) or to bring them into consistency, upon accession, with Article VIII of the GATT 1994.

Balance-of-payments (BOP) restrictions

During the Uruguay Round a large number of developing countries ceased to invoke Article XVIII, which had been used to justify their use of quantitative restrictions. Furthermore, the "Understanding on the Balance-of-Payments Provisions of the GATT 1994" tightens the surveillance of the application of this Article and commits all members to give preference to price-based measures rather than quantitative restrictions in applying BOP restrictions. However, nothing in the Uruguay Round modified the right of members to resort to the BOP provisions of Articles XII (for developed countries) and XVIII:B (for developing countries). Care should be taken that no condition is inserted in the terms of accession which could undermine this right.

Trade-related investment measures (TRIMs)

The Agreement on TRIMs prohibits certain investment measures, including those which are mandatory or enforceable under domestic law, or compliance with which is necessary to obtain an advantage that has the effect of contravening the obligations of the

GATT 1994 with respect to national treatment and the prohibition of quantitative restrictions. Measures specifically prohibited include those requiring the purchase or use by an enterprise of products of domestic origin, including when related to the value or volume of exports by the firm concerned (i.e. "local content" requirements). The other measures specifically prohibited are those restricting a firm's ability to import foreign products as inputs into its production, whether the restriction is related to its exports or its foreign exchange earnings (i.e., "trade balancing" requirements). Thus, the TRIMs Agreement did not bring investment into the multilateral trade rules, as has often been stated (it was the GATS which partially did this), nor did it effectively introduce new trade obligations; the prohibited measures are confined to those which, in any case, contravene the GATT 1994.

Despite the narrow scope of the TRIMs Agreement, some WTO members are seeking commitments from acceding countries in connection with their investment policies in general. They appear to be seeking commitments with respect to other investment requirements which are not specifically prohibited (e.g. export performance requirements not linked to import volumes) and even commitments to grant national treatment to foreign investors. The WTO rules cover only national treatment for goods (not for investment), prohibiting only those investment measures which have the effect of contravening this requirement. Acceding countries have been asked to provide extensive information on their foreign investment laws, far beyond the scope of the TRIMs Agreement. As terms of their accession, most newly acceded countries undertook to ensure full consistency with the TRIMs Agreement and thus were required to eliminate TRIMs upon accession.

Import licensing

The Agreement on Import Licensing Procedures recognizes that import licensing procedures can have acceptable uses – including as a means to collect import statistics or a way of implementing quantitative restrictions in situations where these are permitted under the GATT – but also that their inappropriate use may impede the flow of international trade. The Agreement aims to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of the GATT 1994, that automatic import licensing procedures are not used in such a manner as to restrict trade and that non-automatic import licensing procedures do not act as additional restrictions on imports, over and above those which the licensing system administers, and are no more administratively burdensome than absolutely necessary. The Agreement embodies, *inter alia*, the principle of transparency: in other words, that all information relevant to the administration and functioning of the licensing systems, either automatic or non-automatic, shall be available to any WTO member upon request. In its Memorandum on Foreign Trade Regime, an acceding country has to reply to a very detailed questionnaire on import licensing procedures (Annex 3 to the WT/ACC/1).

State trading enterprises

Under the provisions of the GATT 1994, countries are free to establish and maintain state trading enterprises. However, Article XVII is intended to ensure that trade conducted by state trading enterprises is subject to the same degree of discipline as trade conducted by private firms, and it contains obligations with respect to non-discrimination, commercial

consideration in purchases and sales and securing transparency through detailed notification requirements.

The "Understanding on the Interpretation of Article XVII of GATT l994" provides a working definition of state trading enterprises. The disciplines of Article XVII apply to enterprises which, in the exercise of their exclusive or special rights or privileges, can influence the level or direction of imports or exports through their purchases or sales; thus it is the enjoyment of exclusive or special rights or privileges to enterprises, not government ownership *per se*, which brings enterprises within the scope of this Article.

State trading enterprises engaged in agricultural trade are subject also to the disciplines contained in the Agreement on Agriculture. This Agreement covers measures provided by or through state trading enterprises. WTO members are required to submit notifications indicating their compliance with the commitments of the Agreement on Agriculture.

Acceding countries have not always clearly understood that under Article XVII the criterion is not ownership but rather how and under what conditions the enterprise operates. Thus, privatising an enterprise, transforming it into a joint stock company or having it operate within special funds does not change its position as a state trading enterprise if it still enjoys exclusive or special rights or statutory or constitutional powers through which, with its purchases or sales, it influences the level of imports and exports. State-owned enterprises which do not enjoy special rights and privileges do not fall within the disciplines of Article XVII.

WTO members have, in addition, paid special attention to all kinds of monopolies that acceding countries may have in the areas of production, distribution and/or foreign trade, relating these questions often to state trading but also to government procurement. Detailed questions concerning product coverage, operational policies (in particular pricing) and whether and when a country intends to abolish monopolies will be submitted by WTO members during the accession process. Requests for additional information are being applied particularly to agricultural products. Acceding countries have to demonstrate that mark-ups on state-traded imports of agricultural products do not discriminate against those products, and that they are not circumventing export subsidy commitments. Finally, reflecting concerns expressed by WTO members that the activities of state trading enterprises may not be sufficiently transparent and may not be in conformity with the WTO obligations, acceding countries are being requested to make specific commitments regarding state trading enterprises. These commitments are included in a country's protocol of accession, where it undertakes to apply its laws and regulations in conformity with Article XVII of GATT 1994, the Understanding on that Article, and Article VIII of GATS.

Industrial subsidies

The Agreement on Subsidies and Countervailing Measures, which covers only industrial goods (basically falling under HS Chapters 25–99), contains newly established

multilateral rules and disciplines and associated agreed definitions with regard to the following:

> *Subsidies*: Their definition and classification as prohibited, actionable and non-actionable subsidies; the key concepts of "specificity" of subsidies, "injury" to domestic industry caused by subsidized imports and "serious prejudice" to the interests of other WTO members; and remedies available to offset prohibited and actionable subsidies.
>
> *Countervailing measures*: Specific rules and procedures dealing with initiation and conduct of countervailing investigation; rules regarding calculation of the amount of a subsidy and determination of material injury to a domestic industry; rules and procedures for application of provisional measures, imposition and collection of countervailing duties, and undertakings concerning elimination or limitation of a subsidy or price undertakings; *de minimis* rules for the application of countervailing measures; duration of measures ("sunset rule") and other procedures.

The Agreement contains provisions for special and differential treatment of developing countries in general and also for the least developed and other countries (listed in Annex VII to the Agreement) whose annual per-capita GNP is under $1,000. These special provisions consist of extended time frames for the application of the Agreement, define some new concepts as "export competitiveness" of a developing country and special "*de minimis*" margins for application of countervailing measures against a developing country. The Agreement is also one of the three MTAs which contains specific rules and procedures on subsidies aimed at offering temporary flexibilities to the countries undergoing transformation from a centrally planned economy into a market, free-enterprise economy. In the context of the above provisions for special and differential treatment for developing countries and economies in transition, it is very important for acceding countries to fully know and understand these provisions, and to clearly identify their interests and negotiating strategies in this regard. WTO members would not necessarily agree to an automatic extension of these flexibilities to the newly acceding country. Each such provision would be subject to negotiation and extensive justification, supported by relevant information and data, on the part of an acceding country.

Industrial subsidy programmes and measures of acceding countries generally receive the priority attention of major WTO members in the course of the "multilateral track" of accession negotiations. Their questions on subsidization can be divided into the following categories:

> - Initially, many general questions are posed to collect information on the role and objectives of government policies in the area of subsidies as defined in the Agreement (see its Article 1: "Definition of a Subsidy"). The other aim of initial questions is to identify the existence of any specific subsidies as defined in Article 2 of the Agreement. These questions also include requests to provide to the Working Party the full texts (in one of the official WTO languages) of relevant subsidy legislation as well as information on state

budgets and any government programmes for industry support, including those designed for individual industries and enterprises.

- The second wave of questions is more specific and aims to identify applicable mechanisms for providing subsidies, criteria for eligibility, the existence of special economic or institutional links between the government and enterprises, the relation of subsidies to exports or imports and the influence of subsidies on pricing policies and investment regime. At this stage, an acceding country may be requested to provide a classification of its subsidies into three categories as defined by the Agreement: prohibited, actionable and non-actionable subsidies. The intention is to see whether there are any linkages of subsidies with other aspects of accession negotiations such as price regulation, privatization and competition policy, the existence of state trading enterprises, promotion of exports or import substitution. Another objective is to test an acceding country in terms of its understanding of the Agreement and its obligations. In parallel, questions may be raised about the existence of countervailing legislation and practices or future plans in this regard.

- Finally, WTO members indicate any identified inconsistencies with the Agreement and seek a clear commitment from an acceding country to eliminate those inconsistencies, preferably before its accession to the WTO. In addition, any transitional arrangements and their time frames are also negotiated. WTO members can be expected to insist on minimum transitional arrangements and a specific duration. Their particular focus will be on achieving the elimination of any prohibited subsidies by an acceding country upon its accession to the WTO. However, at this final stage, all remaining issues connected with the terms of accession should be negotiated. Within this package, an acceding country, depending on its priorities and strategies in the area of subsidies, should normally insist on maximum use of the flexibilities offered by the Agreement.

Agricultural commitments[89]

The very complicated and dramatic negotiating history of the Agreement on Agriculture in the Uruguay Round, where a large number of compromises and trade-offs between participants were involved, makes it very difficult for the acceding countries to adapt to the prescribed parameters of this Agreement. For example, with regard to market access commitments, the key concept of tariffication and its modalities are not mentioned in the Agreement. In accession negotiations, the WTO members will insist that tariffication was an instrument used only for the participants of the Uruguay Round, while the newly acceding countries are not entitled to establish tariff equivalents for their non-tariff measures affecting agricultural imports and should eliminate all such measures upon their accession. The base period for calculating agricultural commitments could be another confusing point. A "technical note" by the WTO secretariat (doc. WT/ACC/4 of 18 March 1996), which was

[89] See, in more detail "Terms of WTO Accession" and "WTO Accession Negotiations on Agriculture" below.

designed to clarify the issue of agricultural commitments for newly acceding countries, mentions only the domestic support and export subsidies components of the Agreement and totally omits market access commitments. On the other hand, it proposes different base periods (i.e. the most recent three-year period) than does the Agreement itself for calculating these two types of commitments. The basic conclusion is that the Agreement on Agriculture was negotiated without taking into account the specific situations that may be faced by newly acceding countries, and therefore the latter should be prepared to negotiate their levels of agricultural commitments based rather on their requirements (similar to the negotiations on tariffs and services sectors) than on the exact rules and disciplines contained in the Agreement. For example, they may explore possibilities and rationales for conducting "unilateral tariffication" of non-tariff measures (using modalities for the Uruguay Round participants) and introducing tariff quotas mechanism before entering into negotiations with WTO members. The same applies to base periods for agricultural commitments: that is, acceding countries may propose base periods in accordance with their development needs and particular situations and defend them throughout the negotiations.

In the case of the Agreement on Agriculture, the commitments of WTO members contained in the Concession Schedules of members should provide a point of reference for establishing the obligations of an acceding country. However, it may be expected that major WTO members will generally insist on a maximum level of obligations for an acceding country irrespective of its development status and needs regarding each of three main components of the Agreement, and especially so in the case of an acceding country with current or potential export capacities in agriculture, so as not to allow such a country additional flexibility in improving its competitiveness in producing and exporting agricultural products.

"Contingency protection" agreements

The WTO "contingency protection" Agreements – the Agreement on Safeguards, the Agreement on Implementation of Article VI of the GATT 1994 (anti-dumping) and the Agreement on Subsidies and Countervailing Measures – are not mandatory in the sense that WTO members are not obliged to apply such measures or to adopt relevant national legislation. But if a country decides to apply restrictive measures to deal with injury caused by rapidly increasing subsidized or dumped imports, it will have to abide by all the relevant provisions of these Agreements, which are highly technical, and to enact implementing legislation in conformity with these Agreements. For example, in accession negotiations WTO members are likely to request the existing or draft legislation for review and will seek a commitment from an acceding country to adapt such legislation in every technical detail to the provisions of these three Agreements.

Technical barriers to trade (TBT) and sanitary/phytosanitary measures (SPS)

The respective WTO Agreements on TBT and SPS require that acceding countries revise their relevant national legislation, and in many cases adopt new legislation in those areas. Although these Agreements foresee the possibility of transition periods for developing countries and LDCs, none of the countries which have acceded managed to get a right to use transition periods after accession to develop their standardization and sanitary/phytosanitary

systems. Most acceding countries require extensive technical assistance to enable them to implement their obligations in these areas.

Trade-related aspects of intellectual property rights

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires each WTO member to provide specified minimum standards of intellectual property protection, and to enforce these standards through its domestic legal system. The standards involved incorporate, and in some cases go well beyond, the substantive requirements of the main international agreements on intellectual property: the Berne (copyright) and Paris (patent) Conventions, the Washington Treaty (on integrated circuits) and other WIPO conventions.

Patents must be available for inventions in all fields, including pharmaceuticals. Patents must give protection for at least 20 years and must not discriminate on grounds of place of invention, field of technology, or whether products are imported or locally produced. Under transitional provisions, countries that now exclude some products (notably pharmaceuticals and agricultural products) from patent protection need grant it only from January 2005, but must already accept applications for such protection. Copyright protection must extend to computer programmes, databases, and sound and film recordings. Trademarks must be given seven-year renewable protection and cannot be required to be used in combination with local marks. Misleading or unfair geographical indications (such as wine names traditionally associated with a producing area) are banned. Ten-year protection must be given against the (unauthorized) making, selling or importing of articles incorporating industrial designs. Integrated circuit designs are also protected for at least 10 years, with strict conditions on government use and compulsory licensing, and trade secrets must not be disclosed.

Enforcement procedures are to be effective, fair and equitable and must not create trade barriers or encourage abuse. They must permit review, allow interim measures to prevent goods from being introduced into commerce after customs clearance, and provide for damages, seizure and disposal of goods. In this context, major WTO members pay priority attention to the enforcement of border measures against counterfeit goods, as provided in the Agreement. Counterfeiting or copyright piracy on a commercial scale is to be punished by deterrent imprisonment or fines.

For developed countries, the whole TRIPS Agreement is in force from January 1996. For developing countries and countries in transition to a market economy, most TRIPS provisions apply only from January 2000. Least-developed countries have until January 2006, with a provision for possible extension. However, one aspect of the TRIPS Agreement applies to all WTO members from January 1996: whatever intellectual property protection they provide must be given on a basis of MFN and national treatment. This means, for example, that even if a developing country grants patents for only 10 years, it must grant that 10-year protection to all foreign as well as domestic patent holders.

TRIPS is an area in the accession process regarding which there have been a large number of requests for information and explanations as well as very detailed questions concerning various areas covered by the TRIPS Agreement. The enquiries have concerned progress in the promulgation of the necessary legislation, its scope and applicability and, in particular, conformity with the TRIPS Agreement. Acceding countries have likewise been asked to describe their system of intellectual property rights enforcement, including civil and administrative procedures and remedies.[90]

The most important question with regard to compliance with the TRIPS Agreement, however, is not the due promulgation of each relevant piece of law and juridical procedures but the clear pressure from the major WTO members to commit the acceding countries to comply with all obligations of the Agreement upon the date of their accession, regardless of the transition periods stipulated by the Agreement. All countries except Ecuador have committed themselves to full compliance with the Agreement upon the date of accession.

In addition to the requirements to fully apply all the provisions of the TRIPS Agreement, WTO members require acceding countries to provide evidence and justification of enforcement of intellectual property protection. Concerns have also focused on the following issues: application of the principle of national treatment in all areas of TRIPS and lack of transparency in the application and acceptance procedures, especially in the fields of patents and copyrights, and differential procedures and higher fees for foreign patent seekers.

WTO accession and regional integration

The trade relations of an acceding country with its major trading partners will also be scrutinized in detail, especially if such relations are conducted on the basis of preferential trade agreements such as free trade areas or customs unions. In this context, an acceding country should be able to explain the relation of such agreements (e.g. with the European Union or with countries in the region) with the relevant provisions of the GATT 1994 (Article XXIV) and the GATS (Article V). In such cases, it can be expected that countries outside the existing regional or preferential agreements would press hard for concessions from an acceding country so as to reduce tariff margins and other preferential treatment. If regional agreements are under negotiation, these should be fully coordinated with the WTO accession process. In particular, if regional or preferential trade options are available, consideration could be given to the sequencing of the WTO accession negotiations and respective regional initiatives depending on the relevant interests and the level of trade with countries in the region, as it might be preferable to conclude the regional negotiations before embarking on WTO accession. An acceding country should be prepared to submit texts of regional trade agreements in one of the three official languages of the WTO.

On the other hand, some acceding countries would give priority to WTO accession, considering that by becoming a full member of the system, they can strengthen their negotiating position vis-à-vis the potential regional partner, and gauge more accurately the additional benefits that would be derived from the regional or bilateral agreement. At issue

[90] The WTO secretariat prepared a "standard format of questionnaires" in this regard. See WTO/ACC/9, 15 November 1999.

here may be the relative importance of the market of the acceding countries to the regional partner.

Trade with non-WTO members

Some acceding countries find themselves in the situation where their major MFN trading partners are non-WTO members, and thus, the MFN tariff and other concessions will be enjoyed primarily by countries which did not participate in the accession negotiations. Some WTO members have dealt with this situation by seeking initial negotiating rights on a wide range of products with the acceding country. On the other hand, the acceding country will be in a position, when it becomes a WTO member, to seek unilateral concessions from the major non-WTO trading partners when they in turn seek accession to the WTO.

Relations with international financial institutions

The majority of the countries currently in the process of accession to the WTO are implementing macroeconomic or structural adjustment programmes of the IMF and World Bank. This has complicated their position in the accession negotiations. First, the conditions imposed on trade regimes by the international financial institutions greatly exceed those initiated in the WTO obligations – for example, with respect to tariff rates, where the countries concerned have been obliged to reduce tariff rates drastically on a unilateral basis, and with respect to subsidies, where structural adjustment programmes provide for the elimination of certain generally applicable subsidies which are defined as "non-specific" under the WTO and hence "non-actionable". The Agreement between the IMF and the WTO, which was approved by the WTO General Council on 13 November 1996, provides a broad framework for cooperation between these two institutions. In particular, it stipulates (paragraph 11) that the IMF will provide the WTO, for the confidential use of its secretariat, with staff reports on Fund members seeking accession to the WTO, subject to the consent of the members concerned.[91]

With regard to the structural adjustment programmes, it should be noted that (i) they are temporary in nature and (ii) they involve agreements between the government and the interested financial institutions involved. On the other hand, WTO obligations are permanent, involving contractual rights and obligations with 144 WTO member countries (not with the WTO as an organization), and modifications to them can result in trade compensations/sanctions on the part of trading partners.

WTO member countries have been tempted to seek bindings from the acceding countries at the tariff rates and subsidy levels imposed by the international financial institutions. It is important to consider that these rates may not be viable in the sense of enabling domestic industries in the acceding countries to survive.

[91] See, WTO doc. WT/GC/W/43, p. 5.

"Grandfather" clauses

The Protocol of Provisional Application of the GATT 1947 permitted countries to maintain mandatory legislation inconsistent with their GATT obligations prior to their accession. This provision has been abolished a result of the Uruguay Round, as all measures covered by such "grandfather clauses" have been brought into conformity with WTO obligations, with one exception.[92] Acceding countries cannot expect to benefit from such grandfather clauses other than those allowing a transition period for phasing out inconsistent measures, which will be subject to negotiations.

Acceding countries in the "Doha Development Agenda"

Paragraph 48 of the Doha Ministerial Declaration (DMD) provides that new negotiations "shall be open to: (i) all Members of the WTO; and (ii) States and separate customs territories currently in the process of accession and those that inform Members, at a regular meeting of the General Council, of their intention to negotiate the terms of their membership and for whom an accession working party is established". The only difference in the terms of participation of members and non-members is that the "decisions on the outcomes of the negotiations shall be taken only by WTO Members"[93].

This modality of participation of acceding countries in the multilateral trade negotiations is almost identical to the similar provision of the Punta del Este Ministerial Declaration which launched the Uruguay Round in 1986[94]. There is also no formal record that any need of further clarification of this provision arose during the Uruguay Round.

In the course of the Uruguay Round, some of the countries completed their accession under Article XXXIII of GATT (e.g. Venezuela, Bolivia, Honduras, Costa Rica, Guatemala, Paraguay, El Salvador and Slovenia), while others (e.g. Qatar, United Arab Emirates, Bahrain, etc.) acceded through "succession" under Article XXVI of GATT as these countries applied the GATT on a *de facto* basis; both categories became original members of the WTO. However, two participating acceding countries (China and Algeria), although signatories to the Marrakesh Final Act (1994), could not conclude their accession negotiations before the end of the Round. In practical terms, the participation of GATT acceding countries in the Uruguay Round was not very active. No concrete evidence could be found of any acceding countries submitting requests (on tariffs and services) to their trading partners. However, for domestic political purposes, some GATT acceding countries (particularly acceding countries from Latin America) used their participation in the Round to diffuse the strictly unilateral and burdensome nature of the accession process. In fact, however, all original members "acceded" to the new WTO by accepting the single undertaking, and submitting their schedules on goods and services.

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[92] The United States Jones Act, covered by paragraph 3 of the introduction to the GATT 1994.

[93] Doc. WT/MIN(01)/DEC/1, 20 November 2001.

[94] GATT doc. MIN.DEC, 20 September 1986, Part I, Section F. Participation.

Interests of acceding countries

The question thus arises as to how the acceding countries should make use of paragraph 48 of DMD. The main concerns of the acceding countries would seem to be: (a) that their terms of accession, notably tariff bindings and commitments on services and agricultural subsidies contained in their schedules should constitute their contribution to the final package of the post-Doha negotiations, i.e. that they should not have to "pay twice", (b) that they should be permitted to submit proposals, individually or jointly with like-minded WTO members, in the various negotiating bodies, including those related to changes in the rules, as well as requests for liberalization of barriers to their exports of trade in goods and services, and (c) that their terms of accession should be balanced with regard to rights and obligations in comparison to those of WTO members, and reflect the letter and spirit of DMD, particularly as regards S&D treatment which, as was clearly recognized by DMD, is "an integral part of the WTO Agreements".

In setting up their strategy of participation in the post-Doha negotiations, the acceding countries should also be aware of the existing WTO procedures and decisions which may be, directly or indirectly, relevant in this case.

Relevant WTO procedures and decisions

At present, there are 28 acceding countries which qualify for participation in the new negotiations, under paragraph 48. All currently have WTO observer status which, however, seems to restrict their participation much more than that foreseen in paragraph 48. The existing rules of procedure in the WTO, particularly the "Guidelines for Observer Status for Governments in the WTO"[95] in their paragraph 7 state that "during its period of observership, an observer government shall provide the Members of the WTO with any additional information it considers relevant concerning developments in its economic and trade policies.

At the request of any Member or the observer government itself, any matter contained in such information may be brought to the attention of the General Council after governments have been allowed sufficient time to examine the information." Paragraph 10 provides that "representatives of governments accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to make proposals, unless a government is specifically invited to do so, nor to participate in decision-making."

Furthermore, certain guidance is given by the procedures adopted by the General Council in May 2000 for participation of acceding countries in the mandated negotiations on agriculture, services and other elements of the built-in agenda (see, the box below).

[95] Doc. PC/IPL/9, 25 November 1994, Annex 2.

Box 7

Participation of Acceding Countries in the Mandated Negotiations on Agriculture, on Services and on other Relevant Elements of the Built-In Agenda

Procedures adopted by the General Council on 8 May 2000 (doc. WT/L/355, 15 May 2000)

"The mandated negotiations on agriculture, on services and on other relevant elements of the built-in agenda will be open to States and separate customs territories for whom an accession working party is established. Any decisions in the context of these negotiations will be taken only by WTO Members.

Participation in negotiations relating to the amendment or application of the provisions of WTO agreements, or the negotiation of new provisions, will be open only to WTO Members.

It is understood that participation of acceding States and separate customs territories in these negotiations shall not create any rights for such non-WTO Members."

The Chairman of the General Council noted for the record that the reference in the third paragraph of the draft text to **"any rights" included the notion of negotiating rights** (see doc. WT/GC/M/55, paragraph 11).

At the first meeting of the Trade Negotiations Committee (TNC) on 1 February 2002, the principles and practices of TNC's activities were endorsed[96]. However, these did not address directly issues of participation of acceding countries in the negotiations. Nevertheless, some indirect guidance could be found in the following provisions:

- that the TNC should follow the General Council's Rules of Procedure mutatis mutandis, i.e. with only such adjustments as may be found necessary;

- that the TNC has been established by Ministers under the authority of the General Council with the mandate of supervising the overall conduct of the negotiations;

- that the General Council is in charge of the WTO's work programme as a whole, including that set out in the Doha Declaration.

Against this background, acceding countries could take the position that the Declaration emerging from the Ministerial Conference supersedes prior decisions taken by subordinate bodies. It may be emphasized that today the acceding countries, in addition to the

[96] Doc. TN/C/1, 4 February 2002.

status of “observers” in regular WTO activities, enjoy a qualitatively higher status in the multilateral negotiations equivalent to members in every respect, except the only aspect which has been expressly stated by Ministers in that the acceding countries cannot take part in decisions on the outcomes of the negotiations, i.e. that **they cannot block the final consensus**.

Other relevant provisions of the Doha Ministerial Declaration

The full respect of paragraph 48 of the DMD would seem a matter of vital interest for the acceding countries to defend their interests and achieve more balanced terms of accession. For example, some provisions of the DMD may be used to this effect, such as:

- **Paragraph 9** which notes the extensive **market-access commitments already** made by the countries which have acceded to the WTO. This may be interpreted as a recognition that these countries should not be requested to make further market access commitments in the post-Doha negotiations. It also implies that the countries acceding during the Round would not have to make the “double payment” referred to below.

- Provisions addressing special concerns of developing countries, including implementation issues and special and differential treatment (S&D): paragraph 12 and Decision on Implementation-Related Issues and Concerns (in document WT/MIN(01)/17), paragraph 14 (agriculture), paragraph 15 (services: Articles IV and XIX of GATS), paragraph 16 (market access for non-agricultural products), paragraph 42 (LDCs concerns, in particular commitment to facilitate and accelerate negotiations with acceding LDCs), paragraph 44 (S&D: reaffirmation that provisions for special and differential treatment are an integral part of the WTO Agreements; agreement that all special and differential treatment provisions will be reviewed with a view to strengthening them and making them more precise, effective and operational).

- **Paragraph 50:** "The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions".

The above provisions of the Doha Ministerial Declaration may provide additional argumentation to offset excessive demands and "WTO-plus" commitments and obligations which are common in all accession cases and usually do not take into account development concerns of acceding countries and existing S&D treatment provisions which themselves are insufficient, as was recognized in the Declaration.

The interests of acceding countries to participate as actively as possible in the multilateral negotiations is dictated by the characteristics of non-members:

Energy exporters: non-member countries account for almost fifty percent of world exports of petroleum and a greater percentage of reserves of petroleum and natural gas. Member countries have introduced energy issues into the accession negotiations of these countries aimed at restricting the scope of energy policies, and in a manner that risks setting precedents for the multilateral negotiations for such provisions could find their way into the WTO rules, e.g. on subsidies and anti-dumping, export taxes etc;

LDCs: acceding LDCs should benefit from the provisions of paragraph 42 to facilitate and accelerate their accession negotiations, in particularly taking into account the commitments at LDC III which were more specific with respect to LDC accession;

Agriculture: many acceding countries have large segments of their populations dependent on the agriculture sector. In the agriculture negotiations, three proposals have been made which aim at alleviating the terms that were imposed in the accession negotiations to take better account of their specific agricultural situation, (i) by Jordan, (ii) by Croatia, and (ii) by a group of countries with economies in transition. If the currently acceding countries participate effectively in the multilateral negotiations, they might be able to pre-empt such situations.

Possible approaches to participation by acceding countries

Assuming that acceding countries will have access to all meetings of negotiating bodies (both formal and informal), possible approaches to their participation may include the following elements:

(a) One approach could be to implement an active strategy on negotiating issues of interest to acceding countries, i.e. to make statements and submit proposals, including market access requests, without expressing any doubt as to whether acceding countries have the right to do so. Acceding countries could make statements and submit proposals before the General Council, TNC and other negotiating bodies. Perhaps, there may be three objectives for this course of action: (i) acceding countries could bring attention to what is happening in their accession negotiations in contrast to the negotiations between members. For example, this may refer to excessive market access requests in goods and services placed on acceding countries; "WTO-plus" commitments; disrespect for S&D treatment, etc.; (ii) acceding countries could associate themselves with proposals put forward by members with like-minded approaches and positions on individual negotiating issues, particularly in such areas as agriculture, services and WTO rules and (iii) acceding countries would justify their rights to adapt to the emerging WTO rules in case those rules involve new provisions in favour of developing countries and LDCs (new S&D treatment and possible other flexible provisions).

(b) An alternative approach could entail addressing the TNC to clarify the issue of participation by acceding countries. However, there is the risk that such clarification, would replicate the decision of the General Council (of 8 May 2000) above regarding participation of acceding countries in negotiations on agriculture and services, and thus, produce a restrictive interpretation of paragraph 48 limiting the freedom of action for the acceding countries, (this would seem to be “asking for trouble”). However, recourse to the General

Council for an interpretation of paragraph 48 might become necessary, in the event that some aspects of the acceding countries' participation in the negotiations were to be challenged at some future date.

(c) However, the most important goal of acceding countries' participation in the post-Doha negotiations would seem to be to avoid "double payment" in market access commitments on goods and services, as well as additional reduction of domestic support in agriculture (if such are agreed in the multilateral negotiations): **first payment** – as "entry fee" for accession; **second payment** – as a WTO member's contribution to the results of post-Doha negotiations (if accession negotiations would be completed). This would require: (i) certain synchronization of accession negotiations with the stages of the post-Doha negotiations; (ii) recognition by the WTO members involved in accession negotiations that market access and agricultural commitments undertaken by an acceding country would be counted as its contribution to the outcomes of the "Doha Development Agenda", i.e. acceding countries should be prepared to raise this matter with members of their working parties on accession, as well as in bilateral negotiations with WTO members.

Action at the national level

In order to achieve balanced terms of accession consistent with its trade, financial and development needs and to benefit to the fullest extent from the special provisions mentioned above, acceding countries should elaborate their major negotiating objectives on the basis of a detailed analysis of their basic economic strategies and policies and their conformity with the WTO obligations. This is an important prerequisite for the start of accession negotiations. It should also include consideration of the role of foreign trade and major trading partners in the economy and their prospective contribution to development; identification of the internationally competitive sectors of the economy that could increase the country's export potential; and attention to the need to protect socially important sectors and "infant" industries of the acceding country. Political consensus should be built within an acceding country on all issues requiring substantive adaptation of policies and legislation to conform to the WTO requirements.

An acceding country should make full use of its observer status in the WTO in order to better prepare for its accession negotiations. In particular, attending the meetings of Working Parties of other acceding countries will offer first-hand experience of the complexities of such negotiations. The country should also attach priority attention to informal methods of work with the relevant WTO members, which is a customary practice of the WTO.

The accession negotiations require the establishment of structures responsible for their progress. Major efforts should be undertaken to establish an effective governmental machinery to support the accession negotiations, one having an adequate authority to coordinate this process among various governmental agencies, as well as with the legislature and trading enterprises. It is also important to be able to meet purely technical and logistical problems such as the need to process a substantial amount of documentation, including translating relevant legislation into the official WTO languages.

The multiplicity of institutions involved in trade policy makes coordination an important issue. Coordination is necessary not only among governmental agencies but also between them and private-sector stakeholders. In response to this need, virtually all acceding countries have established some form of coordination mechanism for dealing with WTO matters.

The active involvement of the private sector in accession matters can be crucial for a number of reasons. The articulation of negotiating interests can benefit from significant private sector inputs, particularly in identification of the sensitive sectors of the economy. Furthermore, efforts to assert WTO rights and comply with obligations hinge on the activities of the private sector. However, the capacity of the private sector in many acceding countries to provide this support remains low.

In adopting the necessary laws, parliaments play a very important role in the process of negotiation. Collaboration with the national parliaments gives legitimacy to the actions of governments aimed at achieving membership in the WTO and underscores the internal transparency of the negotiation process.

Accession negotiations and eventual WTO membership will require a considerable strengthening of the national institutional infrastructure in the acceding countries. Many acceding countries have found only after applying for accession that they were poorly equipped in terms of human and financial resources to meet this challenge. A major effort is required on their part with respect to institution-building, upgrading of human resources and improved forms of coordination and management. Acceding countries also need the comprehensive and impartial support of the international community in this endeavour.

UNCTAD technical assistance to acceding countries

UNCTAD has multidisciplinary expertise in the area of trade negotiations, with extensive experience in providing technical assistance to developing countries, including LDCs and economies in transition. At UNCTAD IX (held in Midrand, South Africa, in May 1996) UNCTAD was given a mandate to facilitate the integration of developing countries, particularly LDCs, into the international trading system, including assistance to countries in the process of accession to the WTO.[97] At UNCTAD X in Bangkok in 2000, UNCTAD's intergovernmental mandate on WTO accessions was reconfirmed and expanded. Since then, UNCTAD has been providing technical assistance to many acceding countries, including among others Algeria, Azerbaijan, Belarus, Bhutan, China, Ethiopia, Kazakhstan, the Lao PDR, Nepal, the Russian Federation, Samoa, Sudan, the former Yugoslav Republic of Macedonia, Uzbekistan, Viet Nam, Yemen and Yugoslavia as an executing or co-operating agency in collaboration with UNDP and other donors.

[97] UNCTAD, "A Partnership for Growth and Development", TD/348/Rev.1, 10 May 1996, , para.91.

With regard to UNCTAD's relationship with the WTO, the note by the WTO secretariat on the WTO accession process[98] confirmed that UNCTAD has extensive experience in providing technical assistance in connection with WTO accession and that the WTO's cooperation with UNCTAD has been particularly close and complementary.

UNCTAD's technical assistance aims to promote trade as an instrument for development and strengthen the capacity of developing countries to meet the challenges of an evolving trading environment. Following are the major objectives of technical assistance in connection with WTO accession and typical activities in this regard:

Objectives

- Assisting government officials in elaborating strategies and tactics as well as identifying scenarios and policy options for accession to the WTO;

- Strengthening knowledge of rules and disciplines of the multilateral trading system;

- Providing advice in trade policy formulation, particularly with regard to WTO accession and to the trade policies and practices of main trading partners; and

- Improving technical and information capacities of the government and thus its ability to conduct multilateral trade negotiations on both goods and services.

Activities

Preparatory stage

- Identification of the benefits of WTO membership in the areas of interest to an acceding country, including sectoral analyses (impact studies) focusing on the implications of specific rights and obligations of the WTO Agreements, and evaluation of scenarios and policy options for WTO accession

Multilateral track

- Seminars or workshops to provide general information on WTO rules and disciplines and WTO accession requirements;

- Assistance in drawing up a Memorandum of the Foreign Trade Regime and in preparing answers to the questions submitted by WTO members based on the Memorandum;

- Support of preparations for WTO Accession Working Party meetings, including simulation meetings and policy advice on WTO accession;

[98] WTO, WT/ACC/7, 10 March 1999, pp.31.

- Advice on institutional and organizational matters for the coordination of the WTO accession process within the Government and between the Government and the private sector or other economic operators;

- Identification of amendments to or enactment of trade-related legislation and regulations that may be required to bring the legislation and regulations into conformity with the rules and obligations of the WTO Agreements;

- Study tours to Geneva for high-level government officials to increase their knowledge and understanding of the multilateral trading system and the implications of WTO accession for trade and development, providing an opportunity to meet with the UNCTAD and WTO secretariats, as well as with the WIPO secretariat and selected missions in Geneva, to discuss issues relating to WTO accession;

- In-depth training at the UNCTAD Secretariat of government officials at working level on specific issues relating to WTO accession, including participation in Working Parties for accession to the WTO of other countries; and

- Expertise and advice on strategic and tactical issues relating to the accession process, and dissemination of information and analyses regarding the experiences of countries which have acceded to the WTO, the trade policies of main trading partners and the new round of multilateral trade negotiations.

Bilateral track in goods

- Assistance in preparing initial and revised market access offers on goods; and

- Support in preparing analytical and background information necessary for market access negotiations (sectoral economic analyses; compilation of trade statistics in specific formats, etc.).

Bilateral track in services

- Assistance in preparing initial and revised market access offers on services; and

- Support in preparing analysis and background studies of specific services sectors of interest to an acceding country (compilation of services-related national legislation, etc.).

Other

- Procurement of equipment and databases necessary for conducting accession negotiations and recruitment of translators to prepare national texts of the WTO Agreements and other documents necessary for WTO accession; and

- Other studies as required by acceding countries.

WTO accession procedure

It is possible for non-WTO members to obtain observer status in the WTO in order to become acquainted with WTO activities with a view to seeking accession within five years of observership.[99]

For accession, an applicant submits a communication to the Director-General of the WTO indicating its desire to accede to the WTO under Article XII of the WTO Agreement. After circulation of the communication to all WTO members, the General Council considers the application and the establishment of a Working Party of the concerned applicant (WP). The establishment of the WP and the terms of reference are agreed by consensus of WTO members.[100] Membership in a WP is open to all interested members. Normally, from 20 to 40 countries participate in a WP, depending on the interest of members.[101] The Chairperson of the WP will be appointed following consultations conducted by the Chairperson of the General Council and involving the applicant and members of the WP.

The applicant is required to submit its Memorandum on the Foreign Trade Regime ("Memorandum") describing (i) its economy and economic policies in general, including trade in goods and services; (ii) its legislative and judicial systems and its governmental organization affecting foreign trade; (iii) its policies and regimes governing trade in goods and services and trade-related intellectual property. The applicant must also provide (i) trade and economic statistics; (ii) a list of laws; (iii) information on import licensing procedures, implementation and administration of the Customs Valuation Agreement, and technical barriers to trade and state trading; and (iv) services sectoral classification list and so on.

In addition to the Memorandum, an applicant should submit (i) information on domestic support and export subsidies in agriculture, describing types and amounts of domestic support and export subsidies, and (ii) information on policy measures affecting trade in services, with descriptions of measures and relevant laws and regulation of horizontal measures and specific sectors according to modes of supply.[102] To facilitate the preparation of the information, the WTO secretariat has prepared technical notes on *Domestic Support and*

[99] WTO, Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, WT/L/161, 25 July 1996.

[100] In general, the terms of reference of Working Parties are "to examine the application for accession to the WTO under Article 12 and to submit to the General Council/Ministerial Conference recommendations which may include a draft Protocol of Accession".

[101] In the case of the WPs of China and the Russian Federation, more than 50 members participated.

[102] In many accession cases, this information may be included in the Memorandum on the Foreign Trade Regime.

Export Subsidies in Agriculture,[103] *Policy Measures Affecting Trade in Services,*[104] *Check list of illustrative SPS and TBT issues,*[105] and *Implementation of TRIPS.*[106]

The applicant is also expected to submit to the WTO secretariat texts of the relevant laws and regulations. The information should be submitted in one of the official WTO languages.

Following the circulation of the Memorandum, a number of written questions are submitted with a view to clarifying the details of the applicant's trade regime and legislation. The applicant is expected to provide answers in writing to those questions. The WTO secretariat consolidates the questions and answers and distributes the resulting document to members.

The initial stages of WP meetings typically involve further questions and clarifications regarding the trade regime and legislation as well as compatibility with WTO Agreements, and the applicant may be requested to provide justifications for the presumed WTO-inconsistent measures. Normally this fact-finding stage in the WP meetings involves several rounds of questions and answers.

When the examination of the foreign trade regime is sufficiently advanced, bilateral market access negotiations on goods and services can be initiated.[107] It should be noted that the examination in the WP and the negotiating phase can overlap and proceed in tandem.

Further WPs can be convened depending on the progress of the bilateral negotiations and the progress in preparing domestic legislation. After completion of the examination of the trade regime, discussion on the terms of accession can be started and elements to be included in the report of the WP can be prepared.

Following the conclusion of the bilateral negotiations with the signature between each negotiating member and the applicant, the Schedule of Concessions and Commitments to the GATT 1994 and the Schedule of Specific Commitments to the GATS are consolidated and are then reviewed multilaterally in the WP and annexed to the draft Protocol of Accession as its integral part.

A summary of the discussions and commitments in the WP is reflected in the Report of the WP to the General Council[108] together with a draft Decision and Protocol of Accession.

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[103] WTO, Information to be Provided on Domestic Support and Export Subsidies in Agriculture, WT/ACC/4, 18 March 1996.

[104] WTO, Information to be Provided on Policy Measures Affecting Trade in Services, WT/ACC/5, 31 October 1996.

[105] WTO, Check list of Illustrative SPS and TBT Issues for Consideration in Accessions, WT/ACC/8, 15 November 1999.

[106] WTO, Implementation of the WTO Agreement on TRIPSTRIPS, WT/ACC/9, 15 November 1999.

[107] Recently, applicants were requested to submit initial offers on goods and services even at the first WP or soon thereafter.

Usually, the Protocol of Accession contains general terms of accession and the Report of the WP contains specific accession commitments which are incorporated into the Protocol of Accession by reference.

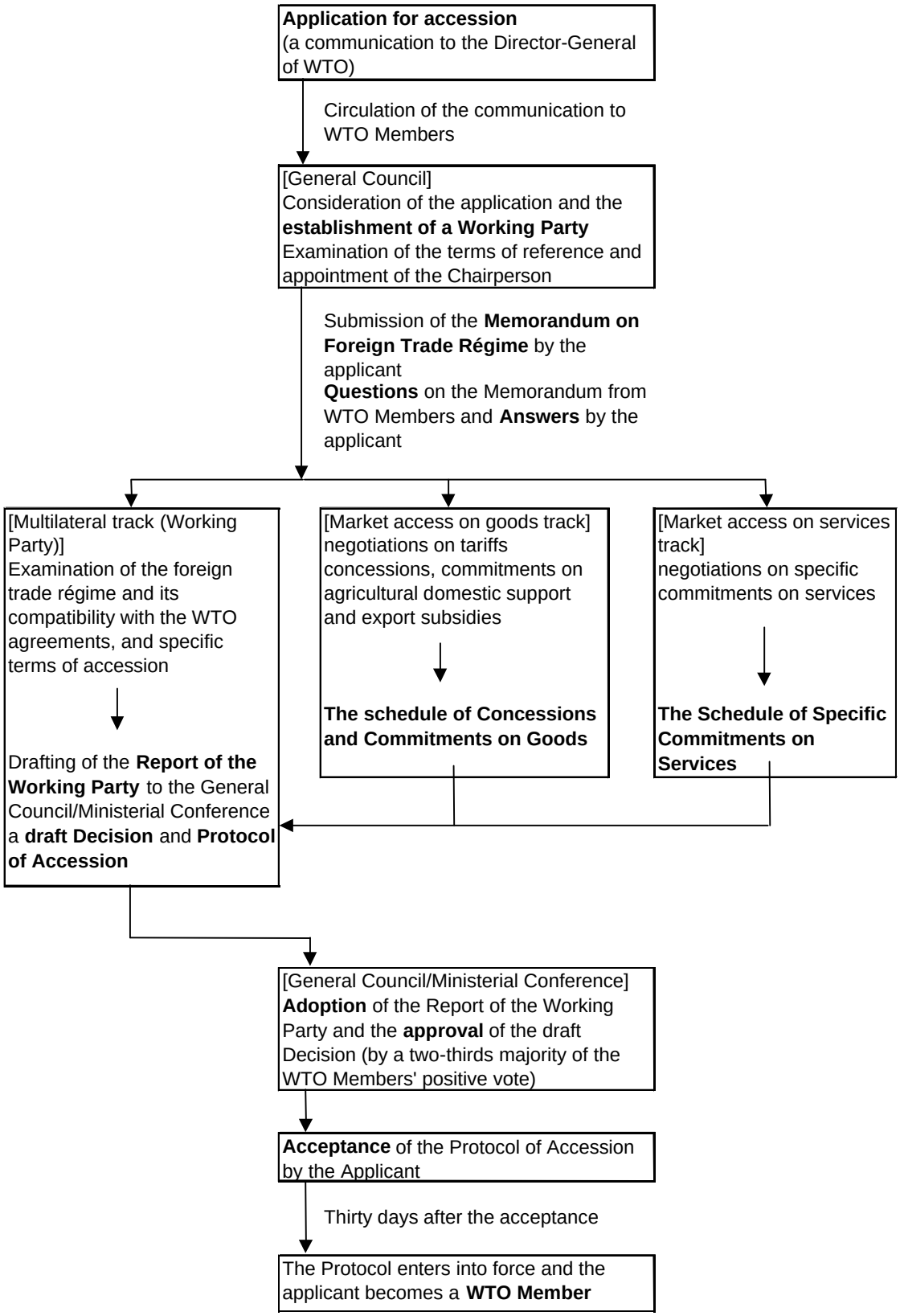
Once the WP has completed its mandate, the WP submits its Report, together with the draft Decision (on the accession of the applicant) and the Protocol of Accession, to the General Council. After examination of those documents, the General Council adopts the Report of the WP and approves the draft Decision by a two-thirds majority of the WTO members' positive vote.[109] The Protocol of Accession enters into force 30 days after acceptance[110] by the applicant, either by signature or by deposit of the Instrument of Ratification.

[108] According to Article XII:2 of the WTO Agreement, decisions on the accession shall be taken by the Ministerial Conference. However, Article IV:2 of the said Agreement delegates the authority to the General Council in the intervals between meetings of the Ministerial Conference, which is expected to be convened at least once every two years.

[109] In approval of all accessions in WTO so far, consensus has been the rule, and voting has not been practiced.

[110] Normally, the date of entering into force of the Protocol is specified in the Protocol of each acceding country as the "thirtieth day following the day of its acceptance".

Outline of WTO accession process



Terms of WTO accession

Jolita Butkeviciene,* Michiko Hayashi,* Victor Ognivtsev,* and Tokio Yamaoka**

As of 1 January 2002, 28 countries[111] were in the process of accession;[112] nine of these are least developed countries (LDCs): Bhutan, Cambodia, Cape Verde, the Lao People's Democratic Republic, Nepal, Samoa, Sudan, Vanuatu and Yemen.

Since the entry into force of the World Trade Organization (WTO), 15 countries (as of 1 January 2002) Kyrgyzstan have acceded to the WTO under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (referred to as "the WTO Agreement"). These countries include Albania, Bulgaria, Ecuador, Estonia, China, Chinese Taipei,[113] Croatia, Georgia, Jordan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Oman and Panama The terms of their accession clearly show that they have accepted a significantly higher level of commitments and obligations than the original WTO members of comparable levels of development and were largely unable to benefit from the special and differential (S&D) treatment provided under the WTO Agreements. Georgia, Kyrgyzstan and Mongolia seem to have accepted particularly stringent commitments. Although the per-capita income of these countries is comparable to those of the LDCs,[114] the levels of their commitments on market access and obligations are equivalent to those by developed countries or, in some respects, even higher.

Article XII:1 of the WTO Agreement states that "any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations …..may accede to this Agreement, on terms to be agreed between it and the WTO". Article XII does not, however, specify the levels of commitments expected from acceding countries or the scope and extent of demands that can be placed on acceding countries. Also, country status such as developing country or LDC is not automatically granted to acceding countries even if they clearly fall into one of these categories. This ambiguity places the whole accession process in a strictly negotiating rather than rule-compliance context. Acceding countries are put in a situation where they have to negotiate every issue relevant to accession, and they are

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111 In addition, the Islamic Republic of Iran applied for accession in September 1996 (WTO, WT/ACC/IRN/1 of 26 September 1996). The WTO General Council considered this application several times in 2001, but it was not possible to reach consensus on this matter among WTO members. In October 2001, the Syrian Arab Republic applied for accession (WTO, WT/ACC/SYR/1 of 30 October 2001). In December 2001, the Libyan Arab Jamahiriya applied for accession (WTO, WT/ACC/LYB/1 of 10 December 2001).

112 In this paper, the number of acceding countries refers to the number of countries whose accession Working Parties have been established.

113 Referred to as Taiwan Province of China in United Nations contexts.

114 For example, the GNP per capita is US$390 for Mongolia, US$480 for Kyrgyzstan and US$860 for Georgia. Source: World Bank Atlas, 2000.

pressed to accept higher commitments. In fact, acceded countries have had to accept commitments far beyond those accepted by the original WTO members, including (i) non-application of the rights under WTO Agreements available to WTO members such as transition periods, and tariffication and special safeguards for agricultural products (this could be defined as "WTO-minus"); (ii) areas not covered by WTO Agreements such as commitments on privatization, investment regime and bindings of export tariffs (defined as "WTO-plus"); and (iii) a higher level of concessions and commitments on goods and services than those accepted by participants in the Uruguay Round (UR), such as 100 per cent bindings of industrial tariffs, lower tariff concessions, wider coverage of specific commitments on services, and participation in the "Plurilateral Agreements".

This paper discusses the terms of accession of newly acceding countries, in particular those of Bulgaria, Croatia, Ecuador, Estonia, Georgia, Jordan, Kyrgyzstan, Latvia, Mongolia and Panama, with respect to the three aspects: (i) WTO-minus; (ii) WTO-plus; and (iii) levels of commitments.

1. WTO-minus

Provisions on S&D treatment in the WTO Agreements take into consideration the specific situation of developing countries and/or LDCs as well as countries with economies in transition. These provisions aim to ensure that the multilateral obligations are consistent with the development, financial and trade needs of such countries. For example, for developing countries, the Agreements on Sanitary and Phytosanitary Measures (SPS) and Import Licensing provide for a two-year transition period, and the Agreements on Customs Valuation, Trade-Related Investment Measures (TRIMs) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) provide for a five-year period. The S&D provisions are of particular importance to acceding countries as these countries are mostly developing countries and/or LDCs, and countries with economies in transition. So far, accession negotiations have, however, indicated that it is extremely difficult for acceding countries to benefit from the S&D provisions which had been granted to eligible original WTO members. Among the acceded countries analyzed in this paper, Ecuador obtained a few transition periods while Jordan, Kyrgyzstan, Mongolia and Panama were allowed to have only one transition period (on the elimination of prohibited industrial subsidies). Bulgaria, Estonia, Georgia and Latvia have not been accorded any transition periods. Besides transition periods, the above acceded countries were not allowed to use the "tariffication method" for agricultural tariffs, and only two of them could obtain the right to use special safeguards provided for in the Agreement on Agriculture. This resistance to including S&D provisions in the terms of accession is in sharp contrast with the thrust of the Doha Ministerial Declaration and the Ministerial Decision on Implementation-Related Issues and Concerns. The latter sets out a work programme to consider ways of making S&D provisions more effective and incorporating them into "the architecture of WTO rules".[115]

[115] See, WTO doc. WT/MIN(01)/DEC/1, 20 November 2001, paragraph 44, and WTO doc. WT/MIN(01)/17, 20 November 2001, paragraph 12.1(iii).

Details of the commitments on goods made by acceded countries are shown in table 1 below.

Customs valuation

The Agreement on Implementation of Article VII of the GATT 1994, which deals with customs valuation, provides several S&D provisions, including a five-year transition period for the implementation of the Agreement, a further three-year delay in the application of the computed method and reservation of the right of the importer to reverse the application order of Articles 5 and 6. Even retention of minimum value may be allowed on terms agreed between the country and the members. However, only Ecuador may use S&D provisions upon notification, except on reservation concerning minimum value.[116]

Technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS)

The Agreement on SPS provides for a two-year transition period for developing countries; however, none of the acceded countries was allowed to use the transition period in this area. Agreements on TBT and SPS provide that the Committee of each Agreement is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under each Agreement; however, Mongolia committed to minimizing to the extent possible recourse to the derogations from the Agreement on TBT and SPS. This implies that it would be difficult for Mongolia to raise time-limited exceptions under those Articles in the future.[117]

Agreement on import licensing

The Agreement on Import Licensing provides that developing countries may, upon notification to the Committee, delay by no more than two years the application of procedures negotiating (i) submission of applications for licenses prior to the customs clearance of the goods, and (ii) approval of licenses within a maximum of 10 working days; however, none of the acceded countries was granted recourse to the transition period.

Subsidies and countervailing measures (industrial subsidies)

The Agreement on Subsidies and Countervailing Measures prohibits subsidies contingent (i) on export performance (i.e. export subsidies), and (ii) on use of domestic products over imported products. The S&D treatment provide that prohibition of export subsidies shall not apply to countries listed in Annex VII of the Agreement (i.e. LDCs and countries whose annual per-capita GNP is less than US$1,000) and to other developing countries for an eight-year transition period. Prohibition of subsidies contingent on use of domestic products shall not apply to developing countries for a period of five years and to LDCs for a period of eight years. For countries in transition, seven years are allowed for the

[116] Eventually, Ecuador made notifications to invoke four S&D provisions, including a five-year transition period.

[117] No WTO member has invoked these provisions so far.

elimination of these two kinds of subsidies. In all cases, these transition periods may be extended.

Mongolia committed to eliminating these prohibited subsidies within six years, Panama within five years, Kyrgyzstan in four years and Jordan in two years from the date of accession. Bulgaria, Ecuador, Estonia, Georgia and Latvia agreed to eliminate these subsidies prior to their accession to the WTO and not to introduce them afterwards. The commitments that Georgia, Kyrgyzstan and Mongolia made on these subsidies seem unusually onerous given that their yearly per-capita GNP is well below US$1,000. Also, the other acceded countries would have been entitled to longer transition periods with the possibility of extensions, had they been original WTO members.

Trade-related investment measures (TRIMs)

The Agreement on TRIMs prohibits trade-related investment measures that are inconsistent with the obligations of Article III and XI of the GATT 1994, namely, national treatment and general elimination of quantitative restrictions. The measures concerned include those regarding local content and trade-balancing requirements. Upon notification, developing countries can, under certain conditions, deviate temporarily from this provision. Nevertheless, only Ecuador managed to have a transition period of four years upon its accession to comply with the Agreement. This contrasts with the recent decision taken by the Council for Trade in Goods to extend the transition period for certain members (Argentina, Colombia, Malaysia, Mexico, Pakistan, the Philippines, Romania and Thailand).[118]

Trade-related aspects of intellectual property rights (TRIPS)

Although the Agreement on TRIPS provides a five-year transition period[119] for developing countries and countries in transition, only Ecuador was allowed to have a short transition period of half a year.

Tariffication and special safeguards for agricultural products

None of the acceded countries was allowed to use the "tariffication" technique to convert its non-tariff measures under Article 4 of the Agreement on Agriculture. Some WTO members insisted that tariffication was a right available only to the original WTO members.

Special safeguard measures under Article 5 of the Agreement, which were in principle designed to apply to tariffied products, were permitted in the accession cases of Bulgaria, Ecuador, Panama and Chinese Taipei,[120] while such measures were not allowed in the cases of Estonia, Georgia, Kyrgyzstan, Latvia, and Mongolia.

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[118] See, WTO, G/C/M/53, 14 November 2001.

[119] The TRIPS Agreement provides for a one-year general period for all WTO members and a further four-year transition period for developing countries and countries in transition (Article 65:1-3).

[120] Referred to as Taiwan Province of China in United Nations contexts.

2. WTO-plus

In the acceding negotiations, there has been a tendency to press for commitments beyond the requirements of the WTO Agreements. This section discusses such WTO-plus commitments.

Enforcement of the WTO Agreements by local (provincial) governments

Article XXIV:12 of the GATT 1994 and Article I:3(a) of the GATS provide that "each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories". Nevertheless, Estonia, Georgia, Jordan, Kyrgyzstan and Latvia, had accepted the commitment that their central governments were the sole authorities on foreign trade policy issues and that they would eliminate or nullify measures taken by their local governments, which were in conflict with the WTO Agreements. Demanding commitment on enforcement by local government is a new tendency. The other four countries that acceded to WTO earlier were not asked to make this commitment.

Industrial development policy

While the WTO Agreements set out rules and disciplines on subsides and trade-related investment measures, they do not interfere in domestic industrial development policy per se. However, Kyrgyzstan committed that its government would not protect any industry, market or business entity. This is an unprecedented condition accepted in WTO accessions, which may be interpreted as a commitment to abandon the right to protect industries.

Privatization and economic reform

While Article XVII of the GATT 1994 defines the rules and the disciplines which "State Trading Enterprises" have to observe in conducting international trade, there is no obligation concerning privatization or ownership of enterprises. However, in the Working Party meetings, major developed countries have exerted pressure to privatize as many state-owned enterprises (SOEs) as possible in the acceding countries. Moreover, most acceded countries have had to commit to periodically reporting to the WTO the progress of their privatization programmes as well as the status of their economic reform programmes. Notification of such information to the WTO is not required under the WTO Agreements.

Right to appeal

While Article X:3(b) of the GATT 1994 stipulates that a member should ensure the right to appeal relating to customs matters, the commitment of Kyrgyzstan ensured a right to appeal on official measures affecting trade. Georgia also committed to provide for the right to appeal administrative rulings on matters subject to the WTO's competence. These commitments go beyond the obligations required in the provisions of GATT 1994.

Price and profit controls

In the WTO Agreements, there is no provision regarding price controls on goods and services in general.[121] Price controls on services are rather subject to market access negotiations regarding specific commitments on services. However, Bulgaria, Estonia, Georgia, Kyrgyzstan and Panama were obliged to eliminate price controls on both goods and services, except for certain products.

Kyrgyzstan went on to commit that all price and profit controls would be applied in a WTO-consistent fashion, taking into account the interests of exporting WTO members as provided for in Article III:9 of the GATT 1994 and Article VIII of the GATS. In fact, there are no disciplines concerning profit controls in the WTO Agreements, and Article VIII of the GATS concerns only monopolies and exclusive service suppliers. Jordan made similar commitments. Those are very general commitments, which may restrict policy options for these countries.

Export duties

Quantitative restrictions on exports are generally prohibited under the GATT 1994, although subject to several important exceptions provided for in Articles XI and XX. Most-favoured-nation (MFN) treatment is required in applying export duties as in the case of import duties. However, there is no provision obliging members to bind, reduce or eliminate export duties. Virtually all WTO members have avoided binding export duties in their schedules of concessions. On the other hand, Bulgaria agreed to freeze the coverage of products subject to export duties and committed to minimizing its use of export duties upon its accession. Mongolia committed to eliminating export duties on raw cashmere within 10 years after accession, and Latvia committed to abolishing all export duties except those on antiques. Estonia and Georgia committed to minimizing the use of export duties.

TRIMs and investment regime

The Agreement on TRIMs deals with trade-related investment measures and prohibits five specific measures that are inconsistent with the GATT. However, in accession negotiations, some WTO members have requested commitments to eliminate or refrain from introducing export performance requirements even if they are not linked to import volume or value. Such measures are beyond the scope of the Agreement on TRIMs. Furthermore, requests for liberalization of the investment regime and application of national treatment to foreign investments have been made in the accession negotiations, although the Agreement on TRIMs does not require commitments in these areas.

[121] Concerning price controls on goods, Article III:9 of the GATT asks for consideration of the interests of exporting countries when a maximum price control measure is adopted.

3. Levels of commitments

In the accession negotiations, WTO members have sought from the acceding countries much higher market access concessions and commitments than those made by the original members of the WTO. At the Fourth WTO Ministerial Conference, a group of recently acceded countries was successful in obtaining recognition, in the Doha Declaration, of the "extensive market access commitments already made by these countries on accession".[122] Also, these countries were requested to participate in the plurilateral agreements that are optional for WTO members.

A. Commitments on trade in goods

Tariff concessions

Unlike in the case of agricultural products, total binding of tariffs for industrial products is not a legal requirement. For the tariff lines of selected developing-country WTO members, only 61 per cent of industrial products are bound on a trade-weighted percentage basis.[123] Even developed countries such as Canada, Japan and the United States have unbound tariff lines.[124] Nevertheless, all acceded countries were obliged to bind tariffs on all industrial products.

Though overall tariff rates of industrial products in most developing countries are within the range of 20 to 40 per cent,[125] Mongolia and Kyrgyzstan, whose economic development is comparable to that of LDCs, have bound their tariffs at about 20 per cent and 6.7 per cent respectively on a simple average basis.

In addition, the acceded countries were requested to participate in the tariff reduction initiatives launched by some WTO members during and after the Uruguay Round. These include: the "zero for zero" initiatives, the Chemical Harmonization initiative, and the Information Technology Agreement (ITA).[126] For WTO members, participation in these initiatives is optional and coverage of products for commitments is flexible. However, strong

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[122] See, WTO, WT/MIN(01)/DEC/1, paragraph 9.

[123] See GATT Secretariat, "The results of the Uruguay Round of Multilateral Trade Negotiations, Market Access for Goods and Services: Overview of the Results", November 1994.

[124] Unbound tariff lines in these countries cover, for example, in the United States: crude petroleum; in Japan: fish products, paper products, petroleum oils; in Canada: petroleum oils, minerals.

[125] GATT Secretariat, "The results of the Uruguay Round of Multilateral Trade Negotiations, Market Access for Goods and Services: Overview of the Results", November 1994.

[126] In the Uruguay Round, mutual tariff elimination (known as "zero for zero") and tariff harmonization for chemical products were agreed among Quad countries (the United States, the European Union, Japan and Canada). Products subject to "zero for zero" are beer, distilled spirits, pulp, paper, furniture, pharmaceuticals, steel, construction equipment, medical equipment and agricultural equipment. The Chemical Harmonization initiative aims to set tariffs of chemical products at either zero, 5.5 per cent or 6.5 per cent. The Information Technology Agreement (ITA) was agreed at the first WTO Ministerial Conference held in Singapore (December 1996) to eliminate tariffs on a wide range of information technology products by the year 2000.

pressure has been exerted on the acceding countries to participate in these initiatives with significant coverage of products. Some WTO members even expressed the view that full participation in these sectoral initiatives would be a prerequisite for WTO accession. Panama and Mongolia committed to participation in the Chemical Harmonization Initiative and Estonia, Georgia, Kyrgyzstan and Latvia in the "zero for zero" initiatives for most of the products covered, as well as the ITA and the Chemical Harmonization initiative. Jordan also committed to participation in the ITA and the Chemical Harmonization initiative and in a few sectors of the "zero for zero" initiatives.

Agricultural domestic support and export subsidies[127]

For agricultural domestic support, a 20 per cent reduction from the base period was agreed in the Uruguay Round. The reduction rate agreed for developing countries was two-thirds of 20 per cent (i.e. 13.3 per cent). Also, Article 6.4 of the Agreement on Agriculture provides for a 5 per cent *de minimis* level for developed countries and a 10 per cent level for developing countries. Members are not required to include *de minimis* levels in the calculation of their current total AMS (Aggregate Measurement of Support) and are not required to reduce domestic support not exceeding such levels. Bulgaria had substantial domestic support measures when it was negotiating its accession, and it committed to reducing domestic support by 76 per cent in two years. This rate is substantially higher than the rate agreed to in the Uruguay Round. Kyrgyzstan and Estonia committed to set a *de minimis* level at 5 per cent. Latvia also committed to set its level at 5 per cent after a four-year transition period. (During the transition period, the rate is 8 per cent.) These commitments are comparable to those made by developed countries. Jordan agreed to reduce its AMS by 13.3 per cent over seven years from the date of accession.

Export subsidy commitments in the Agreement on Agriculture include reductions from the base levels of 36 per cent in budgetary outlays for export subsidies and 21 per cent in quantities benefiting from such subsidies. The agreed rates for developing countries are 24 per cent and 14 per cent respectively. Bulgaria has committed to reducing the subsidies in budgetary outlays by 35.8 per cent and in quantities by 22.0 per cent on average over a period of six years. This commitment is equivalent to that of developed countries, and, in addition, Bulgaria agreed not to use export subsidies for specific markets. Panama committed to eliminating export subsidies within five years, while Ecuador, Estonia, Georgia, Jordan, Kyrgyzstan, Latvia and Mongolia have bound export subsidies at the rate of 0 per cent and committed to not introducing them. These commitments exceed by far the levels of commitments accepted by the relevant WTO members in the respective areas.

The outcome described above has led certain countries which have acceded to the WTO to present proposals in the context of the current WTO agriculture negotiations to obtain substantive modifications in their respective obligations that would reflect the realities of their situations.[128]

[127] See, in more detail "WTO Accession Negotiations on Agriculture" in Chapter III below.

[128] Albania, Bulgaria, Croatia, Georgia, Kyrgyz Republic, Latvia, Lithuania, Mongolia and Jordan.

***Market access*[129]**

One proposal was made by a group of countries with economies in transition, including both original WTO members and newly acceded countries. They stressed that the Uruguay Round coincided with wide-ranging and unprecedented structural reforms in agriculture that occurred in the broader context of the process of transformation from a centrally planned economy into a market economy. These reforms resulted, *inter alia*, in changes in ownership and production structures, redefinition of the role of the state, and drastic reductions in all forms of supports and subsidies. At the same time, these members had bound their tariffs generally at a very low level. However, they considered that these efforts were not reciprocated by comparable improvements in market access by most other WTO members. In light of the above, they proposed that (i) in the course of the negotiations, measures taken up by the countries in transition regarding market opening be fully recognized; (ii) any negotiating guidelines and modalities should include a specific provision exempting low tariffs from further reduction commitments for these countries, as well as allowing for selective reduction commitments; and (iii) any negotiating guidelines and modalities regarding future tariff reductions and other market access commitments address all non-tariff measures and practices that hinder imports and thereby provide protection to domestic producers.

***Domestic support*[130]**

The other proposal by these WTO members mentioned that agricultural production in the former centrally planned economies had suffered a dramatic decline because of the sweeping changes of the past 10 years, and new investment was urgently required. Given the circumstances described above, it is evident that, during a transition period, governments in transition economies have to play a crucial role in helping farmers re-establish the viability of agricultural production. While in theory a relatively wide range of "blue box" and "green box" measures were available to these countries, in practice, because of the specific circumstances accompanying the process of economic transformation, in most cases these measures remained beyond reach. Nor did the current *de minimis* threshold provide a minimum acceptable level of flexibility. For these reasons, these countries proposed that (i) the Agreement on Agriculture should include a specific provision addressing the particular needs of members in the difficult process of transformation to a full-fledged market system; (ii) this provision should exempt investment subsidies and input subsidies generally available to agriculture, interest subsidies to reduce the costs of financing and grants to cover debt repayment from domestic support reduction commitments that would otherwise be applicable to such measures; (iii) it should also increase the *de minimis* threshold applicable to the transition economies; (iv) the provision could be invoked by individual countries as long as the problems in the agricultural sector persisted; and (v) a precedent had been established in the Subsidies Agreement (Article 29), which explicitly recognizes the crucial role of certain domestic support measures in the process of "transformation into a market economy".

[129] WTO, G/AG/NG/W/57, 14 November 2000.

[130] WTO,G/AG/NG/W/56, 14 November 2000.

Croatia's proposal[131]

In addition to associating itself with the above proposals, Croatia presented a separate proposal related to its specific situation, addressing non-trade concerns, the special safeguard clause, export competition and the application of new obligations, as follows:

(i) In order to achieve the objectives of creating a fair and market-oriented agricultural trading system as envisaged in Article 20 of the Agreement on Agriculture (AoA), there is a need to acknowledge, *inter alia*, the future coexistence of various forms of agriculture based on each country's production conditions and potentials and its historical and cultural background. Such acknowledgements should be well targeted and transparent, while relevant measures implemented in no more than minimally trade-distorting ways should not become disguised restrictions to trade.

(ii) During the accession process Croatia converted all import barriers (quantitative import restrictions, non-tariff measures maintained through state-trading enterprises) into ordinary custom duties (tariffs); in that way the conditions for SSG use were created, but as a new member that acceded to the WTO after the conclusion of the Uruguay Round, Croatia had not been given the right to use such a measure for a limited number of most sensitive agricultural commodities. If it was agreed that the special safeguard clause should be maintained, Croatia would like to have the right to use SSG measures.

(iii) The application of export subsidies and all other instruments of export competition is putting member countries, which are not allowed to apply them or cannot afford them, into a disadvantaged position; therefore, members should undertake obligations to regulate and reduce other instruments of export competition such as food aid, export credits and state trading enterprises.

(iv) The new reduction commitments should not affect the transition period for the implementation of the commitments made in accession negotiations.

Jordan's proposal[132]

Jordan considers that it faces problems in adapting to the WTO disciplines of market access. It was unable to use several provisions in the AoA, such as the Special Safeguard provision and flexibility in setting tariffs. Jordan has also submitted a proposal in the context of new negotiations on agriculture. In particular, this proposal emphasized the following points:

[131] WTO,G/AG/NG/W/141, 23 March 2001.

[132] WTO, G/AG/NG/W/147, 3 April 2001.

- While market access is a key element of the agricultural reform process, these reforms must take into account all legitimate interests, including the special needs of developing countries; these legitimate interests and special needs are – in the case of Jordan – mainly the prevention of the negative side effects of the reform on farming and protection from unfair market intrusions by countries with less strict WTO membership conditions; the reform process and market access should also be fair as regards the difference between the bound and applied tariff rates in different countries.

- In recognizing the long-term objectives of establishing a fair and market-oriented agricultural trading system, Jordan proposes that a more uniform difference between bound and applied rates be adopted for developing countries; a formula to achieve convergence of the applied rates at the end of the round, which guarantees fair market access for agricultural products, should be worked out and adopted by all countries.

- The SSG mechanism should be continued, and newly acceding countries such as Jordan should be allowed to use it; Jordan also supports the idea of having a separate SSG mechanism along the lines of the SSG provisions under Article 5 of the AoA.

Outcome of the Doha Ministerial Conference

At Doha, Ministers agreed that "special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development".[133] This should provide the opportunity for WTO members and acceding countries (which are allowed to take part in these negotiations) to pursue these and similar objectives.

B. Commitments on trade in services

Overview

Under the GATS, commitments for market access and national treatment, with the possibility of attaching limitations and qualifications, are only applicable to the services sectors and activities which are scheduled in the commitments in the specific mode of supply. Unconditional most-favoured-nation (MFN) treatment is a general obligation under the GATS; however, MFN exemptions can be scheduled for specific services sectors. The extent of liberalization of trade in services can be assessed by the coverage of services in the schedule of commitments and the depth of liberalization (i.e. extent of market access and national treatment and whether all modes of supply are liberalized or not, as well as whether

[133] See, WTO, WT/MIN(01)/DEC/1, 20 November 2001, paragraph 13.

or not restrictions are attached). Following is an assessment of the schedules of commitments on trade in services for the selected acceded countries (details of the commitments on services made by acceded countries are shown in table 2 below).

While coverage of services and depth of liberalization differ widely in the schedules of commitments of the acceded countries, an overall assessment of their schedules suggested that Kyrgyzstan, Latvia and Estonia have made the most liberal commitments. In spite of the relatively large sectoral coverage of its commitments, Bulgaria's schedule contains frequent entries of "unbound" and limitations. Jordan's commitments contain precise and targeted limitations and qualifications to market access, in particular in terms of foreign equity limitations. In most sectors, a 50 per cent foreign equity limitation is maintained. Some of these foreign equity limitations would be removed by 2004 (e.g. in educational, health and telecommunications services). Panama's commitments also included a relatively large number of restrictions labelled "unbound". Mongolia's commitments had the narrowest coverage of services; however, the depth of liberalization was most significant. The trends of the commitments indicated that the countries that acceded earlier succeeded in including many more restrictions than the countries that acceded at a later stage. It should be noted that Mongolia and Kyrgyzstan did not schedule any conditions that would have contributed to improving know-how in their countries, such as transfer of technology, employment and a local nationality requirement. The most notable examples of a skill development condition and a local employment requirement were found in the schedules of Panama and Jordan for particular business services. Latvia also included a condition on employment of specialists.

Entries of "unbound" were notable for presence of natural persons, cross-border supply and commercial presence. Consumption abroad of financial services, too, was frequently scheduled "unbound". Also, the entry "unbound" (i.e. because technically unfeasible) was often used for cross-border supply for all services except communications and financial services. In Jordan's schedule, "unbound" is used particularly for cross-border modes in specific financial services sectors.

For the sectors such as tourism, education, environment, health/social services and culture/recreation, coverage of services differed significantly among the acceded countries.

Horizontal measures of market access

The entries of the acceded countries in the horizontal measures of market access followed the standard of the WTO member countries, scheduling the presence of natural persons "unbound" except for the entry and temporary stay of natural persons in specific categories. These categories include senior-level managers, executives and specialists for intracorporate transfers; business visitors for participating in meetings and conferences and for negotiating business establishment; and professionals under a service contract. The maximum duration of a temporary stay is from three to five years. Latvia included the requirement to register vacancies for specialists at the State Employment Office for one month to seek applications from its domestic labour market. Bulgaria, Ecuador and Panama also included limitations on the numbers of intracorporate transferees per firm. In addition, Bulgaria, Latvia and Panama scheduled limitations on capital payments and transfers,

participation in privatization programmes, form of establishment, and real estate for purchase and lease.

Horizontal measures on national treatment

Bulgaria scheduled limitations on national treatment in several areas. These concerned subsidies for Bulgarian firms and citizens for all modes of supply; prohibition of acquisition and ownership of land for commercial presence; limitation on participation in privatization; and licensing requirements for commercial presence in distribution of weapons, financial services including insurance, and services related to natural resources. Jordan included "unbound" for subsidies in relation to all modes of supply. For the other countries, the only limitation entered in the section of horizontal measures on national treatment was for the presence of natural persons, that is, "unbound except for measures referred to in the market access section".

MFN exemptions

Bulgaria scheduled a total of 12 MFN exemptions in audiovisual services, transport services including computerized reservation systems, and professional services. Panama entered five MFN exemptions of which two concern audiovisual services, another two cover all services, and one covers professional services. Panama scheduled reciprocity requirement as a MFN exemption for professional services, which is applicable to all countries. Ecuador scheduled two MFN exemptions on audiovisual services. Latvia included five exemptions of which three concerned audiovisual services and the other two related to transport services including computerized reservation systems. Kyrgyzstan and Mongolia did not schedule any MFN exemption. Jordan scheduled 12 MFN exemptions relating *inter alia* to bilateral investment treaties, movement of natural persons, land use, audiovisual services, land transport and travel agencies.

Sectoral commitments

Basic telecommunications (BT) services

Panama and Mongolia did not include basic telecommunications services in their commitments. This is quite remarkable given the fact that (i) this subsector is one of the areas where the United States and the European Union have a strong interest; and (ii) the negotiations of the Group on Basic Telecommunications (GBT) was concluded prior to their accessions. Bulgaria and Ecuador, which acceded to the WTO earlier than Panama and Mongolia, participated in the negotiations in the GBT subsequent to their WTO accession. Kyrgyzstan and Latvia committed to liberalize this sector fully, except the presence of natural persons, by January 2003. In addition, Kyrgyzstan committed that upon its WTO accession the country would operate its BT services regime fully on the basis of the market mechanism as defined in its reference paper attached to the Schedule. The main concepts included in the reference paper were prevention of anti-competitive practices at large, guaranteeing of interconnection to public telecommunications transport networks or services, transparency and the independence of telecommunication regulators. These commitments are identical to

those of developed countries. Latvia also attached the identical reference paper to its schedule and committed that it would re-examine and publish the rules and regulatory policy on further competition closer to the year 2003. Jordan will fully open up its telecom sector by 31 December 2004, except in Mode 4, and has undertaken the obligations in the reference paper.

Enhanced telecommunications (ET) services

The acceded countries scheduled most ET services. Panama and Bulgaria included significant limitations in their commitments. Latvia entered a limitation on connectivity which would be effective until January 2003. Kyrgyzstan and Mongolia did not enter limitations in this sector.

Financial services

The depth of liberalization in the commitments by the six countries showed stark differences. Bulgaria attached the most restrictions among these countries. It scheduled "unbound" for a major part of the financial services entered in relation to cross-border supply and consumption abroad. For commercial presence, elaborate limitations were scheduled concerning business operations, types of company, licensing and permanent residency requirements. The country also scheduled transition periods for opening insurance services. Ecuador and Panama scheduled "unbound" for cross-border supply and consumption abroad. The former scheduled a limitation on the names of foreign companies and a condition on salaries of domestic employees. The latter included a limitation on placing financial instruments in the domestic market for trading purposes. In addition, as sectoral horizontal limitations, Panama scheduled "unbound" for the presence of natural persons for services salespersons, brokers or stock agents.

While Kyrgyzstan and Latvia maintained some limitations, particularly for insurance services, these countries committed to a significant level of liberalization in the financial services sector. Kyrgyzstan entered a restriction on ownership of insurance services, and it included a discriminatory minimum capital requirement for banks. However, these restrictions will be eliminated by the end of 2002. Latvia also committed to eliminate the limitation entered on the type of company in insurance services by December 2003. Mongolia made the boldest liberalization, opening major financial services with no limitations. Jordan limits the establishment of commercial presence to public shareholding companies established in Jordan, and to branches and subsidiaries of foreign banks. In some subsectors, the cross-border mode is left unbound, in particular in relation to trading in derivative products, participation in issues of all kinds of securities, asset management and settlement.

Business services

Under these subsectors more than 40 different services exist. As to the coverage of services, Latvia scheduled 38 services, the largest number, including most business services. The corresponding figures for the other countries were: Jordan (35), Kyrgyzstan (30), Panama (23), Ecuador (16) and Mongolia (6). Some services were scheduled "unbound" for specific modes of supply by Panama, Ecuador, Bulgaria, Jordan and Kyrgyzstan, while Latvia and Mongolia did not schedule "unbound" for any services in this sector. Most of the

countries scheduled limitations in professional services concerning qualifications, licensing, nationality, language, type of firm, and economic needs test. In addition, Panama included a condition that "when a foreign architect or engineer is hired for more than 12 months, the hiring entity must employ a Panamanian professional for the purpose of transfer of skill and of replacing the foreign professional". Mongolia and Ecuador did not schedule limitations for business services.

Construction and related engineering services

Coverage of services and the depth of liberalization in this service sector vary significantly. Kyrgyzstan, Latvia, Bulgaria and Panama scheduled all or most subsectors while Ecuador and Mongolia entered one and two subsectors, respectively. Mongolia, Kyrgyzstan, Latvia and Ecuador did not schedule limitations in this sector. Bulgaria qualified some conditions for commercial presence such as: requirements for partnership or subcontracting where the project is of national or regional significance, as well as accreditation requirements including experience, staff and technical capacity and bank reference. The offers by Kyrgyzstan and Latvia were most significant in coverage and depth. Jordan scheduled commitments in the sector with 50 per cent limitations on foreign equity and the stipulation that the number of foreign engineers to be employed by a firm may not exceed twice the number of qualified Jordanians employed by the same firm.

Distribution services

Kyrgyzstan and Latvia scheduled most subsectors under this sector, and they did not enter limitations. Bulgaria scheduled major distribution services; however, it entered several limitations concerning commodities to be distributed, establishment, licensing and economic needs tests. In addition, as sectoral limitations, Bulgaria specified some goods which were not within the scope of the offers and prohibited the operation of "wholesale and commission agent's services" in the commodity exchange markets. Panama scheduled a limitation regarding nationality, and Mongolia entered "unbound" for cross-border supply and commercial presence. The commitments of Kyrgyzstan and Latvia were the most liberal in coverage and depth. Jordan undertook only an additional commitment in this sector: that, if in the future its legislation permitted non-Jordanian investors to own a greater percentage of equity with respect to projects or an economic activity in this sector, such liberalization would be bound in the schedule.

Transport services

The commitments indicated that this sector was one of the most restricted areas. Ecuador scheduled several services and entered "unbound" for cross-border supply. Panama scheduled one subsector and entered no limitations. Bulgaria entered some services and scheduled a limitation on foreign capital participation. Kyrgyzstan scheduled all major transport services. It included some limitations such as prohibition of providing domestic air transport services, scheduling "unbound" for cross-border supply and consumption abroad for air transport, and limiting foreign capital participation. However, Kyrgyzstan committed that the limitation on foreign capital participation would be removed before 2005. Latvia entered

most services and scheduled authorization requirements for some services, as well as prohibiting the use of foreign registered vehicles for road transport services. Mongolia did not schedule any transport services. Jordan has included this sector, maritime, air transport and auxiliary, with a 50 per cent foreign equity limitation. There are also some limitations on Mode 4 (e.g. 20 per cent of the crew on Jordanian ships must be Jordanian). Jordan also undertook additional commitments on port services.

Educational services

Kyrgyzstan, Latvia, Panama and Bulgaria scheduled some educational services, while Mongolia and Ecuador did not enter any such services. Bulgaria entered several restrictions on commercial presence, limiting such access to juridical persons, requiring permanent residency, and for recognition of professional qualifications. Panama scheduled a requirement for approval and inspection by the Ministry of Education for commercial presence and a citizenship requirement for teaching the history of Panama. Kyrgyzstan scheduled services funded from State sources for commercial presence and cross-border supply. Latvia did not enter limitations in this sector, and its commitment was most significant in coverage. Jordan undertook comprehensive commitments in this sector, leaving Mode 1 unbound in relation to primary and secondary education. On Mode 3, the 51 per cent foreign equity limitation would be removed by January 2004.

Health-related and social services

Ecuador and Panama scheduled "hospital services" while Bulgaria entered "privately funded social services". Kyrgyzstan scheduled all health-related and social services, and Latvia entered "private hospital and sanatorium services" and "social services". These five countries did not schedule limitations. Mongolia did not enter any services under this sector. Jordan undertook to remove its 51 per cent foreign equity limitation in this sector by 2004. On mode 4, at least three-fourths of physicians must be Jordanian nationals and at least half of all staff members must be Jordanian.

Environmental services

Bulgaria, Ecuador, Kyrgyzstan and Latvia scheduled all environmental services, while Panama entered some. These countries did not schedule any limitations. Mongolia did not enter any services under this sector. Jordan has not included sewage and refuse disposal services.

Tourism and travel-related services

Bulgaria, Mongolia, Kyrgyzstan and Latvia scheduled major tourism services while Ecuador and Panama entered two subsectors. Bulgaria scheduled some limitations for commercial presence, including a licensing requirement for tourist services, an obligation for foreign companies to be incorporated in Bulgaria, and a quantitative restriction on foreign managers when the public (state or municipal) share of the capital exceeds 50 per cent. The other countries did not schedule limitations. The commitments by Mongolia, Kyrgyzstan and Latvia were the most liberal in coverage and depth.

Recreational, cultural and sporting services

Bulgaria, Panama and Latvia scheduled some services. Kyrgyzstan scheduled all services under this sector, and Ecuador entered all services except "news agency services". Bulgaria, Ecuador, Kyrgyzstan and Latvia did not schedule limitations, while Panama scheduled "unbound" for cross-border and commercial presence of market access and for all modes of supply of national treatment. Mongolia did not schedule any services under this sector. The commitment by Kyrgyzstan was the most liberal in coverage and depth. The commitments of Jordan contains no limitations on recreational services other than audiovisual ones.

C. Plurilateral agreements

Participation in the Plurilateral agreements (i.e. the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft) is optional for WTO members, and only a few developing countries are signatories of these Agreements.[134] Nevertheless, in the accession negotiations strong pressure has been exerted to participate in these Agreements. The acceding countries, except Ecuador, committed to participating in the Agreement on Government Procurement, and they provided specific deadlines for completion of the negotiations under this Agreement, in most cases one year after accession. Bulgaria, Estonia, Georgia, Kyrgyzstan and Latvia committed to participation in the Agreement on Trade in Civil Aircraft as well.

4. Invocation of non-application clause

Article XIII:3 of the WTO Agreement allows WTO members not to apply the WTO Agreements to an acceding country upon notification before the approval of the accession terms.[135] The United States has invoked this Article for the accessions of Georgia, Kyrgyzstan, Moldova and Mongolia according to the "Jackson-Vanik Amendment" provision of Section 402 of the 1974 United States Trade Act. Originally, this provision was introduced to enable the Government of the United States to deny unconditional MFN treatment to "non-market economies" that deny or restrict the right of their citizens to emigrate. In 1999–2000, the United States rescinded the invocation of Article XIII with respect to Georgia, Kyrgyzstan and Mongolia. As of 18 December 2001, the Jackson-Vanik provision is still applied to 12 countries,[136] among which are one WTO member (Moldova) and 10 acceding countries.

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[134] Republic of Korea, Hong Kong (China) and Singapore are the only developing country/territory signatories among 27 signatories of the Agreement on Government Procurement (as of 21 October 1999). Egypt, Macao and Romania are the only developing country/territory signatories among 25 parties to the Agreement on Trade in Civil Aircraft (as of 1 December 1999).

[135] An acceding country can also invoke this provision; however, so far, there are no such cases.

[136] Armenia, Azerbaijan, Belarus, Kazakhstan, Democratic People's Republic of Korea, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Viet Nam.

Article XIII derives from Article XXXV of the GATT 1947, which had similar content. Article XXXV of the GATT 1947 prohibited invocation of non-application if the countries concerned had already entered into tariff negotiations. However, Article XIII of the WTO Agreement does not include such a condition, and thus acceding countries are exposed to the threat that invocation of Article XIII may be used as a bargaining chip to extract more commitments.[137] Therefore, even if a WTO member had participated in the market access negotiations of an acceding country and obtained initial negotiating rights, it would still be possible to invoke Article XIII to deny MFN treatment to that country in its accession to the WTO, as the United States did. Such a situation could substantially reduce the expected benefit for acceding countries of being a WTO member.

Article XIII:4 of the WTO Agreement provides for the review of the operation of this Article at the request of any member; however, to date there have been no such requests.

5. Conclusions

The universality of the multilateral trading system remains a major goal of the international community. However, the acceding countries are facing substantial difficulties in their WTO accession, especially in their efforts to attain membership in accordance with their level of development in terms of market access commitments in goods and services, and in their attempts to benefit from some of the S&D provisions in the WTO Agreements. The negotiation of transition periods, for example, is being strongly resisted by major developed countries. The acceding countries are also being required to accept obligations going beyond those of the original WTO members or the WTO Agreements themselves, for example, in such areas as agriculture, privatization, export tariffs and the acceptance of optional plurilateral trade agreements. Moreover, they are facing extensive requests to liberalize market access in goods, and especially in services, which may not be consistent with their present development needs. Particularly in the view of developing countries, these imbalances should be corrected to avoid fragmentation of the trading system in terms of different rights and obligations for original members and newly acceded countries.

At the Fourth WTO Ministerial Conference, it was agreed that new negotiations "shall be open to …(ii) States and separate customs territories currently in the process of accession and those that inform members, at a regular meeting of the General Council, of their intention to negotiate the terms of their membership and for whom an accession working party is established". However, "decisions on the outcomes of the negotiations shall be taken only by WTO members".[138]

This formula, which is similar to the relevant provision of the Punta del Este Declaration, would mean that acceding countries would be able to make proposals and participate in these negotiations along with the present WTO members, but with no right of veto over the eventual outcome. In particular, this means that acceding countries would be

[137] See Wang Lei, "Non-Application Issues in the GATT and the WTO" in *Journal of World Trade*, Vol. 28, No. 2, Geneva, April 1994.

[138] See, WTO, WT/MIN(01)/DEC/1, 20 November 2001, paragraph 48.

able to table requests regarding agricultural goods and services to their trading partners (both WTO members and other acceding countries), which should better balance the entirely unilateral accession process. This may create the possibility that commitments made by acceding countries during the multilateral negotiations can be integrated into the outcome of the negotiations alongside similar commitments by current members.

In this context, acceding countries are expected to fully utilize this opportunity to participate in the new multilateral trade negotiations. It should be ensured that the negotiations launched at Doha do not delay, but on the contrary advance, the progress of accessions to the WTO.

Table 1

Concessions and Commitments on Goods by Acceded Countries

Country	*GNP per capita (US$)*	*Tariff concessions (agricultural products)*	*Tariff concessions (other products)*	*Binding coverage*	*Participation in sectoral initiatives*	*Agricultural domestic support (total AMS commitments)*	*Agricultural export subsidies (budgetary outlay and quantity reduction commitments)*
Albania	870	10.6 per cent (most between 10 and 20 per cent) Staging max. until 2007 No SSG	6 per cent (most between 0 and 10 per cent) Staging max. until 2009	All products	Most "zero for zero" sectors, chemical harmonization initiatives, ITA	NIL (10 per cent *de minimis*)	0
Bulgaria	1,380	34.9 per cent (most between 15 and 63 per cent) Staging 5 or 6 years SSG for some products	12.6 per cent / 35 per cent (most between 5 and 25 per cent) Staging max. 15 years	All products	A few "zero for zero" sectors	79 per cent reduction over 2 years	Reduction (outlay: 35.8 per cent (average), quantity: 22.0 per cent (average)) in 6 years
China	779	65 per cent (most between 0 and 25 per cent) Staging max. until 2010	8,9 per cent (most between 0 and 47 per cent) Staging max. until 2010	All products	Most "zero for zero" sectors, chemical harmonization initiatives ,ITA	NIL (8,5 per cent *de minimis*)	0
Croatia	4,580	10.4 per cent (most between 0 and 15 per cent) Staging max. until 2005 No SSG	5 per cent (most between 0 and 10 per cent) Staging max. until 2005	All products	Most "zero for zero" sectors, chemical harmonization initiatives, ITA	Reduction of the AMS ceiling relating to the 1996–1998 base period by 20 per cent in equal annual instalments within 5 years from the date of accession	0
Ecuador	1,310	25.8 per cent (most at 15, 20, 25, 30 per cent) Staging until 2001 SSG for some products	20.1 per cent (most at 15, 20, 25, 30 per cent) No staging	All products		NIL (10 per cent *de minimis*)	0
Estonia	3,480	17.7 per cent (most between 10and 30 per cent) Staging max. until 2004 No SSG	6.6 per cent (most below 15 per cent) Staging max. until 2005	All products	Most "zero for zero" sectors, chemical harmonization initiatives , ITA	NIL (5 per cent *de minimis*)	0
Georgia	620	12.1 per cent (most between 12 and 20 per cent) Staging max. until 2005 No SSG	5.8 per cent (most at 0, 5, 12 per cent) Staging max. until 2005	All products	Most "zero for zero" except alcohol beverage, chemical harmonization initiatives, ITA	NIL (10 per cent *de minimis*)	0
Jordan	1,500	25 per cent (most between 15 and 35 per cent) Staging max. until 2010 No SSG	15 per cent (most between 10 and 30 per cent) Staging max. until 2010	All products	A few "zero for zero" sectors, chemical harmonization initiatives, ITA	13 per cent reduction over 7 years	0
Kyrgyzstan	300	11.7 per cent (most at 5,10,15, 20 per cent) No staging other than wool products until 2003 No SSG	6.7 per cent (most below 10 per cent) Staging max. until 2005	All products	Most "zero for zero" sectors, chemical harmonization initiatives ,ITA	NIL (5 per cent *de minimis*)	0
Latvia	2,470	33.6 per cent (most between 10 and 40 per cent) staging max. until 2008	9.3 per cent (most below 15 per cent) Staging max. until 2008	All products	Most "zero for zero" sectors, chemical harmonization initiatives, ITA	NIL (*de minimis* of 5 per cent, use SDR 24 million ,about 8 per cent as *de minimis* until 1 Jan. 2003)	0

Country	*GNP per capita (US$)*	*Tariff concessions (agricultural products)*	*Tariff concessions (other products)*	*Binding coverage*	*Participation in sectoral initiatives*	*Agricultural domestic support (total AMS commitments)*	*Agricultural export subsidies (budgetary outlay and quantity reduction commitments)*
		No SSG					
Lithuania	2,620	Max. 50 per cent (most between 15 and 35 per cent) Staging max. until 2009 No SSG	Max. 30 per cent (most between 10 and 20 per cent) Staging max. until 2005	All products	Most "zero for zero" sectors, chemical harmonization initiatives, ITA	Reduction from US$ 113.47 million to 94.56 million. over 5 years	0
Moldova	370	Max. 40 per cent (most between 10 and 15 per cent) staging max. until 2005 No SSG	Max. 40 per cent (most between 10 and 20 per cent) staging max. until 2005 No SSG	All products	Most "zero for zero" sectors except alcoholic beverages and furniture, chemical harmonization initiatives, ITA	Reduction from SDR 15.18 million to 12.78million.over 4 years	0
Mongolia	350	18.4 per cent / 20 per cent (most at 10, 20, 30 per cent) No staging No SSG	20 per cent / 20 per cent (most at 10, 20 per cent) No staging	All products	Chemical harmonization initiative	NIL (10 per cent *de minimis*)	0
Oman	4,940	30.5 per cent (most between 0 and 15 per cent) Staging max. until 2004 No SSG	11 per cent (most between 5 and 15 per cent) Staging max. until 2004	All products	A few "zero for zero" sectors, chemical harmonization initiatives, ITA	NIL (10 per cent *de minimis*)	0
Panama	3,070	26.1 / 30 per cent (most between 10 and 70 per cent) Staging max. 14 years SSG for some products	11.5 / 30 per cent (most between 5 and 30 per cent) Staging max. 14 years	All products	Chemical harmonization initiatives	NIL (10 per cent *de minimis*)	Elimination on 31 Dec. 2002
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)	11,872	Max. 400 per cent (most between 0 and 25 per cent) Staging max. until 2007	Max. 106 per cent (most between 0 and 10 per cent) Staging max. until 2011	All products	Most "zero for zero", chemical harmonization initiatives, ITA	NIL (5 per cent *de minimis*)	0

Sources: Concession Schedules of each country; WTO, WT/ACC/10, 21 December 2001; World Bank, World Bank Atlas 2000; UNCTAD calculations.

Table 2

Scope of sector-specific commitments by new WTO members*

Sector	*Albania*	*Bulgaria*	*China*	*Croatia*	*Ecuador*	*Estonia*	*Georgia*	*Jordan*	*Kyrgyzstan*	*Latvia*	*Lithuania*	*Moldova*	*Mongolia*	*Oman*	*Panama*	*Chinese Taipei***
Business services [46]	30	27	22	38	16	28	41	35	39	37	38	45	6	32	23	39
Communication services [24]	17	11	24	19	9	16	20	19	22	16	16	22	9	17	12	24
Basic telecom [7]	7	7	5	7	1	7	7	7	7	7	7	7	0	7	0	7
Construction services [5]	5	4	5	5	1	5	5	5	5	5	5	5	2	5	4	5
Distribution services [5]	4	4	5	4	1	4	4	4	3	4	4	5	2	4	3	5
Educational services [5]	4	3	5	4	0	5	4	5	4	4	4	5	0	4	3	5
Environmental services [4]	4	4	4	4	4	2	4	2	4	4	4	4	0	4	1	4
Financial services [17]	16	14	12	1	14	16	16	16	14	16	16	16	10	15	13	16
Insurance [4]	4	4	4	4	4	4	4	4	3	4	4	4	2	4	2	4
Banking [12]	12	9	8	12	11	12	12	12	11	12	12	12	8	11	11	12
Health- related services [4]	2	1	0	4	1	4	3	3	4	2	2	3	0	1	1	4
Tourism services [4]	3	2	2	4	2	3	3	3	4	4	2	4	3	2	2	3
Recreational services [5]	4	1	0	3	3	5	4	4	5	2	4	4	0	0	1	2
Transport services [35]	15	7	15	20	9	8	16	6	27	21	14	35	0	7	1	13
TOTAL [155]	**104**	**78**	**94**	**121**	**60**	**96**	**120**	**102**	**131**	**115**	**109**	**148**	**32**	**91**	**64**	**120**

Sources: Concession schedules of each country;

UNCTAD calculations.

*Numbers in brackets indicate total number of subsectors in a given sector.

** Referred to in United Nations contexts as Taiwan Province of China.

Chapter III

TARIFFS, AGRICULTURE AND OTHER ISSUES

WTO accession negotiations on tariffs: Tariff offers

Victor Ognivtsev,* Xiaobing Tang* and Tokio Yamaoka**

I. Tariff negotiations as part of the WTO accession process

Countries which are in the process of accession to the WTO are confronted with three tracks of negotiations in the process of accession negotiations:

(i) Multilateral negotiations in the Working Party, which mainly discuss the economic system and trade regime of the acceding country, based on its Memorandum of Foreign Trade Regime (Memorandum), their national trade-related legislation and the subsequent exercise of written questions and answers;

(ii) bilateral negotiations focusing on concessions on tariffs and commitments on agricultural subsidies[139] (called "negotiations on market access in goods"); and

(iii) Bilateral negotiations focusing on commitments on trade in services (called "negotiations on market access in services").

In the negotiations on market access in goods, an acceding country is required to submit tariff offers in the form of a standard schedule of concessions (for details of the format of the schedule, see section 3 below).

The timing for submission of the initial offer is not regulated, but normally this is done when the trade regime of the country becomes more or less clear to WTO members. These bilateral negotiations are usually conducted on a "request and offer" basis. It should be noted that bilateral negotiations are conducted on a confidential basis between an acceding country and a WTO member. In order to expedite the accession process, it is advisable to submit an offer first and then wait for specific requests from interested WTO members. After examining those requests and the national interests of the acceding country, the revised offer can be submitted. Then negotiating countries may submit the second requests. This process will continue until both sides agree on its results. Eventually, an acceding country has to extend agreed tariff concessions on a most-favoured-nation (MFN) basis to all WTO members.

After agreement is reached on all products, the agreed concessions are consolidated into a single Schedule of Concessions and submitted to the Working Party for multilateral review and adoption.

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[139] In some cases, discussion and negotiations on commitments of agricultural subsidies are conducted on a plurilateral basis.

In these negotiations, it is important to know which are the most relevant products for the negotiating countries. At first, it is likely that WTO members will request deep tariff cuts on a broad range of products. The acceding country should evaluate those requests in terms of its interests and seek mutually acceptable agreement through formal and informal negotiations and consultations with individual WTO members.

In addition, in recent accession negotiations, there has been a growing trend for WTO members to push acceding countries to participate in the so-called "sectoral tariff initiatives", namely, the "zero for zero" initiatives, the Information Technology Agreement (ITA) and the chemical harmonization initiative.[140] There is no legal requirement to accept these, but some major WTO members insist that newly acceding countries give these additional concessions to ensure commercial viability of their accession terms. For example, among acceded countries, Estonia, Georgia, Latvia and Kyrgyzstan committed to participation in most "zero for zero" initiatives, the ITA and the chemical harmonization initiative, while developing countries like Jordan embraced fewer of these initiatives.

In order to defend its interests, an acceding developing country should be aware of the relevant Articles of the GATT 1994. Article XXXVI:8 in Part IV (Trade and Development) stipulates that "the developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties", which is applicable to accession negotiations as well as tariff negotiations.[141] According to the Notes and Supplementary Provisions to Article XXXVI, it is understood that the phrase "do not expect reciprocity" means that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments. In the Uruguay Round, this provision was recognized and therefore reflected in the tariff concessions of developing countries, which are less stringent than those of developed countries in terms of tariff rates, binding coverage and implementation periods. In the Ministerial Declaration adopted by the Doha Ministerial Conference, it was recognized that new tariff negotiations on non-agricultural products "shall take fully into account the special needs and interests of developing and least-developed

[140] In the Uruguay Round, a tariff elimination initiative (known as "zero for zero**"**) and a tariff harmonization initiative for chemical products were agreed among Quad countries (the United States, European Community, Japan and Canada). Products subject to mutual tariff elimination are: beer, distilled spirits, pulp, paper, furniture, pharmaceuticals, steel, construction equipment, medical equipment and agricultural equipment. With regard to the Information Technology Agreement (ITA), elimination of tariffs on a wide range of information technology products by the year 2000 was agreed in the Ministerial Declaration on Trade in Information Technology Products, which was adopted at the First WTO Ministerial Conference, held in Singapore (December 1996). Further negotiations are being conducted in the Committee on the Expansion of Trade in Information Technology Products to examine the expansion of the product coverage and the number of participants in the ITA (called "ITA II**"**). As of 19 November 2001, the number of signatories to the ITA was 41, including 11 acceded countries and one acceded separate customs territory (Chinese Taipei, referred to in the United Nations as Taiwan Province of China) (see, WTO, G/IT/1/Rev.21, 21 November 2001).

[141] Ad Article XXXVI of Notes and Supplementary Provisions. In this quotation, "less-developed contracting parties" would read "developing country Members".

country participants, including through less than full reciprocity in reduction commitments".[142]

In addition, with regard to agricultural products, there is no obligation for the least-developed country members to make reduction commitments under Article 15 of the Agreement on Agriculture.[143]

II. Basic elements of a tariff offer

A. Tariff policy

First of all, national interests should be clearly identified before entering into tariff negotiations. The following elements might be considered in shaping offers:

1. Protection

The acceding country's need to protect some sectors and strengthen infant industries/strategic sectors should be examined. It should be emphasized that tariffs are the only fully legitimate instrument for protecting domestic producers under the WTO. For example, for the motor vehicles industry, a sensitive industry requiring protection, many developing countries have maintained considerably high tariffs and some have committed to undertake gradual reductions. For example, Egypt has bound the tariff rate on passenger vehicles (1600–2000cc) at 135 per cent and Indonesia at 40 per cent. Malaysia has not bound the tariff on similar vehicles.

2. Effects on the domestic economy

The effects of tariff reductions on the country's macro-economic aggregates, such as GDP and the balance-of-payments, and on the labour market should be taken into account. By reducing tariffs, economies could, in the long term, be boosted through more efficient allocation of resources. In the short term, however, sectors which are subject to tariff cuts may face severe competition from imported products, and this may lead to factory closings, dismissals and increasing unemployment.

3. Reduction in governmental revenue

Customs duties are an important element of total government revenue in some countries, particularly developing countries, which may lack other alternative efficient tax systems. For example, in fiscal year 1996/97, customs and excise revenue represented around 17 per cent and 32 per cent of total tax revenue in South Africa and India respectively.

The main direct effects of tariff cuts would therefore be reduction of governmental revenue. If bound tariff rates were set below the current applied tariff rates,[144] reduction of

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[142] See, WTO, WT/MIN(01)/DEC/1, 20 November 2001, paragraph 16.

[143] Please note that it is necessary to bind all agricultural products.

[144] "Applied rate**"** is the legal tariff rate in force in a country and sometimes referred to as "autonomous tariffs**"**

governmental revenue would be substantial. For example, as a result of its tariff reforms to reduce the average applied tariff rate from about 30 per cent in 1994 to 17 per cent in 1997, Thailand's collected import duties fell from 19 per cent of government revenues in fiscal year 1994 to 13 per cent in 1997. Therefore, this issue should be carefully handled in countries relying on customs duties for a substantial part of revenue.

It should also be noted that Article XXVIII bis 3(b) of the GATT 1994 recognizes the special need of developing countries to maintain tariff for revenue purposes. On the other hand, it is important to note that in the course of economic reforms, many countries have moved away from heavy reliance on customs duties to other forms of revenue such as income tax, turn-over tax or value-added tax, which may require full restructuring of the tax system and administration.

B. Tariff bindings

If an acceding country has offered a bound tariff rate, it cannot withdraw or raise the tariff rate in excess of the bound rate without the modification procedure provided in the Article XXVIII of the GATT (see box 2 following this discussion), which requires the country to provide affected WTO members with "compensation".

For agricultural products, the Agreement on Agriculture prescribes to bind tariffs on all products covered by the Agreement, with the exception provided for in its Annex 5.[145] In contrast, with regard to other products (i.e. industrial products) an acceding country legally has the option of offering bindings not on all tariff lines. Indeed, there are many unbound tariff rates for products in tariff schedules of developing-country members of the WTO. Table 1 shows that only 61 per cent (trade-weighted percentage) of industrial products would be bound after the full implementation of the concessions of developing-country WTO members. Even developed countries such as Australia, Canada, Japan and the United States[146] have not bound all tariff lines. Therefore, although negotiating countries have traditionally requested an acceding country to bind all products, and although in fact all acceded countries have so far been obliged to bind all products, for tactical purposes an attempt could be made to leave a number of tariff rates on important products unbound, at least in the initial negotiating stage.

in the sense that the rate can be decided autonomously by the country while the change of a WTO bound rate is subject to negotiations with relevant WTO members.

[145] Annex 5 of the Agreement on Agriculture allows certain WTO members to retain certain NTMs which meet the criteria provided for therein.

[146] Examples of unbound items are: crude petroleum in the United States; fish products, paper products, and petroleum oils in Japan; and petroleum oils, minerals, etc., in Canada.

Table 1

Tariff bindings before and after Uruguay Round
(per cent)

	Industrial Products				Agricultural Products			
	Tariff lines		Imports*		Tariff lines		Imports*	
	Pre-UR	Post-UR	Pre-UR	Post-UR	Pre-UR	Post-UR	Pre-UR	Post-UR
Total	43	83	68	87	35	100	63	100
Developed countries	78	99	94	99	58	100	81	100
Developing countries	21	73	13	61	17	100	22	100
Transition economies	73	98	74	96	57	100	59	100

*Trade-weighted percentage.

Source: GATT Secretariat "The results of the Uruguay Round of Multilateral Trade Negotiations, Market Access for Goods and Services: Overview of the Results", November 1994.

C. Tariff rates

1. Average tariff rates

In fact, there are no guidelines in the WTO Agreements for setting the average tariff rates (simple or trade-weighted) for concessions of individual acceding countries. However, the relative average tariff levels of other WTO members with similar social conditions and stages of economic development could be used as a reference.

The level of bound tariff rates will depend on negotiations between the acceding country and interested WTO members, while vigorous requests from the latter should be expected. For example, Mongolia and Kyrgyzstan, whose economic development level is comparable to that of LDCs, bound their tariffs on industrial products at about 20 per cent and 6.7 per cent respectively on a simple average basis, while overall tariff rates for industrial products in most developing-country WTO members are within the range of 20 to 40 per cent.

2. Individual tariff rates

For offers of individual tariff rates, the following three options may be considered:

Option 1. To bind a tariff rate at the same level as the applied rate.

Option 2. To bind a tariff rate at a lower level than the applied rate.

Option 3. To bind a tariff rate at a higher level than the applied rate (i.e. ceiling binding).

WTO members are likely to ask the acceding country to choose Option 1 or 2. It should be kept in mind that, since WTO members cannot increase bound tariff rates without negotiations, it is important to have some margins for future flexibility in tariff policy.

Consequently, if an acceding country wishes to adopt ceiling bindings (i.e. Option 3), it should be prepared to explain why the rates are to be bound at those levels. Indeed, in developing countries one often finds that some low-tariff schemes were recommended by outside expertise. Binding at the current level may not reflect the actual tariff protection level of the country. In fact, substantial disparities between bound rates and applied rates exist in developing-country members of the WTO as well as in developed countries.

In order to protect other sensitive products, it might be advisable to choose Option 2 for certain products (e.g. products which are not produced and will not be produced in the acceding country, but are of special interest to the trading partners).

Regarding tariff peaks, WTO members will demand significant tariff cuts. However, it should be noted that even the Quad countries have many tariff peaks exceeding 100 per cent ad –valorem.[147] These peaks resulted mainly from tariffication of agricultural products in the Uruguay Round.

In any case, attention should be drawn to the fact that tariffs under the WTO are the only fully legitimate measures for protecting domestic producers. Therefore, it is appropriate for acceding countries to leave a certain flexible margin in their offers for future potential increases of tariff rates. Whichever option is chosen, it will be necessary to justify the offered tariff rates.

D. Other considerations

The use of staging and non-ad-valorem duty such as specific duty, combined duty, or tariff quotas for specific purposes may also be useful negotiating tools.

1. Staging

"Staging" is an important modality which enables an acceding country to reduce tariffs step by step ("step approach") during a period of several years. This modality provides an acceding country with a transition period for reduction of tariffs and thus enables domestic producers to progressively adapt to tariff cuts. Staging might be adopted for some sensitive products, though this depends on negotiations**.** For example**,** Bulgaria adopted staging of 5, 10 or 15 years for most products in the schedule. Panama obtained a maximum of 14 years for implementation and Jordan a maximum of 10 years. In some cases, however, acceding countries could not benefit from staging and had to implement the elimination or reduction of tariffs to the committed level on the date of their accession, as did Ecuador for industrial products, Mongolia for all products and Kyrgyzstan for agricultural products.

[147] For details, see, UNCTAD, "The Post-Uruguay Round Tariff Environment for Developing Country Exports: Tariff Peaks and Tariff Escalation", TD/B/COM.1/14/Rev.1, 14 September 1999.

2. Specific and combined duties[148]

A specific duty imposed on a quantity basis or a combined/mixed duty that uses both an ad valorem duty and a specific duty might be appropriate for some products. The specific duty has a stronger protective effect on low price imports because the lower the price of a product, the higher the ad valorem equivalent. However, the protection effect of the duty becomes weaker when inflation in import prices occurs. Since it is difficult to estimate the protection effect of the specific duty, an acceding country may be required to provide information regarding the ad valorem equivalents of the duties and their related statistics. Among acceded countries, the Schedule of Concessions of Bulgaria contains many specific duties or combined duties for agricultural products. The schedules of Kyrgyzstan and Jordan also include specific duties or compound duties for some products. Though there is no limitation in the use of forms of duties other than ad valorem, in the course of preparations for the new WTO negotiations on tariffs, some countries argued that the use of specific duties should be avoided as they are not transparent.

Some countries have applied seasonal tariffs to protect domestic production of fruits (e.g. apples, grapes and pears) and other agricultural products. Among acceded countries, Jordan uses seasonal tariff duties for fruits such as bananas, grapes and apples.

3. Tariff rate quotas

A tariff rate quota (TRQ) is a tariff measure that uses two levels of tariff rates: a primary duty for a certain amount of the product (quota) and a secondary duty (which can be higher than the primary duty) for the amount exceeding the quota. The quota is calculated by subtracting domestic production from domestic demand. Although it is difficult to administer, a TRQ could meet the needs of consumers who want to use the imported product at a low price as well as of producers who need protection. In the Uruguay Round, the TRQ approach has been adopted in the negotiations on agriculture to ensure minimum/current access when non-tariff measures had been converted into tariff equivalents (tariffication) in accordance with Article 4 of the Agreement on Agriculture. In this case, the quota was calculated to secure minimum/current access requirements.

However, it should be noted that none of the acceded countries was allowed to use the tariffication to convert its non-tariff measures under Article 4 of the Agreement, because some WTO members insisted that tariffication was the right available only to the original WTO members. It also should be noted that problems regarding the administering of TRQs, such as the allocation of quotas and the under-filling problem, are being discussed in the WTO Committee on Agriculture and became an issue in the new negotiations on agriculture.

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[148] The *specific duty* is expressed as a monetary amount per unit of the quantity of a product, for example "15 per litre", while the *ad-valorem* duty is expressed as a percentage of the value of a product, for example 5 per cent.

The use of TRQs is allowed only with regard to agricultural products. For industrial products, such measures would be considered WTO-inconsistent as a form of quantitative restrictions prohibited by Article XI of the GATT 1994.

4. Other duties and charges

"Other duties and charges" are described as other than ordinary customs duties and are imposed only on imports (Article II:2(b) of the GATT).[149] In fact, those are additional customs duties. For example, the European Union had, in addition to customs duties, variable levies that were equivalent to the difference between reference prices in the European Union region and international prices.[150] Japan levied additional charges other than customs duties on sugar products.[151] Many developing-country members of the WTO also have "other duties and charges" in their concession schedules.

According to paragraph 1 of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994, those duties and charges should be described in the schedule, while paragraph 4 prohibits the levy of "other duties and charges" in excess of those imposed "on the date of the Agreement".[152] This aims to secure binding of tariffs. Therefore, if an acceding country has "other duties and charges", it has to bind them in the schedule in order to retain them. It is also possible for acceding countries to incorporate those duties and charges into tariffs and bind them together. So far, in all the schedules of acceded countries, "other duties and charges" are bound at zero, which means that acceded countries have committed not to introduce other duties and charges in the future.

III. Format of a concession schedule

In accession negotiations on market access in goods, an acceding country is required to submit a concession schedule on goods, which contains four parts: Part I (most-favoured-nation Tariffs), Part II (preferential tariff), Part III (non-tariff concessions) and Part IV (agricultural products: commitments limiting subsidization), among which only Part I concerns tariff negotiations. (See box 1.)

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[149] They are different from internal taxes, anti-dumping duties or countervailing duties and "fees or other charges commensurate with the cost of the service rendered", all of which member countries can apply in accordance with the relevant Articles of GATT 1994 and respective WTO Agreements.

[150] The variable levies were tariffied pursuant to the Agreement on Agriculture in the course of the UR.

[151] Those charges were incorporated in the tariff concessions in the course of the UR.

[152] At each ... negotiation of a new concession[,] the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the appropriate Schedule. This date for acceding countries would be thought to be the date of its accession.

Box 1

Composition of the Schedule of Concessions and Commitments on Goods

Part I: Most-favoured-nation tariffs
- Section I : Agricultural products
  - A: Tariffs
  - B: Tariff quotas
- Section II: Other products

Part II: Preferential tariff

Part III: Non-tariff concessions

Part IV: Agricultural products: commitments limiting subsidization
- Section I: Domestic support: total AMS commitments
- Section II: Export subsidies: budgetary outlays and quantity reduction commitments
- Section III : Limiting the scope of export subsidies

Section I of Part 1 should cover agricultural products.[153] Section IA comprises tariff bindings and Section IB tariff rate quotas. Section II of Part 1 covers products other than agricultural products.

The specific format of the goods schedule is basically identical to the one that was agreed in the Uruguay Round. These are eight columns, as shown in table 2. The column under the heading "special safeguard" concerns only agricultural products; it is therefore not necessary to include this column in Section II. The headings of the columns of a goods schedule are explained in the following text. It should be noted that there can be some variation regarding columns.[154]

[153] The coverage of agricultural products is detailed in Annex I of the Agreement on Agriculture.

[154] For example, in some cases, "implementation periods" are indicated in the footnotes, not in the column; Panama has a column for SSG, while Ecuador and Bulgaria do not; in some cases, columns such as "present concession established in", "concession first incorporated in the Schedule" and "earlier INRs" were included, but those columns are not required in accession negotiations.

Table 2

Example of a Concession Schedule on Tariffs

Tariff item number	Description of products	Bound rate of duty	Final bound rate of duty	Implementation period from/to	Special safeguard	Initial negotiating right	Other duties and charges
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(1) Tariff item number

Products should be arranged according to the HS (Harmonized System) tariff nomenclature[155] since most members of the WTO have adopted this nomenclature.

(2) Description of products

This column should contain the product description according to the HS nomenclature. It is possible to open detailed tariff lines beyond the six digits of the HS.

(3) Initial bound rate of duty

Initial bound duty rates to be implemented upon accession are shown in this column.

(4) Final bound rate of duty

Bound rates after the final stage of implementation of the concession are shown in this column.

(5) Implementation period

When an acceding country's offer implies staging, a separate column shows the period of implementation (e.g. 1999–2004) or the final year of implementation (e.g. 2004).

(6) Special Safeguards

Special Safeguards (SSG) prescribed in Article 5 of the Agreement on Agriculture are measures (additional duties) to which members may have recourse to ease the sudden surge of volume of imports, or a sharp fall in prices of products for which non-tariff measures have been converted into custom duties in accordance with the tariffication provisions. Such products should be designated in the schedule with the symbol "SSG" as being the subject of a conversion in respect of which the provisions for special safeguard may be invoked. Among

[155] HS tariff nomenclature is annexed to the International Convention on the Harmonized Commodity Description and Coding System, which was implemented from 1988 under the auspices of the CCC (now called "WCO": World Customs Organization). The HS nomenclature contains 4-digit level "Headings" and 6-digit level. "Sub-headings."

acceded countries, so far only Chinese Taipei,[156] Ecuador, Bulgaria and Panama have reserved the right to recourse to the SSG measures for specific products.

(7) Initial negotiating rights

The country with which a concession was first negotiated is deemed to have the initial negotiating right (INR). This country should be indicated in this column. In the accession negotiations, it will be usually the country having a principal supplying interest (e.g. the country that has the largest share in imports of the product) with regard to the product. However, countries which are not the principal suppliers of the relevant product may also seek initial negotiating rights which give them the right to be compensated in the case of re-negotiations, even if they are minor suppliers of the product affected by the tariff increase. As a result, in recent cases of accession, the INR column includes several countries against specific tariff lines. This implies that if the acceding country wishes to increase the tariff bound rate in the future, it should negotiate with those countries in accordance with the procedure described in Article XXVIII (see box 2 at the end of this discussion for a description of this procedure).

(8) Other duties and charges

"Other duties and charges" imposed on imports of relevant tariff items should be specifically described either in the column per tariff line (see paragraph 1 of the Understanding on the interpretation of Article II:1(b)) or in the introductory notes of the schedule, including the types of measures and the rates applied. However, if the tariff rate for a product is not bound, there is no need to describe "other duties and charges" for the product in the schedule. If nothing is entered in the column, this means that "other duties and charges" are bound at zero.

[156] Referred to in United Nations contexts as Taiwan Province of China.

Box 2

The modification procedure prescribed in Article XXVIII of the GATT 1994

Article XXVIII requires that a country wishing to modify or withdraw the tariff concession of a product has to (i) negotiate and agree with a country that has an *initial negotiating right* (an "I.N.R. country") and (a country determined by the contracting parties to have) a *principal supplying interest* (a country that holds the largest import share of the product; referred to as the "P country") and (ii) consult with countries (determined by the contracting parties) to have a *substantial interest* (basically, countries that hold the second- or third-largest import share of the product and account for more than 10 per cent of imports of the products concerned; referred to as the "S country"). In addition, the member country that has the highest ratio of exports of a specific product in its total exports can also be regarded as the P country according to the Understanding on the interpretation of Article XXVIII, which was negotiated in the Uruguay Round.

The negotiation and consultation would be conducted to seek compensation equivalent to the value of the modification or withdrawal so that the general level of concessions is not less than that provided before.

If an agreement cannot be reached with the I.N.R. country and the P country, the applying country is free to modify or withdraw the concession. In turn, the I.N.R. country, the P country and the S country may withdraw concessions substantially equivalent to the value of the modification or withdrawal made by the applying country, provided that 30 days' prior notification thereof is made within six months after the action by the applying country.

WTO Accession Negotiations on Agriculture

Miho Shirotori*

Introduction

The accession negotiations on agriculture are some of the most complex and time-consuming of the accession negotiations, for the following reasons.

1. An acceding country is requested to make its agricultural policies in compliance with the rules and disciplines under the WTO Agreement on Agriculture (AoA). Along the negotiations on improvement of market access conditions (e.g. binding and reductions, if necessary, of tariffs), an acceding government's support to agricultural producers and exporters will be put under a scrutiny by WTO member countries. Those measures that are considered "trade-distorting" according to the AoA criteria may become subject to reduction to the level agreed in the course of accession negotiations. This may require a substantial "reform" in the agricultural policy, especially in countries where the government intervention has been playing a vital role in the agricultural sector.

2. The rules used during the Uruguay Round (UR) on agriculture, especially those governing agricultural market access commitments, are not automatically applicable to the cases of acceding countries. Furthermore, there is no agreed parameter with regard to an acceding country's level of commitments that are "commercially viable" and "appropriate to the level of economic development". The commitments concerning agriculture in the past accession cases varied from one country to another and contained different elements of "WTO-plus" or "WTO-minus".[157] The level of the UR commitments made by WTO members, as well as the record of the implementation of those commitments, cannot be automatically used as the reference point for acceding countries in evaluating whether their commitments can be considered to be at the "appropriate" level.

3. New rules and disciplines for multilateral liberalization in agriculture are in the making. In the second round of the WTO negotiations on agriculture, which was launched in March 2000, new modalities for further liberalization should be agreed before March 2003. Various changes to the current AoA framework have been suggested in the negotiations so far, especially concerning substantial improvement in the special and differential (S&D) treatment for developing countries. An acceding country should thus pay a close attention to the development of those negotiations. If an acceding country formulates its accession commitments strictly according to the rules in the existing AoA, the country may not be eligible for policy flexibility that may be accrued to developing countries as a result of the ongoing negotiations. Observer status in the negotiations is granted to acceding countries, but they are not allowed to be a part of any decision-making process.

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[157] For the definition and further analysis of "WTO-plus" and "WTO-minus" elements of the commitments, see "Terms of WTO accession" above.

Against this background, this paper aims to provide an overview of the issues that require careful consideration by acceding countries during their accession negotiations on agriculture. In examining the trend in the terms of accession on agriculture, references are made to relevant elements of the implementation record of the AoA, and the development of discussions on new AoA rules that have so far been discussed in the ongoing second round of WTO agriculture negotiations. The discussion covers the following five topics: (1) the starting point of the negotiations; (2) market access commitments; (3) commitments on domestic support; (4) commitments on export subsidies; and (5) the second round of agriculture negotiations.

The starting point of negotiations

In accordance with the AoA, an acceding country has to make its commitments in the following three areas: (i) market access to agricultural products (e.g. tariff reductions and binding); (ii) the level of trade-distorting domestic support; and (iii) the level of export subsidies. Commitments in the area of agricultural market access are negotiated as a part of overall tariff negotiations covering both agricultural and non-agricultural products during bilateral negotiations on goods. Commitments on domestic support and export subsidies are negotiated on a bilateral or plurilateral basis, based on information provided by the acceding country in its Memorandum of Foreign Trade Regime as well as information provided in the supporting tables on domestic subsidies, commonly referred to by its document code ACC/4.

The outcome of the market access negotiations is contained in Section I, Part A (tariffs) and Part B (tariff quotas) of Part I of the Schedule (*Schedule of Concessions and Commitments on Goods*). The commitments on domestic support and export subsidies should be included in Section I (Domestic support: total AMS commitments), Section II (Export subsidies: budgetary outlay and quantity reduction commitments) and Section III (Limiting the scope of export subsidies) of Part IV of the Schedule.

Selection of the base period for the commitments

For all three areas of commitments, the starting point of the negotiations is to select the base period from which reductions in tariffs and agricultural subsidies may be scheduled. With regard to market access concessions, an acceding country may be requested by some WTO members to select the currently *applied* tariffs as the base for tariff reductions, though this would be a “WTO-plus” type of commitment. In practice, the initial tariff offers of many countries acceded in the past included bound tariffs that exceeded their applied tariff rates.

With regard to domestic support and export subsidies, acceding countries should provide the supporting tables, ACC/4, which contain detailed information on the use of domestic support and export subsidies, including their monetary values, in the three most recent representative years. Again, there is no general rule on the selection of the base period, though some WTO members may insist that the period indicated in the ACC/4 be used for the base period for the reduction commitments. Taking the most recent period as the base implies that the current circumstances surrounding the agricultural policies in an acceding country determine its future policy options. This may cause particular difficulties to countries

currently undergoing economic transformation or facing policy constraints under Structural Adjustment Programmes. In those countries, current policy measures may not represent long-term agricultural policy objectives. In the case of the UR negotiations, WTO members had almost 10 years between the base period (1986–1988 for domestic support and 1986–90 for export subsidies) and the beginning of the implementation of commitments (1995). This acted as a sufficient transition period for adjusting their domestic policy structures.

Developing country status

While the S&D provisions in many of the WTO Agreements do not go beyond the "best endeavour" clause, those under the AoA are practical and operational, being stipulated with numeric references. Developing countries are allowed 10 years for completing the implementation of the AoA commitments, instead of the six years permitted to developed countries. Reduction commitments for developing countries are generally one-third smaller than those applicable to developed countries (e.g. overall tariff reductions of 24 per cent instead of 36 per cent). In the area of domestic support, developing countries are entitled to spend up to the *de minimis* limit of 10 per cent of the annual production value of the product concerned on domestic support measures that are otherwise subject to reduction commitments (detailed analysis of the *de minimis* limit is given in the relevant section below). Least developed countries (LDCs) receive an extended S&D in the AoA: they are exempted from any reduction commitments.

While the S&D provisions are an integral element of the AoA, past accession cases show that acceding countries may not be entitled to the S&D treatment in its entirety. The granting of developing country status has been done on a case-by-case basis, without taking into account a country's level of economic development (examples of such irregularities in the S&D treatment to acceding countries are given in the following sections). There are no official criteria for developing-country status in the WTO framework, and in most cases the status has been granted on the basis of self-declaration.[158]

As no case of accession by a LDC has been achieved at the time of writing this paper, one cannot say for certain whether the S&D for LDCs would apply to those acceding countries that are listed in the official United Nations classification of LDCs. However, in several negotiations involving acceding LDCs, some WTO members suggested that exemption of LDCs from the reduction commitments would apply only to domestic support and export subsidies, not to tariff reductions.

Market access commitments

In the area of market access, there are two commitments that all acceding countries, developed or developing, should make without exception: elimination of non-tariff measures (NTMs) existing in the agricultural sector (e.g. import bans, quotas, variable levies) and binding of all agricultural tariffs.

[158] For instance, the Republic of Korea and Mexico, which are members of the OECD, maintain developing country status within the WTO framework.

Tariff binding and tariff reductions

Tariff binding

Under the AoA, all tariffs on agricultural products should be "bound" – that is, most-favoured-nation (MFN) tariffs agreed during the negotiations on market access should act as the ceiling above which tariffs will not be raised in the future. Tariff offers by an acceding country should therefore ideally reflect the acceding country's long-term agricultural interests.

Some WTO Members consider that the tariffs that are currently *applied* should be the basis for binding, from which reductions may be made if deemed necessary. This may cause difficulties to some acceding countries that are temporarily levying low tariffs on imports as part of a programme for economic transition or a Structural Adjustment Programme. In practice, the initial offers of many acceding countries in the past included bound rates which exceeded their applied tariffs. The tariff offers made by Mongolia and Estonia, for instance, included bound rates ranging between 5 and 30 per cent, while their applied agricultural tariffs at the time of accession negotiations were zero.

From the perspective of an exporter, the gap between the bound and applied tariff rates reduces the predictability of market access conditions, since an applied tariff can be increased/reduced whenever the need arises. However, the UR tariff commitments show that a large gap between bound and applied tariffs is a common feature in the post-UR tariff structure of developing countries.

In the course of the ongoing WTO negotiations on agriculture, many developing countries have argued that the bound/applied tariff gap is a policy flexibility necessary for developing countries to accommodate external and internal shocks to their generally vulnerable agriculture production. Some developing-country members also suggested that the bound/applied tariff gap should be considered as "credits" to the unilateral trade liberalization undertaken by many developing countries in recent years.

The appropriate tariff level

Tariff concessions offered by an acceding country are expected to be "commercially viable", "meaningful in trade terms" or "appropriate to the level of economic development". However, there is no numerical benchmark for such criteria, and in reality the level of "appropriateness" is determined on a case-by-case basis in bilateral negotiations. In the tariff commitments by countries acceded to WTO, the simple average of bound tariffs ranges from 11.7 per cent (Kyrgyzstan) to 34.9 per cent (Bulgaria). The maximum tariff rates of those countries rarely go above 50 per cent, unlike the bound agricultural tariffs in developed countries, which might be above 100 per cent on sensitive products, or in developing countries, whose tariffs might be as high as 200 per cent as a result of applying the ceiling binding.

In bilateral negotiations with major trading powers, an acceding country should be prepared to receive requests for substantial cuts in its tariff level. The acceding country's lack of bargaining power is obvious. However, well-formulated arguments, when backed by substantive evidence and a sound long-term development policy objective, have proven successful in justifying the appropriateness of tariffs set by the acceding country on key product items.

Tariffication

In formulating the initial tariff offer, an acceding country should take into account the commitment to eliminate all non-tariff measures (NTMs), such as quantitative import control (e.g. quotas, import prohibition), variable import levies or minimum import prices, upon the date of accession. To accommodate the impact of NTM elimination on the domestic market, WTO members in formulating their UR commitments have used the modality of "tariffication", converting the level of protection provided by NTMs into tariffs and modifying the level of corresponding MFN tariffs accordingly. As a result, the post-UR bound agricultural tariffs in many cases turned out to be higher than the pre-UR levels. As a version of the tariffication modality, developing countries had the option to use the "ceiling binding", setting bound tariff rates which were substantially higher than their then-applied rates, for products whose tariffs had previously been unbound.

Neither the tariffication option nor the ceiling binding option is automatically granted to acceding countries. Some WTO members, such as developed countries in the Cairns Group and the United States, seem to have the view that those modalities were intended only for the UR negotiations and are not applicable to the accession negotiations. The possibility of applying the tariffication method should be negotiated with WTO members on a product-by-product and case-by-case basis. The right to use tariffication is also linked to the right to provide Special Safeguard (SSG) measures on selected commodities. The details of these measures are discussed further below.

Market access opportunities: tariff rate quotas

"Market access opportunities" were introduced in the UR negotiations to encourage imports of products previously protected by NTMs through the use of tariff rate quotas (TRQs). TRQ is a two-tier tariff system where a lower rate of tariff is levied on a given quantity of imports (quota), while imports outside this quota are levied at a normal MFN tariff rate.

While the initial aim of the TRQ system was to aid exporters, more and more acceding countries now seem to consider TRQs as an AoA-consistent measure for controlling import quantities. This perception may be correct, judging from the unimpressive record of the TRQ implementation since 1995. The fill rate of quotas (i.e. the percentage share of the imported quantity vis-à-vis the total quota quantity) on sensitive products has been extremely low. On average, around 30 per cent of quotas set under the total TRQ commitments by 36 WTO members were not imported. Recently, WTO members which are major agricultural exporters have been discouraging acceding countries from making any TRQ commitment,

rather than trying to secure a market share by receiving a bilateral allocation from quotas. Among countries recently acceded to the WTO, Bulgaria, Ecuador, Latvia and Panama provided for market access opportunities.

If "allowed" to make the TRQ commitment, an acceding country should expect that WTO members with export interests may request country-specific allocation of TRQs, as "current" market access opportunities, if they have been historical suppliers. Some members may request not only a share in quotas but also an increase over time in their quota quantities, though, under the AoA, the current access quantities do not need to increase throughout the implementation period. They may also request to set a sufficiently low level of within-quota tariff rates, if not duty-free access, and transparency in TRQ administration.

Administration of TRQ refers mainly to domestic regulations regarding the allocation of quotas among importers. After a few years of the implementation experience, WTO members noted that certain administration methods could effectively block imports under TRQ, while the AoA does not provide guidelines regarding preferred TRQ administration methods. The TRQ administration methods in question are those which do not reflect the market demand or the purchase decision of importers, such as discretionary import licensing, involvement of state trading enterprises in purchase or sale of import quotas or import licences conditional on concurrent purchase of the domestic products. Based on such implementation experiences, WTO members tend to encourage acceding countries to resort to open and market-oriented administration methods, such as automatic import licensing or "first come, first –served". Possible establishment of rules concerning the TRQ administration is one of the most discussed subjects in the ongoing WTO negotiations on agriculture.

Special safeguard (SSG) provision

The AoA contains the special safeguard (SSG) provision for agricultural products – a right to levy additional duties up to 33 per cent of the corresponding MFN rate against imports of "tariffied" products to accommodate a possible import surge or a price fall beyond a predetermined level. While invoking safeguard measures within the WTO framework obliges a country to provide proof of serious injuries to the domestic production caused by imports, the SSG provision allows WTO members to apply additional duties without a need to investigate injuries to domestic production.

In the past accession cases, acceding countries were *not* automatically granted the right to SSG actions. However, an acceding country may negotiate for the right to resort to SSGs on certain key products, especially those that are essential for domestic food security, by providing a sound justification. Bulgaria, Ecuador, Panama and Chinese Taipei[159] managed to nominate a number of products as being subject to SSG.

How effective could the SSG provisions to reduce external shocks to the domestic agricultural production remains a question. As an execution of SSG under the current set-up

[159] Referred to in United Nations contexts as Taiwan Province of China.

requires complex calculation of applicable additional duties and a sophisticated administrative mechanism, very few developing countries have made actual use of it. However, in the ongoing WTO negotiations on agriculture, various developing-country WTO members have stressed the need for measures to safeguard their domestic producers from increasing competition from abroad, and have called for a simplified type of SSG as an S&D treatment applicable especially to key staples generally produced by small-scale or subsistence farmers.

Commitments on domestic support

Accession commitments on agricultural domestic support may force an acceding country to undertake a substantial "reform" in the structure and future direction of its agricultural policy. The impact will be particularly large for countries where government intervention has been playing a vital role in the agricultural sector and countries which acutely need stable growth in agricultural production for the purpose of economic and social development. This section examines some difficulties faced by acceding countries in making their agricultural policies WTO-consistent while trying to achieve their long-term development objectives in the agricultural sector.

Domestic support subject to the reduction commitments

Domestic support measures that are deemed trade-distorting are classified as the "amber box" measures. Those measures should be quantified in terms of the base-period total Aggregate Measurement of Support (AMS) from which annual reductions are made. A country is forbidden to exceed the annual bound limit in any year.

Typical of the amber box measures is a market price support, where the government sets the official price of an agricultural product, whether by being the sole buyer of the product or otherwise, in order to encourage producers to maintain or increase the level of production. Amber box measures include not only support to agricultural producers but also support to the manufacturing of processed agricultural products in the form of, *inter alia*, investment subsidies (e.g. preferential interest rates on loans) or input subsidies (including subsidized payment to the operation of processing).

Box 1

Preparation of the ACC/4 document:

In the areas of domestic support and export subsidies, an acceding country is required to provide WTO members with factual information on those agricultural subsidies in the most recent three years in a document called "ACC/4". The information contained in the initial ACC/4 significantly influences the development and outcome of the negotiations. Failing to provide comprehensive information at this stage may cost the acceding country bargaining leverage in the negotiations at a later stage. In preparing the ACC/4, acceding developing countries commonly encounter the following difficulties: lack of trained stuff with an in-depth understanding of the AoA to classify the existing agricultural policy measures according to the AoA definition of domestic support; ambiguity in the criteria given in the AoA definition (which is subject to different interpretation among WTO members); lack of necessary statistical information; and lack of coordination among relevant government ministries. This is one area where an acceding country may require balanced advice and technical support from multilateral or bilateral aid agencies.

Acceding countries often receive pressures from some WTO members to refrain from the use of amber box measures. Generally, the majority of countries in the accession process reported that amber box measures did not exist, had already been eliminated or were in the process of being eliminated over the following years. The same trend applies to developing-country WTO members. Largely because of acute budgetary constraints, many developing countries had set their UR base period AMS at zero. Since countries are not allowed to increase the total spending on amber box measures at the level above the *de minimis* limit, zero AMS in the base period implies the total surrender of the right to use amber box measures in the future.

Out of 16 countries which acceded to the WTO, only six applicants (Bulgaria, Croatia, Jordan, Lithuania, Moldova and Chinese Taipei[160]) included the AMS commitments in their final Schedule. While the economic conditions of many of those countries are comparable to those of the mid- to high-income developing countries, the commitments made by those acceded countries were more onerous than the UR commitments made by developing countries in terms of the length of the implementation period and the reduction percentage of the AMS.

The S&D provisions in the area of domestic support include a favourable threshold in the reduction commitments (13.3 per cent instead of 20 per cent reductions) and time derogation (10 years instead of 6 years of the implementation period). Developing countries are also allowed to use trade-distorting domestic support measures, as long as the monetary value of such a measure falls within 10 per cent (instead of the 5 per cent allowed for developed countries) of the value of the total production of the product concerned. This is

termed the *de minimis* limit. Furthermore, measures that are aimed by developing countries at agriculture and rural development may be exempted from the reduction commitments. Those "development measures" as identified in Article 6.2 are: investment subsidies; input subsidies to low-income or resource-poor farmers; and support to encourage diversification from growing illicit narcotic crops.

There is a significant variation in the breadth of the S&D provisions that were accorded to recently acceded countries. For instance, Ecuador, Mongolia, Panama, Georgia and Jordan are entitled to the *de minimis* limit of 10 per cent, while for Bulgaria, Kyrgyzstan and Estonia the *de minimis* limit is 5 per cent. Latvia was given a transitory period to shift from a *de minimis* limit of around 8 per cent to one of 5 per cent by 1 January 2003. China's *de minimis* level was set at a somewhat irregular 8.5 per cent. China and many other acceding countries did not receive the right to use the "development measures".

This "WTO-minus" aspect of the accession process has been highlighted in the ongoing WTO negotiations on agriculture. A negotiating proposal on domestic support submitted to the WTO agriculture negotiations by 12 countries in transition, the majority of which recently acceded to the WTO, summarizes the problematic conditions encountered by them:

> "The agricultural sector in the former centrally planned economies has witnessed sweeping changes in the past 10 years. (…) Most of the investment decisions in the first half of the last decade were postponed by economic operators due to the uncertainties surrounding ownership with devastating effect on the state of agricultural assets. As a result the agricultural sector is badly needing investment. At the same time farmers have been plagued by the scarcity of capital: they have been lacking own resources, in the absence of a well-functioning mortgage system the availability of loans on commercial terms has been limited, budgetary constraints have stood in the way of adequate government assistance. (…) The recovery of the agricultural sector is an absolute political and economic priority for these countries. In the circumstances described above it is evident that for a transitional period governments in transition economies have to play a crucial role in assisting farmers in their efforts to re-establish the viability of agricultural production. (…) A key question here is whether the multilateral disciplines as they currently stand would offer adequate flexibility for agricultural policy-making, especially if we take into account the prospect of further significant reductions in support as a result of the ongoing negotiations."[161]

For these reasons, these countries proposed that (i) the AoA should include a specific provision to address the particular needs of members in the difficult process of transformation to a fully-fledged market system; (ii) investment subsidies and input subsidies generally available to agriculture in those countries should be exempt from reduction commitments;

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[160] Referred to in United Nations contexts as Taiwan Province of China.

[161] WTO,G/AG/NG/W/56, 14 November 2000.A negotiating proposal by Albania, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, Kyrgyzstan, Latvia, Lithuania, Mongolia, Slovakia and Slovenia.

and (iii) the *de minimis* threshold applicable to the transition economies should be increased. They noted that, as a precedent, Article 29 of the Subsidies Agreement explicitly recognizes the crucial role of certain domestic support measures in economies in transition in the process of "transformation into a market economy".

Developing-country WTO members also propose to increase policy flexibility in the domestic support commitment applicable to developing countries by increasing the *de minimis* level for the measures related to food security from 10 per cent and creating a new set of exempt measures under the "development box", which should include measures necessary to protect resource-poor vulnerable farmers and to meet food security, whether those measures are trade-distorting or otherwise.

Domestic support exempted from the reduction commitments

The AoA does not restrict all types of domestic support measures. Exempt measures include "green box" measures "blue box" measures, "development measures" and measures that fall within the *de minimis* limit.

In theory, countries are free to use the green box without any restrictions. However, the use of such exempt measures is sometimes beyond the economic capacity of many acceding countries, or the types of measures listed in those boxes are not relevant to the agricultural conditions and circumstances of acceding countries. For instance, many of the measures included in the green box reflect the circumstances of countries where the level of agricultural production is not expected to rise further. Developing countries' policy generally focuses on physically increasing agricultural production, in view of the importance of agricultural production and agricultural employment in their economies, and/or guaranteeing food security to a rapidly growing population. Countries in transition are also trying to boost agricultural production and to use more of the available resources which have been left idle by post-reform disruption to the sector.

Export subsidies commitments

The export subsidies provision in the AoA is one area which most clearly distinguishes the WTO rules and disciplines on agricultural products from those on non-agricultural products: the use of export subsidies is prohibited *except* those provided within the framework of the AoA.[162] Nevertheless, the establishment of a set of constraints on the provision of export subsidies is hailed as one of the major achievements of the AoA. Under the AoA, members are (i) committed not to provide export subsidies above the total level specified in their own Schedules according to their reduction commitments; and (ii)

[162] Article 3 (Prohibition) of the WTO Agreement on Subsidies and Countervailing Measures stipulates that, "Except as provided in the Agreement on Agriculture…", export subsidies and subsidies contingent upon the use of domestic products over imported goods are prohibited. GATT Article XVI also states that the provision of export subsidies to "primary products" is excluded from prohibition, providing that such subsidies shall not be applied in a manner which results in "… that contracting party having more than an equitable share of world export trade in that product…".

committed not to introduce new export subsidies that are not included in their reduction commitment.

The reduction commitments on export subsidies have been the major issue of conflicts among WTO member countries in the ongoing WTO negotiations on agriculture. Agricultural exporter countries, namely the Cairns Group countries, have been pressing for the total elimination of export subsidies as one of the targets of the new negotiations, pointing out the highly trade-distorting nature of subsidies used by few countries. The view is shared by many developing countries, which are concerned about subsidized exports replacing the domestic products in their domestic or regional markets.

In this respect, should an acceding country wish to continue the use of export subsidies, it will most likely face serious objections from the majority of WTO members. So far, Bulgaria and Panama have included the reduction commitments on export subsidies in their Schedules. Other acceded countries had zero export subsidies in the base period or had agreed to eliminate the export subsidies that existed during the base period by the time of the accession.

The second round of agriculture negotiations

As stipulated in Article 20 of the AoA, the second round of the WTO negotiations on agriculture was launched in March 2000. It was agreed that the negotiating agenda should include the elements stipulated in Article 20 of the AoA, which are (i) the experience to that date in implementing the reduction commitments; (ii) the effects of the reduction commitments on world trade in agriculture; (iii) non-trade concerns, special and differential treatment to developing-country members, and the objective of establishing a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this agreement; and (iv) further commitments necessary to achieve the abovementioned long-term objectives. The areas for negotiations have been identified by the negotiating proposals submitted by WTO members during the "first phase" (March 2000 – March 2001) of the negotiations. Negotiations went into the second phase in May 2001.

The negotiations received a further push by the Ministerial Declaration adopted at the Fourth WTO Ministerial Conference at Doha (November 2001), which confirmed, though without prejudging the outcome of the negotiations, that the continuing negotiations aim at "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support". The negotiations on modalities for the further commitments should be established by 31 March 2003, and the concessions should be submitted before the Fifth Ministerial Conference.

Possible linkages between agricultural liberalization and food security

Food security, or how to strike a balance between agricultural liberalization and national food security, has been an issue that provoked active discussions among WTO members. The core of the issue is whether the need for food security is a sufficient reason for

allowing countries more flexibility and the use of more domestic support measures than are permitted under the current AoA. This requires a sensitive approach, as giving priority to food security in the AoA framework may contradict its initial long-term objective of substantial progressive reductions in support and protection in agricultural trade. Some WTO Members fear that accepting such food security needs could provide countries with ample opportunities to use arbitrary protection and support measures, as was the case in agricultural trade in the pre-UR period.

There are two opposing views concerning food security and trade liberalization. One is that food security is best served by enhancing domestic production. The holders of this view, which include developing countries and major agricultural importing countries, suggest that lowering trade barriers on agricultural imports resulted in further deterioration of the competitiveness of domestic products, leading to decreased food security in importing countries. Hence, they propose increased flexibility in measures to promote production and protect domestic producers, especially subsistence farmers; enhanced provisions against imports of staple products; or application of temporary quantitative restrictions on imports.

Another view is that food security will be improved by further liberalizing trade, which will enhance general access to foodstuffs. The bearers of this view stress that the concept of food security should not be confused with the concept of food self-sufficiency. They argue that increasing domestic production by injecting government spending or by controlling inflow of cheaper imports would not establish long-term food security. A stable, predictable and liberalized agricultural trading environment governed by multilateral trade rules, they say, is essential for ensuring access to foodstuffs.

Extension of the special and differential treatment to countries in need

Various developing-country members stressed the imbalance in the benefits accrued from the implementation of the AoA between subsidy-providing developed countries and finance-constrained developing countries, as well as between major agricultural exporters and net-food-importing developing countries. In this respect, various WTO members have questioned whether the “one –size –fits all” approach of the current AoA framework is appropriate for the agricultural sector.

A majority of developing countries made substantive reduction commitments in the area of domestic support, despite their needs for stable agricultural production growth to achieve the long-term objectives of economic and social development. With a view to redressing those imbalances, several countries suggested that the new agriculture negotiations should improve the S&D provisions by, *inter alia*, providing greater market access to exports from developing countries and expanding the criteria of non-exempt domestic support measures by establishing the “development box”.

Beyond general improvement of the S&D provisions, some developing countries propose to enable the S&D to allow differing levels of commitments and modalities among developing countries, with a view to addressing needs and problems stemming from country-specific economic, topographic and climatic conditions governing agricultural production and

trade. As was mentioned earlier, several proposals submitted by recently acceded countries with economies in transition stress the same need. These countries suggest that a special provision in terms of the commitments be applicable to them, taking into account the particular structural difficulties they face in nurturing the development of a market mechanism in their previously government-controlled agricultural sector.

Conclusion

There are several ways to "improve" the modalities involved in the accession negotiations on agriculture, with a view to supporting acceding countries' efforts to conform to the AoA rules while trying to meet their long-term development goal. One is to reduce the ambiguity of the criteria regarding the applicability of the UR rules (e.g. the use of tariffication) to the cases of acceding countries. In this context, special attention should be paid to reducing the "WTO-minus" elements in the accession commitments. Another is to take into account the actual economic capacity and country-specific developmental circumstances of an acceding country in agreeing on the "appropriate" level of liberalization required for accession to the WTO. Lastly, there is a need to agree that the accession commitments should not undermine an acceding country's right to "benefit" from any improvement made to the S&D provisions or special treatment for economies in need that may result from the ongoing WTO negotiations on agriculture.

Energy-related issues in the WTO accession negotiations

Murray Gibbs,* Anar Mamedov**

Until the 1980s, most petroleum-exporting developing countries were not contracting parties to the GATT (with the exception of Gabon, Indonesia, Kuwait and Nigeria, all of which acceded under Article XXVI as de facto GATT contracting parties). The other petroleum-producing countries did not seek accession to the GATT, and issues related to petroleum and energy were not discussed in that forum. It is said that a "gentleman's agreement" existed among the major trading countries not to discuss petroleum issues in the GATT lest the strategic nature of petroleum trade and the importance of security concerns in petroleum products "politicize" the debate. There was also a perception by the petroleum-exporting countries themselves that they had little to gain from the GATT, as they exported one product for which market access was not a major consideration, imported all others, and thus stood to lose by being bound by the GATT rules with respect to both their policies in the energy sector and their import regimes in general.

However, in the 1980s some petroleum-exporting countries began to rethink their position. Immediately before the Uruguay Round, Mexico acceded to the GATT, followed during the Uruguay Round by Venezuela (see box 1 below), and at the end of the Round by Bahrain, Qatar and the United Arab Emirates. Two petroleum-exporting countries, Ecuador and Oman, have acceded to the WTO under its Article XII. Many of the countries currently in the process of acceding to the WTO (Algeria, Azerbaijan, Kazakhstan, the Russian Federation, Saudi Arabia, Sudan, Uzbekistan and Yemen) are petroleum-exporting countries. In addition, there are major petroleum exporters which have expressed interest in accession to the WTO but have not yet been able to formally initiate the process (Iran, the Libyan Arab Jamahiriya).[163] Today, around 45 per cent of world petroleum exports, 55 per cent of petroleum reserves and almost 60 per cent of natural gas reserves are accounted for by countries which are not members of the WTO (see figure 1 below).

A range of energy-related issues have been raised in the accession negotiations, including (i) governmental controls on production and export of petroleum-based products; (ii) domestic prices and pricing policy; (iii) export tariffs and taxation; (iv) the operations of state trading enterprises and monopolistic practices in this sector; (v) "unfair" trade practices (e.g. subsidies and dumping); (vi) investment; and (vii) trade in services related to exploration for and the extraction, transportation and processing of petroleum. All these issues are prominent in the WTO accession process of petroleum-exporting countries.

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[163] The Islamic Republic of Iran applied for accession in September 1996 (WTO doc. WT/ACC/IRN/1 of 26 September 1996). The WTO General Council considered this application several times in 2001; however, it was not possible to reach consensus on this matter among WTO members. The Libyan Arab Jamahiriya has recently applied for accession,(WTO, WT/ACC/LYB/1, 10 December 2001).

Box 1

Petroleum in GATT accession negotiations:[*]
Accession to the GATT of Mexico and Venezuela

While export measures, including export restrictions, are, like any other trade measures, subject to the general rules of the GATT (e.g. MFN and non-discrimination), trade-restricting measures in the natural resources sector (including petroleum) may be justified under GATT Article XX(g) (general exceptions relating to the conservation of exhaustible natural resources), subject to certain conditions included therein, notably that production for domestic consumption is also restricted. This exception had served to strengthen the perception that, in general, international trade in crude petroleum was excluded from the rules of the multilateral trading system and was governed by its own distinctive rules. Only when petroleum-producing and exporting countries such as Mexico (1986) and Venezuela (1990) negotiated their accession to the GATT did the issue of flexibility for the management of crude-oil export policies come to the fore. Indeed, this may have been the most important element in Mexico's decision to reject accession to the GATT in 1980, after the negotiations had been successfully concluded. When Mexico did accede to the GATT in 1986, this was still perceived as a major problem, warranting special consideration in the Mexican Protocol of Accession. Thus, paragraph 5 of the Protocol reads: "Mexico will exercise its sovereignty over natural resources, in accordance with the Political Constitution of Mexico. Mexico may maintain certain export restrictions related to the conservation of natural resources, particularly in the energy sector, on the basis of its social and development needs if those export restrictions are made effective in conjunction with restrictions on domestic production or consumption."

Venezuela, which acceded to the GATT during the Uruguay Round, did not consider that any modification to its standard Protocol of Provisional Application (PPA) was required in order to accommodate issues related to petroleum. In its view, paragraph 5 of the Mexican PPA did not change Mexico's multilateral rights and obligations, particularly in light of the provision in GATT Article XX(g) that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption". Indeed, this last condition was identical to the one in the special provision concerning the energy sector in Mexico's PPA. Venezuela concluded that such a provision did not grant any particular advantage, and therefore it did not request the insertion of any special provisions into its own PPA or into the final report of the Working Group on the management of its petroleum sector.

There is, of course, nothing in the GATT/WTO that prevents measures taken in the petroleum and petroleum products sector from being subject to multilateral disciplines and/or challenges by members whenever there is a breach of multilateral obligations. Furthermore, the fact that a Member may have made no tariff bindings on petroleum products does not detract from its other obligations under the GATT/WTO.

[*]See "Trade Agreements, Petroleum and Energy Policies", UNCTAD/ITCD/TSB/9, Geneva 2000.

A fundamental principle of GATT 1994 is the prohibition of quantitative restrictions on trade, which in principle applies equally to exports and imports (Article XI). This prohibition is subject, however, to a number of exceptions. The most relevant exceptions with respect to petroleum trade are to be found in Article XX (general exceptions) and Article XXI (national security). Of special interest to petroleum-exporting states is Article XX(g), which

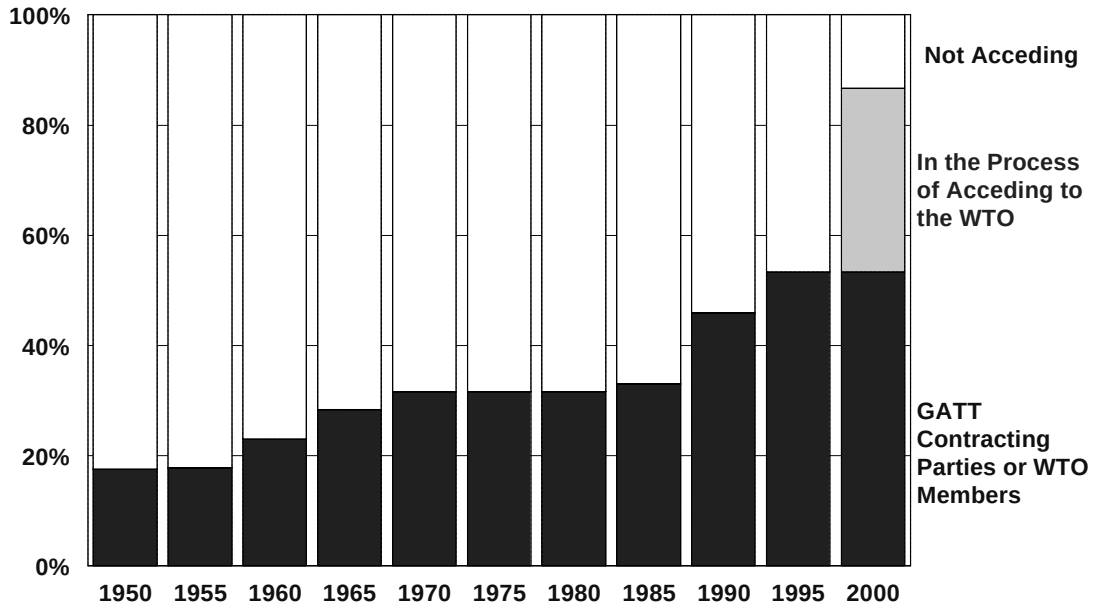
generally exempts from normal GATT disciplines those measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption". Although this exception might appear to give a measure of comfort to petroleum producers, there is some question as to the extent of its scope. Indeed, the different views on its possible application are reflected in the differing approaches to this issue taken by Mexico and Venezuela upon their accession to the GATT. The experience of regional agreements such as NAFTA and those of certain countries which have acceded to the WTO would suggest that initiatives to clarify and perhaps reduce the scope of this exception could arise in the negotiations regarding the accession of individual countries.

A major policy issue in the petroleum sector is "dual pricing" (or "two-tier pricing") practices for natural resources, whereby governments keep domestic prices lower (or export prices higher) than if they had been determined by market forces. This is of fundamental interest to petroleum-exporting countries, as it enables them to use their natural resources to promote industrialization by attracting investment and supporting the competitiveness of their industrial sector.

The issue of dual pricing, together with the related issue of export restrictions on the part of some major trading nations, was raised at the 1982 GATT Ministerial Meeting, and again in the course of the Uruguay Round negotiations, with a view to elaborating new rules to govern these practices.

Figure 1

Share of Oil Production vis-à-vis GATT/WTO Country Status



Source: "The institutional architecture of global energy trade", Craig VanGrasstek, Washington Trade Reports, Washington, 2000

While dual pricing as such is not inconsistent with WTO rules, problems arise in finding acceptable mechanisms to keep domestic prices lower than world prices and in controlling access to the lower-price energy; such mechanisms include (i) export restrictions, (ii) export duties or taxes, and (iii) provision by the government of low-cost energy inputs. During the Uruguay Round negotiations, some participants sought to elaborate GATT Articles in such a way as to restrict policy options in the petroleum sector. The proposals were related mainly to dual pricing and export restrictions.

The dual pricing issue has arisen in the accession negotiations where acceding countries are being requested to eliminate or desist from introducing dual pricing systems. Some countries presently in the process of accession, notably the Russian Federation and Saudi Arabia, are being urged to accept commitments not to maintain or introduce dual pricing systems. It has been argued that such measures are inconsistent with Article XVII of GATT 94 (in the case of the Russian Federation) or are in "violation" of WTO or "problematic" for market access concessions (in the case of Saudi Arabia).[164] Also these countries are being requested to eliminate export tariffs and export quotas.

[164] See WTO, WT/ACC/RUS/4, "Accession of the Russian Federation, Additional questions and replies", 1 November 1995, and WT/ACC/SAU/6, "Accession of the Kingdom of Saudi Arabia, Additional questions and replies", 30 September 1996.

The rules of the WTO with respect to export and import duties and taxes are symmetrical. That is, while governed by the unconditional MFN clause, the duties and taxes can be increased at will unless subject to bindings included in the GATT Schedules. While, the binding of export duties or taxes is extremely rare, some recently acceded countries have also met with requests to bind their export duties. Bulgaria accepted to freeze the coverage of products subject to export duties and committed to minimizing its use of export duties upon its accession. Mongolia committed to eliminating export duties on raw cashmere within 10 years after accession, and Latvia committed to abolishing all export duties except those on antiques. Estonia and Georgia committed to minimizing the use of export duties. Oman, a petroleum-exporting country that is not a member of OPEC, agreed to eliminate all export duties upon accession, including duties on petroleum and derivatives. Also Oman agreed to consider the national oil company, Petroleum Development Oman (PDO), as a state trading enterprise according to GATT Article XVII. Lastly, Oman agreed that any export control requirements remaining in place on the date of accession would be fully consistent with WTO provisions, including those contained in Articles XI, XVII, XX and XXI of the GATT 1994 (see table 1 below for details of Oman's commitments).

Table 1

Concessions and commitments on goods and services by Oman

Goods Commitments										
Tariff concessions (agricultural products)		**Tariff concessions (other products)**		**Binding coverage**		**Participation in sectoral initiatives**		**Agricultural domestic support (total AMS commitments)**		**Export subsidies**
30.5 per cent (most between 0 and 15 per cent) Staging max. until 2004 No SSG		11 per cent (most between 5 and 15 per cent) Staging max. until 2004		All products		A few "zero for zero" sectors, chemical harmonization initiatives, ITA		NIL (10 per cent *de minimis*)		0
Sectoral Commitments on Services										
Business services	**Telecommunication services**	**Construction and related engineering services**	**Distribution services**	**Educational services**	**Environmental services**	**Financial services**	**Health-related and social services**	**Tourism- and travel-related services**	**Recreational, cultural and sporting services**	**Transport services**
32	17	5	4	4	4	15	1	2	0	7

Sources: Concession Schedules of Oman.

The ability of petroleum-exporting countries to use their natural resources to promote industrialization has several limitations in WTO Agreements. Regulations on subsidies and anti-dumping have constrained the policies aimed at the development process. These agreements still have provisions that allow energy inputs to be supplied at lower prices than in the international market, but they are subject to more stringent conditions related to the prevailing definition of the market economy. The provision by governments of products or services for use in the production of exported goods, on terms or conditions more favourable than for goods for domestic consumption, is considered to constitute an export subsidy if

such terms or conditions are more favourable than those commercially available on world markets to their exporters. This could imply that schemes to provide petrochemical exporters with energy inputs at prices lower than world prices could be claimed to constitute a prohibited export subsidy if the same advantages were not also available as inputs into the production of goods for domestic consumption. For instance, Saudi Arabia's accession negotiations on the petrochemical industry tend to consider energy inputs for downstream products at prices lower than world prices as export subsidy, because a very large portion of the Saudi petrochemical production goes to export.[165]

Energy inputs supplied at lower prices than in the international market are a non-actionable subsidy (permissible subsidy) when those inputs are available through the economy and are not specific to export production. Petroleum-exporting countries believe that their comparative advantage based on their natural resources may be used to foster the development process. On the other hand, even if the energy inputs were not directly linked to exports but available only to particular industries, they would still be considered "specific" and thus "actionable" under the Agreement, in that the downstream products could be subject to countervailing duties if they were deemed to cause material injury to domestic producers in importing markets. It is clear, however, that providing all domestic industries with energy below world prices is not a "specific" subsidy in the sense of the Agreement on Subsidies and Countervailing Measures and is therefore not "actionable", although the determination of "specificity" may give rise to different interpretations and, thus, be open to challenge in certain cases.

Industrialization policies also have to face the agreement on Trade-Related Investment Measures.[166] This means that petroleum-exporting countries cannot condition the right to invest, by law, to oil companies' purchases of goods to the domestic market in order to promote the development of local suppliers to the petroleum industry. However, this is specifically permitted in the case of services under Article XIX:2.

As has been noted elsewhere in this book, in tariff negotiations on goods acceding countries have generally been requested to bind all tariff rates on both agricultural and industrial products;[167] the level of binding and the number of products to be bound are matters open to negotiation. Although there is no specific provision either in the GATT 1994 or in the Uruguay Round Agreement on Agriculture, there was an understanding in the Uruguay Round negotiations that duties on all agricultural products (as defined in Annex 1 to the Agreement on Agriculture) should be bound. As all WTO member countries have complied with this understanding,[168] acceding countries are also required to do so. In the case of non-agricultural products (industrial goods), there is neither a written rule nor an understanding that duties should be bound. In practice, developed-country WTO members

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[165] See WTO, WT/ACC/SAU/3, 13 May 1996, and WTO, WT/ACC/SAU/6, "Accession of the Kingdom of Saudi Arabia, Additional questions and replies".

[166] TRIMS deals with those investment measures that are inconsistent with GATT Articles III (National Treatment) and XI (General Elimination of Quantitative Restrictions).

[167] See chapter "Terms of WTO Accession "above.

[168] With the exception of some countries that did not bind duties on a few products for religious reasons.

and some developing countries have bound tariffs on practically all non-agricultural products. Many other developing countries, however, have only bound duties on 60 to 70 percent of such products. During the accession negotiations, acceding countries are urged by developed countries to offer "comprehensive bindings" – that is, to bind duties on all non-agricultural products. Indeed, developed countries often make this a condition for entering into bilateral negotiations, a situation which presents a dilemma for petroleum exporters and other developing countries.

For petroleum-exporting countries, this predicament arises from their dependence on the export of a single commodity – crude oil – which in many cases constitutes 80 to 90 percent of their total exports. Tariffs on crude petroleum in the main importing markets (the European Union, Japan and the United States) are generally low and in many cases not bound. With respect to petroleum products, MFN tariff levels after the Uruguay Round remain higher than those for crude petroleum. The United States and Japan kept their tariff on petroleum products at the pre-Uruguay Round level and some of them are still unbound.[169] No commitments on tariff reductions or bindings on petroleum appear in most developing countries. The result is that 80 to 90 percent of the exports of many petroleum-exporting countries do not receive the benefits of secure and predictable access either to the markets of developed countries or to the markets of most developing countries. While the possibility that the importing countries would impose tariffs or quantitative restrictions on crude petroleum might seem unlikely, it should be recalled that this was done by the United States in the past for reasons of "national security",[170] and that recently there was a serious threat that petroleum imports to the United States would be subject to anti-dumping duties.[171]

In addition, in many developed countries retail sales of petroleum products such as gasoline are heavily taxed. In fact, according to UNCTAD's *Trade and Development Report 2001,* gasoline taxes in the European Union on average amount to some 68 per cent of the final price. In 1999, fuel taxes yielded revenue of nearly US$358 billion in the G-7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States), an amount almost double that earned by OPEC members from their exports of petroleum.[172]

The negotiations of schedules of commitments on trade in services are another area where energy issues can be introduced. Services negotiations have proven more difficult to organize for acceding countries, since they constitute a completely new area and since, in most acceding countries, information on various service sectors and on the diverse measures

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[169] For details see Table K and Table L in "Trade Agreements, Petroleum and Energy Policies", UNCTAD/ITCD/TSB/9.

[170] The United States, for political and national security reasons, has imposed export controls under the Export Control Act, and import restrictions through compulsory quotas on crude oil, petroleum products and derivates.

[171] In 2000, the Committee to Save Domestic Oil (SDO), a regional United States group of independent oil producers, threatened to file anti-dumping and countervailing duties complaints against Venezuela, Mexico, Iraq, and Saudi Arabia, claiming that these countries had a policy of undercutting prices in the United States to put US producers out of business.

[172] UNCTAD, *Trade and Development Report 2001*, UNCTAD/TDR/2001.

applicable to services is not always available. This makes it difficult to assess the implications of the assorted types of commitments required.

Although the current classification of the General Agreement on Trade in Services (GATS) does not include a separate comprehensive entry for energy services, three specific energy-related activities are explicitly listed as separate subsectors in the GATS classification list: "transportation via pipeline of crude or refined petroleum and of petroleum products, and of natural gas", "services incidental to mining: rendered on a fee or contract basis at oil and gas fields" and "transmission and distribution services on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users".

While few countries have made commitments in the energy services sector in the Uruguay Round, one acceding petroleum exporting country, Oman, accepted commitments to totally liberalize trade and investment in the three energy service sectors identified in the GATS classification, as described above. Oman also undertook broad market access and national treatment commitments in related services sectors, including transport, legal services, and construction. Other acceding countries have accepted commitments in the energy services sector; these include not only energy producing countries such as Ecuador ("services incidental to mining") but also China, a country with a large internal market, which has accepted commitments with respect to reduction of state monopoly control on trading and distribution in the petroleum sector.

Significantly, actual or potential energy transit countries have accepted commitments in the subsector "transportation via pipeline of crude or refined petroleum and petroleum products and of natural gas" (Croatia, Kyrgyzstan) or on "services incidental to energy distribution: transmission and distribution services, on a fee or contract basis of gaseous fuels to households, industrial commercial or other users" (Georgia, Latvia, Croatia).[173] Acceding former republics of the Soviet Union and most acceding countries formerly forming part of Yugoslavia are signatories to the Energy Charter Treaty and have accepted certain commitments relating to transit within that framework, The 1921 (general) and 1923 (electricity-specific) Barcelona conventions on transit establish the principle that transit should be facilitated, not obstructed, and that it should not give rise to "transit rent" using transit as a stranglehold, but only to reasonable, cost-related fees. Article V of GATT is largely based on the Barcelona Convention; it allows only reasonable, cost-related charges. However, there are many cases where transit of energy, in particular, has been used by the transit state to extract excessive transit fees or otherwise obstruct an oil and gas operation, in particular in the case of land-locked states absolutely dependent on transit.[174]

Article 7 of the Energy Charter Treaty reconfirms freedom of transit as under Article V of GATT, but requires governments to facilitate and take necessary measures to make

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[173] See "Energy Services in International Trade: Development Implications", note by the UNCTAD secretariat, TD/B/COM.1/EM.16/2, 18 June 2001.

[174] From Thomas W. Waelde, "Access to Energy Networks: a Precondition for Cross-border Energy and Energy Services Trade" in UNCTAD *International Trade in Energy and Environmental Services; Building to bridge to a sustainable future* (forthcoming).

transit practical, including a (soft-law) obligation to at least facilitate the construction of new pipelines and transmission lines. The treaty requires non-discrimination; states have to encourage relevant entities (e.g. TSOs, pipeline operators) to modernize and expand their facilities and to refrain from interrupting energy transit for political reasons. While this transit article sets forth major principles, it does not contain disciplines on specific issues of practical importance. For example, it does not provide guidelines, criteria or even specific figures for transit fees, nor does it specify the regulatory obligation (and state liability) with respect to TSOs and gas pipeline operators. There is no procedure (apart from general conference monitoring and discussion) to make the very open-ended obligation to "facilitate" and not to discriminate with respect to transit. For the last four years, there have been negotiations to develop a more specific "Transit Protocol" which would specify the general principles and provide dispute settlement procedures, but also include, perhaps as attachments, model transit agreements. [175]

Energy services are attracting much attention in the current negotiations under GATS. Proposals have been submitted by Canada, Chile, the European Union, Japan, Norway, the United States and Venezuela. While many are aimed at opening up part or all of the sector for foreign investment, the Venezuelan proposal would incorporate Article IV-type commitments on the part of countries or firms benefiting from such liberalization, such as transfer of technology and access to distribution systems. These proposals also advocate an improved classification for energy services. The report of the United States National Energy Policy Group sets the opening up of the energy services sector in many acceding countries among its main international objectives. Algeria, Azerbaijan, Kazakhstan, the Russian Federation and Saudi Arabia are specifically mentioned in its recommendations.

It should be recalled that the Doha Ministerial Declaration opens the new multilateral negotiations to acceding countries. This will provide them with an opportunity to pursue modifications and clarifications in the existing agreements in tandem with their participation in the accession process.

[175] See www.encharter.org.

Accession of China to the WTO: Advantages and challenges

Xiaobing Tang*

With the successful conclusion of the negotiations on China's accession to the WTO on 17 September 2001, the Fourth WTO Ministerial Conference approved on 10 November 2001 by consensus the text of the agreement for China's accession to the WTO. On 11 December 2001, China became a WTO member 30 days after its notification of acceptance of the agreement.

Since China adopted the "open-door" policy more than two decades ago, it has registered a high rate of economic growth and rapid trade expansion. Its international trade has increased more than twelve-fold, from US$38 billion in 1980 to US$474 billion in 2000. Given its market size and its potential as a major player in world trade, China has a vital interest in maintaining open and secure access to world markets.

It is difficult to overstate the importance of China's WTO accession. Many world political leaders believe that China's entry into the WTO will not only provide a new impetus for the development of world trade but also constitute a defining moment for the multilateral trading system and for the international economic, political and security arrangements that will influence the world in this century and beyond.

Many developing countries have viewed this as a victory not only for China but for them as well. There are hopes that China's accession to the WTO will strengthen the position of developing countries in rebalancing the WTO system.

Given the fact that in China's WTO accession, as in other WTO accessions, none of the WTO members has offered any concessions in return for China's offer of concessions and commitments, the WTO membership will not confer immediate and specific economic and trade benefits on China. However, from a long-term of point of view, by gaining WTO membership, China expects to achieve the following objectives:

1. To stabilize its trade relations with the major trading partners – in other words, to receive unconditional most-favoured-nation treatment so that its trade relations with these countries could become normal rather than subject to annual review under the national laws of these countries;

2. To secure regional peace and create a more relaxed environment for its pursuit of national unification with Chinese Taipei.[176] With both of them entry to the WTO, China and Chinese Taipei will soon have to start a direct trade link, which will certainly lead to further increases in trade and investment between China and

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[176] Referred to in United Nations contexts as Taiwan Province of China.

Chinese Taipei. Stronger economic ties are likely to reduce political tensions between the two sides of the Taiwan Strait;

3. To ensure the eventual elimination of discriminatory restrictions against Chinese products. Despite the radical reform of China's trade regime over the past 20 years and the elimination of WTO-inconsistent trade measures, some WTO members continue to apply a host of discriminatory trade restrictions against Chinese products. With China's accession to the WTO, those WTO members maintaining such discriminatory trade restrictions are bound to phase them out within the agreed time frame;

4. To have access to the multilateral dispute settlement mechanism. China has been subject to constant threats of unilateral trade sanctions and retaliation from its major trading partners. The prolongation of such an unhealthy environment has chilling effects on trade expansion between China and its trading partners. Access to the multilateral dispute settlement mechanism will provide a fair basis for both China and its trading partners to resolve their disputes and develop harmonious trade relations;

5. To provide Chinese exports with more security and predictability in accessing the world market. In the multilateral trade negotiations, China will have an equal right to make requests for market-access concessions from other WTO members and claim its legitimate right in the spirit of "give and take". Currently, China is already a principal supplier of thousands of tariff lines in a number of markets; and

6. To ensure equal participation in the rule-making process that is shaping the future multilateral trading system and the world economic governance. Since the conclusion of the Uruguay Round, dramatic changes have been taking place in the multilateral trading system. These changes reflect rapid changes in the world economy as a result of globalization and represent the interests of different countries and economies. Accession to the WTO will enable China to seek to have its trade interests reflected in future rule-making.

China's entry into the WTO will mean immense opportunities for entrepreneurs around the world. In 2000, China was the world's fifth leading importer, buying some US$225.1 billion worth of foreign goods and US$34.8 billion worth of foreign services. In 1999, China was the world's 11th-largest importer of agricultural products, purchasing nearly US$14 billion worth of products. As the standard of living of the Chinese people is expected to rise further in the years to come through policies of greater openness, and as China's market becomes more open to foreign goods and services, those figures will rise substantially.

Following are the major challenges faced by China and Chinese enterprises in the post-WTO-accession period:

1. As the tables in the Annex to this discussion indicate, China, as part of its accession commitments, has agreed to undertake a number of obligations and commitments which have exceeded the normal terms of conditions for WTO members and those accepted by other newly acceded members (WTO-plus obligations and commitments). In addition, some residual discriminatory measures which had been maintained against China by major trading partners have been given general applicability, although they will be eliminated by specified future dates (WTO-minus rights). These WTO-plus obligations and commitments, to some extent and during a certain period of time, will prevent Chinese exporters from receiving equal treatment in their competition in foreign markets. Thus, one of the major challenges faced by China and Chinese enterprises is how to overcome the difficulties deriving from these obligations and commitments.

2. WTO membership will expose Chinese enterprises, workers and services providers to intensified foreign competition. While Chinese firms will be forced to become more efficient and productive, it is almost certain that this greater competition will lead to some dislocation of firms and jobs, and to hardship for some citizens. In order to overcome the difficulties posed by foreign competition, the Chinese authorities need to undertake the necessary structure adjustment and further reforms. They also need to encourage an influx of technological innovation, which in turn could lead to greater opportunities for better-paying jobs and a wider selection of goods and services for the vast majority of Chinese people.

3. In order to accede to the WTO, China has made immense market-opening commitments in the areas of both goods and services. Some of them are quite sensitive, particularly those related to the uncompetitive manufacturing sectors (e.g. automobiles), agriculture and financial services. How to implement these market-opening commitments within the agreed time frame as provided for in the final legal text governing China's accession to the WTO without creating any social and political unrest remains a major issue. Chinese Premier Zhu Rongji said, while attending the ASEAN plus 3 meeting in Brunei in October 2001, that WTO membership would bring with it "many questions" and that "the disadvantages may outweigh the advantages if the problems are not handled well".[177]

4. With the implementation of the market-opening commitments, it is expected that within the next few years there will be a big surge in imports of both goods and services. These increased imports will certainly increase China's leverage or barging power vis-à-vis its major trading partners. The question here is how to balance this with the accessibility of China's exports to its major trading partners' markets.

5. Another important challenge for China is how to make best use of the multilateral dispute settlement mechanism despite the limitations resulting from those WTO-plus obligations and commitments or WTO-minus rights. WTO is a rules-based organization, and its legal system has been designed mainly by the western

[177] See http://asia.cnn.com/2001/WORLD/asiapcf/east/11/13/willy.column/index.html.

industrialized countries. It is widely recognized that after many years, the smooth integration of all groups of countries in this system is far from satisfactory, and the gap between the developed and developing countries is still obvious. In order to benefit from the functioning of the system, apart from strong individual and cooperative economic units, China would also require the availability of institutions (both governmental and private). It is in the nature of the WTO that everything is dependent on detailed facts. Details are required in its various agreements, including its dispute settlement provisions. For a country like China whose legal system is underdeveloped, adaptation to the WTO Agreements would require great efforts. Long-term efforts in capacity-building will be required in order to set up adequate legal expertise, as has been the experience of many developing-country WTO members in recent years.

Discrimination in international trade agreements has a special historical importance for China because the major western countries have continuously applied residual discriminatory restrictions against China and Chinese products. During the course of China's WTO accession negotiations, the Chinese negotiators have consistently pursued the removal of these residual discriminatory restrictions. Despite those WTO-plus obligations and unprecedented market-opening commitments, or WTO-minus rights, the most positive sign is that China's entry into the WTO will start the ending of these discriminatory treatments which some of the WTO members have applied against China and Chinese products for many years within the agreed time frames. On some important issues, such as anti-dumping, there may be opportunities for China to alleviate some of the WTO-inconsistent provisions within the scope of future multilateral negotiations.

Main concessions and market-opening commitments made by China

As a result of the negotiations, China has agreed to undertake a series of important commitments to open and liberalize its regime in order to better integrate into the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules.

Commitments undertaken by China include the following:

- China will provide non-discriminatory treatment to all WTO Members. All foreign individuals and enterprises, including those not invested or registered in China, will be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade.

- China will eliminate dual-pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export.

- Price controls will not be used to protect domestic industries or services providers.

- China will implement the WTO Agreement in an effective and uniform manner by

revising its existing domestic legislation and enacting new legislation fully in compliance with the WTO Agreement.

- Within three years of accession, all enterprises will have the right to import and export all goods and trade them throughout the customs territory, with limited exceptions.
- China will not maintain or introduce any export subsidies on agricultural products.

While China will reserve the right of exclusive state trading for products such as cereals, tobacco, fuels and minerals and will maintain some restrictions on transportation and distribution of goods inside the country, many of the restrictions that foreign companies have at present in China will be eliminated or considerably eased after a three-year phase-out period. In other areas, like the protection of intellectual property rights, China will implement the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement in full from the date of accession.

During a 12-year period starting from the date of accession, there will be a special Transitional Safeguard Mechanism in cases where imports of products of Chinese origin cause or threaten to cause market disruption to the domestic producers of other WTO members.

On the other hand, prohibitions, quantitative restrictions or other measures maintained against imports from China in a manner inconsistent with the WTO Agreement would be phased out or otherwise dealt with in accordance with mutually agreed terms and timetables specified in an annex to the Protocol of Accession.

1. Goods

The conclusion of the negotiations for market access on goods represents a commitment undertaken by China to gradually eliminate trade barriers and expand market access to goods from foreign countries. China has bound all tariffs for imported goods.

After implementation of all the commitments made, China's average bound tariff level will decrease to 15 per cent for agricultural products. The range is from 0 to 65 per cent, with the higher rates applied to cereals.

For industrial goods the average bound tariff level will go down to 8.9 per cent, with a range from 0 to 47 per cent, with the highest rates applied to photographic film and automobiles and related products. Some tariffs will be eliminated and others reduced, mostly by 2004 but in no case later than 2010.

Textiles

Upon accession China will become a party to the Agreement on Textiles and Clothing and will be subject to its rights and obligations. As for all WTO members, quotas on textiles will end on 31 December 2004, but there will be a safeguard mechanism in place until the end of 2008 permitting WTO Member Governments to take action to curb imports in case of market

disruptions caused by Chinese exports of textile products.

Agriculture

China agreed to limit its subsidies for agricultural production to 8.5 per cent of the value of farm output (per Article 6.4 of the Agriculture Agreement). China also agreed to apply the same limit to subsidies covered by Article 6.2 of the Agriculture Agreement.

2. Services

Telecommunication

Upon China's accession, foreign service suppliers will be permitted to establish joint venture enterprises, without quantitative restrictions, and provide services in several cities. Foreign investment in the joint venture shall be no more than 25 per cent. Within one year of accession, the areas will be expanded to include services in other cities and foreign investment shall be no more than 35 per cent. Within three years of accession, foreign investment will be no more than 49 per cent. Within five years of accession, there will be no geographic restrictions.

Banking

Upon accession, foreign financial institutions will be permitted to provide services in China without client restrictions for foreign currency business. For local currency business, within two years of accession, foreign financial institutions will be permitted to provide services to Chinese enterprises. Within five years of accession, foreign financial institutions will be permitted to provide services to all Chinese clients.

Insurance

Foreign non-life insurers will be permitted to establish as a branch or as a joint venture with 51 per cent foreign ownership. Within two years of China's accession, foreign non-life insurers will be permitted to establish as a wholly owned subsidiary.

Upon accession, foreign life insurers will be permitted 50 per cent foreign ownership in a joint venture with the partner of their choice.

For large-scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance, upon accession, joint ventures with foreign equity of no more than 50 per cent will be permitted; within three years of China's accession, allowed foreign equity share shall be increased to 51 per cent; within five years of China's accession, wholly foreign-owned subsidiaries will be permitted.

Source: WTO Press Release of 17 September 2001 http://www.wto.org/english/news_e/pres01_e/pr243_e.htm

Annex

Some key commitments made by China with respect to its Accession to the WTO

Relevant Provisions of the WTO Agreements or summary	Relevant text of the Protocol of Accession and paragraphs of the Working Party Report
NON-DISCRIMINATION **NATIONAL TREATMENT (as defined in Article III of GATT 1994)** The main objective of the principle of national treatment is to ensure that the effects of tariff concessions are not frustrated by providing indirect protection to domestic products. The disciplines as defined in Article III of GATT 1994 aim at establishing competitive conditions for imported products in relation to domestic products and providing equal opportunities to the imported product and domestic product in the domestic market. Specifically these disciplines have the following broad elements: i. The imported product must not be subject to internal taxes or other internal charges in excess of those applied to like domestic product. ii. The imported product must be accorded treatment no less favourable than that accorded to like domestic product in respect of rules and requirements affecting sale, purchase, transportation, distribution or use of the product. iii. No member country can have a regulation laying down that in use of a product, certain amount or percentage must be from domestic sources. iv. A member must not apply internal taxes or other internal charges or internal quantitative regulation in a manner so as to afford protection to domestic production. **UNIFORM APPLICATION – as defined in Article XXIV:12 of GATT 1994** Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.	Relevant text of the Protocol of Accession (Section 3 of Part I – General Provisions) Except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of: (a) the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; and (b) the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production. **Relevant paragraphs of the Working Party Report (paragraphs 18–19 and 22–23)** The representative of China further confirmed that China would provide the same treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China. China would eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export. The Working Party took note of these commitments. (18) The representative of China confirmed that, consistent with China's rights and obligations under the WTO Agreement and the Draft Protocol, China would provide non-discriminatory treatment to all WTO Members, including Members of the WTO that were separate customs territories. The Working Party took note of this commitment. (19) The representative of China confirmed that the full respect of all laws, regulations and administrative requirements with the principle of non-discrimination between domestically produced and imported products would be ensured and enforced by the date of China's accession unless otherwise provided in the Draft Protocol or Report. The representative of China declared that, by accession, China would repeal and cease to apply all such existing laws, regulations and

	other measures whose effect was inconsistent with WTO rules on national treatment. This commitment was made in relation to final or interim laws, administrative measures, rules and notices, or any other form of stipulation or guideline. The Working Party took note of these commitments. (22) In particular, the representative of China confirmed that measures would be taken at national and sub-national level, including repeal or modification of legislation, to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of the following: **After sales service** (repair, maintenance and assistance), including any conditions applying to its provision, such as the MOFTEC third Decree of 6 September 1993, imposing mandatory licensing procedures for the supply of after-sales service on various imported products; **Pharmaceutical** products, including regulations, notices and measures which subjected imported pharmaceuticals to distinct procedures and formulas for pricing and classification, or which set limits on profit margins attainable and imports, or which created any other conditions regarding price or local content which could result in less favourable treatment of imported products; **Cigarettes**, including unification of the licensing requirements so that a single licence authorized the sale of all cigarettes, irrespective of their country of origin, and elimination of any other restrictions regarding points of sale for imported products, such as could be imposed by the China National Tobacco Corporation ("CNTC"). It was understood that in the case of cigarettes, China could avail itself of a transitional period of two years to fully unify the licensing requirements. Immediately upon accession, and during the two year transitional period, the number of retail outlets selling imported cigarettes would be substantially increased throughout the territory of China; **Spirits**, including requirements applied under China's "Administrative Measures on Imported Spirits in the Domestic Market", and other provisions which imposed distinct criteria and licensing for the distribution and sale of different categories of spirits, including unification of the licensing requirements so that a single licence authorized the sale of all spirits irrespective of their country of origin; **Chemicals**, including registration procedures applicable to imported products, such as those applied under China's "Provisions on the Environmental Administration of Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products";

	Boilers and pressure vessels, including certification and inspection procedures which had to be no less favourable than those applied to goods of Chinese origin, and fees applied by the relevant agencies or administrative bodies, which had to be equitable in relation to those chargeable for like products of domestic origin. The representative of China stated that in the cases of pharmaceuticals, spirits and chemicals cited above, China would reserve the right to use a transitional period of one year from the date of accession in order to amend or repeal the relevant legislation. The Working Party took note of these commitments. (23)
B. Agriculture **Domestic Support Commitments** **(Article 6.2 of the Agreement on Agriculture):** In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS. Domestic Support Commitments-calculation of current total AMS (Article 6.4(b) of the Agreement on Agriculture) For developing country Members, the de minimis percentage under this paragraph shall be 10 per cent.	Relevant paragraph of the Working Party Report (Section C.8 of Part III – Agricultural Policy) In implementing Article 6.2 and 6.4 of the Agreement on Agriculture, the representative of China confirmed that while China could provide support through government measures of the types described in Article 6.2, the amount of such support would be included in China's calculation of its Aggregate Measurement of Support ("AMS"). He noted that China's Total AMS Commitment Level was set forth in Part IV, Section I of China's Schedule. The representative of China further confirmed that China would have recourse to a de minimis exemption for product-specific support equivalent to 8.5 per cent of the total value of production of a basic agricultural product during the relevant year. The representative of China confirmed that China would have recourse to a de minimis exemption for non-product-specific support of 8.5 per cent of the value of China's total agricultural production during the relevant year. Accordingly, these percentages would constitute China's *de minimis* exemption under Article 6.4 of the Agreement on Agriculture. The Working Party took note of these commitments. (235)
C. Textiles **Relevant Provisions of the Agreement on Textiles and Clothing** Article 9 of the WTO Agreement on Textiles and Clothing (ATC) stipulates that: "This Agreement and all restrictions thereunder shall stand terminated on the first day of the 121st month that WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement." Articles 2 and 3 of the ATC provides for progressive phasing out of all MFA quotas and other non-MFA restrictions, and integration of this sector into GATT 1994 in four stages starting from 1 January 1995 (the date of the entry into force of the WTO Agreement)	**Paragraphs 241 and 242 of the Working Party Report** Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase "day prior to the date of entry into force of the WTO Agreement", contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession. To these base levels, the increase in growth

date of the entry into force of the WTO Agreement).

Paragraph 13 and 14 of Article 2 of the ATC stipulates that at each of the first three stages of the integration programme, an annual increase of the established growth rate (i.e. the growth rate from the former MFA restraints carried over into the ATC) for the remaining restrictions should be provided for as follows:

- For stage one (from 1 January 1995 to 31 December 1997), the level of each restrictions under the MFA bilateral agreements in force for the 12-month period prior to the date of entry into force of the WTO Agreement shall be increased annually by not less than the growth rate established for the restrictions, increased by 16 per cent;
- For stage two (from 1 January 1998 to 31 December 2001), the growth rate for the respective restrictions during stage one, increased by 25 per cent; and

For stage three (from 1 January 2002 to 31 December 2004), the growth rate for the respective restrictions during stage two, increasing by 27 per cent.

In parallel to phasing out of both MFA and non-MFA restrictions over the 10-year transition period, Article 6 of the ATC continues to permit the imposition of new quantitative restrictions by all WTO members (who decided to retain such right) on products (covered by the Annex, that have not yet been integrated into GATT 1994 under the integration programme) of a specific member or members on a discriminatory basis for up to three years during the transition period under the so-called "transitional safeguards" mechanism.

For the invocation of the transitional safeguards, Article 6 of the ATC sets up detailed procedures and disciplines concerning the determination of serious damage or actual threat thereof. In determining serious damage or actual threat thereof, the member imposing the transitional safeguard action, should also examine "on the basis of the level of imports as compared with imports from other sources" whether the serious damage has been caused to the domestic producers of products due to the totality of imports from all sources. This standard is high than that based on the concept of "market disruption" under the MFA, which required a causality between the existence of serious damage and the disruptive imports. Furthermore, the transitional safeguard actions can now only be applied in situation where imports have actually caused serious damage or actual threat thereof. There is no

rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession. The Working Party took note of these commitments. (241)

The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession:

a. In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;
b. Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
c. Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
d. If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
e. The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations,

possibility of taking preventive action to avoid "real risks" of serious damage, as was the case under the MFA.	for the period ending 12 months after the request for consultations; f. No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and g. Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Draft Protocol. The Working Party took note of these commitments. (242)
D. Investment **Article 2 of the TRIMs Agreement** which provides that: 1. Without prejudice to other rights and obligations under GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 19994. 2. An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement. **Annex to the TRIMs Agreement, illustrative list**: 1. TRIMS that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require: (a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or (b) that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports 2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict: (a) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports; (b) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign	**Relevant text of the Protocol of Accession (Paragraph 3 of Section 7 of Part I –General Provisions)** China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China. **Relevant paragraphs of the Working Party Report (Paragraphs 203-247)** The representative of China confirmed that upon accession, as set forth in the Draft Protocol, China would comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and would eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities would not enforce the terms of contracts containing such requirements. The allocation, permission or rights for importation and investment would not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the

exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or (c) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production. Article 5:2 of the TRIMs Agreement provides that: "Each Member shall eliminate all TRIMs which are notified under paragraph 1..., within five years in case of a developing country Member, ..."	transfer of technology. Permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. Consistent with its obligations under the WTO Agreement and the Draft Protocol, the freedom of contract of enterprises would be respected by China. The Working Party took note of this commitment. (203) In the context of discussions on the government's Industrial Policy for the Automotive Sector, the representative of China confirmed that this policy would be amended to ensure compatibility with WTO rules and principles. The Working Party took note of this commitment. (204) The representative of China added that amendments would be made to ensure that all measures applicable to motor vehicle producers restricting the categories, types or models of vehicle permitted for production, would gradually be lifted. Such measures would be completely removed two years after accession, thus ensuring that motor vehicle producers would be free to choose the categories, types and models they produced. However, it was understood that category authorizations by the government could continue to distinguish between trucks and buses, light commercial vehicles, and passenger cars (including multi-purpose vehicles and sport utility vehicles). The Working Party took note of this commitment. (205) The representative of China confirmed that China also agreed to raise the limit within which investments in motor vehicle manufacturing could be approved at provincial government level only, from the current level of US$30 million, to US$60 million one year after accession, US$90 million two years after accession, and US$150 million four years after accession. The Working Party took note of this commitment. (206) With respect to the manufacture of motor vehicle engines, the representative of China also confirmed that China agreed to remove the 50 per cent foreign equity limit for joint-ventures upon accession. The Working Party took note of this commitment. (207)

E. Subsidies

Export Subsidies (Article 3.1 (a) of the Agreement on Subsidies and Countervailing Measures)

Except as provided in the Agreement on Agriculture, the following subsidies within the meaning of Article 1, shall be provided:

(a) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

Export Subsidies (Article 27.2(a) of the Agreement on Subsidies and Countervailing Measures)

The prohibition of paragraph 1 (a) of the Article 3 shall not apply to:

(a) developing country Members referred to in Annex VII.

Developing Country Members referred to in paragraph 2 (a) of Article 27 (Annex VII to the Agreement on Subsidies and Countervailing Measures)

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

(a) Least-developed countries designated as such by the United Nations which are Members of the WTO.

Each of the following developing countries which are Members of the developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached $1,000 per annum: Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

Relevant text of the Protocol Provisions (Section 10 of Part I – General Provisions)

10. Subsidies

1. China shall notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement.

2. For purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.

3. China shall eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement upon accession. Relevant paragraphs of the Working Party Report (Paragraphs 167-168 and 171-174)

The representative of China confirmed, as provided in Section 10.3 of the Draft Protocol, that it would eliminate all export subsidies, within the meaning of Article 3.1(a) of the SCM Agreement, by the time of accession. To this end, China would, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covered subsidies granted at all levels of government which were contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment. (167)

On the same basis, the representative of China confirmed that China would eliminate, upon accession, all subsidies contingent upon the use of domestic over imported goods, within the meaning of Article 3.1(b) of the SCM Agreement. The Working Party took note of this commitment. (168)

Industrial Policy, including Subsidies: Some members of the Working Party expressed concern that the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization; this could have an impact not only on access to China's domestic market, but also on the performance of Chinese exports in the markets of other WTO Members, and should be subject to effective SCM Agreement disciplines. In view of this, some members felt that it would be inappropriate for China to benefit from certain provisions of Article 27. The representative of China, in turn, considered that certain provisions of this Article should be available to China, and informed the Working Party of the efforts being undertaken, as part of its ongoing reform process, to reduce the availability of certain types of subsidies. China was committed to implementing the SCM Agreement in a manner that was fair and equitable to China and to other WTO Members. In line with this approach, the representative of China stated his intention to reserve the right to benefit from the provisions of Articles 27.10, 27.11, 27.12 and 27.15 of the SCM Agreement, while confirming that China would not seek to invoke Articles 27.8, 27.9 and 27.13 of the SCM Agreement. The Working Party took note of these commitments. (171) Some members of the Working Party, in view of the special characteristics of China's economy, sought to clarify that when state-owned enterprises (including banks) provided financial contributions, they were doing so as government actors within the scope of Article 1.1(a) of the SCM Agreement. The representative of China noted, however, that such financial contributions would not necessarily give rise to a benefit within the meaning of Article 1.1(b) of the SCM Agreement. He pointed out that China's objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses. The Working Party took note of this commitment. (172)

F. Anti-Dumping	Relevant text of the Protocol of Accession (Section 15 of Part I – General Provisions)
General Agreement on Tariffs and Trade 1994 (or the Agreement on Anti-Dumping Measures (the AAD))	**15. Price Comparability in Determining Subsidies and Dumping**
Paragraph 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (or the Agreement on Anti-Dumping Measures (the AAD)) that: "For the purpose of the Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."	Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following: (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules: (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability; (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product. (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China. (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing
Paragraphs 2.2 to 2.6 of the AAD specify the details of the determination of dumping should be made.	
Article 2.7 of the AAD applies to countries maintaining "a complete or substantially complete monopoly of trade, where all domestic prices are fixed by the state". This provision has been interpreted to permit the use of less stringent criteria in applying anti-dumping measures against non-market economy countries or countries deemed by the investigating authority to be non-market economy. The Agreement on Subsidies and Countervailing Measures establishes the legality of subsidies and identifies them to be prohibited, actionable and permitted (or non-actionable). Prohibited and actionable subsidies are subject to countervailing measures.	
For the purpose of countervailing measures, Article 14 of the Agreement on Subsidies and Countervailing Measures provides that: "any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines: (a) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) or private investors in the territory of that Member;	

(b) a loan by a government shall not be considered as a conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loam which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amount; (c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees; (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in question in the country of provision or purchase (including prices, quality, availability, marketability, transportation and other conditions of purchase or sale).	Measures. (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.
G. Uniform Administration of the Trade Regime **Article XXIV:12 of GATT 1994** Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.	**Relevant text of the Protocol of Accession (Section 2 (A) of Part I – General Provisions)** **(A) Uniform Administration** 1. To apply the provisions of the WTO Agreement and this Protocol to the entire customs territory of China, including border trade regions and minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations are established (collectively referred to as "special economic areas"). 2. To apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level (collectively referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange. 3. To conform its local regulations, rules and other measures of local governments at the sub-national level to the obligations undertaken in the WTO Agreement and this Protocol. 4. To establish a mechanism under which

	individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime. **Relevant paragraphs of the Working Party Report (paragraphs 73 and 75)** The representative of China confirmed that the provisions of the WTO Agreement, including the Draft Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment. (73) The representative of China further confirmed that the mechanism established pursuant to Section 2(A) of the Draft Protocol would be operative upon accession. All individuals and entities could bring to the attention of central government authorities cases of non-uniform application of China's trade regime, including its commitments under the WTO Agreement and the Draft Protocol. Such cases would be referred promptly to the responsible government agency, and when non-uniform application was established, the authorities would act promptly to address the situation utilizing the remedies available under China's laws, taking into consideration China's international obligations and the need to provide a meaningful remedy. The individual or entity notifying China's authorities would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments. (75)
H. Safeguards **Relevant Provisions of the Agreement on Safeguards** Article 2:2 of the WTO Agreement on Safeguards states that: "Safeguard measures shall be applied to a product being imported irrespective of its source." This means that GATT Article XIX action should generally be applied on an MFN basis. However, in exceptional circumstances and subject to specific conditions, Article 5:2 (b) permits flexibility in allocating MFN quotas among suppliers in certain circumstances. Under this provision WTO members may deviate from the MFN provisions when an overall import quota is imposed by an importing country against all sources of suppliers, in that the share allocated to suppliers found to be contributing more to global injury could be lower than the share allocated to them on the basis of recent trade patterns. Article 5.2 (a) of the Agreement on Safeguards states that an importing member applying a quota under Article XIX may seek agreement among the exporters to their respective shares of the quota. In the event that "this method is not reasonably practicable", however,	**Relevant text of the Protocol of Accession (Section 16 of Part I – General Provisions)** **16. Transitional Product-Specific Safeguard Mechanism** 1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards. 2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

it allows the importing member to allot shares in the quota on the basis of import shares "during a previous representative period", due account being taken of any special factors which may have affected or may be affecting the trade in the product." Article 5:2(b) of the Agreement on Safeguards details the conditions under which a WTO member may depart from allocating quotas among suppliers on a strict MFN basis and from the traditional practices of GATT. Such departure from the MFN provisions is permissible provided that (i) "imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period", (ii) the reasons for the departure are justified and consultations are conducted, in advance, with affected parties, and (iii) "the conditions of such departure are equitable to all suppliers of the product concerned". Furthermore, such departure is only allowed to remedy serious injury for a period of four years and is not permitted in the case of threat of serious injury In order to seek a departure, the importing country needs: • to provide the WTO Committee on Safeguards with all pertinent information, which includes evidence of serious injury, a precise description of the product and the proposed measure (which, in this case, may only be in the form of a quota), proposed date of introduction, etc.; and • to provide adequate opportunity for prior consultation with the affected exporting country with a view to reviewing the above-mentioned information. The reasons for the departure must be justified to the Committee on Safeguards. As referred to above, a departure from the non-discrimination rule shall only be permitted in case of serious injury, which, as provided for in paragraph 1 (a) of Article 4, "shall be understood to mean a significant overall impairment in the position of a domestic industry".	3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards. 4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration. 6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards. 7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened

	to cause market disruption. In this case, notification of the measures taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards. 9. Application of this Section shall be terminated 12 years after the date of accession.

ANNEXES

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Annex I

ACCESSION OF COUNTRIES TO THE WTO

Table 1

Countries and customs territories that completed WTO accessions in 1995–2001

(Situation as of 1 January 2002)

15 countries and 1 separate customs territory

Country/territory	Date of WTO membership
Albania	8 September 2000
Bulgaria	1 December 1996
China	11 December 2001
Croatia	30 November 2000
Ecuador	21 January 1996
Estonia	13 November 1999
Georgia	14 June 2000
Jordan	11 April 2000
Kyrgyzstan	20 December 1998
Lithuania	8 May 2001
Latvia	10 February 1999
Moldova	26 July 2001
Mongolia	29 January 1997
Oman	9 November 2000
Panama	6 September 1997
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei, referred to in the United Nations as Taiwan Province of China)	1 January 2002

Table 2

Countries in the process of accession to the WTO

(Situation as of 1 January 2002)

28 countries

Country/territory	Start of the accession process
Algeria	June 1987*
Andorra	October 1997
Armenia	December 1993*
Azerbaijan	July 1997
Belarus	October 1994*
Bahamas	May 2001
Bhutan (LDC)	October 1999
Bosnia and Herzegovina	July 1999
Cape Verde (LDC)	July 2000
Cambodia (LDC)	December 1994*
Federal Republic of Yugoslavia	February 2001
Former Yugoslav Republic of Macedonia	December 1994
Kazakhstan	February 1996
Lao PDR (LDC)	February 1998
Lebanon	April 1999
Nepal (LDC)	June 1989*
Russian Federation	June 1993*
Samoa (LDC)	July 1998
Saudi Arabia	July 1993*
Seychelles	July 1995
Sudan (LDC)	October 1994
Tajikistan	May 2001
Tonga	July 1995
Ukraine	December 1993*
Uzbekistan	December 1994
Vanuatu (LDC)	July 1995
Viet Nam	January 1995
Yemen (LDC)	July 2000

* GATT accession converted into WTO accession.

Annex II

STATISTICAL INFORMATION

Table 1
Share of exports of acceded countries (completed accession under Article XII since 1995) in world trade, 1999
(Billion dollars and percentages)

Country/territory	Value	Share	Rank	GNP per capita (US$)
China	195.2	3.5	9	779
Oman	7.321	0.13	58	4940
Ecuador	4.451	0.08	68	1310
Croatia	4.268	0.08	70	4580
Bulgaria	4.060	0.07	77	1380
Lithuania	3.005	0.05	78	2620
Estonia	2.940	0.05	92	3480
Jordan	1.782	0.03	105	1500
Latvia	1.725	0.03	109	2470
Panama	0.822	0.015	132	3070
Moldova	0.470	0.008	133	300
Kyrgyzstan	0.455	0.008	134	300
Mongolia	0.366	0.008	142	350
Albania	0.270	0.004	144	870
Georgia	0.240	0.004	154	620
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei, referred to in the United Nations as Taiwan Province of China)	121.6	2.2	15	11872
TOTAL	**348.975**	**6,268**		

World: 5625.0

Sources: UNCTAD Handbook of Statistics, 2000; World Trade Organization, Annual Report, 2000. UNCTAD' calculations.

Table 2

Export structure by main commodities of acceded countries, 1999 (Percentages)

Country	1st group	%	2nd group	%	3rd group	%
Oman	Fuels	76.4	Food items	4.1	Ores, metals	1.5
Ecuador	All food items	63	Fuels	22.3	Agricultural raw materials	4.7
China	Machinery, transport equipments	27.3	Food items	6.0	Chemical products	5.6
Croatia	Machinery, transport equipments	29.1	*Chemical products*	11.7	Food items	9.5
Bulgaria	Food items	13.6	Ores, metals	11	Machinery, transport equipments	11
Lithuania	Machinery, transport equipments	25.9	Fuels	14.8	Chemical products	12.3
Estonia	Machinery, transport equipments	24.6	Food items	16.2	Agricultural raw materials	9.3
Jordan	Chemical products	29.5	All food items	25.1	Ores and metals	24.3
Latvia	Agricultural raw materials	30.3	Food items	6.2	Chemical products	6.0
Panama	All food items	75.3	Chemical products	4.5	Fuels	3.5
Moldova	All food items	72.0	Ores and metals	1.4	Agricultural raw materials	1.3
Kyrgyzstan	Food items	15.8	Fuels	11.8	Machinery	9.7
Mongolia	Ores and metals	59.9	Agricultural raw materials	27.7	Food items	2.2
Albania	Ores, metals	12.6	Food items	9.8	Agricultural raw materials	8.8
Georgia	All food items	35.1	Ores and metals	20	Chemical products	11.8
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei referred to in the United Nations as Taiwan Province of China)	Machinery, transport equipments	50.2	Chemical products	5.0	Food items	3.0

Sources: UNCTAD Handbook of Statistics, 2000; World Trade Organization, Annual Report, 2000.

Table 3

Share of exports of acceding countries in world trade, 1999
(among 215 countries and custom territories)
(Billion dollars and percentages)

Country/territory	Value	Share	Rank	GNP per capita (US$)
Russian Federation	74.3	1.3	20	2270
Saudi Arabia	50.5	0.9	25	6920
Algeria	11.9	0.2	47	1550
Ukraine	11.6	0.2	48	750
Viet Nam	11.5	0.2	50	370
Kazakhstan	5.6	0.09	64	1230
Belarus	5.9	0.09	66	2630
Uzbekistan	3.7	0.065	76	720
F. R. of Yugoslavia	1.7	0.03	82	2280
Yemen	1.53	0.03	90	350
F.Y.R of Macedonia	1.41	0.03	112	1690
Azerbaijan	0.929	0.02	114	550
Cambodia	0.740	0.02	121	260
Lebanon	0.677	0.02	129	3700
Nepal	0.6	0.02	140	220
Bosnia-Herzegovina	0.554	0.02	147	1690
Sudan	0.505	0.02	148	330
Lao People's Democratic Republic	0.311	0.006	149	280
Armenia	0.232	0.005	150	490
Tajikistan	0.225	0.005	155	350
Bhutan	0.120	0.002	168	510
Seychelles	0.120	0.002	177	6540
Andorra	0.05	0.001	184	18000
Vanuatu	0.036	0.001	186	1170
Samoa	0.02	0.0004	193	1060
Cape Verde	0.012	0.0004	197	1330
Tonga	0.01	0.0004	199	1720
Bahamas	0.01	0.0004	201	11940
TOTAL	**184.7**	**3.2732**		

World: 5625.0

Sources: UNCTAD Handbook of Statistics, 2000; World Trade Organization, Annual Report, 2000 . UNCTAD calculations.

Table 4

Export structure by main commodities of acceding countries, 1999 (Percentages)

Country	1st group	%	2nd group	%	3rd group	%
Russian Federation	Fuels	38.0	*Ores, metals*	15.7	Machinery, transport	7.6
Saudi Arabia	Fuels	87.7	Food items	7.5	Ores, metals	3.4
Algeria	Fuels	97.2	Ores. metals	0.5	Food items	0.3
Ukraine	Ores, metals	35.3	Fertilizers	3.5	Food items	2.5
Viet Nam	Footwear	17	Fuels	16	Food items	7.2
Kazakhstan	Fuels	38.6	Ores, metals	27	Food items	8.1
Belarus	Machinery, transport equipments	16.0	Chemical products	12	Ores, metals	8.0
Uzbekistan	Agricultural raw materials	42.0	Ores, metals	18	Fuels	5.6
F. R. of Yugoslavia	Food items	14.0	Ores, metals	10.4	Agricultural raw materials	4.0
Yemen	Fuels	95.3	Food items	2.8	Ores, metals	0.6
F.Y.R of Macedonia	Food items	16.1	Ores, metals	8.7	Agricultural raw materials	2.1
Azerbaijan	Fuels	78.6	Food items	6.3	Ores, metals	3.6
Cambodia	N/A					
Lebanon	Pearl, precious stones	12.1	Gold, silver	10.0	Food items	5.0
Nepal	Wood, wood products	91.0	Food items	6.3	Agricultural raw materials	0.2
Bosnia Herzegovina	N/A					
Sudan	Food items	60.0	Agricultural raw materials	25.0	Ores, metals	0.4
Lao PDR	N/A					
Armenia	Ores, metals	26.0	Food items	10.8	Agricultural raw materials	4.6
Bhutan	N/A					
Seychelles	Food items	99.1	Ores, metals	0.3	Other goods	0.6
Andorra	N/A					
Vanuatu	Food items	79.1	Agricultural raw materials	8.2	Ships, boats	6.0
Samoa	Food items	96.3	Agricultural raw materials	0.1	Other goods	3.6
Cape Verde	Food items	84.2	Ores, metals	9.1	Agricultural raw materials	1.2
Tonga	N/A					
Bahamas	Food items	92.1	Ores, metals	0.5	Other goods	7.4
Tajikistan	Ores, metals	32.0	Food items	9.8	Agricultural raw materials	3.6

Sources: UNCTAD Handbook of Statistics, 2000; World Trade Organization, Annual Report, 2000.

Table 5

Share of exports of acceded countries (completed accession under Article XII since 1995) in world trade in commercial services, 1999
(Million dollars and percentages)

Country/territory	Value	Share	Rank	Share in total trade*
China	23879	1.8	15	11.5
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei referred to in the United Nations as Taiwan Province of China)	16660	1.3	23	13.1
Croatia	3723.2	0.237	81	43.4
Bulgaria	1757.5	0.112	87	31.6
Jordan	1688.6	0.107	118	46.4
Panama	1589.1	0.101	123	19.8
Estonia	1485.8	0.095	129	35.6
Lithuania	1083.3	0.069	138	21.4
Latvia	1020.4	0.065	142	33.4
Ecuador	763.0	0.049	157	15.2
Albania	253.2	0.016	184	84.0
Georgia	216.9	0.014	188	30.1
Moldova	104.5	0.007	201	13.7
Mongolia	73.3	0.005	206	13.6
Kyrgyzstan	60.3	0.004	207	10
Oman	18.2	0.001	209	0.2
TOTAL	**54376.3**	**3.982**		

World (billion US$): 1350.0

Sources: World Bank, World Bank Atlas 2000; World Trade Organization, Annual Report, 2000. UNCTAD calculations.

* Based on balance of payments data

Table 6

Structure of services exports of acceded countries, 1999
(Percentages)

Country/territory	Transport		Travel		Communi-cations		Financial		Other	
	STS*	SWT**	STS	SWT	STS	SWT	STS	SWT	STS	SWT
China	10.2	0.851	59.5	3.35	1.562	0.394	2.49	2.097	20.6	1.594
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei referred to in the United Nations as Taiwan Province of China)	20.4	1.227	20.6	0.836	6.2	1.126	2.9	1.78	47.1	2.6
Croatia	13.0	0.17	67.0	0.593	…	…	…	…	20.0	0.243
Bulgaria	29.7	0.183	52.9	0.221	1.7	0.104	1.5	0.028	12.3	0.07
Jordan	17.7	0.105	47.1	0.189	…	…	0.1	0.002	35.1	0.194
Panama	56.5	0.313	24.4	0.092	3.2	0.183	10.4	0.177	5.5	0.028
Estonia	47.1	0.246	36.9	0.13	1.7	0.091	0.8	0.013	10.2	0.05
Lithuania	36.9	0.14	50.8	0.131	3.3	0.125	0.8	0.009	5.6	0.02
Latvia	69.8	0.251	11.5	0.028	3.3	0.118	4.0	0.044	8.1	0.027
Ecuador	37.6	0.101	45.0	0.082	8.4	0.227	7.5	0.061	…	…
Albania	6.1	0.005	83.3	0.05	9.4	0.084	0.4	0.001	…	…
Georgia	44.8	0.034	54.5	0.028	0.7	0.005	…	…	…	…
Mongolia	39.4	0.01	48.6	0.008	10.2	0.027	0.4	0.0001	…	…
Moldova	43.9	0.016	36.1	0.009	5.5	0.021	2.6	0.003	9.4	0.003
Kyrgyzstan	33.0	0.007	23.4	0.003	17.1	0.037	1.8	0.001	11.9	0.002
Oman	100	0.06	…	…	…	…	…	…	…	…

Sources: UNCTAD Handbook of Statistics, 2000; World Trade Organization, Annual Report, 2000
UNCTAD calculations
*STS- Share of total services
**SWT- Share of world total

Table 7

Share of exports of selected acceding countries in world trade in commercial services, 1998
(Million dollars and percentages)

Country/territory	Value	Share	Rank	Share in total trade*
Russian Federation	12373	0.94	32	14.1
Saudi Arabia	4729.5	0.36	37	10.7
Ukraine	3922	0.33	58	22.2
Belarus	919.1	0.07	131	11.6
Kazakhstan	904.3	0.069	139	13.4
Nepal	432.9	0.033	172	39
Azerbaijan	320.3	0.024	178	31.7
Seychelles	266.3	0.02	181	71.0
Bahamas	255	0.02	183	82
Yemen	166.4	0.013	185	9.7
F.Y.R. of Macedonia	130.3	0.01	187	9.9
Armenia	118.1	0.009	193	32.8
Lao People's Democratic Republic	115.6	0.009	195	23.7
Vanuatu	108.0	0.008	197	85.0
Cambodia	98.6	0.007	203	12.1
Cape Verde	74.5	0.006	205	82.0
Samoa	57.8	0.004	208	73.0
Sudan	13.6	0.001	211	2.2
Tajikistan	11.2	0.001	215	1.6
TOTAL	**25016.5**	**1.97**		

World (billion US$): 1350.0

Sources: World Bank, World Bank Atlas 2000; World Trade Organization, Annual Report, 2000. UNCTAD calculations.

* Based on balance of payments data

Table 8

Structure of services exports of selected acceding countries, 1999
(Percentages)

Country/territory	Transport		Travel		Communi-cations		Financial		Other	
	STS*	SWT**	STS	SWT	STS	SWT	STS	SWT	STS	SWT
Russian Federation	33.2	1.058	41.2	0.887	1.2	0.117	5.1	1.652	16.9	0.5
Saudi Arabia	…	…	…	…	…	…	…	…	100	1.8
Ukraine	79.4	1.081	8.5	0.078	0.5	0.02	2.6	0.352	8.2	0.103
Belarus	54.0	0.138	1.8	0.003	1.4	0.011	6.0	0.056	28.0	0.07
Kazakhstan	45.1	0.148	38.9	0.086	0.2	0.002	5.56	0.184		
Nepal	18.8	0.002	58.0	0.041	…	…	…	…	23.2	0.023
Azerbaijan	48.2	0.04	34.3	0.019	…	…	6.7	0.056	9.1	0.007
Seychelles	38.3	0.04	58.6	0.042	0.4	0.001	2.5	0.026	0.2	0.0001
Yemen***	21.8	0.0012	38.5	0.015	…	…	…	…	39.8	0.021
F.Y.R. of Macedonia	38.4	0.031	16.3	0.009	1.5	0.02	13.5	0.109	23.2	0.017
Armenia	41.0	0.019	24.0	0.007	2.8	0.004	24.8	0.114	3.5	0.001
Lao People's Democratic Republic	17.9	0.006	80.8	0.019	0.8	0.001	0.6	0.002		
Vanuatu	10.6	0.003	47.3	0.012	…	…	4.8	0.018	18.2	0.006
Cambodia	39.9	0.017	45.2	0.013	…	…	14.7	0.062	…	…
Cape Verde***	60.4	0.015	27.2	0.005	0.24		6.3	0.017	2.8	0.001
Samoa	1.8	0.0001	88.9	0.01	0.2		…	…	9.1	0.001
Sudan	4.2	0.001	2.2	0.0001	…	…	2.7	0.008	87.4	0.023
Bahamas	35.3	0.05	61.2	0.052	0.4	0.001	2.8	0.026	0.3	0.0001
Tajikistan	38.0	0.019	23.0	0.007	2.7	0.004	….	…..	3.3	0.001

Sources:: World Bank, World Bank Atlas 2000; World Trade Organization, Annual Report, 2000; UNCTAD calculations.

* STS- Share of total services

** SWT- Share of world total

*** 1998

ANNEX III

SAMPLE DOCUMENTS

I. Example of a "Standard" Protocol of Accession

PROTOCOL OF ACCESSION OF THE HASHEMITE KINGDOM OF JORDAN TO THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION[178]

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the Ministerial Conference accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the Hashemite Kingdom of Jordan (hereinafter referred to as "Jordan"),

Taking note of the Report of the Working Party on the Accession of Jordan to the WTO in document WT/ACC/JOR/33 (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of Jordan to the WTO,

Agree as follows:

Part I - General

1. Upon entry into force of this Protocol, Jordan accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which Jordan accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 248 of the Working Party Report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in the paragraphs referred to in paragraph 248 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Jordan as if it had accepted that Agreement on the date of its entry into force.

[178] WTO, WT/ACC/JOR/33-WT/MIN(99)/9, 3 December 1999.

4. Jordan may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

Part II – Schedules

5. The Schedules annexed to this Protocol shall become the schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Jordan. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

Part III - Final Provisions

7. This Protocol shall be open for acceptance, by signature or otherwise, by Jordan until 31 March 2000.

8. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

9. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 7 to each member of the WTO and Jordan.

10. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

11. Done at Seattle this third day of December one thousand nine hundred and ninety nine, in a single copy in the English, French and Spanish languages each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

Annex

Schedule – Hashemite Kingdom of Jordan

Part I – Goods

[Circulated in document WT/ACC/JOR/33/Add.1]

Part II – Services

[Circulated in document WT/ACC/JOR/33/Add.2]

II. Example of the Notification of Acceptance

PROTOCOL OF ACCESSION OF THE HASHEMITE KINGDOM OF JORDAN TO THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION DONE AT GENEVA ON 17 DECEMBER 1999[179]

NOTIFICATION OF ACCEPTANCE

ENTRY INTO FORCE

I have the honour to inform you that on 12 March 2000 the Government of Jordan deposited with me a letter of acceptance of the above-mentioned Protocol, thereby recognizing as fully binding the signature affixed by its plenipotentiary on 17 December 1999.

In terms of its paragraph 8, the Protocol shall enter into force on 11 April 2000.

Pursuant to paragraph 1 of the Protocol, Jordan shall become a Member of the World Trade Organization on 11 April 2000.

This notification is furnished in accordance with paragraph 9 of the Protocol.

Mike Moore
Director-General

[179] WTO, WT/Let/333, 14 March 2000.