



Initiative for Policy Dialogue Working Paper Series

September 2005

Joining the Trading System
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Trade

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11

Joining the Trading System



Accession

Twenty countries have been added to the WTO since its creation in 1995.¹ Another 24 countries are negotiating membership,² of which eight are least developed countries (LDCs). Most of this book has been concerned with ensuring that the rules and procedures of the WTO deliver benefits to the developing countries within the WTO system. For the (equally needy) developing countries who are not yet members, the benefits of multilateral trade reform in the Doha Round are dependent on the speed and ease with which they are able to join the WTO, and the terms of their accession. The recent experience of several acceding developing countries is reviewed below.³ It shows that the WTO's accession process requires reform in several respects. In particular, there are no good arguments for maintaining the double standard which treats countries differently depending on whether they are existing members of the WTO or not. There is a need for transparent and objective rules and procedures for accession negotiations which ensure that the accession process is not unduly

¹ For analysis of the experience of accession see Kennett, Evenett, and Gage (2004). The 20 countries are: Albania, Armenia, Bulgaria, Cambodia, China, Croatia, Ecuador, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Macedonia, Moldova, Mongolia, Nepal, Oman, Panama, and Chinese Taipei.

² In order from oldest to most recent application: Algeria, Russian Federation, Saudi Arabia, Belarus, Ukraine, Sudan, Uzbekistan, Vietnam, Seychelles, Tonga, Kazakhstan, Azerbaijan, Andorra, Laos, Samoa, Lebanese Republic, Bosnia and Herzegovina, Bhutan, Cape Verde, Yemen, Serbia and Montenegro, Bahamas, Tajikistan, Ethiopia, and Libya.

³ For reviews of the experience of individual countries see Grynberg and Joy (2000): Vanuatu; Oxfam (2003a): Cambodia; and Oxfam (2004): Vietnam.

costly for developing countries and that accession terms reflect the level of development of each new member.

The WTO's accession process is lengthy and arduous. At the Fifth Ministerial Conference, held in Cancún in September 2003, Cambodia and Nepal became the first two least developed countries to gain membership through the accession process. The time between their initial application and approval was nine years and fourteen years respectively. Vanuatu, Sudan, Samoa, and Laos are all currently in protracted accession negotiations which began more than six years ago.

Indeed, the time taken to complete the WTO's accession process appears to be growing. Figure 11.1 plots in sequential order the length of time taken to complete the first twenty accessions. Even without the longest accession (China, the fifteenth nation to join the WTO, in 1995), the trend is rising (Kennett, Evenett, and Gage 2004).

Part of the problem lies in the absence of clear and transparent accession criteria and negotiation guidelines. The formal rules of accession are set by Art. XII of the Marrakesh Agreement establishing the World Trade Organization. It simply states that new members may accede on 'terms to be agreed between it and the WTO' (Art. XII.1) and that the Ministerial Conference shall approve the

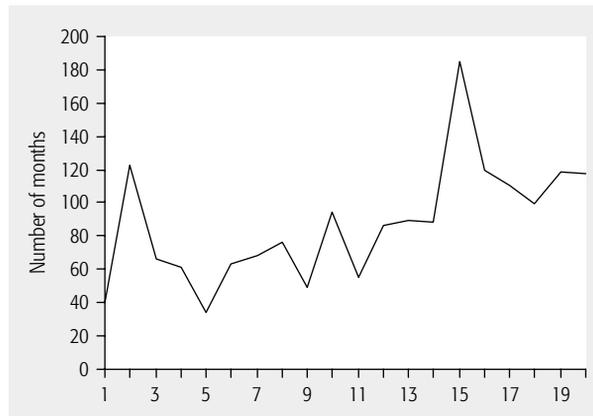


Figure 11.1. **Length of accession process for the first 20 countries to join the WTO**

Source: Kennett, Evenett, and Gage (2004).

JOINING THE TRADING SYSTEM

159

agreement on the terms of accession by a two-thirds majority of the members of the WTO (Art. XII.2). Unfortunately Art. XII does not give any guidance on how those terms should be formulated, nor does it provide any membership criteria, or any elements in an accession process. Indeed for an organization which prides itself on being 'rules-based', the accession process is remarkably vague. This lacuna has left the accession process in the hands of member countries who have interpreted the 'terms to be agreed' as an opportunity to go beyond the existing WTO agreements and impose extra conditions (often referred to as 'WTO-plus conditions') on acceding countries. The US has been particularly successful in seeking WTO-plus provisions from its partners in bilateral trade agreements, and then using these as leverage in WTO negotiations. For example, Vietnam agreed to TRIPS-plus commitments in its bilateral trade agreement with the US. Now that Vietnam is seeking accession to the WTO, which operates under the Most Favoured Nation (MFN) principle, these concessions have become the effective starting point for accession negotiations.

In practice the accession process occurs in three stages. In the first stage the WTO establishes a working party, and the acceding country submits a memorandum explaining the detail of its trade regime. In the second stage the working-party members focus on identifying where the applicant's trade policies differ from the rules of the WTO. In the third stage the applicant undertakes a series of bilateral negotiations with working-party members which culminates in an accession agreement for approval by the Ministerial Conference. Since developed countries are always represented on the working party and since all members of the working party must agree to the terms of accession in order for it to be approved, the developed countries have an effective veto over the accession of any country that does not accept their terms. Samoa's senior trade consultant complained about the brinkmanship practiced by developed countries: 'They can ask for all sorts of commitments which Samoa isn't in a position to offer. If they insist, there are two options: we will never become a member or we have to give in to that request.'⁴

⁴ In an interview with Tuala Falani Chan Tung published in *Sunline*, Apr. 2004.

Recognizing the weaknesses of the current arrangement, the WTO's members committed themselves in the Doha Declaration 'to accelerating the accession of least-developed countries' (para. 9). Following this decision, at the General Council in December 2002, the WTO membership adopted guidelines for LDCs accession. According to the guidelines, negotiations for the accession of LDCs will be facilitated and accelerated through simplified and streamlined accession procedures. In addition the guidelines suggested that members should ensure that acceding LDCs are not subjected to obligations or commitments that go beyond what is applicable to the existing LDC members.⁵ Yet, in several areas, the WTO's actions fall short of this rhetoric. The guidelines are not specific—there are still no objective membership criteria—and evidence from countries in the accession process indicates that they continue to be treated more harshly than existing members.

Recent-accession countries have been subjected to a glaring double standard in that they have been required to accept a higher level of market access commitments than existing members in many areas of the agenda. For example, Cambodia, Nepal and Vanuatu have had to commit themselves to more comprehensive tariff bindings and lower levels of tariff peaks. By way of comparison, while Cambodia, Nepal, and Vanuatu have agreed to bind 100 per cent of their tariff lines, other countries that are already members of the WTO have often bound a much smaller share of their tariff lines.⁶ Furthermore, while Cambodia's bound rates are as high as 60 per cent for sensitive agricultural products, many least developed (and even developed) WTO members have much higher bound rates on agricultural goods.⁷ In industrial goods, Cambodia was required to bind its tariff rates at a

⁵ A decision of the General Council on Streamlining Accession of the LDCs, dated 10 Dec. 2002 states: 'WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members'; and 'Acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services'.

⁶ See UNCTAD (2004). For example, both Tanzania and Cameroon have bound 13.3%, and one developed WTO member, Australia, has bound 97%.

⁷ For example, bound rates are as high as 550% in Myanmar, and other developing WTO member countries have bound tariff rates on agricultural goods as high as 3,000% (Egypt), while developed WTO members have bound tariff rates on some agricultural goods as high as 350% (United States). See UNCTAD (2004).

JOINING THE TRADING SYSTEM

161

maximum level of 50 per cent, much lower than other least developed countries.⁸ Similarly, in its accession negotiations, China had to agree to large tariff reductions in agriculture which went far beyond the obligations of existing members. It also agreed to a special safeguard clause allowing individual WTO members to take measures to limit imports of Chinese products in case of a surge. This extraordinary measure, which is in breach of the MFN principle and goes far beyond the GATT safeguard provisions (Art. XIX), could open the floodgate for the application of discriminatory measures against China. In services, Nepal was required to open up seventy service sub-sectors—far more than similar developing countries. Similarly Cambodia was asked to undertake a commitment on audio-visual and distribution services—an area on which no existing LDC member has made a commitment (Oxfam 2003a). It seems strange that the WTO's developed country members should force acceding countries, particularly small and poor countries like Cambodia and Nepal, into such strong concessions. Grynberg and Joy (2000) suggest that the motivation lies in the developed countries' desire to create a precedent that can be applied to future negotiations.

Moreover there is clear evidence that the price of accession is growing over time (Kennett, Evenett, and Gage 2004). Figure 11.2

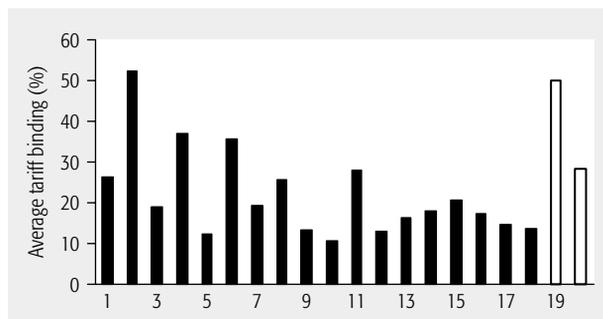


Figure 11.2. **Average tariff binding on agricultural products permitted to the first 20 countries to join the WTO**

Source: Kennett, Evenett, and Gage (2004).

⁸ Other least developed countries also have relatively high tariff bindings in the non-agricultural goods sector. Bangladesh, Djibouti, Lesotho, and Niger all have peaks in tariff bindings at levels as high as 200%. See UNCTAD (2004). Nepal has bound tariff rates on non-agricultural goods at a maximum level of 130%.

shows that the average tariff binding on agricultural goods allowed to acceding countries is falling over time, with the exception of the last two countries, which are in a different category because they are the only two LDCs that have joined the WTO. The figure demonstrates that acceding countries are making larger commitments on their agricultural tariffs.

The terms of accession agreements should reflect the level of development of the new member, yet much recent experience suggests that acceding countries have been forced to offer concessions that have not been made even by developed countries. For example, Cambodia and Vanuatu made a commitment to bind export subsidies in agriculture at zero and not to apply such subsidies in the future. This means that these two developing countries have effectively forgone the right to use export subsidies for agricultural goods, a right that is granted to all other least developed member countries by the Agreement on Agriculture. This commitment goes further than most developed countries have been willing to go in restricting their own export subsidies.

As well as making more commitments than existing members, acceding developing countries have been denied access to different types of special and differential treatment. Cambodia, Nepal, and Vanuatu accepted a significant reduction of their rights to special and differential treatment—rights that are granted automatically to other least developed countries that are already members of the WTO. New members have been granted much shorter transition periods than existing members. Cambodia obtained the longest transition period—five years for customs valuation, three years for technical barriers to trade (TBT), four years for sanitary and phytosanitary measures (SPS), and three years for TRIPS. Nepal negotiated a three-year period for customs valuation, TBT and SPS, and TRIPS. Vanuatu received only a one-year transition period for customs valuation and a two-year period for TRIPS (UNCTAD 2004).

Insensitivity to the development needs of new members has been particularly manifest in the area of intellectual property rights. Developing countries have been reluctant to commit themselves

JOINING THE TRADING SYSTEM

163

rapidly to protecting the intellectual property of firms from the industrialized countries because that might hinder technology transfer, enable those firms to extract monopoly rents, and limit access to crucial technologies such as medicines to combat disease. For these reasons developing countries have sought long implementation periods for intellectual property commitments. The original TRIPS Agreement, which came into effect on 1 January 1995, gave developing countries an eleven-year transitional period to bring their national legislation in line with the agreements. Additionally, the Doha Declaration on the TRIPS Agreement and Public Health increased the transitional period for pharmaceutical products to 2016.⁹ In their accession negotiations both Cambodia and Nepal were asked to commit themselves to elements of the TRIPS Agreement earlier than other least developed countries. Cambodia and Nepal obtained a three-year transition period, while Vanuatu obtained two years. Cambodia made explicit commitments to comply with all obligations concerning patents and protection of undisclosed information (Part II, sects 5 and 7 of the TRIPS Agreement), although the Doha Declaration on the TRIPS Agreement and Public Health provided a time-bound exemption from these commitments. In other words, Cambodia has been required to eliminate immediately the use of affordable new generic drugs even though existing LDC members of the WTO need not do so until 2016.

There is an urgent need for the Doha Round to reform its accession procedures in accord with the General Council decision of December 2002, described above. To make these principles operational, there is a need to establish clear and objective rules and disciplines for accession negotiations. Members should ensure that the accession process is not excessively costly for the LDCs and that technical assistance is provided to assist them. It is also necessary that the terms of accession agreements are tailored to LDCs' levels of development and do not force commitments on acceding countries that are not required of existing members.

⁹ The Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/W/2, 14 Nov. 2001.

Regional and Bilateral trade agreements and South–South trade

With the collapse of the Doha Round, the United States threatened to pursue a set of bilateral and regional trade agreements. Such agreements are against the spirit of the multilateral trading system, which has been based on most-favored-nation principles. Moreover, developing countries may be even more disadvantaged in one-on-one bargaining with the United States; a series of such agreements may leave many developing countries worse off than they would be even with another unfair multilateral agreement. While in principle, such agreements are only consistent with WTO rules if there is limited trade diversion, in practice, little attention has been paid to this requirement. The argument that these regional agreements are useful as a step towards improved multilateral agreements is also suspect. The kind of multilateral agreement to which they may lead may be more unbalanced than one which would be directly entered into, without the more circuitous route. More to the point, there is a high cost to the roundabout approach. For to the extent that there is *temporary* trade diversion, some industries are being *temporarily encouraged*, only to be later discouraged. Adjustment costs are typically high in developing countries; there may be significant costs of entry and exit, and with a scarcity of capital, the burden on developing countries may be particularly large.

In the next chapter, we propose institutional reforms that address these issues. But there is another arena in which trade agreements which fall short of full multinational agreements may be desirable, and those entail reducing the restrictions on South–South trade. South–South trade makes up some 40 per cent of developing country trade. And, as we noted earlier, developing countries have much higher tariff levels than developed countries. This suggests that considerable gains are available from liberalization of South–South trade.

How then should WTO agreements manage the trade-off between the need to protect domestic markets from competition from developed countries, while not hindering trade between developing

JOINING THE TRADING SYSTEM

165

countries? One solution might be to allow developing countries to offer preferential market access deals to each other in the same way that the EU's Everything but Arms initiative offers free access to developing countries only. Such a provision would have one further advantage: preferential treatment by some developed countries (most notably the US) is based on *political conditionality*—it is a 'gift' that is constantly in danger of being taken away, and this induced risk limits the value of the gift. Moreover, the granting of such preferences becomes a lever with which developed countries can extract other concessions from developing countries. A South–South agreement would likely focus more exclusively on trade issues, and would not suffer from these abuses.

