THE ACCESSION OF ETHIOPIA TO THE WTO IN THE CONTEXT OF ITS POLICY ON "DEVELOPMENTAL STATE"

by

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Abstract

Unlike many other international instruments, accession to the WTO does not simply require the commitment of the government to sign and ratify the multilateral agreements. A country needs to make considerable legislative and administrative changes to comply with the standards of the WTO and its members to finalize the negotiation for accession. For governments with impure free market economy policy the challenges amplify.

The government of Ethiopia publicly pronounces its adherence to the ideology of the developmental state. On the other hand the nucleus of WTO principles is progressive trade liberalization. Therefore, this dissertation tries to provide some reflection on the paradox created as a result of the divergence in priority between WTO principles and developmental state in the context of Ethiopian desire to join the organization.

The research is an interdisciplinary work. The issues that will be discussed are not purely legal in their nature. They have legal, political and economic dimensions. And the main focus of the paper is on trade in services and foreign investment negotiation aspect of the accession. Furthermore the objective of the dissertation is to give some insight for policy makers about the challenges and opportunities that 'Developmental State' ideology will pose in the accession process of Ethiopia to the WTO.

The research is divided into five chapters. Chapter one gives introductory remarks about the concept of the developmental state and accession to the WTO. The limitations of the WTO accession process and an overview of the features of developmental state in the world and particularly in Ethiopia are also briefly discussed in the chapter. The origin and concept of developmental state in the world, in Africa and Ethiopia is discussed in some detail under chapter two. The chapter also tries to show the impact of developmental state policies in the laws of the country that are going to be deliberated in the process of accession. Chapter three is about accession to the WTO. In this chapter the requirements, benefits, challenges and procedures of accession are dealt in depth. The writer debates and tries to show the fact that the system is slowly shifting from rule based negotiation to power and precedent based negotiation. By

analyzing the laws of Ethiopia that are inspired by the principles of developmental state against the legal and precedent requirements to join the WTO, I tried to correlate the findings of chapter two and three in chapter four. Specific strategies and advises on how to move the negotiation forward on certain areas are also outlined in this chapter. Finally, conclusion and my summarized recommendations are placed under chapter five.

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Key Words

Developmental State; Negotiation stage; Neo-liberalism; Progressive liberalization; Working Party; World Trade Organization; WTO-plus and WTO-minus obligations.

Abbreviations

COMESA Common Market for Eastern and Southern Africa

EPRDF Ethiopian People's Revolutionary Front

GATT General Agreement on Tariffs and Trade

GATS General Agreement on Trade in Service

IMF International Monetary Fund

LDCs Least Developed Countries

MFN Most Favored Nation

MRO Maintenance Repair and Overhaul

WTO World Trade Organization

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Chapter 1

Introduction

Ethiopia is one of the Least Developed Countries (LDCs) in sub-Sahara Africa with a population of more than 90 million.[1] Although Ethiopia is the 9th largest country in Africa, its Gross Domestic Product was only 54.8 billion USD in 2014.[2] The Economy has been growing steadily for the last 10 years. Agriculture accounts for 41.6% of the real GDP.[3] However, as the economy modernizes; its share is slowly decreasing. In 2010 the government launched a five years growth and transformation plan (GTP).[4] The industry is anticipated to play a key role in the economy if the GTP is successfully executed.[5] The main motive for focusing on the industry sector is to increase the export trade of the country.

International trade is the mechanism to carry out export trade, as a result engaging in bilateral or multilateral trade agreements boost a country's role in international trade. Among the multilateral trade agreements by far the most important and broad in scope are those agreements which are supervised by the World Trade Organization (WTO). WTO is fundamentally an organization committed for trade liberalization.[6] Black's Law dictionary defines trade liberalization as a reduction or removal in trade practices that thwart free flow of services and goods from one country to another[7]. The end goal of trade liberalization is to create a plain playing field for all traders so that the basis of competition will be comparative and competitive advantages.

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[1] World Bank, countries data, found at (http://www.worldbank.org).
[2] ibid.
[3] Ministry of Finance and Economic development, *Federal democratic Republic of Ethiopia Growth and transformation Plan* (volume 1, Addis Ababa 2010) 4.
[4] ibid 1.
[5] ibid.
[6] Amrita Narlikar, *The World Trade Organization* (Oxford University Press 2005) 2.
[7] Black's law dictionary-free online dictionary, Found at (http:// www.thelawdictionary.org).

Ethiopia, as a LDC, has the opportunity to access American and European markets without the requirement of reciprocity. Besides, it is a member of Regional Economic Integration agreements such as COMESA. But these arrangements have not significantly improved the volume of the export trade of the country.

An increase in international trade participation would create profound effect on the economy of a country; on the other hand the share of Ethiopia in the world trade is indeed very little.[8] And when it is compared with other African counties, it is also among the least. Though the economy of Ethiopia grew by double digits according to the government data for the last 8-10 years, it has been losing its steam in recent years.[9] In the 2012/2013 budget year the economy grew at its weakest pace in a decade.[10] Therefore, I believe joining the WTO in the near future has never been more urgent for the country.

The rationale behind Sovereign states come up together to create an international organization or treaty is to solve problems which are common to all or most nations, which is why their principle of operation is all sovereign states have a presumptive right of membership.[11] "By contrast, the WTO operates more like a club to which countries can claim no presumption membership and must instead meet whatever standards and demand might be set by the existing members."[12] As a result the accession process to the WTO repeatedly labeled as cumbersome and time consuming. For LDCs like Ethiopia, extended period of negotiation will also stretch the limited technical and financial resources of the country.

Scholars and trade negotiators alike argue that due to the lack of predetermined set of clean cut rules for accession, the price of joining the WTO is increasing from time to time.[13] That means acceding countries are required to liberalize their trade regime more than the members did. These additionally required commitments by the new members are known as 'WTO- plus' obligations

[8] According to WTO country basic indicators Ethiopia's share in the world total exports and imports are 0.02 and 0.05 respectively (http://www.wto.org).
[9] Ministry of Finance and Economic development, *Federal democratic Republic of Ethiopia Growth and transformation Plan*, volume 1, (Addis Ababa, 2010) 4.
[10] Ethio channel weekly newspaper, September 10, 2013, page 1.
[11] Craig Van Grasstek, *Why demands on acceding countries increase over time (*UN publication 2001) 116.
[12] ibid.
[13]Fatoumata Jawara and Aileen kwa, *Behind the scene at the WTO The real world of International Trade Negotiation* (Zed Books Ltd 2004); Roman Glynberg,Manleed Dugal and Mohammad A Razzaque, *An evaluation of the terms of accession(Common Wealth Secretariat 2006)*; Roman Gynberg and Roy Mickey Joy, *The accession of Vanuatu to the WTO (UN publication 2001) 54.*

and 'WTO- minus' rights.[14] 'WTO-plus' obligations were first witnessed in the accession of the former Soviet Union countries. But it was not as such divisive until the Chinese accession commitments were released to the public.[15]

In my opinion it is a deliberate move by the heavy weight members of the WTO that resulted in the present shape of the article XII of the WTO agreement.[16] The ambiguity and uncertainty created as a result of this provision is utilized by members to force acceding counties to accept 'WTO- plus' obligations and 'WTO- minus' rights. I believe this is because the WTO agreement was prepared with neo-liberal economy and political assumptions. Hence, it has an inherent deficiency to incorporate other types of political or economic ideologies to the system; to coerce those countries with different economic philosophy to comply with the neo- liberal principles in the process of negotiation; the article was designed and put in its brevity and ambiguity.[17]Instead of just stating that reaching an agreement with the WTO is required, in my view the provision should have been formulated in a manner which lays the basic requirements for accession.

Accession to the WTO will have certainly a positive impact on the entire economic activity of a country. The WTO is not only about eliminating trade barriers, but it is also about the opening up of a country to the world and showing the economic policy stability of a government to potential foreign and local investors.[18] The Chinese, Vietnamese and Cambodians experience tells us that joining WTO, especially for those countries with comparative advantage in the means of production, dramatically increases the export trade.[19] Over 90 million people give Ethiopia an

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[14] Julia ya Qin, '"WTO-plus" obligations and their implications for the WTO legal system', (Journal of world trade, volume 37) 483.

[15]ibid.

[16] Article XII of the WTO agreement

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.

[17] ibid 504-505.

[18] Constantine Michalopoulos, *WTO accession*. (World Bank 2002) 61

[19] *Africa and the WTO Doha and beyond*, (Economic Commission for Africa 2001)

advantage of cheap labor. Moreover, recent investments by the government in the education sector, particularly in technical training, has made the working force to be relatively skillful in low level manufacturing activities.

The fact that Ethiopia was not colonized by Western Powers provided the country with the opportunity to actively participate in international diplomacy and politics. As a consequence it was among the early member of the League of Nation, and it was the founding member of United Nations, Organization for African Unity, World Bank and IMF [20]. However, this international diplomatic activity was not translated in to a meaningful participation in international trade and economic activities.

Ethiopia is not a founding member of any major economic cooperation agreement including WTO. It only applied for WTO membership in January 2003. Tough ten years has elapsed y after membership application, except for submission of memorandum and answering questions, no significant activity was taken place. It was only in February 2012 that the initial goods offer was submitted. But the negotiation is not yet really kicked off. The working party has demanded for an initial services offer before serious negotiation starts. [21] Currently the country's WTO accession team is engaged in the preparation of the initial services offer.

Melesse Zenawi, the late prime minister of Ethiopia, was known for his criticism of neo-liberal thinking. He passionately argued that neo-liberal policies are proved unsuccessful in Africa.[22] He was the architecture of the developmental state policies of the Ethiopian People's Revolutionary Front /EPRDF/, which has been in power for more than 20 years. As the government of Ethiopia sees the country as a developmental state, its policies are the manifestations of the belief that the government has irreplaceable role in the economic development of a country.[23]

The concept and application of developmental state varies from time to time, region to region and even from country to country. Historically its origin can be traced to the 16th and 17th century

[20] Ethiopia joined League of Nations On September 28, 1923, United Nations on September 13, 1945, Organization for African Unity on May 25, 1963 and World Bank & IMF on December 27, 1945.

[21] An interview with a member of the technical committee of accession to WTO at the Ministry of Trade.

[22]Wolde Gebriel, 'EPRDF, Developmental State and Rent seeking', found at (http:// www.relooney.info/NS4030/00-Ethiopia-Economy_2.pdf) (p 3).

[23] Asnake Kefale, 'Narratives of Developmentalism and Development in Ethiopia', found at http://www.nai.uu.se/ecas-4/panels/41-60/panels-57/Asnake-kefale-full-paper.pdf (2011) 7.

Western Europe.[24] But I believe its best application so far was in the late 20th century in South East Asia countries. Based on the policies of their governments, currently there are several countries around the world which can be considered as developmental states in the broader sense of the concept. These countries range from China which is ruled by communist party to the democratically elected government of Brazil.

As the concept of developmental state differs from country to country, the same to for the definition of the term; for my purpose I use the definition from Bagchi, whose expression perfectly echoes the situation in Ethiopia. "Developmental state is a state that puts economic development as the top priority of governmental policy and is able to design effective instruments to promote such a goal.''[25] The Ethiopian government argues that to accelerate economic growth, the government should play an active role in the economy either as a regulator or as an actor.[26] Accordingly from setting prices to certain goods like sugar to providing some services in monopoly such as telecommunication, the government has an extensive role in the market. It also bans foreigners from participating in some strategic economic activities like banking and insurance.

Apparently the policies of developmental state are not compatible with the trade liberalization goal of WTO. China as a socialist developmental state has opened up its market before and after its accession.[27] Despite the fact that the communist party conceded plenty of its previous policies during the negotiation, it did not lose the developmental nature when it joined the organization in 2001 after the conclusion of the accession process. Therefore, an in-depth study of the experience of China can be used as an important road map for the accession process of Ethiopia.

Ethiopia has set a goal to join the WTO by 2015. However, this ambitious goal looks increasingly unattainable. The government as stands does not seem prepared to compromise its developmental policies in exchange for membership to WTO.[28] But I strongly believe that the

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[24] Amiya Kumar Bagchi, *The developmental state in history and in twentieth century* (Regency Publications 2004) 9.
[25] Amiya Kumar Bagchi, 'The past and the future of the Developmental State' (Journal of World System Research, VI, 2, 2000) 398.
[26] Kefale (n 20)6-7.
[27] Pang Rong Quian, *Selected economic and political issues of China's GATT\WTO membership* (The Center for Trade Policy and Law 1996) 49.
[28] If we look at second round of questions and answers (e.g. Q13 and 14) the government is not willing to liberalize the financial and telecom sector in near future.

Chinese economic miracle in the 1st decade of the new millennium is a living example of the fact that those concessions are worth making.

As I said above the economic growth in Ethiopia is slowing, so the government should search for a new frontier to accelerate it. Joining WTO will deliver a strong economic growth by expanding the country's international trade and foreign direct investment. Some insiders say that after the death of the late prime minister, the accession process has been stalled for the past couple of years. In my opinion it seems the new administration does not appreciate the benefits of quick accession. This is unfortunate, the longest the entry to the WTO, the longest the country will remain in the margins of international trade.

Chapter 2

Definition and application of the concept of developmental state

The developmental state is a multidimensional concept. It can be studied from a political, sociological or legal point of view. From the perspective of political scientists it is one type of political ideology to run a government.[29] But this does not mean that the political concept is not interrelated to the legal concept. The political ideology of a ruling party is the basis for the policies of a country at that point of time. And usually legal norms are driven by the policies of the government, thus it can be said that political ideologies have a direct influence on lawmaking.

The legal concept of developmental state is not yet well-developed. In the neo-liberal model, the purpose of the law of the land is primarily to protect private property, to facilitate contracts and to limit the power of the state.[30] However, it is not easy to illustrate the fundamentals of the legal concept of developmental state.[31] This is not only because the concept varies from country to country, but it is also because the political dimension usually overshadows the legal concept. I think the legal regime of developmental state should focus on striking the balance between the roles of the state in the economic development of a nation and protecting the well-established right to property of individuals and non-state entities.

From the sociological point of view the more appropriate name for the developmental state is 'Welfare State.' Welfare state is known for its policy of living behind nobody. There is a consensus among citizens to look for the disadvantaged and the poor.[32] Therefore the tax burden is heavier on the rich so as to bring about universal coverage of health, education, shelter, etc. to

[29] Neo- liberalism and Socialism can be mentioned as other types of ideology.

[30]David M Trubek, 'Developmental States and The Legal Order towards a New Political Economy Development and law' (University of Wisconsin Legal Studies Research paper No 1075 2008) page 5.

[31] ibid

[32] Stein Kulhnle and Sven E.O.Hort, *The Developmental Welfare State in Scandinavia Lessons for developing world*, (UN Research Institute for Social Development program paper No 17, 2004) 8.

all of its inhabitants. In the Scandinavian countries the sociological dimension of developmental state is more dominant. Public responsibility for welfare provision and the principle of universal coverage based on social right are the characteristics of this part of the world.[33]

My objective of studying developmental state is to determine its impact on the accession of a country to the WTO. Thus both the political and legal dimension of the concept, though the demarcation is fluid, will be examined in this chapter.

The main contention point that generates the ideological war on the type of the government is the role of the state. Some argue that the state is the most important socio-economic and political institution in the society.[34] Others contend that the state should have a minimal role in the life of its citizens. The proponents of the former thought fell in the basket of developmentalists. And the advocates of the later are neo-liberalists. Unlike the Marxists both agree on the importance of free market economy. The liberalists argue that the market is more perfect and effective when it is less regulated. In addition they say the rent seeking attitude of public officials will make the participation of the state in the economy wasteful and inefficient.[35]

On the other side of the spectrum, the developmentalists argue that profit is the sole incentive for private investors; as a result they say private actors may not be attracted to participate in areas that are not profitable in short period but are vital for the overall development of the society.[36] And they further argue that in addition to the fact that neo-liberal policies were proved unsuccessful in most developing countries, the 2008 financial and economic crises speaks loud as to the consequences of excessive deregulation in the economy.[37]

The core principle of developmental state is putting economic agenda a priority and implementing effective mechanism to achieve this goal.[38] It is usually evident that at one point of a country history, the government has an active role in the economy. The pre-industrialized Netherlands, England and Germany were the places where today's concept of developmental

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[33] Ibid.
[34] 'The Developmental State: what options for Africa' (UN Economic Commission for Africa Issue Paper 2012).
[35]Turebk (n 27) 4.
[36] Edigheji *Constructing a democratic developmental state in South Africa* (p 291).
[37] ibid
[38]Amiya Kumar Bagchi, *The Developmental State under Imperialism* 228.

state was first originated. [39] But the model was forgotten for centuries until its reemergence in South East Asian countries. When South Korea and Japan joined the ranks of developed states in a short period of time, it took the attention both politicians and economists to study their interventionist economic policy.[40] Consequently, the theory of developmental state started to be discussed in every corner of the globe. This phenomenon is known as the reemergence of the 'New Developmental State.'[41]

This new way of developmental thinking attracted many newly independent states of Africa and South America[42]. Consequently in the 1960th and 1970th African countries adopted state lead development strategy. Nevertheless, the government involvement in the economy as producer, trader and banker resulted in unsustainable macroeconomic instability.[43] Subsequently African governments' first application of developmental state policies failed and lead to the 1990th structural adjustment programs by IMF.[44]

After African states adopted the painful structural adjustment programs, their economies did not grow as expected.[45] Lack of good governance and poor quality of state institutions were considered the root causes for the stagnation to their economies.[46] As a result international institutions like IMF and World Bank started to accept the fact that the state has a role in economic development.[47] Hence, policy makers and scholars across Africa once again proclaimed the state should play a more active role in the economy. Moreover, the argument about the role of the state in economic development has come full circle after the financial and economic crises of 2008.[48] However, currently only two African states openly declare they are developmental states; these are South Africa and Ethiopia.[49]

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[39] Bagchi (n 21) 9-29.
[40] Thandika Makandawire, 'Thinking about developmental state in Africa' (Cambridge Journal of Economics 2001, 25,289-313) 291.
[41] Trubek (n 27) 1
[42] 'The Developmental State: what options for Africa' (UN Economic Commission for Africa Issue Paper 2012). 3
[43] Kefale (n 20) 4-5.
[44] ibid
[45] ibid.
[46] Makandawire (n 37) 29.
[47] 'The Developmental State: what options for Africa' (UN Economic Commission for Africa Issue Paper 2012). 1
[48] ibid 2
[49] Kefale (n 20) 5.

Ethiopia was ruled by a military dictatorship until 1991. The then socialist rebels deposed the military rule and announced a Federal Democratic system of government. By the time the rebels (now the ruling party) took control of the country, due to the collapse of Soviet Union followed by the collapse of socialism in most parts of the world, the balance of power in the world was already shifting. Therefore, the new power holders were forced to change their ideology and declared a free market economy. During the first 10 years of EPRDF rule, Ethiopian Economy was stagnant. On top of this the country was engaged in a full-fledged war with its neighbor Eritrea. After the war ended in 2001, the ruling party split into two; the winner faction led by the late Prime Minister Melesse Zenawi right away shifted its focus to the economy and started to draft the economic and political policies of the country. Until 2006 the government was mostly known for its agricultural led economic development policy. But after the controversial 2005 election the government introduced its developmental state policy. Some question the reason for adopting such policy by EPRDF.

> "For the political opposition the main reason behind the promotion of developmentalism appears to be the need to provide a new legitimacy for a regime that failed to translate its promises of democracy particularly after the deeply controversial 2005 election."[50]

Whatsoever the reason behind the fact that Ethiopia is now a developmental state either in the loose or strict sense of the concept is unquestionable. It is said that the main feature of the developmental state is its frequent interventionist policy of the government in to the economy; Ethiopian government interventionist policy can be extracted from different legislations and policy documents.

Ethiopian Investment law proclamation no.769/2012 and Council of Ministers Regulation No. 220/2012 are the most important legislations that shade light on the overall picture about the economic policy of the government. Developmental state wants to protect its domestic investors from foreign competition and at the same time it wants to attract foreign investment in some designated areas. Accordingly, one of the objectives of the investment law at Art 5(3) says its

[50] Kefale (n 20) 8.

goal is to develop the domestic market through the growth of production, productivity and service.

When we go through the details of the legislation, it incorporates three main characteristics of developmental state policies. The first one is state monopoly or partaking of the state in certain sectors like postal service, air transport and telecom.[51] Preservation of some sectors for the domestic investors and minimum capital requirement for foreign investors are the second feature.[52] For example the financial, packaging, shipping, broadcasting and advertisement sectors are only allowed for Ethiopian investors. The third developmental state nature of the law is it gives incentives for foreign investors to invest in those areas that are strategically important for the rapid industrialization of the country. These incentives include tax exemption, free import duty and establishing of industry zone.[53]

Another distinguishing feature of developmental state is the existence of state controlled business enterprises. These enterprises will engage in areas that are not attractive to the private investors or that are highly profitable. State owned enterprises are closely associated with the economy of the present-day Ethiopia. They extensively participate in mining, construction, production and service sectors. The story does not end here in Ethiopia. There are business enterprises which are not owned by the government but affiliated to the ruling party. These enterprises do not have any relationship with developmental state, but they will and are complicating the negotiation process to accede to the WTO.[54]

When a state participates in widespread economic undertakings it needs extra money to accomplish this goal than the state which only does traditional state activities. To live up to this goal it shall generate additional income in the form of taxes and tariffs. Ethiopia as a developmental state its tariff levels are high i.e. the average tariff is 17.3%.[55] This is more than the WTO members' average. Tariffs cover a big share of government income. Import duties account for 39.5% of the total government revenue.[56] Taxes rates are also high, to mention some: there is a 35% tax for incomes more than 250 USD; 15% VAT is also levied almost in all

[51] Proclamation no. 769/2012, Article 6
[52] Proclamation no. 769/2012, Article 7
[53]Proclamation no. 769/2012, Article 7
[54] See round 2 questions and answers (Q 18).
[55] WTO countries basic indicators Ethiopia (found at http:// www.wto.org)
[56] Ibid.

transactions; further more businesses are required to pay 30% profit tax and last but not least Sur and Excise taxes are also imposed on imported goods.

To sum up, developmental state is not a new phenomenon. The developed countries at one point used it to advance the economic and social ends of their society. In the 20th century the concept was applied in a more comprehensive and convincing way in South East Asian countries. However, the collapse of communist Soviet Union undermines the role of the state in the economic transformation. As a consequence the so called 'Washington consensus' dominates the political discourse of recent decades. Despite the fact that interventionist policy of a state was doomed by world powers and neo-liberal scholars, some African, Asian and Latin American countries have challenged the wisdom of the market and the private investor for rapid economic growth. Ethiopia as a country led by the ideology of developmental state for the last ten years, it has legislations especially in the economic sector that reflects the same narrative. The government has a mandate by these legislations to actively participate in economic activities. The engagement ranges from prohibiting individuals to own land to determining the price of certain goods. In the next chapters I will try to formulate the relationship between these laws and policies of Ethiopia which are inspired by developmental state ideology and accession to the WTO.

Chapter 3

A discussion about the WTO accession process

3.1. General background on accession to the WTO

The WTO, an organization with a goal of liberalizing and regulating international trade, was established as a result of a multilateral trade agreement signed in 1995.[57] Before the formation of WTO, GATT (General Agreement on Tariff and Trade) was the main international mechanism to regulate cross-border trade in goods. 128 countries signed the Marrakesh agreement which created the body responsible to independently supervise trade transactions among the members. WTO facilitates the administration of the agreements in trade in goods, trade in services and trade related intellectual property rights.[58]

The two key principles in the agreement of WTO are non-discrimination and reciprocity. [59] Non-discrimination is basically articulated by the principle of Most Favored Nation treatment (MFN). It means every member should get the treatment similar to the one extended to the most benefited country. On the other hand the principle of reciprocity bars the existence of free riders in the system; as a result every member has the duty to commit one to another to eliminate trade barriers.

Like other international agreements WTO is open for non-members to accede whenever they are interested. "Accession is the international law term used when states that are not original parties

[57] Amrita Narlikar, *The World Trade Organization* (Oxford University press 2005) 2.
[58] Article 3 of agreement establishing the World Trade Organization.
[59] ibid 3.

to a treaty decide to join it and accept rights and obligations the treaty contains."[60] Accession to the WTO is governed by Article XII of the WTO agreement. The provision reads as follows:

> 1. Any state or separate customs territory possession 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 multilateral trade agreements annexed thereto.
> 2. Decision on Accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-third majority of the members of the WTO.
> 3. Accession to a plurilateral Trade agreement shall be governed by the provision of that agreement.

After 1995 thirty five countries joined the organization via the above article. The last country to join WTO in 2014 is Seychelles. Today, 161 members of WTO account for just about all international trade transactions. Iran is the largest economy outside the multilateral trade agreement.[61] The remaining non- member countries are either in the process of negotiation or they are at observer state stage. Typically these countries have small or minimal trade relation with the rest of the world or they are politically unstable. The worldwide membership to the WTO clearly exhibits that a responsible government would not think to benefit its country by staying outside the system.

Scores of African states are members to the WTO. But there is no one African country that joined the organization through accession under Article XII. All African member states joined

[60] 'Accession to the World Trade Organization, Newly Independent States' (International Institute for sustainable development WO/NCSD Project2002) 2.
[61] See the Official Site of WTO at Http://www. wto.org/membership.

the organization through succession. Succession is a process whereby colonized countries had the opportunity to join the organization under Article XXI: 5(c) of GATT once they got their independence.

Accession to the multilateral trade agreement, GATT 1947 was not as such a cumbersome process. Some said the balance of power at that time was not in the hands of the members but in the hands of the acceding countries.[62] This may shows at the early stage GATT signatory countries were desperate to attract new members. After the GATT transformed itself in to WTO in 1995, the story was completely changed; joining WTO becomes an adventure that needs a lot of energy and patience.

As stated before, the Accession process to the WTO demand an extended period of time. To show this with context, the accession of China took more than 15 years and it was the longest until recently. The conclusion of the accession saga of Russia took the crown from China as the longest accession by five more years. Moreover the accession of Algeria has already exceeded 25 years; but it is not yet finalized.

There are different factors for the lengthy accession period for prospective members. These factors can be categorized as internal and external. The internal factors are those obscurities which lie in the accession system of the WTO. The brevity and vagueness of Article XII which resulted in the lack of a clean cut and predetermined preconditions for a country to fulfill before joining WTO is often raised as the main deficiency of the system.[63] This undermines the rule based system and produces power and negotiations based outcome. As one commentator observed the process of accession is largely governed by unwritten rules derived from precedents and previous rulings.[64] Regrettably, due to the above glitch in the system the process would not end before sucking in an unlimited period of time.

The external factors are about the level of readiness of the acceding country to follow up the negotiation in a scheduled manner. For some countries after membership application, they wait

[62] UNCTAD/DITC/TNCD/11, *WTO Accession & Development Policies*, (UN publication 2001) XI.
[63] UNCTAD/DITC/TNCD/11, *WTO Accession & Development Policies*, (UN publications 2001) XI; Fatwmata Jawara and Aileenkwa, 'Behind the sense at the WTO: The real world of International Trade Negotiation.' (Zed Books Ltd 2004) 4 – 5; Roman Grynber, Manleed Dugal and Mohammed A.Rzzque, 'An Evaluation of the terms of Accession to the WTO', (2006) 2; Graig Van Grasstek, 'Why demands on Acceding countries increase over time.' (2001) 116.
[64] ibid

years even to submit the memorandum. The reasons could differ from country to country. Some lack technical capacity to pursue the negotiation and others lose interest in the course of accession due to internal political upheavals.

By its very nature multilateral trading system aims to be universal. However when we look in to WTO's accession practices, countries negotiate for up to more than two decades to finalize their entry. This shows the primary goal of WTO is not universalization of membership but compliance with the norms of the organization as set by the members. The WTO officials say that WTO is a rule based system, but as said above many commentators conclude that the accession process has no rules but precedent and power.[65] Moreover the negotiation is one sided process, only the acceding country required to make commitments without getting or expecting the same from the WTO members.[66]

In the negotiation process some members play a dominant role than others. The Western powers (USA, European Union and Canada) and Japan are active participants in demanding the newcomers to concede as much as possible in the negotiations. "The US 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 US negotiator want to see applied uniformly to all WTO members."[67]

During the accession process members examine the legal frame work and the institutional capacity for enforcing policies affecting trade in goods, services and intellectual property. The acceding country need to have adequate, fair and transparent judicial, arbitral and administrative tribunals or procedures.

Market access commitment for goods includes negotiations on tariff levels and commitments to eliminate non-tariff measures like quotas. Tariff level negotiation is about setting bound rates and applied tariff rates. The bound tariff level is the maximum tariff level that cannot be exceeded once the commitment was agreed. "In practice however, most actual tariff rates

[65] ibid.
[66] Graig Van Grassteke, 'Why Demands on Acceding countries increases over time.' (2001) 116.
[67] ibid 133.

(applied rates) are lower than the bound level allowing some flexibility for future changes by the new members."[68]

In the market access commitments for service all four mode of service delivery methods will be negotiated. These are cross border supply, consumption abroad, commercial presence and presence of natural persons. The acceding country is required to open most of its service sectors in all the four modes to foreign competition; it includes the banking sector, telecommunication, energy and healthcare.[69] Further the General Agreement on Services (GATS) requires members to list down those sectors that foreigners are allowed to participate. Thus the acceding state is expected to bring to the table its initial list of commitments to initiate the negotiation.

Another sensitive area of negotiation is Trade Related Intellectual Property Agreement (TRIPs). Acceding countries are required to adjust their legal regime in respect of intellectual property such as patents, copyright and trademarks. Unlike tariff and service negotiations, the capacity to implement the requirements enshrined in the TRIPs is the main focus of the fact finding stage of the negotiation.[70] Although a country has legislations that comply with TRIPs standards, it could lack the bureaucratic machine to implement it. Thus, members should develop their competence to enforce intellectual property rights while the negotiation progresses.

There are also some other basic areas of WTO agreement that will dominate the negotiation platform; to mention a few, transition period, special and differential treatment (S&D) and subsidies. "A transition period is a period of time that allows a member to phase in or delay certain additions or charges to its laws to become fully incompliance with its new WTO obligations."[71] During the transition period members will have the time to adjust with the new obligations. There is an argument whether this transition period is applicable to those countries that joined the organization after 1995. Developed countries argue that acceding countries have enough time to adjust while negotiating the agreement, so they contend that the original

[68] 'Accession To The WTO, Newly Independent States ',WO/NCSD Project, International Institute for sustainable development (2002), 11
[69] ibid 12.
[70] ibid 3 & 11.
[71] ibid 3& 9.

transition period had passed and new comers should not claim it as of right.[72] But experience shows that countries that negotiate tough still secure a reasonable transition period.

Special and Differential Treatment (S&D) is a system designed to protect the most vulnerable economies. It allows countries to take measures that would otherwise contradict with WTO rules. It includes withdrawing previous commitments in order to protect infant industries, providing domestic subsidies and so on. The enabling close agreed in 1979 in Tokyo also permits S&D treatment in respect of tariffs, non-tariff measure and regional trading agreements. [73] Although S&D does not have a direct impact on the negotiation process, it helps negotiators to assess the limit of their negotiation leverage. Major WTO powers have the position that new members are not legally entitled to S&D and they argue that what binds them is what is negotiated. However, despite the fact that there is a tremendous pressure from western countries in the accession of new members to eliminate S&D treatment, some S&Ds concession have been agreed with acceding countries.[74]

The issue of subsidies is the most controversial area both in the negotiation stage and later in the implementation stage. All subsides are not prohibited. Those actions that have no or minimal trade distorting impact are green box subsidies. "Careful examination of green box subsidies is a part of fact finding process."[75] Based on their level of development countries should argue for the inclusion of at least some subsides that are normally considered as amber box. Least developed countries like Ethiopia must negotiate vehemently to get flexible subsidy agreement package; especially in the area of agriculture and export trade.

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[72] Rolf J.Langhanmar and Matthias Lucke 'WTO Accession issues',(Blackwell publishers Ltd 1999) 859; WTO Accession & Development Policies, (UN Nation publications 2001) XII; , Carlos A.Primo Braga and Oliver Cattaneo 'WTO and Accession countries'; Zdenek Drabek and Mark Bacchetta, 'Marc Macchetta and Zdenek Drabek, 'Effects of WTO Accession on policy making In Sovereign states'(Staff Working Paper DERD-2002-02 2002) 7.
[73] Rolf J.Langhanmar and Matthias Lucke 'WTO Accession issues', (Blackwell publishers Ltd 1999) 859.
[74] International Institute for sustainable development, 'Accession to The World Trade Organization, Newly Independent States '(WO/NCSD Project2002) 10.
[75] ibid 13.

3.2 Benefits of accession to the WTO

Joining WTO has a diverse effect on different segments of the population of a country. Consumers expect that the more competitors in the market the less the price of goods would be. Business community has also an interest; the importer will benefit from the decreasing tariff level. And as the tariff levels in the destination countries of their goods will change for good, the same is true for the exporters. Politician will also assess the advantages and disadvantages of accession to the constituent they represent. Accession even touches those who work in the administrative and judicial sector. Authorities and judges are required to take in to consideration the new legal reality created by the country's accession when they decide on trade related matters.

On the other hand, joining the WTO has an outward and inward implication for the economy a country.[76]Acquiring permanent and unconditional MFN status when trading with other member states is the main external benefit of accession to the WTO. This will result in the integration of the economy of the country to the global economy.[77] The opportunity to participate in international trade rule making is another benefit of joining WTO. By taking part in the rule making process, a country can influence for the incorporation of its interests in future negotiations.[78] Further, as the WTO is a universal trade negotiating medium, members will save cost by avoiding multiple trade negotiating forums.[79] Moreover the presence of a dispute resolution mechanism in the WTO system is another advantage especially for weaker countries which have minimal diplomatic influence on others.[80]

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[76]Oliver Cattaneo and Carlos A. Primo Braga, 'Everything you always wanted to know about WTO.' (The World Bank 2009) 4.
[77]Marc Macchetta and Zdenek Drabek, 'Effects of WTO Accession on policy making In Sovereign states' (Staff Working Paper DERD-2002-02 2002) 10-12; Rolf J Langhammer and Matthias Lucke, 'WTO Negotiations and Accession Issues for Vulnerable Economies' (2000) 4; Rolf J.Langhanmar and Matthias Lucke 'WTO Accession issues', (Blackwell publishers Ltd 1999) 860-862; Oliver Cattaneo and Carlos A. Primo Braga, 'Everything you always wanted to know about WTO.' (The World Bank 2009) 5.
[78] ibid.
[79] ibid.
[80]ibid.

When you look at the benefits of joining WTO from internal perspective, it creates improved business climate for both domestic and foreign investors. Countries are obliged to take reforms in respect of trade policies and laws so that they can join the WTO. Reforms against unfair competition and unlawful use of intellectual property will create attractive business environment for entrepreneurs. Hence, the international commitment made by a state would make the government to be more caution to intervene in to the market.[81] Accession to WTO requires implementing laws and regulations to eliminate trade barriers, as a result it increase transparency and promote rule of law. Once those reforms are made, though the government changes its policy on free market through time, it cannot unwritten the rules and change the commitment regarding WTO as easily as domestic legal rules.[82] On the other term, "the credibility of a reform minded government may itself be enhanced if the government can 'tie its hand' through WTO membership. The international implications of ranging on promised reforms may represent a political cost to the government that makes it more likely that it will stick to its announced policies."[83]

3.3 Accession procedures

The non-mandatory stage of observer status is the first pre-accession formality for a state which intends to join WTO. It is a process whereby prospective members will warm up before the formal negotiation starts. In its five years period a country is expected to be acquainted with the basic information and knowhow to start the accession. Whether a country passes through observer state or not it has to go through six stages to tie up its aspiration for accession. The stages are: -[84]

1. Submission of formal request for accession
2. Establishment of working party

[81] Langhanmar & Lucke (n 15) 862
[82] ibid
[83] Langhanmar & Lucke (n 15) 862.
[84] Ivan Markovic, 'How to join The WTO: some aspects of the accession process.' (Economic Annals, volume LIV, No.180 2009) 119; Constantine M. Chalopoulos *WTO Accession for Countries on Transition* (The World Bank 1998) 5.

3. Submission of memorandum on foreign trade regime
4. Fact finding and negotiations in the terms of accession
5. Adoption of the report of the working party for accession
6. Approval of the accession by the General Counsel or Ministerial Conference

The request for accession under Article XII of WTO agreement shall be submitted to the General Director. The office of the Director will circulate the request to all members for discussion in the next General Counsel meeting.[85] At General Counsel meeting the working party will be formed. In principle every member of the WTO has the right to participate in the working party. However, the significance of a country in the world trade determines the size of the working party. From past accessions, countries with sizable economy and international trade activity like China, Russia and Saudi Arabia attracted huge participation in the working party. On the other hand, usually only neighboring countries and world powers such as USA, European Union and Japan are interested in the working party of LDCs accession. Nevertheless, if members change their mind during the accession process, the working party is open at any stage of the negotiation for partaking.[86]

Memorandum on foreign trade regime is standardized document describing the countries trade and economic policies and legal frame work that are related to trade obligations. It is a bulky and detailed document.[87] The memorandum covers mainly six areas.[88] The first is about the general economy, economic policy and foreign trade of the country. To mention some issues that have to be addressed in this part; the current economic situation, the direction of the economic, monetary and fiscal policy, investment and competition policies and information about remittance and economic growth in connection with goods and services are the major ones.

The second part is about framework for making and enforcing policies affecting foreign trade in goods and services. Here the entire legal system of the country in respect of legislating, enforcing and interpretation of laws should be illustrated.

[85] ibid
[86] ibid
[87] ibid
[88] Please see for further reference memorandum on foreign trade regime prepared to the Working party by Ethiopia.

The third part deals with specific policies on trade in goods. Import regulations, tariffs, quotas, licensing procedures, state trading practices, free economic zones and the like shall be explained in-depth.

The fourth and fifth sections are about services and trade related intellectual property. And the last element is about economic relations of the applicant country with third countries. Bilateral and multilateral economic agreements and cooperation that a country has concluded or intends to conclude shall be pointed out in this part.

The most important and difficult stage is the fact finding and negotiation process. Working party members try to investigate the prospective member's trade policies, its readiness and ability to join the organization by asking questions and receiving answers in writing. The questions will address areas of inconsistency with WTO obligations. The negotiating countries are expected to ensure how to address the inconsistencies in its replies. The fact finding process will also also continue in the working party meetings.[89]

The negotiation process takes place in bilateral and multilateral phases. Trade in goods and services negotiation is conducted in the form of offer and request. The negotiating country has first to put its initial offer on market access on goods and services to ignite the negotiation. The end result of the negotiation is to produce schedule of tariffs concession and schedule on specific commitments in services.[90]

The working party organizes and summarizes the final outcome of the negotiation to produce a consolidated single agreement. This agreement is known as protocol of accession. Then the draft schedule will be distributed to the members of the working party for review. Once the document is good enough for everybody, the protocol of accession will be submitted to the General Counsel or the Ministerial Conference for approval.[91]

The final stage of accession is the adoption of the protocol by the General Counsel. Traditionally consensus is the way to approve membership of the acceding country.[92] But two-third majority is only required per the WTO agreement. There is also a blocking alternative for the unsatisfied

[89] Markovic (n 80) 119.
[90] ibid
[91]ibid
[92] ibid

members. It is a mechanism to restrict a new member's right and obligations from taking effect as between a country and the new member.[93] Finally the candidate state becomes a WTO member after it adopts the accession agreement through its own treaty ratification process.

3.4 **'WTO- plus' obligations and 'WTO- Minus' rights**

The most contentious and recently originated issue in relation to accession is the prescription of obligations that exceed the requirements of WTO agreements to the new members. The most powerful members of WTO make demands from acceding countries that go beyond the commitments made by the original members.[94] Such obligations are called 'WTO- plus' obligations and 'WTO- Minus' rights. 'WTO- plus' obligations refer to commitments that go beyond the WTO agreement; whereas 'WTO- Minus' rights refer to commitments where new members relinquish rights available to the members.[95]

The issue of 'WTO- plus' obligations and 'WTO- minus' rights is usually raised in relation to market access obligations. These obligations are laid down in the member's goods and service schedules. To put it in to perspective "on the service sector, Eventt and Primo Braga (2006) observed that LDCs, developing and developed founding members of the WTO, respectively committed on average 20, 44 and 108 sub sectors. By contrast, countries in all categories that have acceded since 1995 committed an average of 104 sub sectors."[96]

Prior to the accession of China, the issue of WTO plus obligation is rarely talked about. But when the accession protocol of China made public, which is different from the standardized document with 143 paragraphs, the concept explodes and generates a lot of academic debates. China's 'WTO- plus' obligations are in the areas of transparency, judicial review, foreign

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[93] 'Accession to the World Trade Organization, Newly Independent States ' (International Institute for sustainable development WO/NCSD Project 2002) 8.

[94] Fatumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO*, The real world of International Trade Negotiation (Zed Books Ltd 2004) 5.

[95] Simon J Evenett and Carlos A. primo Braga 'WTO Accession, Lessons from experience.' page 3. See also supra at note 19, page 3.

[96] Cattaneo and Primo Braga (n 18) 18.

investment, national treatment of foreign investors, economic reform, government procurement and compliance.[97]

Another manifestation for 'WTO- plus' obligation is the fact that acceding countries are demanded to accept plurilateral agreements on government procurement and information technology agreement.[98] Under the original accord these agreements are only optional for interested parties to join.[99]

Below are some 'WTO- plus' commitments made by acceding countries:[100]

- Moldova committed to reduce the use of price control in its economy.
- China committed to remove the fifty percent foreign equity limit for joint venture in the motor vehicle industry.
- Taiwan committed to permit advertising for alcoholic beverages.
- Saudi Arabia committed to not imposing duties on iron and steel scrap.
- China committed to publishing an official journal dedicated to the publication of laws and regulations that are related to WTO commitments.

'WTO- Minus' right is mainly in relation to the question of transition period.[101] The original WTO members were allowed for one, five and eleven years of transitional period based on the level of their economic development. China, Taiwan, Lithonia and Ecuador were given less transitional period in areas were transitional period is permitted for founding members. However, availability of transitional period for acceding countries is a point of disagreement. The USA has the position that it is only a right for the original members. Even the WTO has taken the position that acceding countries should not claim transitional period as of right.[102]

As said before non-discrimination and reciprocity are the founding pillars of WTO agreement; however, I think the non-existence of membership criteria or clarification about the terms to be

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[97]Julia Ya Qin, ' "WTO-Plus" obligations and their implications for the WTO legal System.' (Journal of World Trade, Kluwer law International, 2003) 490.
[98] Cattaneo and Primo Braga (n 18) 19.
[99]UNCTAD/DITC/TNCD/11, *WTO Accession & Development Policies*, (UN publication 2001) xii.
[100] Cattaneo and Primo Braga (n 18) 19-20.
[101] Cattaneo and Primo Braga (n 18) 20.
[102] Cattaneo and Primo Braga (n 18) 20.

agreed under Article XII of the WTO paves the way to the erosion of these two core principles by way of 'WTO- plus' obligations and 'WTO- minus' rights.

The practice of 'WTO- plus' obligations and 'WTO- minus' rights is criticized by many commentators as it leads for second class WTO citizens.[103] WTO differs from the 1947 GATT because it is a rule based system. Rule based system needs a uniformity of rules throughout its members. If the rule of the game differs from member to member, the system will lose its rule of law touch and will be subjected to power based relationship. Therefore, taking in to consideration the undesirable impact that will be created by 'WTO- plus' obligations and 'WTO- minus' rights on the system, and taking in to account that only weak and politically unstable countries are currently outside the system, I strongly believe that the WTO has to make serious effort to curb this trend in the remaining accessions.

[103] Cattaneo and Primo Braga (n 18) 19.

Chapter Four

Analysis of the effects of developmental state policies on Ethiopian trade laws and its impact on the negotiation for accession

The past 100 years of Ethiopian history shows that the country passed through three different political/economical ideologies. They are feudalism, socialism and capitalism; these same ideologies had inspired the policies and legal frameworks of successive governments. The monarchy was primarily known for its feudalist doctrine. However the last emperor of Ethiopia, Haileselasse I, introduced policies with capitalist flavor. As a manifestation to this the 1960 civil and commercial codes are carbon copies of the laws of the Western world.

In the 1974, the military deposed the king and launched socialist economic policies. The military regime viewed private capital as hostile to the state. Consequently it announced private capital cap. Moreover it pronounced that the government would own and administer all economic resources and would provide all services to the people. During the military rule, though the government proclaimed specific socialism inspired legislations like the 1975 urban extra land confiscation decree, it didn't introduce a comprehensive codified Marxist commercial or civil law.

Today, the codes that were passed by the imperialist parliament govern most of the civil and commercial matters of the country. However following the current government path to development state ideology, parts of these codes were repealed and replaced by specific legislations.

As said before developmental state vigorously participates in economic activities, hence it needs enough revenue to realize this mission. In order to live up to the additional demand for revenue, it usually levies hefty tariffs and taxes on imported goods. On the other spectrum a government with developmental state agenda strives to empower the local population economically. So its laws usually reserve some important sectors from the ambit of foreign investors. Equally, developmental state also bans the participation of both domestic and foreign businessmen in some vital economic sectors. Therefore taking in to consideration this context; I will try to shade some light about the challenges and possible outcomes of the negotiation to accede to the WTO.

Before starting to look deep into the accession of Ethiopia, it is wise to briefly review the requirements of GATT and GATS. The obligation that is expected from the WTO members can be classified in to two: the first is general obligation to adhere to the common and uniform rules. These rules include transparency, most favored nation (MFN) and reasonable, objective and impartial application of domestic regulations.[104] And the second obligation is specific commitments. These obligations are negotiable and country specific. They include tariff level reduction and market access commitments in the services sector.[105]

WTO accession procedure has special treatment for least developed countries (LDCs) like Ethiopia. Article IV.3 of GATS says there shall be a specific consideration for LDCs while negotiating specific commitments. In addition to this the Committee on Trade and Development and the General Council adopts a guideline which says members should exercise restraint in seeking commitments from acceding LDCS.[106] Therefore, these and other provisions of WTO instruments about developing countries shall be taken into account in analyzing Ethiopia's negotiation with the organization.

WTO negotiation process is a multitier system and it involves fact finding bilateral and multilateral negotiations at the same time. The negotiation covers all the WTO agreements; however, I will try to briefly discuss the issue of tariffs in the context of developmental state accession but the main focus will be on the negotiation of market access commitments for trade in services.

[104] Julia Ya Qin, 'WTO-Plus obligations and their implications for the WTO legal System.' (Journal of World Trade, Kluwer law International, 2003), 485.
[105] ibid.
[106] Annex 4, *Guidelines for accession of least-developed countries,* (WTO document WT/L/508, 2003).

4.1 Tariff/Tax level negotiation

Before 1993 Ethiopia's tariff level was a reflection of the socialist government policy of import substitution. Since 1993 the government has taken serious tariff amendment measures as a result the maximum import tariff decreased from 230% to 35% step by step and the average tariff level had been reduced from 41.6% to 17.5%.[107] However, Ethiopia's tariff rate is still high when compared with other WTO members' average.[108]

The government does not only impose tariffs on imported goods, it also collects different kinds of taxes from the same goods. Almost all imported goods are subject to 10% surtax per the Sur tax regulation no. 133/2007; directive no. 58/03 of Ethiopian Customs Authority lets the government to collect cargo scanning fee from imported goods. There are also internal taxes that are applicable on imports too. These are Excise tax and VAT. Imported goods which vary from drinks to automobiles are subject to Excise tax rate which ranges from 10% to 100% per Proclamation no. 307/02. On the other hand Proclamation no.285/2002 imposes 15% VAT on almost all imported goods. And Article 52 of the income tax law adds one more type of revenue for the government.[109] It requires a 3% income tax to be collected on business income at the time of the import of goods or commercial use. This tax is commonly known as withheld tax.

The total amount collected from the aforementioned duties and taxes accounts for about 40% of the government revenue in 2010/11 budget year.[110] Although levying duties and taxes on imported goods to maximize the revenue of the government is in line with the policies of development state, it contradicts with trade liberalization policies of the WTO. Notwithstanding its developmental policy, the government of Ethiopia relatively reduces its tariff levels for the

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[107] The Federal Democratic Republic of Ethiopia: Poverty Reduction Strategy paper annual progress report,(IMF, 2004) 39
[108] WTO countries basic indicators, Ethiopia (found at http:// www.wto.org).
[109] Proclamation No. 286/2002.
[110] WTO countries basic indicators, Ethiopia (found at http:// www.wto.org)

past 20 years voluntarily as part of its economic reform. However, the reduction is not sufficient when assessed against WTO standards. Besides, in my understanding these reforms were not made in connection with the accession process. On the other hand, the experiences of other acceding countries show that as part of their bid to join the organization, they reduce their trade barriers even before they were forced by the WTO members. China had decreased its duties to 15% for agriculture products and 8.9% for industrial goods before it was accepted to the WTO as a sign of good gesture. [111]

As a result of several rounds of negotiations on tariff levels, the tariff level of member states has gone decreasing and decreasing from time to time. Hence, the expectation from acceding countries including LDCs increases as the day goes by. The protraction of the process of accession will not help Ethiopia's cause to join the WTO with minimum cost. Thus, in my opinion the country has to decide at this instant to bring its demand for maximum revenue in conformity with trade barrier elimination objectives of WTO. Tariff reduction will obviously decrease the income of the government, which will have an effect that will be easily felt by developmental states like Ethiopia. But joining WTO would also bring all kinds of economic opportunities for a state. Therefore, Ethiopia has to choose as China did to progressively and quickly reduce not only tariffs but also disguised duties like surtax and cargo scanning fee to finalize its accession process in the near future.

4.2 Market Access Commitments for Trade in services

From developmental state perspective trade in services is the most controversial area of the negotiation. Finance, Telecom, transport, power and health sectors are the center of gravity for the disagreement. Ethiopia as a developmental state has legislations which authorizes the government to predominantly engage in strategic business areas such as telecom and power plant. On the other hand these laws, with the goal of empowering the domestic investor, restrict foreigners from participating in businesses like finance, transport, packaging, forwarding, broadcasting, legal service, education, health care, etc.

[111] Jeffrey L. Gertler, 'What china's WTO Accession is all about' (WTO secretariat 2002) *26.*

The 1994 GATS in its preamble states that its goal is to expand trade in services through transparency and progressive liberalization. As a direct reflection to this principle both developed countries and developing countries commit to liberalize significant part of service sectors in their service commitment schedules. Moreover, countries which joined after 1995 through the accession process agreed to liberalize wide-ranging areas in their respective service sector. For instance China and Vietnam, which have comparable economic policies with Ethiopia, agreed to liberalize significant part of their respective service sectors in all 4 modes.

In the GATS regime the extent of market access and national treatment that the acceding country grants is a matter of negotiation. However, progressive liberalization, transparency and MFN are non- negotiable principles and members are obliged to comply with it.

Among various service sectors I will examine three most important and contentious ones in light of both the negotiable and non-negotiable principles. These are finance, telecom and transport sectors. The current legal regime of these sectors, their possible liberalization scenarios and the likely way forward for the current stalemate in the negotiation between Ethiopia and the working party will be addressed.

4.2.1 Financial sector

The government of Ethiopia believes that the financial sector has a vital role in the economic development of the country. And like many other countries it wants to tightly control the sector. The 2012 investment proclamation excludes foreigners from participating in this sector. Consequently, banking, insurance and microfinance businesses are currently transacted by the government and local businessmen only.

Although, not all WTO members allow foreign banks and insurance companies to freely operate or wholly owned by non-nationals, as part of their accession package members commit in one or another way to open up their financial sector. Therefore, Ethiopian current total exclusion of the sector will be scrutinized under microscopic eyes by the working party and during the bilateral negotiation stage.

When we look at Ethiopian standpoint on financial sector in light of the four modes of supply the picture is almost the same with slight differences from one mode to another mode.

Cross border supply of financial service (mode 1):- is almost restricted except for reinsurance. Currently Ethiopian insurance companies are allowed to buy reinsurance from abroad.

Consumption abroad of financial service (mode 2):- is also practically prohibited by requiring companies to surrender their foreign currency to the national bank.

As I said above commercial presence of foreign financial institutions (mode 3) is barred statutorily. Since commercial presence is not allowed the concept of the presence of natural persons (mode 4) is irrelevant. However, as a general labor rule all foreigners are only allowed to work in the country except in rare cases after securing work permit from authorities in advance.

On the other hand, let us have a look at the position of Ethiopia in respect of the financial sector against the non-negotiable principles of the GATS i.e. transparency, MFN and progressive liberalization.

Transparence: - Ethiopia publishes laws regarding finance (Proclamations and Regulations) in its official journal, Negarit Gazette. However, directives issued by relevant organs like Customs and Revenue Authority, Investment Agency and Ministry of Finance are not published in official journal. Although recently government offices have started to avail directives in their websites, taking in to consideration the frequent downing of the sites Ethiopia has to publish its directives to fully comply with the transparency requirement of GATS.

From the perspective of **MFN**, Ethiopia currently does not allow any country or its nationals to participate in the financial sector. Therefore, as there is no discrimination based on country of origin, there will not be an issue in relation to MFN in the financial sector in its current shape.

Progressive liberalization: - Ethiopian government has a firm position not to open up the financial sector to foreign participation.[112] But as one of the pillars of the foundation of WTO is progressive liberalization, the current stance of Ethiopia is entirely in contradiction with it. I think, so long as that the country wants to join WTO, making commitments in the financial

[112] See the government position on the issue from a weekly newspaper called Addis Admass published on May 1, 2014, Page 1.

sector is unavoidable. Therefore, the best way forward is to adopt a strategy to minimize the extent of the commitments so as not to lose the whole concept of developmental state ideology after going through the negotiation process.

In the above context I will try to recommend the possible commitments that are necessary to be made for the goal of accession. WTO members will require commitments to be laid down in each of the four modes of supply. Thus, my recommendation for the financial sector will be suggested separately for each mode.

Cross border supply of financial service (mode 1):- Naturally allowing firms to be established or to be incorporated in Ethiopia by foreign investors will benefit the country as they bring the much needed foreign currency with them. However, unregulated risk taking by financial institutions abroad will have a consequence at home. Banks which take a lot of bad loans abroad may need restructuring from the local government and tax payers' money.

When we see the case of China, it didn't put specific restrictions for most of cross boarder supply.[113] Therefore, the wise strategy for Ethiopia in this regard is to demand extended transition period and restrict the group of persons that will be allowed to engage in such activity. This will help to limit the damage that could possibly be imported from financial meltdown in other countries. Thus, as subsidiaries of foreign firms presumably would not ask Ethiopian government help for their business miscalculations with customers outside Ethiopia, allowing only them to engage in cross boarder supply of financial service is a reasonable commitment.

Consumption abroad of financial service (mode 2):- these kinds of transactions takes place outside Ethiopia, hence it is difficult to monitor the business. As long as foreign currency regulations of the country are adhered, I believe its impact on Ethiopian financial sector is limited. Moreover looking in to the accession package of recently joined members, it is rare to find a country which put limitation in this mode. Therefore, this places Ethiopia in a position to follow the precedent and allow consumption abroad of financial services.

The most important for the banking and insurance businesses is **mode 3**; taking in to account pervious accessions, there are four main options for market opening in this respect. These are:

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[113] Aaditya Mattoo, 'Chain's Accession to the WTO: the service dimension', (World Bank research working paper 2932, 2002), page 6.

1. The establishment of full foreign owned firms.
2. The establishment of partial foreign owned firms.
3. The establishment of full/partial foreign owned firms in designated areas.
4. The establishment of full/partial foreign owned firms after transition period.

When we look at the case of China, by 2000 i.e. before accession, foreign banks and financial institutions had already set up 191 representative offices and subsidiaries.[114] However, these foreign firms were not allowed to operate without restrictions, their presence was limited in areas like the Shanghai/Beijing corridor.[115] After accession China removed the geographical restrictions within 5 years. Similarly in 2006 all restrictions on insurance were lifted except the foreign ownership limit on life insurance.[116]

Therefore, the experience of China clearly shows that Ethiopian financial sector will not come out unscratched of the negotiation process. Hence, if Ethiopia seriously wants to join the WTO in the near future, it has to start liberalizing the sector beginning from now. In my opinion total liberalization of the sector is unrealistic because foreign banks and insurance companies of most advanced economies will undoubtedly wipe out the infant domestic industry. On the other hand as Ethiopia is a tiny economy when compared with China, I believe the strategy China followed to liberalize the sector in designated areas will not be accepted by WTO members in Ethiopian case. Thus the feasible tactic that the negotiating team should follow is on the one hand to press for extended transitional period and on the other hand insisting on limited ownership in the form of joint venture with local financial institutions.

Temporary presence of natural persons (mode 4):- In the service sector the issue of temporary presence of natural persons is dependent on the liberalization committed in mode 3. Hence, if Ethiopia agrees for commercial presence of foreign financial firms, logically it has to make commitments in mode 4. However, the liberalization in this mode should follow the standard precedent and Ethiopia shall only agree for the temporary presence of senior management staff and executives.

[114] Justin Yifu Lin, 'WTO Accession and Financial Reform in China', (Cato Journal Vol. 21, No. 1, 2001), page14.
[115] ibid
[116] Aaditya Mattoo, (n 6) page 9

4.2.2 Telecom

Traditionally telecommunication sector is divided in two; basic and value added service. Basic service i.e. voice data transmition, telex, telegram is usually subject to market access restrictions. On the other hand value added services i.e. electronic mail, online information are more open to competition.[117]

Pursuant to the 2012 investment law Article 6(2) (b) both foreign and domestic investors are only allowed to invest in telecom business jointly with the government. But the Council of Ministers regulation, which is enacted to implement the investment law and to determine investment areas that are reserved to domestic investors, is silent on the issue that whether foreigners are allowed or not to form joint venture with the government. The regulation only refers the issue for further determination by the Ministry of Information Technology. Previously the government on several occasions promised to liberalize the sector once nationwide expansion of basic telecom is achieved. This policy stand is apparently comes from the assumption that telecom service in rural areas is not profitable. Hence, the private investor will only concentrate on collecting large amount of profit from urban areas with no intent to re-invest the profit in less profitable rural parts of the country. However, in recent couple of years the telecom service specially mobile phone service has become available throughout the country including very remote rural areas. In my observation though the aforementioned logic of the government can no more hold water, the government does show no sign yet to fully liberalize the sector. Furthermore despite the fact that the existing legal regime allows joint venture in telecom business, but then in practices the government monopoly carries on.

From China's accession protocol it is clear that China and WTO members met in half way. By denying foreign firms majority share, China tried to preserve its identity on developmental government i.e. domestic control over basic industries. Nevertheless, China agreed for foreign access in all geographic areas after five years of accession with a limitation of 49% foreign equity both in basic and value added services.[118] Vietnam too agreed to significantly liberalize its

[117] Daniel Roseman, 'The WTO and telecommunications services in China: three years on' (Emerald Group publishing Limited Volume NO2 2005) 28.
[118] ibid 30.

telecom business when it joined the WTO in 2007. It allows for foreign access in both basic and value added services with 51% cap on asset.[119]

When we look deep in to the recent accessions of developmental (quasi-developmental governments) and LDCs, Ethiopian current position on government monopoly of telecom is not attainable position. Therefore there has to be at least conditional liberalization as China and other countries did to find a common ground with the members. The conditions may include equity cap, geographic limitation or transition period. In my opinion, for the long term development and benefit of the of the sector and the customers respectively, minority equity by foreigners for about 10 years of transition period and full liberalization then after is a fair outcome from the negotiation to Ethiopia.

4.2.3 Transport

Transport means are Rail, Road, Air and Maritime. As foreign investors are primarily interested in Air and Maritime services, the working party will focus throughout the negotiation on these two sectors. Railway service is the least attractive for foreign investors because they don't have any interest to invest in mountainous country like Ethiopia, which has almost no infrastructure in the sector. Thus I will only examine the remaining three sectors.

The legal environment regarding foreign participation in the road transport sector is not plain as it is expected to be. The investment proclamation, which has general provisions about the do's and the do not's, does not preserve the sector for the government monopoly or joint venture. On the other hand the investment regulation, which has the purpose to list down sectors reserved for domestic investors and sectors permitted to foreigners, is silent on this issue as well. Thus this leaves the sector for the discretion of the Investment Board to allow or deny foreigners to invest in road transport business.[120]

[119] Please see schedule of specific commitments in service by Viet Nam (found at http:// www. *docsonline.**wto**.org/imrd/directdoc.asp?DDFDocuments/t/WT/ACC/)*

[120] Regulation no.270/2012 article 4(2)

When we see the experience of previous accessions, LDCs and developing countries did not usually make commitments in this sector.[121] Whereas, China agreed for the involvement wholly owned foreign subsidiaries after sex years of transition period.[122]

Ethiopia as a country governed by developmental state ideology, the government owns trucking, city bus and other transport businesses. And domestic investors are also allowed to engage in any kind of road transport business activity. However, in my opinion both government owned and privately owned companies are very weak both in organization and finance to compete with foreign investors. Thus my advice to the negotiating team is to keep the sector out of discussion as much as possible. If this cannot be achieved the maximum liberalization in this sector has to be limited to making commitments only in mode 1 and 2.

Under the GATS, air transport traffic rights and services directly related to traffic rights are excluded from the agreement. Thus the context of the discussion in air transport should be seen in light of the GATS scope of sphere.

The 2012 investment regulation has changed the previous limitations for foreigners to engage in air ticket selling service and aircraft maintenance (MRO) service. Hence if the working party or members in bilateral negotiation adhere strictly to the scope of GATS, there will not be further demand from Ethiopia to liberalize in this sector. However my suspicion is that members will demand Ethiopia to repeal its government monopoly on air transport service using aircraft with a seating capacity more than 50 passengers. Moreover they may also demand the repeal of prohibition of foreigners to participate in the remaining seating capacity air transport service. On the outset the indefinite exclusion of the air transport service from the ambit of foreign participation seems unreasonable. Nevertheless, for the purpose of smoothing the accession road, I think the negotiation team should follow a strategy to please WTO members by promising the liberalization of the sector after reasonable transition period subsequent to membership. And as this promise does not create GATS commitment, legally speaking Ethiopia will not be obliged to keep the promise when the time approaches.

[121] Please see Part ll Schedule of Specific Commitments of acceded countries(found at http://docsonline.WTO.org)
[122] Please see schedule of specific commitments in service by China (found at http://*www.**wto**.org/english/the**wto**_e/acc_e/wp_acc_**china**add2_e.doc).*

In the maritime sector the main restrictions set in the investment regulation are the reservation of forwarding and shipping agencies only to domestic investor.

China allows commercial presence for minority joint venture ship operators, whereas it allows majority ownership in joint venture for auxiliary services.[123] On the other hand original members of the WTO including both heavy weight members (USA, EU, Canada and Japan) and African countries made no commitments in maritime service.[124] Despite these facts, the working party will obviously request Ethiopia to fully liberalize the sector. However Ethiopia shall insist for the consideration of the fact that it is a landlocked country when negotiating on the topic.

Furthermore, Ethiopia as a developmental state needs to empower the domestic businessmen. The domestic shipping and forwarding industry may struggle to survive the intense competition from foreigners if the sector is fully liberalized in short transition period. Therefore, the inclusion of reasonable transitional period and equity cap is vital to sustain the industry in post WTO membership era in case liberalization in the sector is unavoidable.

[123] ibid.

[124] Please see WTO press briefing on the issue (found at http://www.wto.org/english/thewto_e/minist_e/min96_e/maritime.htm).

Chapter five

Conclusion and Recommendation

The WTO rebrands itself from being a club of western powers and their former colonies to a worldwide organization in the 21 century by incorporating countries like China, Saudi Arabia and Russia to the system. In today's globalized world joining the WTO is a mandatory phase for a responsible government. The economy of a country cannot really advance unless it is integrated with the international trading system through the WTO. The goal of WTO is to liberalize international trade and to replace the old power and diplomatic based way of solving trade issues and conflicts with rule centered system. However the process of acceding to the WTO notoriously loses its rule appeal and increasingly becomes power and precedent based. As a result acceding countries should expect to pledge more than their WTO founding neighbors did to be part of the organization. Therefore, it is fair to say that significant liberalization becomes the new norm for new comers.

Ethiopia seems to appreciate the economic benefits of joining the WTO before 10 years. But after application for membership in 2003, the government openly adopted the developmental state ideology. The policies of developmental state are clearly exhibited in recent business laws of the country. The government heavily participates in the economy as a regulator and as an actor. Moreover the business environment of the country is not liberalized both from the perspective of trade barriers and foreign participation. These policies and laws of developmental state are in many respect go against the ambition of quick accession.

The Chinese government involvement in the economy before accession resembled the current Ethiopian situation. China made significant compromises for the sake of joining WTO. But the government in Beijing has not lost its developmental nature after accession. On the other hand the economy of the country has boomed as a result of the opportunities created by membership. Therefore taking in to consideration the Chinese experience, Ethiopia should not fear to make reasonable concessions in its current developmental state policies to join the organization.

The working Party formed for the accession of Ethiopia has not yet started negotiation with Ethiopian negotiating team. As the negotiation stage could consume a lot of time, Ethiopia needs to finalize the preparation of its initial service offer and make itself ready for the negotiation soon. The negotiation phase needs good preparation both in technical and legal matters. The team has to be well equipped in negotiation skills, know-how of previous accessions and privileges of LDCs and developing countries. In addition the country has to predetermine its priorities and red lines for prudent and organized follow up of the process.

The negotiation has different major focus areas. The most contentious subjects include tariff rate reduction, opening up of the service industry to foreign competition, trade in agriculture products and subsidies. Although Ethiopia made some progress especially in relaxing the foreign investment regime recently, demanding work is still required in all areas to make the dream of accession a reality. Customs duties and disguised duties like Sur tax have to be reduced and eliminated respectively. Dramatic reduction of these lucrative sources of government revenue would lead to a plunge in the government funds. In states like Ethiopia where the government involves heavily in every aspect of its citizens life the problem would be felt easily. Therefore Ethiopia as a developmental state needs to minimize the shock by starting slow reduction in advance and by securing as much as possible transition period to implement the changes.

Trade in services is the major stumbling block in the negotiation between WTO and a developmental state like Ethiopia. The current Ethiopian business laws shield the infant service sector of the country from competition. Strategic segments of the economy like finance, banking, telecom and transport are guarded by these laws from private or foreign participation. In principle GATS advocates the opening up every sector for competition. However in practice though latecomers have been compelled to liberalize every sector, all members restrict private or foreign competition in some areas. Members had reserved those sectors they consider strategic from inclusion in their schedules of commitments. But for acceding countries the importance of a sector from their perspective would not guarantee an exclusion from the ambit of liberalization. The nature of the sector and the interest of the members on that sector would determine whether the desire of the acceding country is acceptable or not. Therefore, Ethiopia shall identify those sectors that the heavyweight members of WTO would not allow exclusion not to waste time by insisting on unachievable goal. Conversely on other sectors, which are not the primary interest of the members, like road and rail way transport, the negotiating team of Ethiopian shall bargain hard to exclude the sectors from liberalization.

In nutshell the legal regime regarding the service sector as manifested mainly in the investment proclamation and regulation would not survive without changes as long as Ethiopia wants to join the WTO. My recommendation is that Ethiopia should not resist progressive liberalization in sensitive service sectors like banking and telecommunication. But transition period and equity cap should be part of the grace period to protect the weak domestic industry from melting down as a result of the changes.

Finally after more than 10 years, the accession of Ethiopia is still at the early stages. To avoid a repeat of the experience of countries like Algeria, which has been negotiating for a quarter of a century, Ethiopia shall recognize the need for compromise on some of its developmental polices in exchange for joining the club of the majority of world trading nations. These compromises include amending its customs, tax and investment laws.

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