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Everything You Always Wanted to Know about WTO Accession

(But Were Afraid to Ask)

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Abstract

In this paper, the authors explore the complex, long, and unique process of accession to the World Trade Organization, with its intertwined economic, legal, and political dimensions. Referring to country case studies and sector-specific issues, the paper organizes some of the current reflections on the topic around three main themes. First, it explores the rationale of accession to the World Trade Organization: Why would new members join the WTO? And why would incumbent members let new members in? Second, it analyzes the World Trade Organization accession process in detail: What are the main characteristics and challenges of the accession process? Has it evolved over time, and how? Third, the paper looks at the implementation of World Trade Organization accession deals: Is accession the end or the beginning of the story? What are the implications for the participating countries and the multilateral trading system?

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1. WTO accession in context

The fundamental dilemma of WTO accession

With a view "to ensure that globalization becomes a positive force for all the world's people," the international community committed to "develop further an open trading and financial system that is rule-based, predictable, and non discriminatory" (United Nations Millennium Development Goal (MDG) No. 8). The set of non-discriminatory trading rules embedded in the World Trade Organization (WTO) agreements has the characteristics of a global public good, and the WTO, as the main institutional framework for the conduct of trade relations, directly contributes to development and to the fight against world poverty. Acceding to the WTO implies sharing responsibility in the management of this global public good and the objective of universal membership for the WTO seems *prima facie* a worthwhile goal.

However, the WTO faces a fundamental dilemma. On one hand, it inherits from the old tradition of the General Agreement on Tariffs and Trade (GATT), whereby countries contribute to the objective of promoting trade "by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." (Preamble of the GATT 1947 and 1994) In other terms, accession to the WTO implies "reciprocity" and "mutual advantages", and therefore excludes a "free" membership. On the other hand, the central position of the WTO in the world trading system and the objective of universal membership suggest that the "cost" of accession should be kept as low as possible, so as to not exclude the poorest countries. With both a mercantilist heritage and as the institutional vessel for a global public good, the institution faces tensions that become evident in the experience of its accession procedures.

A historical perspective on GATT/WTO accessions

The history of the GATT, and then the WTO, could be characterized as a successful one if the size of its membership were to be taken as the relevant parameter to measure success. On January 1, 1948 the GATT was signed by 23 countries;[1] in the following years, the number of contracting parties increased, reaching 50 in the early 1960s, 100 in the early 1970s, and 150 in 2005. The membership also became more diversified, with a majority of developing countries (since 1960) and the accession of many transition economies after the collapse of the Soviet Union. Over six decades, the number of contracting parties to the GATT has increased by nearly 130, with about 30 additional countries currently with an observer status and in the process of negotiating WTO accession.[2]

Not all these countries have been through the same accession process, however. In particular, as pointed by VanGrasstek (2001), the majority of developing countries that joined the GATT did not actually accede, but rather succeeded to GATT status. In the post-World War II period, many countries that gained independence from colonial powers had the option of entering the GATT under the special terms of GATT Art. XXVI:5(c), and acquired *de facto* GATT status, before converting this status into full GATT contracting party status by succession – a process that was much less stringent that the ordinary accession process under GATT Art. XXXIII. In total, 64

[1] Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, the Czechoslovak Republic, France India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, and the United States.

[2] See the summary table of ongoing accessions on www.wto.org.

countries benefited from this fast track accession process.[3] Change in practice also occurred with the establishment of the WTO in 1995: 128 GATT contracting parties became original members of the WTO, and 24 additional countries joined the organization since – using the provisions contained in Art. XII of the WTO Agreement. Even then, experiences have varied: the shortest accession negotiation was that of the Kyrgyz Republic, lasting 2 years and 10 months, and the longest (so far) was that of China, lasting 15 years and 5 months. Among the remaining candidates, Algeria has begun the accession negotiations in 1987 and Russia in 1993.

A number of factors, including the degree of readiness and openness of the candidate countries, explain these differences. However, some commentators have observed a trend towards an increasing cost, length, and complexity of accession negotiations (see, for example, Evenett and Primo Braga, 2006). This is of concern, in particular, to the poorest of the acceding countries, and one could even argue that the observed track-record of accession experiences threatens to move the WTO away from its core principle: non-discrimination. For some authors, the accession process has created a "two-tier" membership or a "second class" of WTO citizens, and the interpretation of accession protocols has created a whole new branch of WTO law and jurisprudence (see, for example, Ya Qin, 2003, and Charnovitz, 2008). Finally, some have questioned the benefits of joining the WTO at such a perceived "high price," and there has been one concrete case of a country (Vanuatu) that has suspended the procedures to finalize its accession bid after about ten years of negotiations (Gay, 2005).

Lanoszka (2001: 602) pointed out that "the dynamics of accession to the WTO is a microcosm of the clashes transpiring international political economy" and therefore this process deserves special attention. How has the WTO dealt with the fundamental dilemma of accession, and balanced the rights and obligations of its members with the expectations of candidates and the international community? Has the WTO accession process become an obstacle to the universality of membership? Or, on the contrary, is discrimination (a multi-tiered or "à la carte" WTO) the price to pay for the extension of membership? What are the systemic consequences of this move away from the core principles and original features of the GATT?

Main issues to be addressed

These are just a few of the questions to be addressed in this paper – and beyond, by WTO members and the international community. First, it explores the rationale of WTO accession: Why would new members join the WTO? And, why would incumbent members let new members in? Second, it analyses the WTO accession process in details: What are the main characteristics and challenges of the WTO accession process? Has it evolved over time, and how? Third, it looks at the implementation of WTO accession deals: Is WTO accession the end or the beginning of the story? What are the implications for the participating countries and the multilateral trading system?

2. The rationale of WTO accession

The rationale of WTO accession, and the potential impact of accession on entrant and incumbent members, has given birth to a substantial literature. To the simple underlying questions – (1) Why

[3] Article XXVI:5(c) of GATT 1947 reads as follows: "If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party."

join the WTO? (2) What are the impacts of WTO membership? – a number of answers have been provided, sometimes generating a stream of passionate academic exchanges (see Rose, 2004, and 2007). The need was even felt to summarize the discussions and a "literature on the literature" has emerged (see, for example, Rose, 2006, Evenett, 2005, Jackson and Feinerman, 2001). Accession of China to the WTO alone generated more than 20,000 scholarly contributions.[4]

The profusion of views generates, however, a feeling of unfinished business. There is no satisfactory answer to the first question – Why join the WTO? – in part due to the absence of a clear agreement, as pointed by Staiger (2003), on the role attributed to the WTO, i.e. what fundamental problems the GATT/WTO is attempting to solve. With regard the second question – What are the effects of WTO accession? –, a number of attempts were made to capture these effects, but some observers are still willing to argue that "little is known about the impact on economic performance and social well-being of the other economies that have joined the WTO since 1995." (Evenett, Gage, and Kennett, 2004: 4)

Those questions remain critical: the answer to the first one will determine whether a country decides or not to apply for membership, and the answer to the second one will determine the price that is worth paying for membership: the higher the anticipated benefits of membership, the more concessions a country is ready to make to join the club. In section 2.1, we review the perspectives that dominate the literature on WTO accession in terms of the benefits of joining the "club." Section 2.2, in turn, reviews a more recent empirical literature that disputes the relevance of some of these agreements.

2.1. A typology of the reasons behind WTO accession

There is not a single reason for joining the WTO. Motives vary from country to country and even within a country, they vary over time and from one segment of the population or an interest group to another. One could think it is all about economics and trade, but this reductive view of the decision-making process misses the fact that political factors, both domestic and international, typically play an important role. Moreover, effects of WTO membership do not stop at the border. Joining the WTO is akin to embracing concepts about how market economies operate and how global economic cooperation can be welfare enhancing.

Outward looking: a better integration into the world economy

Accession to the WTO is, for most candidates, a way to further integrate the world economy and to better harness the benefits of international trade. This is true, in particular, for countries which for historical (e.g. transition economies), geographical (e.g. landlocked countries), or economic (e.g. least-developed countries, LDCs) reasons have stayed at the margin of major trade flows. WTO membership comes with its privileges, which include:

- A permanent and unconditional MFN status, and the protection against arbitrary protectionist measures of major trading partners

WTO membership guarantees certain conditions of access (most-favored nation treatment, MFN) to foreign markets, and contributes to promoting domestic exports. The gains are not so much in foreign tariff cuts, because most WTO candidates had already been granted MFN or preferential treatment (e.g. under the general system of tariff preferences, GSP, or any other preferences scheme) before accession. The gains are rather in the transparency, stability and security of these market access conditions. Preferences granted outside the WTO framework are largely

[4] Number of hits for "China WTO accession" search using http://scholar.google.com.

discretionary, and the terms of a particular market access could always be modified or withdrawn, at the will of the importing country with no further compensation. Similarly, the implementation of bilateral trade agreements could be subject to discretion. In the case of Nepal (Rajkarnikar, 2005), difficulties with bilateralism (the transit and bilateral trade treaties with India could not be renewed in 1989, due to certain disputes, and resulted in shortages of critical goods) compelled the government to seek entry into the multilateral trading system.

- The reduction of the cost of trade negotiations

WTO membership gives access to the largest (so-called multilateral) trade negotiations forum. Market access improvements agreed at this level automatically benefit all members. By contrast, non-members have no choice, but to negotiate further market access or any other trade-related rights at the regional or bilateral levels. This can be costly, and many countries don't have sufficient administrative, human or budgetary resources to simultaneously negotiate a number of bilateral/regional trade agreements.

- The participation to international trade rule-making

The WTO mandate is broader than the one of the GATT. It includes the reduction of both tariff and non-tariff barriers to trade not only in goods, but also in services. The rules of conduct elaborated in this forum tend to govern most trade flows, among members, but also among members and non-members. The countries staying outside the WTO give up their right to participate to rule-making, and nonetheless are affected by the enforcement of the rules adopted by WTO members. Participation to this rule-making process makes sense at all levels of development: (i) for leading trading powers, it is about trying to disseminate one own standards and norms to the largest possible community; (ii) for smaller countries, it is about participating to and trying to influence the norm setting exercise in one's best interest (Cattaneo, 2002). As Ostry (1997: 193) observed, "the middle powers recognized that the alternative to a rule-based system would be a power-based system, and lacking power, they had most to lose."

- The access to an impartial and binding dispute settlement mechanism

According to Art. 3:2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), "the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system." The WTO dispute settlement system has several functions: first, it protects members against abusive uses of unilateral trade sanctions, such as the US Section 301;[5] second, it restores some equity in the settlement of trade disputes, offering the smaller WTO members access to credible enforcement and sanction mechanisms; third, it creates a watch mechanism, where third parties are informed of violations of the agreements and automatically benefit from their remedy (Maggi, 1999). In particular when there are strong power imbalances in bilateral trade relationships, a multilateral approach to enforcement is just as important as in rule-making.

Inward looking: an improved business climate for domestic producers and foreign investors

WTO membership does not only create rights, but also obligations. Increased access of domestic producers to foreign markets is mirrored by increased market access of foreign producers to domestic markets. In other terms, reforms need to be undertaken at home, and these reforms are probably the main source of benefits from WTO accession. These include:

[5] Section 301 of the 1974 Trade Act is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny U.S. rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict U.S. commerce.

- More efficient and credible trade policies

Bagwell and Staiger (1999) observe that unilateral trade policy choices tend to result in too much trade protection and too little market access because governments shift to foreign exporters part of the inefficiency costs. WTO membership mitigates governments' incentives to pursue so-called "beggar-thy-neighbor" policies, and creates pressure towards a lowering of the tariffs (in addition to the suppression of quotas and other barriers to trade that are more restrictive than necessary). As a result, WTO members offer foreign producers a larger, more secure and predictable access to their markets. This, in turn, contributes to increasing imports and competition on domestic markets, and to lowering prices and increasing the variety of imports. Ultimately, the local producers have to adjust, become more efficient, and improve their quality standards. Thus, increased efficiency of trade policies also benefits local producers: WTO membership protects businesses against abusive state interferences, such as discrimination in favor of certain individual sectors that are not the most productive or efficient (e.g. excessive tariffs on steel may adversely affect the automobile and many other sectors). In the same vein, Pietras (1998) observed that the WTO regime encouraged individuals and firms to rely upon external as well as internal markets.

- An anchor for domestic regulatory and administrative reforms

Countries acceding to the WTO are required to put in place a set of norms and institutions, which support the liberalization of markets, increase transparency, and promote the rule of law and contract enforcement. These reforms are often considered as desirable *per se*, but could be delayed or postponed by the opposition of some interest groups. Thus, the WTO provides an anchor for the reforms, tying the hands of the government, and making recidivism costly. It also offers to its members a Trade Policy Review Mechanism (TPRM) that has been important, for example, to policy formulation and execution in transition economies.

Langhammer and Lücke (1999) suggest that applicant countries undergoing a systemic transformation of their economies can look towards the WTO agreements to provide, ready for implementation, a fully developed and well-established set of norms. As pointed by Drabek and Bacchetta (2004), there is some evidence that WTO membership goes hand in hand with higher institutional quality and efficiency, and reduces rent-seeking behavior and corruption. The better protection of intellectual property rights (Agreement on the trade-related aspects of intellectual property rights, TRIPS), better governance of so-called backbone services (e.g. telecoms, banking, transports) (General Agreement on Trade in Services, GATS), and better regulation of technical, sanitary and phytosanitary measures (Agreement on the application of sanitary and phytosanitary measures, SPS, and Agreement on technical barriers to trade, TBT), contribute to improving the national business environment, and to creating sizeable domestic payoffs. Not only importers and exporters benefit from these reforms, but all domestic firms, whether involved in trade or not. Ultimately, the country becomes more attractive to foreign investors, and foreign direct investment inflows (FDI) are expected to contribute to reducing the cost of capital (Francois, 1997).

The question of the repartition of gains between acceding and incumbent members

If the benefits for the acceding country are significant, why would the WTO incumbent members accept new members into the club? Don't they run the risk that the new entrants' exporters would become more efficient competitors and win market shares to the detriment of their own producers both at home and abroad? Debates around the accession of China illustrated these fears, which are largely proportional to the economic size of the applicant country: China represents 75% of the

scholar references on WTO accession (and Russia another 10%), and a large share of this literature does not focus on the impact of accession on China, but rather on the rest of the world.

It is true that, according to trade theory, the country that liberalizes and opens its economy is supposed to be the main recipient of the benefits. For example, exploring the distribution of gains from expanding the WTO membership, Bond, Ching, and Lai (2002) found that not only does the new entrant gain a higher share of the total surplus than the incumbent members, but its absolute gain was also higher. But this is all about relative gains: all agree that the global economy as a whole is better off, and it is therefore in the incumbent members' interest to accept new members. Quoting the Head of the Chinese delegation, Long Yongtu, "The outcome of China's accession to the WTO will be marked with the feature of a "win-win" and "all-win" for China as well as for the world" (Bond, Ching, and Lai, 2002: 1).

Indeed, the effects of accession on incumbent members mirror those on acceding members. For example, incumbent members' exporters benefit from the removing of barriers to trade in the acceding countries – enhanced export opportunities – and from the more stable and predictable business climate – enhanced investment opportunities and more secure business transactions. In addition, by offering the new entrant a better access to their markets, the incumbent members reinforce the efficiency of their own trade policies, and limit their exposure to protectionist temptations and pressures. Finally, accession of new members to the WTO contributes to further improving the implementation of existing agreements through dispute settlement: more countries are subject to multilateral discipline and, in light of the specific interests of each country, more export interests can be efficiently fostered.

But, is it all about politics?

All the above primarily explored the economic rationale for WTO accession. As already pointed out, however, it is not all about economics. The decision to join the WTO could be just as much, if not more in some cases, driven by politics. For example, according to Tsogtbaatar (2005), Mongolia joined the WTO without having prepared any serious economic analysis of the consequences (positive or negative) of accession, motivated by the sole political objective of joining the club before its two big neighbors (Russia and China), and with a view to showing the rest of the world that it was serious about embracing the market economy unreservedly. For many transition economies, the accession to the WTO was prompted by reformist governments that wanted to protect themselves against pressures of political opponents, and prevent any return to the socialist model. Per se, the accession to the WTO sanctions a political choice to move to market economy. In short, politics and economics are tightly intertwined.

Joining the WTO is adhering to the idea of global economic cooperation (multilateralism) and to certain principles developed in the aftermath of World War II. Looking at the effects of WTO accession through the narrow lens of individual economies could be misleading: the existence of the WTO (and the enlargement of its membership towards universality) has global effects that exceed the sum of the domestic level effects. As summarized by Lanoszka (2001: 577), "the WTO package of multilateral agreements is seen to be a significant factor in eliminating global economic policy co-ordination failures, through disciplining States to overcome their limitations as isolated economies by advancing their interests through collective action." This cooperation is desirable, not only for economic, but also political reasons: the creation of the Bretton Woods institutions and the GATT responded to the firm belief that lack of global economic cooperation led to the 1930's "tariff wars", economic distress, and ultimately to World War II. The spirit of the GATT is now embodied in the WTO, and joining this community could be part of a scheme to reinforce international cooperation, thus "a political decision with a varnish of economic

rationale" (Cattaneo, 2008: 37). This could also explain why some countries decide to join the WTO despite their having an already secured access to their major export markets negotiated through a web of bilateral/regional trade agreements.

The importance of political factors in the accession process is also reflected in the attitude of incumbent members. Economic considerations might affect the decision to let new members in, but the experience of the transition economies shows that political considerations play an even greater role.

2.2. Miracle cure or placebo?

Are the above-listed reasons to join the WTO solidly grounded? Have these effects been observed in practice? Do they pass the test of empiricism? Recently, the widely held and long-standing views about the positive economic effects of WTO membership have been called into question. Several empirical studies failed to convincingly demonstrate that accession to the WTO significantly increased trade. It then became legitimate to ask whether accession to the WTO was a miracle cure or just a placebo.

Do we really know that the WTO increases trade?

This question attracted renewed attention in 2004, when Rose (2004) found that GATT/WTO membership did not have a statistically significant effect on the value of bilateral trade flows over the years (fifty year reference period). A series of papers by the same author followed that refined the analysis, and a number of critiques revisited the questions posed and the methods employed.[6] For example:

- Subramanian and Wei (2007) used a different methodology, and found that the WTO had a strong positive impact on trade, amounting to about 120% of additional world trade (or USD 8 trillion in 2000 alone);
- Tomz, Goldstein, and Rivers (2007) argued that Rose underestimated the effect of the GATT/WTO by mistakenly classifying a number of countries as non-participants when in fact they had rights and obligations under the GATT (e.g. colonies, de facto members, and provisional members); correcting this bias, the authors found that the GATT/WTO substantially increased trade, and that its effects were positive across countries and over time.

These authors agreed, however, that the effects of WTO accession could be diminished by a number of factors. For example, for Subramanian and Wei, these include: (1) *what* the country did with its membership (industrial countries that participated more actively than developing countries in reciprocal trade negotiations witnessed a larger increase in trade), (2) *with whom* it negotiated (bilateral trade was greater when both partners undertook liberalization than when only one partner did), and (3) *which products* the negotiations covered (sectors that did not witness liberalization did not see an increase in trade). (Subramanian and Wei, 2007) Elaborating on the second point, Pietras (1998) noted that the protectionist practices of transition economies' trading partners adversely affected the train of reforms and the benefits of WTO membership: the sense that "other countries do it too" led to a slow but visible retreat from the initial liberal trading policies of many transition economies. A similar argument was developed by Murshed (2004), who concluded that the WTO could act as a credible commitment device for developing countries for as long as the developed countries too were committed to freer trade.

[6] A summary of this literature is available, for instance, in Evenett and Primo Braga (2007), and Rose (2006).

The effects of WTO membership through the lens of empiricism

Empirical studies have not, so far, made a compelling case for (or against) WTO accession. A number of reasons could explain this failure: first, research has mainly focused on the case of China, and other experiences have been largely overlooked; second, most research was undertaken in preparation rather than in the aftermath of WTO accession (see for instance Tarr, 2007) – in other terms, authors typically focused on *estimating the potential* of WTO accession rather than *measuring its effects* (useful advocacy and policy-making tools in candidate countries, these studies did not necessarily shed light on the real economic impact of WTO accession); and a number of methodological issues made the task of economists particularly difficult, if not impossible (e.g. reforms are often undertaken over a decade in preparation for accession, but it is impossible to distinguish reforms that would have been undertaken unilaterally in any circumstances). Examples of this work include:

- For Bulgaria and Ecuador, Evenett, Gage, and Kennett (2004) used export data to evaluate the effect of WTO membership on the degree and security of access to foreign markets. With regard to Bulgaria, the authors found that the falling applied MFN rates (fostered by Bulgaria's WTO accession) explained approximately one fifth of the country's export growth to the Quad countries (i.e. Canada, the EU, Japan, and the US). For Ecuador, the authors concluded that export growth was higher in those product lines where the gap between MFN and GSP rates narrowed faster, suggesting that a reduction in the uncertainty over the terms of their market access to foreign markets had encouraged the country's firms to ship more goods to the leading industrialized economies.
- For 25 transition economies during the 1990's, Campos (2004) used empirical data to find that WTO membership had little impact on trade openness, FDI and growth, but a positive effect on domestic reform (external liberalization).
- For Russia, Lissovolik and Lissovolik (2007) tried to measure the cost of the "outsider" status. The authors found that Russian exports to WTO members during the 1995-2002 period have fallen short of their model's predictions, and concluded that the impact of Russia's accession to the WTO on structure and possibly the level of trade might be quite significant and much higher than the existing estimates.
- For transition economies in the field of services, Eschenbach and Hoekman (2006) found an inverse relationship between the level of GATS commitment and the "quality" of actual policy, suggesting that the argument in the literature regarding the lock-in and credibility benefits of WTO membership and commitments needed to be qualified. According to the authors, external enforcement incentives may be weak in cases of non-compliance by small/poor countries, as foreign exporters may perceive the net return of initiating disputes or invoking WTO disciplines to be inadequate. Other enforcement mechanisms, such as bilateral investment treaties, where they overlap with GATS commitments, are often preferred. Moreover, for EU accession candidates the GATS appeared as a largely redundant commitment device.

2.3. The case of transition economies

The above empirical studies mainly focused on the case of transition economies. The analysis of the reasons behind WTO accession and the problems faced by new entrant countries, also suggests that some issues are specific to transition economies. Nonetheless, from a legal perspective, the GATT did not specifically identify transition economies: members are either treated as market or non-market economies. From a historical perspective, accession to the GATT/WTO has required from applicants some signs of willingness to depart from the socialist model; thus, non-market economies in the GATT/WTO are "de facto" in transition. Well defined

in other forums, the concept of transition economies has just recently made a timid appearance in the WTO in the context of the Doha Development Agenda (DDA) and technical assistance projects, but the recognition of specific needs has not translated, so far, into specific rights.

An historical perspective on the accession of socialist and transition economies to the GATT/WTO

Participation of socialist countries to the GATT 1947 posed a problem, since the functioning of their economies contradicted the basic market orientation and neo-liberal principles of the agreement: for example, it appeared meaningless to negotiate tariff concessions with non-market economies, since tariffs have little or no influence over import decisions, and would not result in increased export opportunities.

The GATT notion of non-discrimination also conflicted with the notion of socialist solidarity. In 1949, an "iron curtain" also fell on world trade, and the Soviet Union created the COMECON. COMECON's initial scope was limited to practical questions of facilitating trade, and *de facto* offered the socialist countries an "alternative" to the GATT. In 1991, the COMECON counted ten countries with full membership, one country with associate membership, five non-socialist co-operant, and five observers. At the same time, the GATT counted more than one hundred contracting parties.

Several countries among the original contracting parties of the GATT became socialist regimes: Burma, China, Cuba, and Czechoslovakia signed the GATT with 19 other countries on 1st January 1948. Poland and Yugoslavia also participated to the Havana negotiations, but did not sign the GATT. It is worth noting, however, that none of these contracting parties were socialist at the time of the signature of the agreement: a centrally-planned economy was installed in Burma in 1962 (and lasted until 1988), in China in 1949 (but the Republic of China -Taiwan- was designed as the successor for the purpose of the GATT), in Cuba in 1959, and in Czechoslovakia in 1948. These countries remained contracting parties of the GATT – although largely inactive, despite their change in regime.

With the growing success of the GATT (in terms of expanding membership), some socialist countries applied for increased affiliation: observer status, participation to negotiation rounds, accession to specific codes negotiated under the GATT auspices, and full GATT membership. According to Haus (1991: 165), "while GATT rules and procedures acted as an impediment to the membership of non-market economies in the trade institution, security goals clearly made the membership of some East European countries desirable. (…) Individual requests to GATT were therefore generally approved or denied in accordance with the policy of differentiation, which entailed the granting of preferential economic treatment to those East European countries which pursued domestic or foreign policies that differed from Soviet policies". In other terms, the GATT was serving the goal of encouraging policy diversity in the East and reducing ties of some countries with the Soviet Union. GATT membership was seen both as a tool for promoting and gratifying countries "in transition" – although at the time signs of transition and departure from the socialist model were very modest. Poland, Romania, and Hungary respectively joined the GATT in 1967, 1971, and 1973. Bulgaria, however, was not considered eligible to receive preferential treatment under the strategy of differentiation, and obtained only and observer status in 1967. During the 1980s, Western officials drafted extremely precise and strict criteria for determining eligibility to join the Uruguay round, so as to bar Bulgaria and the Soviet Union while allowing China to participate.

After the collapse of the Soviet Union (1991), former satellites moved from centrally-planned to market economies – formally becoming "transition economies". This coincided with the end of the Uruguay Round and the creation of the WTO (1994). Of the 36 countries in transition, 21 have joined the WTO, 12 are in the accession process, and only 3 have not applied for membership yet.

WTO accession and non-market economy status

The GATT is based on the principle of non-discrimination. There is no differential treatment in WTO law for transition economies – the term "transition economies" does not even appear in the texts. Nonetheless, the application of WTO rules in economies where the government still plays a major role, including in trade, raises several difficulties. In 1954, Czechoslovakia proposed to amend Article VI of the GATT to remedy one of these difficulties: the definition of normal value of exports for purpose of antidumping/countervailing duties investigations when the price in the domestic market is fixed by the State (GATT doc. W.9/86, 9 December 1954). Other contracting parties of the GATT refused, at the time, to amend Article VI, but conceded the introduction of an interpretative note that read as follows:

"It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate".

The most recent Agreement on the Implementation of Article VI of the GATT 1994 (also known as the antidumping agreement) reaffirms this principle in its Article 2.7.

This provision is the only one in WTO law that explicitly distinguishes between market (MEs) and non-market economies (NMEs). The GATT, however, only provides for an exception to the general rule: each contracting party of the GATT is free to treat MEs and NMEs differently or equally; each contracting party is free to adopt its own definition of a ME/NME. In practice, the main actors of the GATT have distinguished between MEs and NMEs for the purpose of antidumping investigations, but kept a large political room of maneuver for the definition of this status. In some cases, like the US, unless an antidumping case is raised, a country in transition remains uncertain as to the status (ME or NME) it would be granted for the purpose of an investigation. The level of uncertainty is therefore extremely high.

The paradox is that countries admitted to the WTO are, by definition, in transition (or already MEs), but can nonetheless be treated as NMEs in antidumping investigations. This suggests that the concepts of transition and ME/NME are disconnected. This is confirmed by a closer analysis of WTO membership and ME/NME status of transition economies:

- There is no clear link between WTO membership and ME/NME status: some NMEs are members; some MEs are still non-members; some members have not been qualified as either ME or NME, and therefore have an unclear legal status.
- There is no solid link between the level of transition and the ME/NME status. Some economies still in transition can be granted a ME status. Some relatively more liberal economies can still be treated as NMEs. The decision remains mostly political. For example, while China is still treated as an NME under US and EU law, it included specific provisions in its FTAs that requested from its partner to recognize it as a ME.

The question is then how to define a transition economy if there is no agreement on whether transition is achieved or not? Some countries have an NME status with some WTO members and, simultaneously, a ME status with others.

It is in the interest of transition economies to gain ME status in WTO members' domestic law as early as possible. If anything, the interpretative note to Article VI of the GATT was used by market economies to discriminate against – and not in favor of – NMEs. In practice, it has been used as a tool for Western economies to ensure that their rights would not be challenged by technical difficulties associated with the application of GATT rules to transition economies (on the issue of non-market economy and antidumping, see Polouektov, 2002).

Specific needs, but no specific rights

A parallel could be made between the treatment of developing countries and transition economies in the multilateral trade system. As a result of the decolonization process, a number of developing countries joined the GATT during the 1960s. As early as 1960, developing countries represented

one-half of the GATT contracting parties; they represent now three quarters of the WTO membership. Accordingly, the GATT was revised to include provisions on special and differential treatment in favor of developing and least-developed countries; an Enabling Clause was also adopted in 1979 to allow derogations from the MFN principle in favor of developing countries. With respect to accession, many newly independent countries entered the GATT under the special terms of GATT Art. XXVI:5(c) described above.

In the same vein, with the collapse of the Soviet Union a number of recently "independent" countries in transition joined the GATT/WTO, with specific needs and difficulties to implement trade rules. While Czechoslovakia was isolated in 1954 when it suggested a revision of the GATT Article VI, economies in transition now represent a significant group of countries in the WTO, which could justify the adoption, like for developing countries earlier, of tailored provisions. However, the WTO largely ignores the transition-economy status: MFN applies to transition economies and special and differential treatment can only be claimed by those transition economies that also happen to be developing countries; and those among the transition economies that were once colonies cannot benefit from the now abolished special arrangements of GATT Art. XXVI:5(c). In sum, transition economies have no specific rights, and the WTO did not take any specific measures to accompany these countries in their transition.

3. The WTO accession process

Once a country has decided to officially apply for WTO membership, the complex and lengthy process that eventually leads to accession starts. The WTO agreement and GATT/WTO practice provide a legal framework for this process. However, this framework is relatively "loose" and the dynamics of negotiations – and their result – tend to vary from country to country. It took China more than fifteen years to complete the process, compared to less than three years for the Kyrgyz Republic; the China accession protocol consisted of a main text of 11 pages, 9 annexes, and 143 paragraphs incorporated by reference from the 77 pages Working Party Report, compared to a main text of no more than two pages of standardized provisions for some other countries' accession protocols.

Nevertheless, the more than 20 so-far-achieved WTO accessions have had some common features. Evenett and Primo Braga (2006) observed that (1) the WTO accession process is becoming more demanding in terms of market access commitments; (2) there is growing concern that the price of joining the WTO now includes commitments that go beyond the GATT/WTO agreements; and (3) the accession process takes limited account of the specific circumstances of applicant countries or their needs for special and differential treatment.[7]

These perceptions resonate like criticisms, and deserve further attention. Has the price to pay for acceding to the WTO become too high – in particular with regard to the role of the WTO in the management of a global public good? Have accession protocols created a "second class" of citizens in the WTO – and contradicted the core WTO principles of non-discrimination and single undertaking? Has the WTO accession process ignored the specific needs of developing countries?

3.1. The early stages of the process: from the opening of the negotiations to the conclusion of a deal

[7] These authors also note, however, that the "need to calibrate the process by level of development has been partially recognized by the WTO membership and was manifested in the WTO General Council's guidelines for the accession of least developed countries in December 2002" (WT/COMTD/LDC/12).

The first issue to explore is that the WTO accession process has become increasingly lengthy and complex. In 1998, Langhammer and Lücke expressed concerns that, "with approximately three accessions per year, the processing of the remaining applications would take more than a decade. However, such a long-drawn-out process would be undesirable as it would deny the full benefits of WTO membership to most applicants for many years." (Langhammer and Lücke, 1998: 837) A decade later, on the positive side, about 20 more countries have joined the WTO; on the negative side, however, about 30 accessions remain unachieved. A number of lessons could be drawn from the experience of the former that could help improving accessions of the latter.

In the books, a largely unchanged process

From a strictly legal point of view, no major changes have occurred over the years. Art. XII of the WTO Agreement provides that "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". Although the article provides for a two-third majority vote, in practice, the unanimity rule prevails.

Art. XII has been criticized for its brevity and general content, especially with regard the section on terms of accession "to be agreed" between the acceding country and the WTO. With a view to provide some guidance, the WTO Secretariat, in consultation with the members, to draw up a set of procedures for accession which are closely modeled on those followed by contracting parties to the GATT (WTO documents WT/ACC/1, 4, 5, and 9). These guidelines reviewed the different stages in the accession process, including: (a) the application for and the creation of a Working Party; (b) the examination of the Foreign Trade Regime of the state or separate customs territory; (c) the establishment and negotiation of a schedule of commitments on goods (GATT 1994) and a schedule of commitments on services (GATS); (d) the agreement on the report of the Working Party; and (e) the Protocol setting out the terms of accession.[8] These guidelines dealt, however, only with procedural aspects of the accession process, and no general agreement was reached on terms of accession.

Two small changes in the rules governing accession should be noticed, nonetheless (Martin, 2006). First, under GATT Art. XXXV, an existing contracting party could refuse to extend GATT concessions to a new contracting party (and vice versa) only if they had not negotiated bilaterally during the accession process. Under WTO rules, this constraint has been removed, and an incumbent member can try to shape the offer of a new member through bilateral negotiations, while retaining the right to not provide the benefits of WTO membership to the new entrant. Second, the GATT Art. XXVI:5(c) special arrangements for colonies of GATT members which had allowed a number of former colonies of European countries to join the GATT without any negotiations on their trade regime have been abolished.

In practice, an increasingly complex and lengthy process

Despite this permanence of the rules, in practice, things have changed. As observed by VanGrasstek (2001), the GATT/WTO system is a multi-dimensional object, and its geometry has evolved over time. One could not agree anymore with Curzon (1965: 36) who wrote, back in 1965, that the GATT's accession arrangements were biased in favor of newcomers, and that incumbent members did not normally "try to drive too hard a bargain" in payment of concessions

[8] For a detailed analysis of the accession procedures, see WTO Document WT/ACC/10/Rev. 3, and World Trade Organization (2008).

they had made to third parties many years before. A number of circumstances could explain these changes.

First, the scope of WTO disciplines largely exceeds those of the GATT 1947: they do not only apply to border measures, but also to a wide range of domestic policies such as standards, services regulation, or intellectual property. The collection of relevant information and the review of existing or under-reform legislations in those areas are more time consuming than the simple observation of tariff lines (fact-finding phase of the accession process). Members can also delay the admission of a candidate until it has adopted (or implemented) the regulations/laws that make it fully compliant with WTO disciplines – and domestic regulatory/legislative processes could turn out to be unpredictable and lengthy.

Second, on market access, the level of commitments required from new entrants is much higher than it used to be in the early years of the GATT, due to the combination of three factors: (1) the level of tariffs bound/applied by incumbent members has dramatically dropped as a result of the successive rounds of multilateral trade negotiations (i.e. the standard of admission is higher), (2) the WTO agreements extended the coverage of the GATT to include agriculture, textiles, etc. that are particularly sensitive sectors in most countries, and (3) the GATS extended market access commitments to the services sector.

Third, given the conjunction of bilateral and multilateral negotiations in the accession process, the larger the membership, the more specific requests a candidate country will receive, and the longer the process is likely to be. With the increasing diversity of interests in the WTO, more topics are under scrutiny than ever before in the accession process.

Fourth, remaining candidates to accession are countries that have been (and in some cases still are) facing serious political distress, extreme poverty, geographical isolation, or transition from centrally-planned to market economy. Not only do these countries need to make more efforts to adjust to the WTO disciplines, but these efforts are made in a difficult context (e.g. fragile democracy) and with limited resources (both human and financial).

Challenges facing the candidate countries

These characteristics of the WTO accession process make it particularly demanding on candidate countries. For instance, Saudi Arabia joined the WTO in 2005 after 10 years of negotiations, 365 bilateral and 14 multilateral rounds of negotiation, answering to 3,500 questions about its trading regime and system of business regulation, and submitting 7,600 pages of documentation. Saudi Arabia also prepared implementation of its commitments by issuing 28 Royal Orders and 42 laws and regulations (Evenett, 2006). From an administrative logistical perspective alone, a country must have the resources to sustain such a demanding process. In addition, most recent acceding countries and remaining candidates face a number of domestic political and economic constraints that make their negotiating task more difficult.

First, developing and transition acceding countries have limited human and budgetary resources. For example, in the case of Vanuatu (Gay, 2005), only around five members of Staff in Trade and Customs were available to deal with accession, none of whom had prior experience of the GATT or the WTO – and even when fully trained, officials often move jobs. The country had no permanent representation in Geneva, and the trips necessary for negotiating membership were too difficult to fund (estimated to represent roughly one full year of the budget of the Department of Trade).

Second, securing sufficient ownership of WTO accession (and its commitments) is a major issue, in particular in countries where political instability prevails and/or the decision/rule-making process remains opaque. In the case of Vanuatu, the length of the negotiations saw the succession of nine governments, most of which didn't get time to become aware (let alone familiar with) of the details of the accession package and to understand the role of the WTO. There was also a lack of confidence in representatives that made civil society cautious about the whole process: there was a fear among local people that, following independence in 1980, Vanuatu was re-selling its country to foreign interests. Those feelings were probably exacerbated by the "power-based" and "one-sided" aspects of the accession process, but the lack of information/participation of civil society and media also played an important role in forming attitudes against the WTO. In the case of Cambodia (Chea and Sok, 2005), political turmoil also delayed accession. On the transparency and ownership front, negotiations were conducted with limited participation of stakeholders. As a result, only 40 per cent of the workers and 50 percent of the small and medium enterprises (SMEs) had heard of the WTO at the time of accession.

With a view to facilitating the accession process, and based on the experience of previous entrant countries, some authors have drafted accession strategies or tips for candidate countries (see, for example, Michalopoulos, 2002). These include:

- Analyze the possible implications of the various WTO agreements, and link domestic reform and development plans to the WTO accession process;
- Define a negotiation strategy and position, including with regard "WTO-plus" concessions the incumbent members might try to impose;
- Establish a central co-ordination point to provide direction and manage the multiplicity of legislative and regulatory changes in foreign trade regime that are necessary for accession;
- Seek and gain strong public support, including through transparency, information and continuous consultation with civil society (non-governmental organizations, NGOs), stakeholders, and the media;
- Identify and focus on areas of the WTO agreements where weaknesses in the country's institutional infrastructure require delays in the WTO provisions' implementation – seek technical assistance and prepare realistic implementation plans.

The burden of reform is not all on the candidate countries either. It is widely agreed that the WTO accession process itself needs to be improved, and it is in the interest of all, including incumbent members, to facilitate the accession of new members to the WTO. Recognizing the special needs of least-developed countries (LDCs), the 2001 Doha Declaration called for the facilitation and acceleration of the accession negotiations with LDCs and, in December 2002, the General Council adopted Guidelines on the Accession of LDCs. According to these guidelines, WTO members have to give more consideration to the specific needs of acceding LDCs particularly in the following areas: market access (restraint in seeking concessions and commitments from acceding LDCs); WTO rules (special and differential treatment, transition periods, plurilateral trade agreements), process (streamlined accession procedures); and technical assistance (priority attention to acceding LDCs) (WTO document WT/L/508 of January 20, 2003). The same consideration should be given after accession. Adlung (2007) noticed, however, that Cambodia and Nepal – both recently acceded LDCs – were expected to commit in the current negotiations three to four times more services sectors than the average WTO member. Some authors suggested going further. Gay (2005) suggested, for example, a set of basic rules and disciplines that would help overcome capacity limitations of certain candidates, and would include e.g., fixed transition periods for the most demanding agreements (such as TRIPS) and guidelines on market access commitments (including on tariff reductions and service sectors' reforms). Technical assistance and capacity building have also a major role to play (see section below).

3.2. The accession protocols: an analysis of the new members' concessions

The same way the accession process has been criticized, the results of the process (i.e. the accession protocols) have been subject to criticisms. It is easier to recommend some improvement of the accession procedures, however, than a specific level of tariff reduction or depth of services reform. Criticisms that emphasize the cost of accession often fail to recognize the benefits of WTO membership. After all, accession to the WTO remains a voluntary process, and no country has been forced into the organization. Nonetheless, it should be acknowledged that not all countries have the same capacities to negotiate and reform, and the principle of non-discrimination should continue to rule the WTO. Thus, an analysis of the usual terms of accession is useful, and should help determining whether the price to pay for WTO membership is fair or too high.

Diversity or uniformity?

The common legal framework and the organic role of some WTO members in the WTO accession process ensure a certain uniformity of the process and a minimum degree of consistency across accession deals: for instance, the US, the EU, Japan, Australia and Switzerland participate to all accession working parties. WTO accession negotiations are not isolated from domestic policy considerations. As explained by Lacey (2007), most WTO members will have "pet" issues on which they will take a firm stance, even if no concrete or specific export interest exists in the accession at stake. They will then showcase the concessions obtained as just another example of their commitment to promote the interests of one or more of their economic and/or political constituents. There was also the fear, during the negotiations, that concessions to be made by Nepal and Cambodia (the first acceding LDCs) would set a precedent with respect to the level of commitments for any future LDCs or smaller economies (see, for example, the case of Tonga, in Ofa, 2007).

However, despite recurrent requests and the existence of a model protocol of accession, issues that are specific to each candidate drive the negotiations, and the final terms of accession are tailor-made. A common mistake is to use the China accession protocol as a reference: as pointed out by Michalopoulos (2002: 68), "China's accession is very unique, both for political and economic reasons, and lessons from it have to be drawn with extreme care". Nonetheless, some provisions that China had to accept and had been qualified as "unique" at the time (e.g. on special treatment with respect to trade remedies) have since been reproduced in other countries' accession protocols (namely Vietnam, five years later). Therefore, the force of the precedent should not be neglected.

It is also commonly argued that the WTO accession process is largely "one-sided" and "power-based," i.e. the deal is largely imposed on candidates by incumbent members. It is true that countries are joining the WTO "under what may be called status quo for the incumbent countries", and cannot negotiate any change in the rights and obligations of the latter (Drabek and Bacchetta, 2004: 1087). This does not preclude, however, the need for some economic and legal adjustments in incumbent countries: for example, Rhodes and Jackson (1999) stressed the difficulties in the US associated with the accession of China to the WTO with regard the Jackson-Vanik amendment. The GATT 1947 (Art. XXXV) and the WTO Agreement (Art. XIII) also gave incumbent members the right to opt for the non-application of their disciplines to an acceding country.

For candidates, the adoption of different negotiation strategies has produced very different outcomes. For example, Mongolia took an "easy" approach to the accession negotiations, and

accepted far reaching concessions, without securing sufficient transition periods and exceptions (Tsogtbaatar, 2005). By contrast, Nepal took a "tough" stance to the negotiations, and refused a number of concessions on market access and rules: the Nepalese negotiators convinced the WTO members to bind their country's tariffs on sensitive agricultural products at 51% (during the transition period, then at 42%), while the prevalent applied tariff rate stood at 10%; they also refused to join the International Union for the Protection of New Varieties of Plants (UPOV, referred to in the TRIPS Agreement), committing only to "look at" major intellectual property conventions administered by the World Intellectual Property Organization (WIPO), and "explore the possibility of joining them in the future, as appropriate" (Rajkamikar, 2005). This shows that a country can resist requests and influence the outcome of the negotiations.

Within the rules and disciplines of the WTO, each country has also considerable scope as to how restrictive or liberal its trade regime will be: while some countries tried to liberalize as little as necessary to ensure accession, some others adopted a liberal trade strategy as part of their accession process (Micahlopoulos, 2002). The accession process, depending on the attitude of the candidate country towards prompt liberalization, can thus "lock-in" more or less liberal tariff cuts and regulatory reforms.

It should be noted also that WTO accession does not take place in a vacuum. The ambition of one country's accession deal may vary, for example, with its participation to regional trade agreements (RTAs). Looking at transition economies, Drabek and Bacchetta (2004) distinguished three scenarios: (1) countries where the prospect of accession into the EU played the most prominent role in driving liberal reforms and compliance with WTO disciplines required little adjustment; (2) countries (e.g. Croatia and Albania) where WTO accession served as an "external anchor" of domestic reforms concurrently with regional integration; and (3) countries (e.g. the Kyrgyz Republic) where WTO accession most likely played the most important role. Participation (or the prospects thereof) to RTAs could also have the opposite effect: as pointed by Pietras (1998: 360), "ironically, preparation for entry into the EU required economies in transition to maintain (or at least declare for binding) higher tariffs and protection levels than they otherwise would have, because at a later date they would need to accept the EU levels." Exploring the question of the sequencing of WTO accession and RTA negotiations in the Eurasian Economic Community (EAEC), Tumbarello (2005) argued that, from a consumer surplus standpoint, it was preferable to join the WTO first, and then only negotiate a regional customs union. Sequencing, substitutability, and complementarity of multilateral and regional trade agreements continue to be subject to many debates that go well beyond the scope of this volume.

Commitments on market access: Opening in the goods and services sectors

Commitments on market access (e.g. binding or reduction of tariffs on imports) are probably the most visible and anticipated outcome of WTO accessions: they have long been in the tradition of the GATT; they are more tangible and quantifiable (tariff levels) than commitments on rules; and, their impact on other members' exports is more direct and immediate. However, not all authors agree on the level of effort that has been required from new entrants.

At one end of the spectrum, comparing levels of *applied* tariffs (as opposed to *bound* tariffs) before and after accession, some authors found that acceding countries had not been exposed to unreasonable pressures to open up their markets: "Many acceding (transition) countries have liberalized their trade regimes unilaterally and have been able to negotiate the terms of their WTO accession within the scope of measures already taken. As a result, their WTO commitments are less "liberal" than the measures actually applied. (…) The only exceptions were the Czech

Republic, Hungary, Poland and Slovakia which essentially bound the rates at their actual levels" (Drabek and Bacchetta, 2004: 1092-3). At the other end of the spectrum, comparing levels of *bound* tariffs (as opposed to *applied* tariffs) before and after accession, some authors observed that the later acceding countries had to make more concessions than earlier joiner, i.e. that the simple tariff bindings had been falling over time (Evenett, Gage, and Kennett, 2004).

Martin (2006: 27-8) found important variations in the experience of acceding countries. He observed that "many acceding members were not required to make any cuts in their agricultural tariffs, and the average reduction from initial tariffs was only 14.3 percent for the members for which a calculation was feasible. However, some accessions, such as those of China, Albania, Panama and Croatia, appear to have involved very substantial reductions in average tariffs. (…) The reductions in average non-agricultural tariffs show some interesting patterns. In most accessions after Panama's in 1997, acceding countries have been expected to introduce a bound tariff averaging 10 percent or less, with exceptions made for Jordan, and for the LDCs of Nepal and Cambodia. The consequent reductions in average applied tariffs ranged from almost 60 percent in Albania and China to zero in Ecuador and Cambodia, with an average percentage cut of 21 percent".

In any case, these "before and after" tariff comparisons raise serious methodological concerns. For example, Ianchovichina and Martin (2004) observed that, in the case of China, most liberalization efforts had been undertaken between 1995 and 2001 in preparation for accession, and the tariff cuts undertaken after 2001 to meet China's accession commitments were less substantial. What should then be the reference period for measuring the impact of WTO accession on market access? It would be erroneous to suggest that a country made little effort on market access by comparing tariffs before and after the date of accession if most efforts had already been made in preparation for accession.

Market access is also not only about tariffs. WTO members may raise a number of so-called "real" market access issues while negotiating with an acceding country. For example, the accession deal can include provisions pertaining to the use, allocations, or phasing-out of tariff-rate quotas (Lacey, 2007).

In the services sector, Evenett 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 (of the 160 sub-sectors identified in the GATS). By contrast, countries in all categories that have acceded since 1995 committed an average of 104 sub-sectors. In other terms, countries that went through the WTO accession process typically committed a much higher number of sub-sectors than did GATT contracting parties at a similar level of development in the Uruguay Round negotiations (1988-1994). The number of GATS commitments is a poor indicator, however, of the depth and nature of reforms engaged and, as quoted above, Eschenbach and Hoekman (2006) observed a negative correlation between the level of GATS commitments and the quality of actual services policies. In the same vein, Mattoo (2003) qualified China's commitments on services as "the most radical reform of trade in services ever undertaken in the WTO", but observed that China's commitments were more frequently subject to qualifications or reservations than those of other countries. Finally, similarly as for tariffs, a number of acceding countries had already unilaterally opened their services as part of a domestic development strategy, and a high level of commitment could just reflect the status quo, as was the case for Tonga ('Ofa, 2005).

Commitments on rules: "WTO-plus" obligations and "WTO-minus" rights?

Market access commitments are just part of the story. Acceding members also commit to bringing their laws, regulations, and other standards or practices into conformity with WTO law. These commitments should be straightforward (i.e. implementing WTO agreements); however, incumbent members often see accession negotiations as an opportunity to prescribe obligations exceeding the existing requirements of the WTO agreements – the so-called "WTO-plus" obligations and "WTO-minus" rights. This attitude raised a number of criticisms underscoring a "power-based" and "unfair" accession process leading to a "multi-tier membership" or a "second class" of WTO citizens.

A distinction is usually made between so-called "WTO-plus" and "WTO-minus" commitments, where the former refer to commitments that go beyond those agreed during the Uruguay Round, and the latter refer to commitments where the acceding country forgoes rights available to other members. This dichotomy is far from being clear, however: after all doesn't a country that forgoes rights commit to more obligations, and vice versa? Charnovitz (2008), for instance, disagreed with this classification and elaborated a new typology of "WTO-plus" and "WTO-minus" commitments; he also stressed that "WTO-minus" commitments could apply to incumbent members. Similarly, Evenett and Primo Braga (2006: 235) observed that "whether an accession commitment goes beyond an existing WTO agreement depends in large part on how the latter is interpreted, and so it should not be surprising that disagreement is rife on the extent of WTO+ commitments." Illustrative lists of "WTO-plus" and "WTO-minus" commitments are provided in the boxes below that rely on Charnovitz (2008). In addition, it should be noted that a number of acceding countries were asked to ratify plurilateral agreements (e.g. the Agreement on Government Procurement, or the Information Technology Agreement) that were not necessarily universally adhered to by other WTO members. Here again, these lists reveal that China has been in many respects a particularly challenging and atypical case.

Illustrative List of WTO-Plus Commitments in Accession Protocols

Industrial Policy
--Saudi Arabia committed that its government's pricing policy was designed so that economic operators supplying natural gas to industrial users would fully recover their costs *and make a profit.*
--Moldova committed to reduce the use of price controls in its economy.
--China committed to removing the 50 percent foreign equity limit for joint ventures in the motor vehicle engine industry.
--China committed that within three years, "all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A [of the Protocol] which continue to be subject to state trading in accordance with the Protocol. Such right to trade shall be the right to import and export goods."
--China committed to giving national treatment to foreign direct investors in China with respect to the purchase of goods and services and with respect to pricing of goods and services provided by public enterprises (e.g., energy).
--China committed that state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations.

Health and Environmental Regulation
--China committed to provide six years of exclusivity for the use of data to obtain product approval of pharmaceutical and agricultural products which utilize new chemical entities irrespective of whether they are patent-protected.
--the Kyrgyz Republic committed not to require additional certification for products which have been certified as safe for human use by recognized foreign or international bodies.
--Taiwan, China, committed to permit advertising for alcoholic beverages in all media subject to regulation in relation to the content and timing of advertising.
--Jordan committed to applying the SPS Agreement "in a least trade distortive manner from the date of accession without recourse to any transition period."

Tax Policy
--Estonia committed to apply national treatment with respect to *direct* taxation.

Financial Policy

--Taiwan, China, committed: (1) to endeavor to direct its economic and financial policies toward the objective of fostering sustained, non-inflationary economic growth with macroeconomic stability, and (2) to permit exchange rates to reflect underlying economic and financial conditions.
--Taiwan, China, committed not to impose restrictions on the making of payments and transfers related to current account transactions "without the approval of the WTO."
--Saudi Arabia committed that with regard to regulation of the insurance sector, it would undertake regulatory reforms by May 2006 that would be consistent with internationally recognized insurance industry standards and principles, including the standards of the International Association of Insurance Supervisors, the financial services transparency code of the IMF, and the OECD's "Detailed Principles for the Regulation and Supervision of Insurance Markets in Emerging Economies."

Foreign Policy
--Saudi Arabia "confirmed" that "the application of secondary and tertiary boycotts" (i.e., directed against firms that do business with Israel) "had been terminated in practice and in law."

Trade Policy
--Latvia committed to nullify measures taken by sub-national authorities that are in conflict with the WTO Agreement.
--China committed to apply to all imports of wood and paper products the same rates of duty that it applies in a free trade area.
--China committed to not invoking three provisions applying to developing countries in the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that provide for "special and differential treatment."
--China committed that "Once the international harmonization of non-preferential rules of origin was concluded, China would fully adopt and apply the internationally harmonized non-preferential rules of origin."
--China committed to withhold enforcement of the terms of any contract providing local content or export performance requirements.
--Saudi Arabia committed to not imposing export duties on iron and steel scrap.

Transparency and Due Process
--Armenia committed to publish all laws, regulations or other measures relating to trade in goods and services *at least two weeks* prior to implementation.
--China committed that it would maintain tribunals for the prompt review of all administrative actions relating to trade in services and that such tribunals would be impartial and independent of the administering agency. China also guaranteed a right of individuals or enterprises to appeal to a judicial body.
--China committed to publishing an official journal dedicated to the publication of laws and regulations pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange and, after publication . . . committed to provide a reasonable period for comment before such measures are implemented . . . .

Legal Status of WTO Agreement in National Courts
--Estonia committed that if its laws were found to "contradict" international treaties, including the WTO Agreement, the provision of the international treaty would apply.
--Jordan committed to the same.

Source: Charnovitz (2008).

Illustrative List of WTO-Minus Commitments in Accession Protocols

Applicant WTO-Minus
--Lithuania began its WTO membership on May 31, 2001, but was given until December 31, 2005 to bring its excise taxes on beer and mead into conformity with GATT Article III.
--Taiwan, China, was given two years after accession to eliminate the import ban on passenger cars equipped with diesel engines.
--Ecuador was given seven years to phase out its "price band system" in order to comply with the WTO Agreement on Agriculture.

Incumbent WTO-Minus
--The China Protocol contains a number of "Reservations by WTO Members" which grandfather ongoing trade discrimination against China. For example, the accession terms negotiated by the WTO state that listed Mexican antidumping measures may persist for six years and "shall not be subject to the provisions of either the WTO Agreement or the anti-dumping provisions of this Protocol."
--The China Protocol establishes the possibility of imposing product-specific safeguards against China in response to market disruption. This provision contains a weaker discipline that the normal one in the Agreement on Safeguards.

--The China Protocol provides laxer rules that supersede the normal WTO disciplines regarding price comparability in determining subsidies and dumping (i.e., non-market economy status) for trade with China. Some of these dispensations expire after 15 years and some are permanent.
--The China Working Party report provides special rules regarding trade in textiles and clothing wherein an incumbent WTO member may impose specified quantitative restrictions on China if: (1) the member believes that Chinese products "threaten the orderly development of trade" in such products and (2) China has not agreed to impose comparable export restraints to those specified.

Source: Charnovitz (2008).

Related to the issue of "WTO-minus" rights is the question of transition periods. Applicants would typically stress the need to adopt thousands of new technical standards or regulations, and point to the transition arrangements original WTO members benefited from (e.g. one year, five years, and eleven years, respectively, for developed, developing, and least-developed countries to implement the TRIPS Agreement). According to the WTO Secretariat, however, "throughout the accession process, conformity with the WTO Agreements is the standard against which acceding governments' trade policies are measured. In addition, maintaining a standstill on WTO-inconsistent measures, as well as on tariff increases, is generally agreed principle in WTO accession negotiations. Therefore, governments coming through the accession process after years of negotiations are generally well-equipped to participate as full and effective players in the WTO from the day of accession, thus strengthening the rules-based multilateral trading system." (WTO Document WT/ACC/10/Rev. 3 of 28 November 2005: 15) In other terms, there should be no need for transitional arrangements. In practice, some transitional arrangements have been granted on a limited number of areas and for specific periods of time, but the applicant had to demonstrate that it had done as much as possible to bring its system in line with WTO requirements and had to present a plan and timetable for next steps before making the request. Transition periods have also been extended more readily to LDCs, in accordance with the WTO Guidelines on LDCs' accession (WTO Document WT/L/508 of 20 January 2003).

The question of "WTO-plus" obligations and "WTO-minus" rights remains controversial. Acceding to the WTO means transferring some sovereignty to an international body. The "power-based" accession process could exacerbate some hard feelings against this transfer: "WTO-plus" or "WTO-minus" commitments are seen as additional losses of sovereignty that a country would not have consented to in the first place, or a breach of the principle of "sovereign equality of nations" (Art. 2:1 of the Charter of the United Nations). However, this should be tempered: first, all members are conscious about their sovereignty, and the debate on "policy space" perfectly illustrates that tensions are not confined to the context of accession; second, if one believes that the WTO disciplines help governments adopt more efficient policies, then "more WTO" should not be such a bad thing (Cattaneo, 2005). Here again, passions surrounding the accession debate seem to have overshadowed the rationale and benefits of WTO membership.

Along these lines, Ya Qin (2003: 507, 511-2) observed that the "WTO-plus" market economy obligations in the China Accession Protocol filled a gap in WTO law and "to the extent that they reflect the market economy assumptions of the WTO system, these undertakings do not necessarily impose more stringent obligations on China when compared with other members who are traditionally market economies". Other "WTO-plus" rules of the Protocol could also be expected to have a salutary effect on China and world trade, "because the "plus" rules are generally consistent with the WTO objective of trade liberalization and are created to strengthen rather than weaken WTO multilateral disciplines. A more transparent, uniform, and liberal trade and investment regime in China will certainly help to boost trade and investment there, which in turn can contribute to a growth in the global production of, and trade in, goods and services".

Admittedly, "WTO-minus" commitments are less justifiable: new safeguards against Chinese imports or more lenient antidumping rules affect China's market access rights and introduce additional inefficiencies in the trade regimes of incumbent members. As summarized by Martin, "there seems to be a strong case, on equity and efficiency grounds, to strongly restrict the right of existing members to introduce additional distortions into their own trade regimes. (…) The right to develop additional, discriminatory measures against exports from new members reduces the economic gains to both the new member and the existing member and was surely not envisaged in the design of the WTO agreement, which provided for non-application of the agreement only under tightly restricted circumstances" (Martin, 2006: 22).

4. Implementing WTO accession deals: domestic and global challenges

Is the WTO accession issue still important? Does it still deserve our attention? One could raise these questions for at least three reasons: first, the popularity of the topic has been largely prompted by the negotiation of China's accession – now that this accession is completed, is there a risk that the topic looses the attention of the media and scholars? Second, some commentators point to the increasing role of RTAs and the troubles of the Doha Round, suggesting that accession to the WTO could become less attractive to remaining outsiders. Third, with more than 150 members, the WTO has almost reached universality, and the completion of major accessions in the pipeline (e.g., Russia) would leave only a few countries with relatively little economic weight out of the system. In other terms, we would be close to reaching "the end of History" in terms of reaching a truly "global" multilateral trade system.

One could take the opposite view, however: accession is just the beginning of the story. All recently-acceded countries are in the phase of implementation of the commitments made in the course of accession. This implementation phase is very demanding and tests the credibility of earlier commitments. It is also the moment when the impact of WTO accession can be observed and measured, thereby providing answers to the fundamental questions raised earlier on the rationale and effects of WTO accession. Finally, recent WTO accessions have had major systemic effects on the WTO, which are still to be fully captured: for example, a "WTO accession law" (and soon jurisprudence) has emerged that challenges the grounds of accession protocols and traditional WTO law, such as the principle of uniformity of WTO law inherited from the Uruguay Round; the considerable economic and political weight of some new WTO members is also likely to affect strategies and alliances in future rounds of multilateral trade negotiations. A new chapter of history is open.

4.1. The cost and challenges of implementation

The implementation of commitments made in the course of accession has a cost, which is probably outweighed by the benefits of accession in the long run, but requires serious adjustments in the short run. WTO accession affects a country as a whole: not only the government, but also the private sector and individual households have to adjust. Relocation or redistribution efforts might be required, suggesting that not all actors will be winners.

Over time, this implementation cost has also increased, with more disciplines covered in the WTO than in the GATT, and more commitments that require the development and strengthening of administrative capacities and institutions. The conclusion of the accession process is just a step; adjustment efforts start long before, and finish long after the official entry into the WTO. It is also not all about economics: cultural factors, among others, may affect the implementation of WTO accession commitments. In the light of the difficulties encountered by certain new entrants

to meet the implementation deadlines contained in the accession protocols, one could wonder whether all commitments made were realistic: implementation is the final test of the fairness or appropriateness of the commitments made during accession.

Government and household revenues

WTO accession potentially affects customs (and government) revenue when it is accompanied by tariff cuts. For many developing acceding countries, import duties remain the largest share of government revenue (e.g. 73 percent of tax revenue in Cambodia). However, as discussed above, it is unclear that achieved accessions resulted in substantial reductions of applied tariffs. Also, it is unclear that a reduction of tariff rates systematically results in a reduction of tariff revenues: the suppression of quotas required by WTO law and their replacement by tariffs increases the tax base; and lower tariffs should result in more imports.

In addition to this revenue foregone due to the implementation of bound duties that may be lower than applied duties, Sauvé (2005) suggested that the calculation of accession costs and benefits should include: revenue foregone when the transaction value is introduced in place of the minimum price system, according to the WTO Customs Valuation Agreement; revenue raised owing to the termination of rebates and duty exemptions in order to comply with the WTO Subsidies Agreement; and government budget expenditures to repay technical assistance loans from international financial institutions.

The revenue of both government and households is directly affected by the implementation of WTO accession commitments. Changes in the terms of trade result in reallocations of resources, which include labor. In the short run, some will lose and some will gain. Considering the impact of China's accession on individual households, Chen and Ravallion (2004) found that almost 90 percent of urban households gain from WTO accession, while over three-quarters of rural households loose – although the losses are generally quite small. Hertel, Zhai and Wang (2004) similarly found that urban households benefit substantially more than rural households from WTO accession, but suggested that in the longer-run even agriculture-specialized households gain on average. The World Bank (2008) estimated that the implementation of WTO accession commitments in Saudi Arabia provided substantial improvements in the standard of living of Saudi households, with an increase of households' expenditure close to 2.9 percent (of which 0.2 percent only resulted from tariff cuts, and 2.7 percent resulted from the removal of non-tariff barriers to trade).

Adjustment of the public sector

According to Drabek and Bacchetta (2004), public sector adjustment to WTO accession has two dimensions: first, the acceding country must harmonize its policy instruments with those of the WTO: for example, replace quotas by tariffs, or move agricultural subsidies from one "box" (as identified by the level of trade distortion associated with the subsidy) to another; and second, the acceding country bears the cost of required institutional changes, such as the setting up of new administrative capacities, and investment/changes in technologies (to enforce new rules on TBT or SPS standards, intellectual property rights protection, and customs reform).

A complete review of government interventions is often necessary, for example in countries where state trading enterprises still play an important role: this is often the case in transition economies, but also in other countries where access to natural resources and the distribution of strategic commodities (e.g. mineral ores or fuel) are traditionally a domain of the state (see Gibbs and Mamedov, 2001). For example, in Saudi Arabia, state-trading companies have been

instrumental in enforcing government controls on domestic sales of food and fuel products and setting domestic prices below international prices (Langhammer and Lücke, 1999). Practice shows that the actual behavior of enterprises rather than their ownership is the key criterion for the compatibility with WTO rules. Thus, while privatizations often accompany the WTO accession process, they are not mandatory: the candidate country only has to demonstrate that enterprises decide of their purchases and sales solely on commercial grounds.

These requirements demand both an intensive legislative/regulatory efforts and budget allocations that sometime appear unrealistic. The case of Cambodia illustrates the first point: effectively, the schedule of reforms imposed by the accession protocol would have required the passing of more than two laws and sets of regulations per legislative working month; based on past experience, however, the parliament takes on average three months to pass a single piece of legislation (Chea and Sok, 2005). In some countries, the implementation of commitments made by the government is made even more difficult by the non-federal character of the administration, and the diffusion of powers among different regional entities. On the second point, using data on relevant reforms engaged in developing countries and sponsored by the World Bank, Finger and Schuler (2000) estimated to USD 150 million the cost of implementing three WTO agreements alone (SPS, TRIPS, and Customs). UNESCAP estimated the cost of implementation of the Customs Valuation Agreement alone at more than USD 4 million for Cambodia (Sauvé, 2005). Thus, the cost of implementation may sometimes well exceed the budgetary resources of the country.

Adjustment of the private sector

Drabek and Bacchetta (2004) described the adjustment costs resulting from changes in relative prices and competitive conditions following WTO accession as follows: “Liberalization of the country’s trade regime may change the domestic relative prices of goods and services, which, in turn, will lead to increased competitive pressures on industries that had been until now protected by tariffs (or quotas). This, in turn, will create incentives for resources – capital and labor – to move into sectors which are more profitable and efficient. This process of resource re-allocation is not without costs as labor is retrenched and must be retrained (or the opportunity costs of unemployed labor must be imputed into the calculations of adjustment costs.” In other terms, not all sectors benefit from WTO accession in the short run, and a reallocation of resources might occur, which requires a rapid response from both the private and public sectors (accompanying policies to limit the negative impacts of resource reallocations and movements of factors).

It can be argued that joining the WTO is a necessary component of a trade-led growth strategy, but it is not sufficient. Domestic industries must adjust to the international level of competition and competitiveness. In many sectors, accession to the WTO will require comprehensive changes in business practices and large scale training or monitoring to develop a strong non-traditional export base (see Hoekman and Roy, 2000). The competitiveness of domestic industries also relies on business climate and other factors such as electricity cost or availability of adequate infrastructure. WTO accession should contribute to improving this environment, but it will depend on the level of commitments made. Paradoxically, a country that excluded certain reforms from its accession commitments might still need to unilaterally enforce them with a view to fully harness the benefits of trade liberalization.

Francois and Spinanger (2004) examined the case of China’s motor industry. They concluded that the fall in protection associated with WTO accession would result in a sharp decline in output and wide-spread plant closures, unless the industry did overcome a number of problems (including an important market segmentation and suboptimal plant size). According to the authors, restructuring in the industry to achieve scale economies could reduce costs by about 20 percent,

and this reduction would more than reverse the negative impact on output of the reduction in protection levels.

Adjustment often poses particular problems in the services sector, due to its initial underdevelopment, and either high level of state involvement or informality in many economies.[9] Entry costs can also be such that liberalization might not produce all anticipated results. Finally, regulations in the services sector are often more complex and require substantive technical expertise to implement better regulation. Exploring the adjustments required by WTO accession in the telecommunications sector, for example, Henderson, Gentle, and Ball. (2005) pointed at the challenges associated with the establishment of an independent regulatory authority, adoption of competition rules, interconnection requirements, universal service and infrastructure investment. For instance, according to the authors, competition in international services, if allowed prior to rebalancing of tariffs, may result in the subsidy from international services to local services being eliminated before the price of local services is raised to economically sustainable levels. In short, to the extent that changes in competition rules may affect the viability of certain private operations, reforms of the private and public sectors are tightly intertwined.

WTO accession and services reforms: the example of the financial sector

Services sectors reforms – and the banking sector in particular – have often been stumbling blocks of WTO accessions. For transition economies, the issue is also of importance in the context of the review of their "market economy" (ME) status. For example, in 2006, when China failed to obtain the revocation of its "non-market economy" (NME) designation in the US, in addition to reviewing usual criteria in a main report, the US Department of Commerce took the unusual step of issuing a preliminary memorandum concluding that China had not yet attained ME status on the basis of deep-rooted distortions in China's banking sector.

The banking sector is often among the services sectors that require most adjustments in the course of the WTO accession process. At the same time, these reforms are likely to have significant impacts on domestic economies: a more competitive and efficient banking sector facilitates access to and reduces the cost of credit; it is a determinant of competitiveness in other sectors, and an essential component of private sector development, growth, and economic development strategies.[10]

Exploring the case of Vietnam at the eve of WTO accession, Van Sam and Thanh Thu (2005) observed that the country's banking sector had been partially reformed but remained weak (still dominated by state-owned banks, undercapitalized and with a limited lending capacity). The authors summarized the adjustments that were needed and the benefits that were anticipated from participation in the WTO accession as follows:

- The Vietnamese banking industry must mobilize capital, access new technology and retrain its management and staff to match the development requirements of other financial markets.
- With tougher competition, Vietcombank must further specialize in professional banking skills to enhance the efficiency of enterprise capital usage.
- New banking services need to be developed and made more rapidly accessible. In this way Vietcombank can exploit and more effectively apply its (developing) banking services to contribute to economic growth and an increased share in both the international and domestic financial markets.
- Vietcombank can take advantage of its wide network of branches to match the managerial and business styles of foreign banks.
- Internationally integrated banking operations can help support these reforms and also increase the transparency of the Vietnamese banking system to meet the needs of integration and implement the commitment to (other) financial institutions and the WTO.
- When Vietnam joins the WTO, foreign-invested and private banks will have better operational conditions there.
- Banking services techniques and technology must be improved and service charges reduced to attract more customers.

[9] Langhammer and Lücke, above n. 28, at pp. 854-7.

[10] See for instance, World Bank, *Making Finance Work for Africa*, World Bank Publications, November 2006.

- Staff professional skills must be improved so that Vietcombank (and other banks) will be both a currency trader and an investor, thus helping commercial enterprises to develop. The growth of these enterprises should become a foundation for banking development.

Exploring the case of China, Bhattasali (2004) similarly observed that the reform of the financial sector in the context of WTO accession primarily served domestic objectives: i.e. to increase competition, performance, and the range of financial products available to locals. Before accession, foreign banks operated almost exclusively on an offshore or enclave basis and accounted for less than 3 percent of bank assets. The accession protocol provided for liberalization within two years of local currency services to Chinese enterprises (five years for services to individuals), followed by the liberalization of stock-broking, fund management, and insurance on quite short timetables. The author concluded that state banks would come under serious pressures from their non-performing loans, weak management systems, low operating margins, and the emerging strong competition. Financial re-engineering and fairly radical actions to reduce operating costs would be required. The author remained optimistic, however, that suitable reforms could be adopted and that the rehabilitation of the state banks would not present major problems.

Source: Van Sam and Thanh Thu (2005), Bhattasali (2004).

Other types of adjustments

Adjustment to WTO accession requirements is always a source of economic, social and political stress, because it directly affects people's income and conditions of living. It also reaches far beyond the economic sphere: cultural factors, for example, can profoundly affect a country's ability to make (or implement) certain accession commitments. In some cases, exceptions can be carved out of the accession protocol; otherwise, the accession could be delayed or denied. Intellectual property is the most common area of cultural frictions, but it is not the only one.

The effective implementation of the TRIPS Agreement requires the adoption of a number of rules and the reinforcement of certain administrative capacities (e.g. register for geographical indications, enforcement mechanisms, see Abbot and Correa, 2007). Cultural factors also enter into consideration, as countries try to qualify their commitments with local interpretation of the rules. For example, in the case of Vietnam, patent owners were expected to use the invention in conformity with the requirements of the socio-economic development of the country, and the public could claim for annulment of the protection certificate (Langhammer and Lücke, 1999). In the case of Nepal, as already mentioned, the country refused to join the UPOV treaty as well as other WIPO conventions (Rajkamikar, 2005). Some authors also fear that the level of intellectual property protection imposed by the TRIPS Agreement may be excessive for some acceding countries, inhibiting e.g. technological transfers. Moreover, according to Maskus (2004), adjustments required from intellectual property commitments would include the development of a stronger competition policy regime and larger allocation of resources to research and development.

In the case of Vanuatu (Gay, 2005), the issue was not one of intellectual property, but land ownership. For customary and traditional reasons, Vanuatu constitution prohibits freehold ownership of land. Incumbent WTO members asked for the revision these laws, but this would have been politically controversial and culturally unacceptable to Vanuatu. The latter negotiators could not compromise on this issue, and had to make major commitments on goods and services market access in compensation. The resulting "high price" of accession for Vanuatu then accounted among the factors that were responsible for the decision to suspend accession. In the case of Saudi Arabia, Bhala (2007) pointed at the compatibility problem of certain WTO obligations with Islamic law, and *vice versa*.

Special and differential treatment, technical assistance and capacity building

The debate on "WTO-plus" or "WTO-minus" commitments and implementation periods somewhat occulted the importance of special and differential treatment and other exceptions to WTO rules that are available to all developing countries. As it happens, all recent and future candidates should qualify as either developing or least-developed countries and make full use of these provisions.

In many cases, these flexibilities are not sufficient, however. Technical assistance and capacity building (TACB) can play an important complementary role. This is true both at the time of accession negotiations (upstream) and commitments implementation (downstream). Primo Braga, Fink, Lucenti, and Zarcone (2004) analyzed in detail the different forms of TACB that have been provided to acceding countries, and reached the following conclusions:

- General consensus-building and awareness-raising activities seem to be over-emphasized, at the expense of supporting country-specific and sector-specific analysis;
- An appropriate timing and targeting of TACB is of fundamental importance;
- Parallel support by more than one agency is sometimes perceived to lead to a duplication of efforts, if not even wasteful competition among agencies, stressing the continuous need for donor coordination;
- The effectiveness of the assistance must be addressed by multilateral and bilateral organizations;
- TACB should be available for countries to comply with WTO rules, in particular in the areas of tax treatment, pricing policies, and trading rights;
- Research-capacity building initiatives should be promoted from the beginning of a country's accession;
- So-called "south-south learning" initiatives should be promoted since they offer a forum for the exchange of experiences among acceding and recently-acceded developing and transition countries;
- There is a need to integrate long-term institution building into accession-related TACB (roadmap to be developed at the beginning of the accession process);
- More attention needs to be given to TACB to help in the implementation of a country's obligations both during and post accession, because only through the successful implementation of its obligations will a country truly benefit from WTO accession.

4.2. The systemic impact of accessions on the WTO

WTO law à la carte?

The inclusion of "WTO-plus" provisions in accession protocols raises concerns that a systemic trend towards higher standards in terms of WTO disciplines and an expansion of the trade liberalization agenda (to new areas such as investment) were to follow. However, these expectations are likely to be unrealistic. For instance, Paragraph 9 of the China Working Party Report clearly stipulated that all commitments made by China "were solely those of China and would prejudice neither existing rights and obligations of members under the WTO Agreement nor on-going and future WTO obligations and any other process of accession." (WTO Document WT/ACC/CHN/49 of 1 October 2001 at 2) Nonetheless, we are left with obligations that are imposed on new members on a case-by-case (discriminatory) basis – which is at odds with the basic WTO principle of non-discrimination. And even if these provisions do not lead to systemic changes, it is important to monitor them since they may have significant implications for the WTO legal system (Ya Qin, 2003).

Actually, it can be argued that since the Tokyo Round (1974-1979), a "GATT à la carte" has developed, where contracting parties had obligations that varied with the number of plurilateral

trade agreements they had signed. There was not either a single dispute settlement mechanism, but a collection of rules specific to each individual agreement. The creation of the WTO in 1994 remedied this situation, imposing a "single undertaking" and a dispute settlement mechanism that applied across all WTO disciplines, and thereby restoring the uniformity of the international trade rules of conduct. It appears, however, that Art. XII of the Marrakesh Agreement introduced a loophole in the system, making it possible for the WTO to depart from uniformity and non-discrimination. The risk is then to create a "multi-tier" membership that may challenge some of the fundamental principles of the organization.

Beyond principles, these developments in the realm of WTO accessions may have concrete implications. Ya Qin (2003) distinguished three major issues:

- First, the ad hoc rule-making in the accession negotiations does not lend itself well to careful formulation of rules of conduct, and numerous ambiguities, gaps and inconsistencies can be found in the provisions of the protocols that attempt to modify or expand existing WTO rules;
- Second, the negotiation of "WTO-plus" obligations on a member-specific basis led to bargains for the most stringent rules possible, without due regard to practical implications, and the imposition of rules that are unlikely to be followed and enforced can only reduce the effectiveness of WTO law;
- Third, it is not easy for the public (including exporters and investors) to identify and keep track of all the special provisions that rule trade relations with specific acceding countries, detracting from the uniformity and transparency of WTO law.

In addition, the emergence of a "law of WTO accession" created new challenges and strains on the dispute settlement system. For the first time, in 2006, Canada, the EU and the US brought a case against China that raised the issue of the implementation of accession commitments (*China-Measures affecting imports of automobile parts*, WTO disputes WT/DS 339, 340 and 342, initiated on 30 March and 13 April 2006). This raised a number of questions, including whether protocols of accession were enforceable in WTO dispute settlement, whether the protocols were integral parts of (or amendments to) the WTO agreements, what should be the proper approach to interpreting accession commitments within the context of WTO law, etc (see , for example, Charnovitz, 2008). The absence of clear answers to these questions is a source of tensions that could affect the legitimacy of the WTO dispute settlement system. At stake is the interpretation of the obligations contracted by all recent acceding countries. A new chapter of WTO jurisprudence is therefore about to be written, maintaining the accession issue at the core of the members' interests.

Gaining a voice at the WTO

Beyond the implementation of the agreements, the participation to the WTO governance process alone may require a number of administrative adjustments in acceding countries. In many countries (both developed and developing) the Trade Ministry is not well equipped to deal with the demands of an effective participation in WTO procedures: participation in councils, negotiations, and other technical meetings take place daily all year around. Many countries do not have a permanent representation in Geneva, or sufficient resources in their Ministry of Trade to fully participate in this process.

Hoekman and Roy (2000: 316) observed that WTO membership has little effect unless countries are active participants in the WTO: "This requires the Ministry of Trade or Commerce to ensure that relevant information flows to and from the appropriate entities within the government, and that the institutional capacity exists (is created) to be able to defend the nations interests (and

those of the multilateral trading system more generally). In addition, there will be a need to cooperate with like-minded countries; collect information from – and interact with – the private sector; and to develop institutions that are responsible for monitoring and analyzing the economic effects of the governments' trade-related policies". Concretely, the participating government should be able to formulate a coherent position in multilateral trade negotiations and, since few countries have the resources to be able to follow all topics and contribute to all meetings, cooperation with other countries is often necessary.

Recent accessions have also modified the rules of the WTO governance game. For example, the economic and political weight of China is considerable, and its entry into the WTO is likely to affect strategies and alliances in future rounds of multilateral trade negotiations. Also, the perception that a high "price" was paid for accession fostered among WTO recently-acceded members the adoption of a conservative negotiating stance in the "Doha round" negotiations – i.e., the proposition that they had already undertaken "too much" in terms of WTO commitments and needed a pause in the liberalization process. Needless to say, this "pause" could add to the obstacles to the conclusion of the Doha Round. Older members ready for deepening existing commitments could look for alternative forums, such as RTAs, to move their agenda forward. This could be an unintended consequence of so-called "WTO-plus" commitments to the expansion of discrimination in the world trading system.

5. Conclusion

Accession to the WTO has been driven by different motives in different countries. Moreover, expectations about the benefits of WTO membership and the price one would be willing to "pay" to join the organization also varied accordingly. Joining the WTO is not only about improving the efficiency of trade policies, but also about embracing certain economic and political ideas that were developed in the aftermath of World War II, and that affect the society as whole. It is therefore difficult to judge of the fairness of conditions attached to accession: each member tends to have its own interpretation and understanding of the "spirit and letter" of the rules – and therefore request, in good faith, different commitments from acceding countries. As a result, the main challenge for candidate countries is to find a path to accession through this maze of cumulative requests.

There is a risk that the increment of conditions attached to WTO accession could create a "two-tier" membership, challenging the principle of non-discrimination on which the GATT was originally founded. Commentators have almost unanimously condemned so-called "WTO-plus" commitments. The accession process itself has also been criticized as being too lengthy and complex and becoming an obstacle to the universality of the system. But is it possible to say upfront that "more WTO" is a bad thing? Couldn't it be simply characterized as "tough love"? (Evenett and Braga, 2006: 236)

The ultimate test of the fairness and adequacy of the terms of accession is the capacity of acceding countries to fully implement their commitments. Here, it appears that a number of commitments were largely unrealistic with regard implementation capacities of certain acceding countries, and delays in certain reforms or inadequate sequencing could hamper the benefits of WTO accession. The credibility of the system is then at risk: the absence of full implementation of WTO commitments by recently-acceded countries could incite older members to seek further discipline in bilateral/regional treaties; and the use of the WTO dispute settlement system as an enforcement mechanism could exacerbate hard feelings of new entrants against the multilateral trade system.

This calls for more solidarity in supporting WTO-related activities by acceding members. With the rising price of accession, efforts on technical assistance and capacity building are more necessary than ever before. These should be made at all stages of the accession process, from early negotiations to implementation. Also, it is crucial that new entrants fully participate in the WTO governance process and contribute to shaping the rules of tomorrow's multilateral trading system. This will help to make the multilateral trading system truly inclusive and sustainable, and more evenly share the opportunities offered by globalization. The chapters in this book expand upon the different dimensions of the WTO accession experience and we hope they can make a contribution to a better understanding of these complex procedures.

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