



TRADE AND
DEVELOPMENT SYMPOSIUM
Perspectives on the Multilateral Trading System

A Collection of Short Essays

The Accession of Least Developed Countries to the World Trade Organization

By Nicolas Imboden



International Centre for Trade
and Sustainable Development



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Confederazione Svizzera
Confederaziun svizra

Federal Department of Economic Affairs FDEA
State Secretariat for Economic Affairs SECO

Introduction

The World Trade Organization (WTO) is considered to be in a crisis. The Doha Development Round, started with great expectations 10 years ago, has not yet been able to achieve results. A successful conclusion is not even in sight. Clearly multilateral trade negotiations are at an impasse which also questions the relevance and usefulness of the organization.

At the same time, the WTO has been very successful in developing from a rather homogeneous and small club of major economies into an inclusive and universal trade organization counting 153 members at various levels of development with differing needs and aspirations. With the upcoming membership of Russia, all major economies are today part of the WTO. Most of the countries outside the organization are in the process of accession.

The special case of Least Developed Countries

Among the acceding countries, ten Least Developed Countries (LDCs) aspire to become members of the club that defines and guarantees the application of a rules-based system to international trade relations. This group of countries has specific characteristics which make their integration into the world economy difficult:

- As latecomers in the multilateral system LDCs are rule takers not rule makers. They have to adapt to the already established system;
- Their economies are normally small both in absolute size and taking into account the purchasing power of their population. Their economic and social fabric is fragile. It is challenging for them to undertake deep structural adjustment and at the same time to compete internationally;
- LDCs have in general weak institutions and a shortage of qualified and experienced administrators. In such circumstances, designing and implementing substantial

reforms of the economic framework is a very difficult task.

- Most of these latecomers have followed an economic model largely based on regulated markets and state intervention. A majority has undertaken reforms to open up their economies and to introduce market economy elements into their production structure but based on selective and discretionary decisions by the Government. Doing business was not a right, but a privilege. In the multilateral rule-based system, doing business in a country is not a privilege, but a right. Governments therefore can no longer make ad-hoc decisions, but have to clearly define and publish the conditions which have to be fulfilled and the rules and regulations one has to follow to do business. This requires a new way of thinking for the whole administration.

The accession process requires patience and understanding as well as the technical support of the international community. In fact, WTO members recognize the difficulties that LDCs face when adapting their internal system to the international rules, but also the imperfections of the model of accession negotiations. They adopted, in 2002, special guidelines for the accession of LDCs to the WTO (WT/L508) which recognize the fragility of their economic system and the limited institutional capacity and institute differential treatment for them. The WTO secretariat and WTO members provide substantial amount of technical assistance both to train the officials of the countries concerned as well as assisting them in the set-up of the legislative and regulatory framework.

Despite this, only three LDCs¹ have acceded to the organization since its establishment in Marrakech. Two of them² have practically finished their accession processes, but are still not formally members of the WTO. Eight more are still in the process of accession - for some of them since more than 10 years³. Clearly the guidelines and the assistance provided are either not sufficient or not correctly implemented.

1 Cambodia, Nepal and Cape Verde (which graduated from LDC status after the accession)

2 Samoa and Vanuatu

3 Yemen - negotiations started in 2000, Laos - 1998, Vanuatu - 1995, Sudan - 1994, Samoa - 1998, Liberia - 2007, Ethiopia - 2003, Equatorial Guinea - 2008, Bhutan - 1999 and Afghanistan - 2004.

Why is the accession of LDCs slow and complex?

The slow progress of LDCs' WTO accession is due to various factors both internal to the LDCs and due to the process of accession.

1. LDCs often start the accession process under false assumptions

Most countries decide to become members of WTO for political reasons: they aspire to be members of major international organizations. It is only after they start the process of accession, that they fully realize that becoming a member of WTO entails numerous difficult political, social and economic reforms and years of hard work.

Another frequently quoted objective of the WTO membership is to have a guaranteed access to markets. In fact, most LDCs already benefit from WTO access for their products. LDCs thus realize that the costs of adjustments are very much higher than imagined and that the expected benefits are much lower than envisaged. The initial enthusiasm to become member thus fades quickly. Reforms in the process of accession only start seriously once the country realizes that:

- WTO membership is not a goal, but an instrument to ensure that their economies have the required framework conditions to become competitive;
- Reforms are not made for WTO members or to gain access to their markets. They allow the candidate's economy to become competitive in order to harness the opportunities the world market offers and become attractive as a production place;
- WTO provides a secure, predictable and non-discriminatory economic framework based on the rule of law allowing the domestic and foreign investors the opportunity to invest, thus increasing both productivity and export potential of the country.

2. Reforms are complex and lengthy

The reform and liberalization process is politically much more complicated than generally perceived

especially for weak institutions such as the ones in most LDCs. It requires both difficult political decisions and substantive technical knowledge. The rule of law and the liberalization of the economy are benefiting the majority, but often hurt the powerful. With the disappearance of discretionary decisions the power (and the money) of influential agencies fade. The same is true of liberalization which abolishes monopolies in the economy. Political resistance will arise and needs to be dealt with.

The reform and liberalization process is also technically demanding. Acceding countries have to ensure that the liberalization produces a socially acceptable result by defining predictable rules and regulations for the economic actors which are in line with WTO obligations and their development objectives. Technical assistance is clearly highly appreciated and needed. However, the national authorities are the ones to determine what is socially and economically feasible in their country. Experts can only provide suggestions on how different objectives can be attained by WTO compatible instruments: they should not influence the objectives of the Government and fully respect the national constraints. Establishing coherent policies and the corresponding WTO conform instruments is an iterative process which includes many authorities and agencies and which also requires a sustained dialogue with the private sector and the civil society: a long and time consuming process. The accession process is thus lengthy as it requires a major shift of attitude from all stakeholders in the country.

Time is not the issue: it is better for all stakeholders that the process takes a little longer with full ownership than a quick accession where countries enter into obligations that they are not able or willing to assume. The international community and the acceding country should accept this and work together to implement the reform process, even if it takes time. The objective of improving the accession process should not be primarily to accelerate the process, but to ensure that the process is as conducive as possible to the sustained development of LDCs and that it is predictable rather than a moving target - as it is often perceived to be.

The accession process: how does it work?

The accession process is divided into three interrelated parts:

- **The multilateral negotiations** in form of Working Party Meetings (WPMs). The purposes of the WPMs are to: (i) analyse - together with WTO members - the economic and trade regime of the country; (ii) see whether it is in line with WTO requirements and (iii) define what has to be changed to make their policies and system compatible with WTO.
- **The Legislative Action Plan (LAP)** contains all the laws and regulations the acceding country agrees to change or pass to bring its regime in line with WTO requirements. The LAP is defined by the discussions in the WPMs and is adapted according to the proceedings of the WPMs.
- **The bilateral market access negotiations:** Normally, the liberalization process starts with a multilateral offer by the acceding countries:
 - o The goods offer reveals the acceding country' applied tariffs and the bound tariffs it is willing to commit itself within WTO.
 - o The services offer presents the services sector (and the different modes) the country is willing to open up.

Once the overall offer is more or less in line with what WTO members consider reasonable, bilateral negotiations are undertaken with any country that has specific requests to the candidate. Any concession made to a country is finally multilateralized in the schedule which will be the basis of the accession commitments of the country concerned.

What are the main issues in the accession process?

The WTO accession process should be a collective effort of the world community to assist the acceding country in integrating into the world economy in order to enhance its sustainable development.

The practice is somewhat different: the acceding country perceives the process more as a tribunal than a cooperative effort towards ensuring that his trade regime is in line with best practices. It explains its policy and the measures taken or proposed to bring its regime into line with the WTO requirements. WTO members scrutinize and question its statements generally taking as a yardstick their own context. They tell the candidate what it has to do to become member of WTO rather than advising it on how it can best bring its regime in line with WTO requirements. The principles guiding the process are not the

development needs of the acceding country, but the particular interests and views of WTO members. Discussions are very diplomatic, but there is very little effective dialogue or cooperation in finding mutually acceptable solutions.

The asymmetry of this process is visible already in the composition and the functioning of the WPMs:

- The acceding country is represented at the level of the Minister with a relatively large and high-level delegation from the capital, which has worked for months to prepare the extensive information required by the WTO members;
- WTO members are often represented by lower-level representatives of the Permanent Missions based in Geneva who have often not the time or the possibility to familiarize themselves with the economic, social and political realities of the acceding LDCs.

The basic issue of the accession process is the approach: rather than having a dialogue on how WTO members can assist and accompany the acceding country in its efforts to put its economic and trade regime in line with its sustainable development requirements and international best practices, WTO members often pursue their own commercial interests and/or formal requirements of WTO.

Possible avenues to improve the accession process

The 3 accession parts could be implemented and technical assistance provided in a way that would greatly enhance the reform process in the acceding country as well as the credibility of the multilateral system:

The multilateral negotiation's process is necessary and useful. WTO members are well advised not to compromise on this. WTO multilateral rules are an excellent yard stick for a country who wants to bring its regime in line with international best practices to achieve its sustainable development objectives. However, the multilateral negotiating process has two weaknesses:

1. Acceding LDCs have many important reforms to undertake, but they do not have the capacity to do them all at once. Unfortunately, WTO accession does not prioritize the reforms according to their importance for the country's development, but according to the interest of the WTO member countries

Illustration: Clearly reforming the archaic licensing system of some acceding countries is a very high priority. Setting up an intellectual property right system - which is very demanding and costly in terms of institutional capacity - is also important in the long term but perhaps not crucial in the short term.

2. WTO members recognize that some of the commitments require both institutional build-up and training which cannot be done in the short term. Therefore the principle of transition periods - accompanied by action plans with concrete dates of implementation - is accepted for some of the commitments such as implementation of CVA, TRIPs, etc. More clearly defined rights and obligations for the transition periods and action plans would streamline the process and make it more predictable.

-> *Proposal: To facilitate and streamline the accession and reform process:*

- *Transition periods should be defined relatively early in the process;*
- *The action plan should contain commitments for technical assistance to ensure the country has the means to implement the various activities foreseen and agreed upon.*

- 1) **The Legislative Action Plan** is the resultant of the analysis made in the WPMs. It is clearly the responsibility of the acceding country to prepare and adopt laws and regulations bridging the gap between national reality and international rules. WTO defines very accurately the principles a country should apply in its trade regime. It leaves, however, the application of the principles to each country so as to adapt them to its situation. Unfortunately, WTO member countries more and more request acceding countries to apply those principles according to their own interpretation. As a matter of fact, some countries request acceding countries to apply their own wording of the relevant articles while ignoring local specificities.

-> *Proposal: WTO members should be requested to respect the legislative system in the acceding country and refrain from asking adoption of wordings which follows their own national legislation. While technical assistance is necessary and useful, experts should propose various approaches and acceding countries should not be forced to accept the proposals which would favour or advocate the positions of any WTO member. Instead, the assistance should be geared towards promoting development objectives of the acceding country while fulfilling the WTO obligations.*

2) **Bilateral access negotiations** are the most difficult and least predictable part of most accession processes. In short, members can force the acceding country to accept any of their requests or to forego accession. The issues are the following:

- Member countries often change their demands during the negotiations and/or introduce requests which are not in line with WTO requirements. This puts the negotiators into very difficult situations. They convince their partners in the government to make an ultimate concession so as to ensure accession, only to have to go back with new requests. Accession thereby becomes a moving target;
- While it is understandable and legitimate that member countries defend their commercial interest, this leads to a liberalization that does not necessarily correspond to the interest of the acceding countries' concerned and thereby gives the liberalization and the multilateral system a bad reputation in the country;
- Some members request liberalization in the areas where they have no commercial interest, but so called "systemic" or "negotiating" interests. It is not uncommon that LDCs are required to give something that is under DDA negotiations- not because the requesting country is interested in the concession - but because it wants to ensure that the future member will be on its side in the DDA negotiations.

Fortunately, this kind of behaviour is not widespread and most countries are quite sensible in the bilateral access negotiations. However, as all countries have to agree to the accession, one unreasonable country has the means to create difficulties for the acceding country and/or to retard its membership in the WTO unduly.

-> *Proposal: This could be avoided by:*

- *Agreeing on benchmarks which would give clear guidance and predictability to the acceding country;*

- *Having some multilateral process to facilitate agreement on bilateral issues which unduly postpone accession of the new members.*

3) **Technical assistance** is an important element of the accession process. WTO members provide quite substantial and generous support which is highly appreciated by the acceding countries. The efficiency and the predictability of the assistance could be enhanced substantially through the following measures:

- A technical assistance programme should be established multilaterally at the beginning of the process. This would ensure that the support given corresponds to the needs of the reform program established. It might also ensure a better distribution of the assistance provided: indeed, some countries seem to have more assistance than required and others have problems mobilizing a minimum required. A multilaterally agreed assistance program would also increase the transparency of aid and the coordination;
- Technical assistance programs often focus more on the administrative requirements of the donor countries than the needs and ownership of the receiving countries. Donor countries' governments are accountable to their Parliaments and understandably want to ensure that their fiduciary requirements are fulfilled. However, predefined and rigid assistance projects often give way to unnecessary or untimely assistance while urgently required support cannot be provided. Misunderstood efficiency criteria and excessive reliance on indicators encourage consultants to put their emphasis on production of documents and events rather than on the content of the assistance or, to neglect the more time consuming transfer of technology and knowhow through strong cooperation and efforts to explain to the partners the methods and results.

Illustration: Piles consultant's reports are stacked up in offices of acceding countries' officials without being and are only used by new consultants who come to address the same issue.

Conclusion

Accession to the WTO is a long and challenging process that entails painful and complex reforms in particular for LDCs. It is a process which is essential to ensure that a country integrates into the world economy and follows a path of sustainable development. No country - and in particular a LDC - can develop in isolation. WTO accession should accompany and reinforce the reform process in line with the capacities and the development objectives of the concerned countries. The objective of a more streamlined and targeted accession process is not to make it easier or more expedient for the acceding country, but to make it the most relevant possible for its reform process. This would mean that during the accession, a country could adapt its economic structure to the requirements of the world market thereby ensuring that its people fully benefit of the potential the world market offers. Such an approach is not only in the interest of the acceding LDCs, but also in the interest of its WTO partners. Let us not forget that the limiting factor to increased commercial relations with LDCs is not market access, but the low purchasing power of its population. Only flourishing LDCs will be good commercial partners of WTO members.

An accession process based on clearer and more predictable requirements for accession; an accession process that puts the development requirements of the LDC into the centre of the negotiations is clearly in the interest of the LDC, but also of the WTO members and the multilateral trading system as a whole. A process that is perceived as being unfair and arbitrary in which short term interests of WTO member countries prevail is not in the interest of the world economy or the multilateral trading system.

Only a system that is - and is perceived as - fair, will survive and thrive. Only reforms that are in the well understood interest of the country are sustainable.

The eighth Ministerial Conference is the opportunity for an open dialogue on the issue of the accession of LDCs. It should be addressed in a way that stimulates concrete decisions rather than soft law - which already exists but delivers little. In the end, it is rather odd that the organization with the purpose of promoting a rules-based trading system does not have any clear set of rules and criteria to enter the club. The Ministerial Conference has the opportunity to show that the multilateral trading system is able to take into account the needs of countries at different levels of development and that it is an engine and not a hindrance to their development. This is important not only for the acceding countries, but for the credibility of the system. And the system needs to regain credibility as an institution that can respond to the legitimate aspirations of all its members including the weakest ones.

Nicolas Imboden, Partner and cofounder of IDEAS Centre. Previous he was Senior Vice President of SGS (1999-2002), a Swiss Government trade and aid official with the rank of an ambassador (1992-1999), Governor of the regional development banks (ADB, AFDB, IDB) and Executive Director at the EBRD (1992). He was the Swiss negotiator for market access and agriculture during the Uruguay Round negotiations (1987-1992). He also worked in the World Bank as an agricultural economist (1978-1982), OECD (1974-1978 as researcher on aid monitoring) and UNDP (1972-1974 as Program Officer in Chad).

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Please note that this paper is in draft form. It will be revised and included in an e-book that ICTSD will publish shortly after the WTO ministerial conference.

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