

ETHIOPIA'S ACCESSION TO THE WORLD TRADE ORGANISATION: LESSONS FROM ACCEDED LEAST DEVELOPING COUNTRIES

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ABSTRACT

This article examines the experiences of least developing countries (LDCs) acceded to World Trade Organisation (WTO) in relation to their accession process, terms of accession and implementation of commitments with a view to drawing lessons which could be relevant to Ethiopia to devise successful strategies and avoid mistakes in an effort to gain maximum benefits from its WTO membership. Given that accession to the WTO is not an end in itself, Ethiopia should carefully and strategically negotiate to reap the potential benefits of membership in light of its long-term development strategies.

Keywords: WTO Accession, LDCs, Ethiopia

Acronyms

GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
LDCs	Least Developed Countries
MFTR	Memorandum on the Foreign Trade Regime by the Acceding Country
TRIPs	Trade Related Aspects of Intellectual Property
WTO	World Trade Organization

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1. INTRODUCTION

WTO was established to liberalize multilateral trade in the belief that liberalization of trade brings multiple benefits to the world population.¹ It had 30 LDCs, which were already members of the General Agreement on Tariffs and Trade (GATT), when it was established in 1995. As of March 2015, 32 countries completed their accession, which increased the number of members from 128 to 160, out of which only seven of them are LDCs: Cambodia and Nepal in 2004, Cape Verde² in 2008, Samoa and Vanuatu in 2012, Lao PDR in 2013 and Yemen in 2014. Currently, 35 LDCs are members of the WTO with eight more negotiating to accede.³ Their application for membership was motivated by a desire to ensure predictable market access and become eligible for the special concessions available to LDCs under WTO rules.⁴ Moreover, the countries hoped to use accession to the WTO as an incentive for accelerating domestic economic, legal and institutional reforms to create a stable business environment and attract foreign direct investment.⁵

Moreover, the establishment of the WTO represented a shift from a multilateral trading system based on diplomacy under the GATT regime

¹ To this end, the preamble to the Agreement Establishing the WTO (Marrakesh Agreement) provides that “[t]he Parties to this Agreement, recognizing that their relations in the field of trade and economic [endeavor] should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand.” See Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, 33 I.L.M. 1167 (1994) [hereinafter WTO Agreement].

² Cape Verde graduated in 2007. Nevertheless, it negotiated its accession while it was still an LDC, and will be considered as one of the recently acceded LDCs in this analysis.

³ Afghanistan (since 2004); Bhutan (since 2007); Comoros (since 2007); Equatorial Guinea (since 2007), Ethiopia (since January 2003); Liberia (since June 2007), Sao Tomé & Principe (since January 2005), Sudan (since October 1994), *WTO, Current State of Affairs on LDCs Accession to the WTO*: available at <http://www.ictsd.org/bridges-news/bridges-africa/news/the-current-state-of-affairs-on-ldcs-accession-to-the-wto> <visited 27 March 2015>.

⁴ Simon Evenett and Carlos P. Braga, *WTO Accession: Lessons From Experience*: www.academia.edu <visited 11 March 2015>.

⁵ *Ibid.*

to one that operates under the rule of law.⁶ However, no guidance is given under Article XII of the Marrakesh Agreement on the terms to be agreed upon as it does not specify the procedures to be used for negotiating the terms of accession or the commitments expected from acceding countries or the scope and extent of demands that would be made by members. This makes the accession process demanding and time consuming.⁷ It is also argued that the lack of clear guidelines of accession to the WTO has been allowing current member states to impose “WTO+” obligations on acceding countries, which is more burdensome especially on LDCs.⁸

Ethiopia has been in the process of accession to the WTO since 2003.⁹ While the country exclusively reserves some service sectors such as financial institutions and telecom services to domestic investors,¹⁰ the experiences of recently acceded LDCs show that liberalizing virtually all service sectors becomes a precondition to be a WTO member. The

⁶ *WTO Accession at Any Cost? Examining the Use of WTO-Plus and WTO-Minus Obligations for Least Developed Country Applicants*, 2008: <http://www.temple.edu/law/ticlj/ticlj22-1Nguyen.pdf>. <visited 12 March 2015>.

⁷ Derk Bienen, *What Can LDCs Acceding to the WTO Learn from other Acceded Countries?* (BKP Development research and consulting discussion paper no. 01/2014. Munich), p5.

⁸ *Supra* note 4.

⁹ A working party was established by the General Council to examine its application on 10 February 2003. Ethiopia’s Memorandum on its Foreign Trade Regime was circulated in January 2007. The Factual Summary of Points Raised, prepared by the Secretariat, was circulated in March 2012. The Working Party met for the third time in March 2012 to continue the examination of Ethiopia’s foreign trade regime. https://www.wto.org/english/thewto_e/acc_e/a1_ethiopia_e.htm <visited on 12 March 2015>.

¹⁰ Investment Proclamation No. 769/2012, Art. 7, *Fed. Neg. Gaz.* of the Federal Democratic Republic of Ethiopia, 18th Year No. 63, Addis Ababa (17th September, 2012); and Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation 270/2012, Art. 3. The following areas of investment are exclusively reserved for Ethiopian nationals:

- i. banking, insurance and micro credit and saving services;
- ii. packing, forwarding and shipping agency services;
- iii. broadcasting services; mass media services;
- iv. attorney and legal consultancy services;
- v. preparation of indigenous traditional medicines;
- vi. advertisement, promotion and translation works; and
- vii. air transport services using aircraft with a seating capacity of up to 50 passengers.

experiences also show that the process of accession and terms of commitments are so demanding which poses challenges to LDCs. On the other hand, it is argued that “commitments under General Agreement on Trade in Services (GATS) need not compromise the ability of the Ethiopian Government to pursue sound regulatory and macroeconomic policies.”¹¹

This article examines the experiences of LDCs acceded to the WTO with a view to drawing lessons that will be helpful to Ethiopia to devise successful strategies and avoid mistakes in an effort to gain maximum benefits from its WTO membership. It is divided into six sections. Following this introduction, the second section briefly deals with the WTO accession process from legal point of view. The third section assesses the experiences of acceded LDCs during their accession process and accession negotiations. The fourth section highlights challenges encountered by acceded LDCs in the implementation of their accession commitments. The fifth section draws lessons from the experiences of LDCs that could be relevant to Ethiopia and other acceding LDCs. The last section forwards some recommendations.

2. WTO ACCESSION PROCESS

2.1 LEGAL FRAMEWORK

The WTO rules governing accession process are stipulated under Article XII of the Marrakesh Agreement.¹² Sub article 1 of this provision states that:

[a]ny state or separate customs territory possessing full autonomy in its 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 the terms to be agreed between it and the WTO. Such accession shall apply to

¹¹ Tilahun Esmael Kassahun, “Ethiopia’s WTO Accession and Financial Services Liberalization: Striking the Balance between Trade Liberalization and Domestic Policy Space” *Mizan Law Review* (2012), Vol. 6 No.2, p240.

¹² *Supra* note 1.

this Agreement and the Multilateral Trade Agreements annexed thereto.

Closely resembling Article XXXIII of the GATT 1947, upon which its wording has been based, Article XII does not give any membership criteria, “terms to be agreed” and the procedure for negotiation. In other words, it does not identify any concrete steps nor does it provide any advice when it comes to the procedures to be used for negotiating the terms of accession. The deficit of Article XII regarding clear guidelines on how new members may join the WTO and the “terms to be agreed” opens door for burdensome accession experience.¹³

Taking such a challenge into consideration, the WTO members have committed themselves by the Doha Ministerial Declaration to “facilitate and accelerate” the accession process of LDCs which resulted in guidelines for the accession of LDCs that was approved by the General Council Decision in 2002.¹⁴

As far as *facilitation of the accession process* is concerned, Section III of the 2002 LDC Accession Guidelines stipulates that “efforts shall continue to be made, in line with information technology means and developments, including in LDCs themselves, to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous.” It is argued, however, that the generality of this clause made the LDCs’ accession process burdensome, prolonged and demanding.¹⁵

With a view to further simplifying the accession process for LDCs, the 2012 Addendum to the 2002 LDC Accession Guidelines (paragraph 14) prescribes that “[m]embers shall refrain from reopening the accession package once negotiations have been completed and consolidated

¹³ Ratnakar Adhikari and Navin Dahal, *LDCs’ Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu*, (South Asia Watch on Trade, Economics & Environment, Kathmandu, Nepal), p5: <http://www.un-ngls.org/SAWTEE.doc>. <Last visited 12 March 2015>.

¹⁴ WTO (2002), *Guidelines for Accession of Least Developed Countries*, WT/L/508: at https://www.wto.org/english/thewto_e/acc_e/cbt...e/annex4_e.doc. <Visited 26 March 2015>.

¹⁵ Bienen, *Supra* note 7, p14.

schedules circulated for verification at the level of the Working Party.” Moreover, paragraph 17 stipulates for “periodic dialogues under the aegis of the Sub-Committee on LDCs with a view to deepening the understanding of issues relating to LDC accessions as well as to finding ways to address any difficulties encountered by the acceding LDCs” which could be taken as a potentially powerful tool.

Furthermore, section IV of the 2002 Guidelines prescribes for *technical assistance* that should be provided by the WTO members as follows:

*[e]ffective and broad-based technical cooperation and capacity building measures shall be provided, on a priority basis, to cover all stages of the accession process, i.e. from the preparation of documentation to the setting up of the legislative infrastructure and enforcement mechanisms, considering the high costs involved and to enable the acceding LDC to benefit from and comply with WTO rights and obligations.*¹⁶

In addition, paragraph 22 of the 2012 Addendum to the 2002 Guidelines states that:

*[t]he WTO Secretariat shall draw up technical assistance framework plans, based on inputs from the acceding LDCs, aiming at greater coordination and effective delivery of technical assistance at all stages of the process, making optimal use of existing facilities. The technical assistance framework plans will be demand driven and will be adjusted over time to reflect changes in acceding LDCs’ needs.*¹⁷

Acceded LDCs obtained limited supports, during their negotiation process, which was crucial to their negotiations. For instance, technical advice was given to Cambodian negotiators by group of experts from

¹⁶ WTO, *Guidelines for Accession of Least Developed Countries*, (2002) WT/L/508: at https://www.wto.org/english/thewto_e/acc_e/cbt...e/annex4_e.doc (last visited 26 March 2015).

¹⁷ WTO (2012), *Accession of Least-Developed Countries*, Addendum WT/L/508/Add.1.

UNCTAD.¹⁸ Other bilateral and multilateral donors also provided help to the Cambodian government in conducting its accession negotiations.¹⁹ Nepal also received technical assistance from UNDP, including support in the preparation of negotiating documents, building negotiating capacity and promoting public awareness of the WTO membership.²⁰

2.2 PHASES OF WTO ACCESSION PROCESS

Procedures of accession to the WTO comprise four phases. In the first phase, a state or customs territory wishing to accede submits a formal written request to the WTO Director-General, who then circulates the request to all WTO members.²¹ The WTO General Council considers the request and establishes a Working Party to closely examine the application that is open to all interested WTO members.²² The applicant then submits to the Working Party a detailed memorandum on its foreign trade regime, describing, among other things, its economy, economic policies, domestic and international trade regulations and intellectual property policies.²³

In the second phase, the Working Party members submit written questions to the applicant to clarify features of its foreign trade regime. After all necessary background information has been obtained; the Working Party starts meetings to focus on issues of inconsistency between the applicant's international and domestic trade policies and laws and the WTO rules and laws.²⁴

¹⁸ Heike Baumüller, *et al* *Making WTO Membership Work for Least-developed Countries: Lessons from Nepal and Cambodia*, (International Institute for Sustainable Development, 2008), p5.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *WTO Accession Explanation: How to become a member of the WTO*: http://www.wto.org/english/thewto_e/acc_e/acces_e.htm <visited 12 March 2015>.

²² *Ibid.*

²³ Ratnakar Adhikar, Navin Dahal and Manisha Pradhanga, , *Ensuring Development-Supportive Accession of LDCs to the WTO: Lessons from Nepal*, (SAWTEE2008), p25.

²⁴ WTO Secretariat, *Accession to the World Trade Organization, Procedures for Negotiations under Article XII*, WT/ACC/1: <http://www.wto.org>. <visited 12 March 2015>.

In the third phase, an intensive multilateral and bilateral negotiation on the terms of accession goes on. The multilateral negotiations focus on the compliance with the WTO rules and disciplines while in bilateral negotiations each member of working party negotiates with the acceding country on the specific market access commitments.²⁵ The result of the negotiations is “the accession package” consisting of the Report of Working Party, the goods and services schedules, and the accession protocol.²⁶ The Working Party has the responsibility of determining the terms of accession and incorporating them in a draft Protocol of Accession, which is submitted to the General Council/Ministerial Conference.²⁷

The final phase of accession process involves “the decision”. Once the final package, consisting of the report, protocol and lists of commitments is presented to the WTO General Council or the Ministerial Conference and a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organisation.²⁸ In most cases, the country’s own parliament or legislature has to ratify the agreement before membership is complete.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *WTO Accession Explanation: How to become a member of the WTO:* http://www.wto.org/english/thewto_e/acc_e/acces_e.htm. <visited 12 March 2015>.

Table 1: WTO Accession Procedures ²⁹

Step	Procedure	
1.	The applicant sends a communication to the Director-General of the WTO indicating its desire to accede to the WTO under Article XII.	
2.	The communication is circulated to all WTO Members.	
3.	A Working Party (WP) is established and a Chairperson is appointed.	
4.	The WTO Secretariat informs the applicant about the procedures to be followed.	
5.	The applicant submits a Memorandum on its Foreign Trade Regime for circulation to all WTO Members.	
6.	The WTO Secretariat checks the consistency of the Memorandum with the outline format (Annex I) and informs the applicant and the members of the WP of its views.	
7.	WP members submit questions on the Memorandum and the applicant answers. (Repeat if necessary).	Acceding country submits initial offers on industrial tariffs, agricultural tariffs, services offer, existing regime on agricultural subsidies (ACC 4), descriptions of its services regime (ACC 5) and provides checklists on Agreement on Sanitary and Phytosanitary (SPS) Measures, Technical Barriers to Trade (TBT) (ACC 8) and Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (ACC 9).
8.	The WP meets.	
9.	WP members submit and the applicant answers more questions on the Memorandum.	Bilateral negotiations between the applicant and interested WP members on concessions and commitments on market access for goods and services (as well as on the other specific terms of accession) are
10.	The WP meets again.	
11.	Repeat steps 9 and 10 above,	

²⁹ Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé, *Nepal's Accession to the World Trade Organization: Case Study of Issues Relevant to Least Developed Countries*, 2014 (CDP Background Paper No. 23 ST/ESA/2014/CDP/23) p 6.

	until 12.	undertaken.
12.	The examination of the Memorandum is complete.	
13.	Terms and conditions (including commitments to observe WTO rules and disciplines upon accession and transitional periods required to make any legislative or structural changes necessary to implement these commitments) are agreed.	Concessions and commitments on market access for goods and services (as well as on the other specific terms of accession) are agreed.
14.	A WP Report is prepared.	The Schedule of Concessions and Commitments to GATT 1994 and the Schedule of Specific Commitments to the General Agreement on Trade in Services (GATS) is prepared.
15.	A draft Decision and a draft Protocol of Accession (containing commitments listed in the WP Report and the Schedule of Concessions and Commitments to GATT 1994 and the Schedule of Specific Commitments to the GATS) is prepared.	
16.	The WP adopts the 'accession package'.	
17.	The General Council/Ministerial Conference approves the accession package.	
18.	The applicant formally submits the instrument of ratification of the accession package.	
19.	The applicant notifies the WTO Secretariat of its formal acceptance.	
20.	30 days after step 19, the applicant becomes a Member of the WTO.	

Throughout these procedures, the burden is on the applicant to satisfy the demands of existing WTO members. As a result, the WTO accession process becomes very costly and complex; that the WTO accession process is taking longer and longer time to complete; that joining the WTO includes commitments that go beyond the Uruguay Round

agreements; and that the WTO accession process takes little account of the specific circumstances of applicant countries or their needs for special and differential treatment.³⁰ The basic problem is that the terms of WTO accession are not well defined in the WTO legal framework.

3. EXPERIENCES OF LDCs ACCEDED TO THE WTO

3.1 DURATION OF ACCESSION PROCESS

Although the WTO members agreed “to facilitate and accelerate negotiations with acceding LDCs” at the 2001 Launch of the Doha Round of trade negotiations,³¹ the accession process of acceded LDCs was not much shorter than that of other countries mainly because of capacity constraints and lengthy process in proceeding with the negotiations.³² There is a clear tendency towards longer accession negotiations.³³ The seven LDC accessions have taken slightly longer ranging from 8.7 years (Cape Verde) to 17.2 years (Vanuatu).³⁴ In the case of Cambodia, the accession process (from application to full membership) lasted about 10 years while Nepal’s negotiations (from re-application) took a little over eight years.³⁵ Moreover, Republic of Yemen had to wait 14 years (from April 2000 to June 2014) to become the WTO member.³⁶

Bienen argues that “[t]he trend towards longer accession negotiations have been explained by an observation that demands made by WTO members have become stronger and accession countries regardless of

³⁰ Simon Evenett and Carlos Primo Braga, *WTO Accession: Lessons from Experience* (the World Bank Group, Trade Note 22 2005) p2: www.worldbank.org. <visited 12 March 2015>.

³¹ Doha Ministerial Declaration, para. 42, (2001).

³² Heike Baumüller, Ratnakar Adhikari and Navin Dahal, *Making WTO Membership Work for Least-developed Countries: Lessons from Nepal and Cambodia*, (International Institute for Sustainable Development 2008), p10.

³³ It has taken the 31 acceded countries 9.6 years from the formal request to become a WTO Member; while accessions that have been completed over the past ten years (i.e. since 2004) have lasted 13 years on average. *Supra* note 7, p7.

³⁴ *Ibid.*

³⁵ WTO Secretariat, information on current accessions: http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm: <visited 12 March 2015>.

³⁶ *Ibid.*

their economic size have become more assertive regarding the level of commitments they are willing to make.”³⁷ Moreover, he finds that “accessions of LDCs tend to take longer because all WTO accessions involve a vast range of highly complex technical issues which require time to be negotiated, and especially so for countries with limited capacities.” Furthermore, “the scope of issues covered by WTO accession negotiations has expanded over time.”³⁸ Therefore, an acceding LDC could negotiate harder by taking more time amid the complex negotiation issues and procedural challenges.

3.2. COMMITMENTS OF ACCEDED LDCs

3.2.1 Tariff Bindings in Trade in Goods

Despite WTO Members’ agreement to “exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs”³⁹, acceded LDCs were asked to make concessions that not only are beyond their capacities and stage of development but also beyond the WTO requirements.⁴⁰ For instance, Nepal bound its tariff rates at 42% for agricultural products and 24% for industrial goods while Cambodia maintained only 28.1% for agricultural products and 17.7% for non agricultural goods. The two countries have some of the lowest average bound rates among the LDCs at 26% and 19% respectively.⁴¹ Likewise, Cambodia’s maximum duty of 60% is one of the lowest among the LDCs. In contrast, most developed countries such as the EU (264%), USA (350%) and Japan (958%) have reserved the right to apply high tariffs on some products.⁴² Besides, Nepal and Cambodia agreed to bind the vast majority of their tariff lines at 99.4% and 100% respectively. Quite the opposite, while over half of the LDCs have bound less than

³⁷ *Supra* note 7, p7.

³⁸ *Ibid.*

³⁹ WTO (2002), *Guidelines for Accession of Least Developed Countries*, 2005 WT/L/508: at https://www.wto.org/english/thewto_e/acc_e/cbt...e/annex4_e.doc. (last visited 26 March 2015).

⁴⁰ Bau Muller, *Supra* note 18, p6.

⁴¹ *Ibid.*

⁴² *Ibid.*

50% of their tariff lines, only nine incumbent LDCs have a 100% binding coverage.⁴³

Although Nepal wanted to create a policy space for protecting the agricultural sector, should the need arises, by binding tariffs on agricultural products at an average of 60%, the developed member countries opposed such a proposal and Nepal was forced to bind its average tariff at 42% on the agricultural sector.⁴⁴ Even so, Nepal was successful in keeping bound tariffs both for agriculture and non-agriculture products at relatively high rates and maintained policy space through substantial “water” in its tariffs, compared to other acceding LDCs.⁴⁵ Table 2 shows the extensive market access commitments made by recently acceded LDCs during accession to the WTO.

*Table 2: Simple average, maximum and minimum bound tariffs of acceded LDCs (%)*⁴⁶

Acceded LDCs	Agricultural goods- average final bound tariffs	Non-agricultural goods- average final bound tariffs	All goods - Average final bound tariffs	All goods- Maximum final bound Tariff
Nepal	41.5	23.7	26.0	100.0
Cambodia	28.1	17.7	19.0	60.0
Cape Verde	19.3	15.2	15.8	55.0
Samoa	25.8	20.4	21.1	100.0
Vanuatu	43.6	39.1	39.7	210.0
Lao PDR	19.3	18.7	18.8	90.0
Average LDCs	29.6	22.5	23.4	119.2
Average of original LDCs WTO Members			151	

⁴³ *Ibid.*

⁴⁴ Adhikar, *Supra* note 23, p5.

⁴⁵ Pierre Sauv , “Economic Impact and Social Adjustment Costs of Accession to the World Trade Organization: Cambodia and Nepal” *Asia-Pacific Trade and Investment Review* (2001), Vol. 1, No. 1, p29.

⁴⁶ Bienen, *Supra* note 7.

Compared to those of the original LDC members, the commitments of the newly acceded LDCs to the WTO are broader and deeper.⁴⁷ For instance, while Solomon Islands bound its average agriculture tariffs at more than five times, Bangladesh and Tanzania did the same at more than ten times their applied rates.⁴⁸ Although the gap between applied and bound tariffs in the non-agriculture sector is lower for Bangladesh, it is high for Tanzania and Solomon Islands.⁴⁹ On the other hand, binding coverage is high for Solomon Islands (100 per cent) and low for Bangladesh (15.5 per cent), which shows a trade-off between the level of bound tariff and the binding coverage (see table 3).

Table 3: Bound and Applied Tariffs of Three LDCs (Founding Members of WTO)⁵⁰

Countries	Agriculture Simple average bound rates (%)	Agriculture Simple average MFN rates (%)	Agriculture Binding coverage (% of tariff lines)	Non-Agriculture Simple average bound rates (%)	Non-Agriculture Simple average MFN rates (%)	Non-Agriculture Binding coverage of tariff lines (%)
Bangladesh	192	17.6	100	34.4	14.3	2.6
Solomon Islands	72.7	14.8	100	79.4	9.2	100
Tanzania	120	19.9	100	120	11.5	0.2

⁴⁷ *Raj pandey etal, Supra* note 29.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Id.* p24.

3.2.2. Transition Periods

Acceded countries negotiate for transition periods to implement their accession commitments and membership duties. For instance, “30% of bound tariff lines are set at a higher rate upon accession and then reduced over a transition period.”⁵¹ However, with the exception of Nepal and Cape Verde, acceded LDCs have negotiated transition periods for reducing bound tariffs only for a limited number of products. In this respect, Cambodia, Samoa, Vanuatu and Lao PDR used them for less than 100 tariff lines (out of more than 5,000) because of relatively high final binding overhang which does not require reduction of applied tariffs.⁵² The acceded LDCs also committed to a gradual reduction of bound tariffs negotiated transition periods ranging from 3 to 10 years.

On the other hand, other non LDCs acceded to the WTO have negotiated better transition periods. For instance, Panama maintained 14 years of transition period while Vietnam succeeded in negotiating 12 years of transition period.

*Table 4: Use of transition periods of acceded LDCs*⁵³

Country	No of bound tariff Lines	No of tariff lines with transition	Share of tariff lines with transition	Length of transition period (years)
Nepal	5,305	4,908	93%	9
Cambodia	6,823	4	0%	7
Cape Verde	5,794	3,538	61%	10
Samoa	7,694	26	0%	10
Vanuatu	5,060	98	2%	3
Lao PDR	10,694	48	0%	10
Average LDCs	6,895	1,437	26%	8.17

⁵¹ Bienen, *Supra* note 7, p19.

⁵² *Ibid.*

⁵³ Bienen, *ICL, Supra* note 7, p19.

Moreover, these countries made commitments to ensure that any changes made in their laws, regulations and practices would not result in a lesser degree of consistency with the provisions of relevant agreements and to implement the agreements progressively.⁵⁴

3.2.3. Commitments on Trade in Services

In the area of services and investment, the acceded LDCs' accession packages are also described as overly extensive. Unprecedentedly, these countries made excessive commitments to liberalize trade in services, opening up all of the 11 service sectors under the WTO classification, some fully and others partially and with transition periods (including 70 sub-sectors in Nepal and 74 sub-sectors in Cambodia).⁵⁵ However, Bangladesh, also a LDC WTO founding member, liberalized only two sectors and 11 sub-sectors.⁵⁶

Acceded LDCs did not put significant limitations.⁵⁷

*The sectoral coverage and depth of commitments in these countries' schedules of commitments reflect their desire to utilize service commitments for overall economic development and trade promotion. Their commitments are in sectors that could contribute to improving the quality and efficiency of the services required by business, such as accounting, banking, insurance, management consulting, telecommunications and transport services. In addition, the commitments include sectors which contribute to developing skills required for a modern, knowledge economy (such as education, computer and related services) and also sectors which help improve health and environment conditions.*⁵⁸

Cambodia, Cape Verde and Nepal allowed land lease for foreign investors and limited the employment of foreign nationals to intra-

⁵⁴ Raj pandey, etal, *Supra* note 29, p24.

⁵⁵ Baumuller,etal, *Supra* note 18, p7.

⁵⁶ *Ibid.*

⁵⁷ Raj pandey, etal, *Supra* note 29, p24.

⁵⁸ *Ibid.*

corporate transferees like executives, managers and specialists.⁵⁹ Nepal was asked to open all services sectors in which it has made commitment for 100% equity participation by foreigners within a period of five years. Fortunately, it has succeeded in reducing foreign equity participation only up to 80% through active involvement of the voice of stakeholders and the firm stand of its negotiators,⁶⁰ whereby the Nepali nationals and domestic investors must participate as a precondition for the commercial presence of foreign service-providers in the country. Unlike Cambodia, which unbound subsidies, Nepal has reserved subsidies and tax benefits to wholly nationally-owned enterprises with a view to maintaining a policy space that enables it to encourage domestic service providers.⁶¹ In addition, Nepal's schedule recognizes a special significance of environmental protection in which foreign investors are required to meet environmental standards.⁶²

Although Nepal made better commitment than other LDCs like Cambodia with respect to market access, national treatment and sectoral regulations other than education, health and recreation services; *commitment of Nepal is generally ten times higher than that of Bangladesh*, which made commitments only in communication and tourism.⁶³

While the commitments of acceded LDCs' cover all four modes of supply,⁶⁴ original LDC members such as Bangladesh, Tanzania and Solomon Islands made very limited commitments. For instance, Bangladesh made commitments only in telecommunications, and five-star hotels and lodging services; Tanzania committed only in hotels of four-stars and above.⁶⁵ Bangladesh also retained the right to restrict

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ WTO, "Report of the Working Party on the Accession of Nepal: Schedule of Specific Commitments in Services (2003e)." WT/ACC/NPL/16/Add.2.

⁶² Raj Pandey, etal, *Supra* note 29.

⁶³ *Id.*, Raj pandey etal, p25.

⁶⁴ Pierre Sauvé, "*Economic Impact and Social Adjustment Costs of Accession to the World Trade Organization: Cambodia and Nepal*", Asia-Pacific Trade and Investment Review, (April 2000) Vol. 1, No. 1, p30.

⁶⁵ *Ibid.*

employment of foreign natural persons and to limit government subsidies and tax benefits to domestic service providers in its schedules.⁶⁶

Table 5: GATS Commitment Index⁶⁷

Sectors	Nepal	Cambodia	Bangladesh
Overall Index	33.34	49.08	3.36
Market Access	29.19	43.68	2.24
National Treatment	37.49	54.48	4.47
Business Services	30.32	31.58	0.00
Communication services	15.68	47.35	26.68
Construction/engineering services	14.73	50.00	0.00
Distribution services	54.45	66.09	0.00
Educational services	40.76	32.61	0.00
Environmental services	68.75	75.00	0.00
Financial services	47.58	64.29	0.00
Health/social services	25.53	23.40	0.00
Tourism/ travel services	66.73	69.12	33.09
Recreational/ cultural services	28.65	0.00	0.00
Transport services	13.25	25.29	0.00
Other Services	0.00	0.00	0.00

Much commitment was made by the acceded LDCs in mode 3, i.e., commercial presence, which is considered most significant by WTO members.⁶⁸ Besides, they liberalized commitments in mode 2, consumption abroad, without any limitations for their citizens consuming services (Vanuatu: 75; Nepal: 77; Lao PDR: 79; Samoa: 81; Cambodia: 89; and Cape Verde: 102).⁶⁹

⁶⁶ Raj pandey etal, *Supra* note 29, p25.

⁶⁷ *Ibid.*

⁶⁸ Beinen, *Supra* note 7, p 22.

⁶⁹ *Ibid.*

Bienen identifies the following conditions applied by acceded LDCs to mode 3 entry:⁷⁰

- Economic needs tests;
- Conditions on the legal form of investments;
- Limitations on foreign ownership;
- Minimum investment thresholds;
- Conditions on recruitment of local staff;
- Requirements for joint ventures; and
- Phased or gradual opening of a sub-sector.

The main challenge faced LDCs was lack of regulations for all sectors which forced countries like Cambodia to leave sub-sectors unbound “until related laws and regulations are established.”⁷¹

3.2.4. Trade Related Aspects of Intellectual Property Rights (TRIPS)

In relation to the TRIPS agreement, LDCs were required to undertake many obligations which are far beyond not only their particular capacities and needs but also beyond the requirement of WTO. For instance, as part of its action plan for implementing the TRIPS Agreement, Cambodia agreed to join the International Convention for the Protection of New Varieties of Plants (UPOV).⁷²

However, the agreement leaves it up to its members to decide how they would like to protect plant varieties, be it through patents, a *sui generis* system (which could, but does not necessarily have to be UPOV) or a combination of both (Article 27.3b). For the purpose of flexibility, some countries opted to develop their own systems feeling that UPOV did not provide sufficient flexibility to ensure protection of the rights of farmers to freely save, re-use and exchange seeds.⁷³ Requiring Cambodia to

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Nguyen (2008), *WTO Accession at Any Cost? Examining the Use of WTO-Plus and WTO-Minus obligations For Least-Developed Country Applicants.*; at <http://www.temple.edu/law/ticlj/ticlj22-1Nguyen.pdf>. <visited 12 March 2015>.

⁷³ *Ibid.*

accede to UPOV agreement has been considered a WTO “plus” provision since the General Council stated that being a signatory to the Plurilateral Agreements should not be imposed as a condition to membership.⁷⁴ In the case of Nepal, this requirement was dropped at the last minute following intensive lobbying efforts by Nepalese civil society groups.⁷⁵

3.2.5. Special and Differential Treatment

The WTO agreements recognise the specific trade, development and financial needs of including LDCs. As per the 2002 LDC Accession Guidelines, both acceding and acceded LDCs are eligible for special and differential treatments starting from date of their membership. The Guidelines provide that “special and differential treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession”.⁷⁶ Before the adoption of the LDC Accession Guidelines, countries were not entitled to any special and differential treatments under the terms of Article XII of the Marrakesh which gave rise to the following challenges:

[n]egotiations must continue until WTO members are satisfied that no further concessions are possible; no matter the size of the applicant, bilateral negotiations could be protracted unless the applicant quickly concedes the vast bulk of the standardised demands of the (primarily large) WTO members; and although each accession is considered on its own merits, and there is, in legal terms, no setting of precedents, WTO Members are concerned about precedence in the sense that, whatever

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ WTO (2002), *Guidelines for Accession of Least Developed Countries*, WT/L/508: at https://www.wto.org/english/thewto_e/acc_e/cbt...e/annex4_e.doc. <Visited 26 March 2015>.

*leniency is granted to one acceding country might be used as an argument by other acceding countries later.*⁷⁷

Pursuant to the 2002 Guidelines:

*WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members. ... Acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs... Transitional periods/ transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs.*⁷⁸

Despite the decisions of the WTO in 2002,⁷⁹ the cases of acceded LDCs show that the promises were not put into practice. In this respect, although LDCs are not required to undertake any reduction commitments with respect to agricultural export subsidies under the WTO Agreement on Agriculture,⁸⁰ Cambodia was forced to bind its agricultural export subsidies at zero, a commitment that no original LDC has been required to make.⁸¹ With reference to this specific provision, Cambodia opposed the deprivation of its ability to utilize domestic export subsidies in order

⁷⁷ Beinen, *Supra* note 7, p28.

⁷⁸ WTO, *Guidelines for Accession of Least Developed Countries* (2002), p.2-3. WT/L/508: at https://www.wto.org/english/thewto_e/acc_e/cbt...e/annex4_e.doc. <Visited 26 March 2015>.

⁷⁹ *Ibid.*

⁸⁰ Agreement on Agriculture, Marrakesh Agreement Establishing the World Trade Organization (1994), Annex 1A, Legal Instruments–Results of the Uruguay Round, 33 I.L.M. 1125, Art. 15 (2).

⁸¹ Adhikari, Ratnakar/Dahal, Navin, *LDCs' Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu*, (Kathmandu: South Asia Watch on Trade, Economics & Environment (SAWTEE), 2003).

to support its agricultural industry.⁸² The Working Party has been criticized for failing to grant the benefits favorable to LDCs under the Agreement since much of Cambodia's future economic development revolves around strengthening this industry.⁸³

In addition, most of the acceded LDCs were forced to make commitments considered as excessive relative to their LDC status.⁸⁴ With regard to pharmaceutical patents, the 2001 Doha Declaration on the TRIPS Agreement and Public Health states that LDC members would be allowed until January 1, 2016 to implement or apply sections 5 and 7 of Part II of the TRIPS Agreement.⁸⁵ However, Cambodia was asked to adhere to a January 1, 2007 deadline for compliance to the entire TRIPS Agreement.⁸⁶ Before arriving at this date, Cambodia had originally requested a transition period for TRIPS compliance that would expire in 2009.⁸⁷

Similarly, although the TRIPS Agreement provides transition period for LDCs, Nepal was asked to implement the most favoured nations and national treatment provisions contained in the TRIPS Agreement right from the date of accession.⁸⁸

4. IMPLEMENTATION OF WTO ACCESSION COMMITMENTS

WTO Members (including newly acceded LDCs) are expected to implement their accession commitments including reduction of applied tariffs, the opening of services, and/ or changes in regulation and administrative practices in accordance with the negotiated transition

⁸² Celine Charveriat & Mary Kirkbride (2003), *Cambodia's Accession to the WTO: How the Law of the Jungle is Applied to One of the World's Poorest Countries*, (OXFAM London, U.K): http://www.oxfam.org.uk/what_we_do/where_we_work/_cambodia/downloads/Cambodia_accession_facts_final_Aug21.pdf <Last visited 11 March 2015>.

⁸³ Nguyen, supra note 72.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Adhikar, *etal*, *Supra* note 23.

periods.⁸⁹ Violation of membership duties and accession commitments constitute legal responsibilities under the WTO's Dispute Settlement Body.⁹⁰

The acceded LDCs undertook to implement ambitious legislative reform plans. For instance, Cambodia dedicated to pass no less than 47 laws and regulations by 2007 while Nepal was to enact 10 new laws and regulations and amend 25 existing laws and regulations.⁹¹ However, both countries could not perform these plans at the scheduled time. Cambodia had adopted just only 24 of the 47 laws and regulations while Nepal had enacted three of the 10 new laws and adopted eight of the 25 amendments by the end of 2007.⁹² Particularly, while Nepal lacks proper regulatory mechanisms in most of the services sector so far, none of GATS-related regulations have been adopted in Cambodia.⁹³

Chea and Sok (2005) found that:

The challenges facing Cambodia are two fold: enacting all necessary reform legislation for membership in time and carrying it out. As part of its accession to the WTO, Cambodia has made a large number of commitments in legal and judicial system reforms, including the enforcement of the rule of law and the establishment of a specialized commercial court. [...] Forty-seven laws and regulations are needed to fulfill WTO membership requirements. Fourteen laws and regulations have already been adopted, while the other thirty-three are to be passed within the next two years. [...] The schedule imposes the passing of more than two laws and sets of regulations per legislative working month. On past experience, however, the Cambodian parliament is not likely to meet the

⁸⁹ Bienen, *Supra* note 7, p 33.

⁹⁰ *Ibid.*

⁹¹ Baumuller, etal, *Supra* note 18.

⁹² *Ibid.*

⁹³ *Ibid.*

*deadline; it has, on average, taken three months to adopt a piece of legislation.*⁹⁴

Although Cape Verde agreed to enact legislation on customs valuation prior to its accession to the WTO⁹⁵, it could not fully implement this commitment within the transition period agreed (2.5 years) and forced to renegotiate with members and the Secretariat in which it was granted a waiver for a year.⁹⁶

Several factors are believed to cause the delays. Following the accession, the impetus to implement WTO-related reforms decreased quickly because outside pressure for reform declined significantly since there is no an international monitoring mechanism and consequence for not fulfilling accession commitments.⁹⁷ Furthermore, the progress was critically impeded due to limited capacities to draft, implement and enforce the laws and regulations and set up and manage the necessary institutions.⁹⁸ Multilateral and bilateral technical assistance activities have not been sufficiently comprehensive and effective even though they have happened after the countries' accessions.⁹⁹ The other challenge has been lack of coordination among the different donors. For instance, bilateral donors have tended to fund activities based on their national interests, such as to develop specific laws that were often drafted by foreign experts based on model laws from the donor countries.¹⁰⁰ Moreover, assistance has not been uniformly distributed among beneficiaries. Much of the assistance was directed to the ministries of

⁹⁴ Samnang Chea and Hach Sok, (2005), *Cambodia's Accession to the WTO: 'Fast Track' Accession by a Least Developed Country*", in: Gallagher, Peter/Low, Patrick/Stoler, Andrew L (eds.): *Managing the Challenges of WTO Participation, 45 Case Studies*, (WTO/Cambridge UP, Case Study 8:http://www.wto.org/english/ressp_e/casestudies_e/case8_e.htm <visited 12 March 2015>.

⁹⁵ Full implementation of the Agreement on Customs Valuation would start from 1 January 2011 (2.5 years after accession).

⁹⁶ Bienen, *Supra* note 7, p33.

⁹⁷ Baumuller, etal, *Supra* note 18.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Id.* p8.

trade and finance of the countries while assistance to other ministries remained inadequate.¹⁰¹

Generally, the technical assistance that the LDCs received after WTO membership has been inadequate. In particular, assistance has been lacking to help address constraints that prevent the countries from benefiting from WTO membership. As a result, WTO membership has not helped achieve key policy objectives related to trade, i.e. trade diversification and expansion.¹⁰²

5. SUMMARY AND LESSONS FOR ETHIOPIA

The preceding sections show that the LDCs recently acceded to the WTO made broader and deeper commitments compared to those of the original LDC members. Their accession packages are generally deviated from the letter and purposes of the General Council Guidelines on the accession of LDCs. They were forced to accept more onerous terms of negotiations which go beyond their specific capacities and even the WTO requirements. These countries also faced variety of challenges in the course of their accession to the WTO due to lack of technical assistances and capacity to negotiate. It is expected that Ethiopia and other acceding LDCs may also face challenges similar to which the acceded LDCs had already encountered.

The following lessons could be drawn based on the experiences of LDCs in their accession process, negotiations and implementation of commitments:

1. Acceded LDCs had to pass through complex steps although the WTO members committed to simplify and streamline the negotiation process for LDCs. Furthermore, they faced challenges mainly because of imposition of strict demands from the developed WTO Members in the phase of bilateral negotiations.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

2. The instances of commitments which the acceded LDCs were requested to make clearly show the tendency of the developed members to impose WTO+ conditions on LDCs. They were asked to make commitments that are not proportionate to their level of economic development, capacity, trade and financial needs. Their commitments are more onerous than the original LDC members as well as developing and developed country members. This shows that the WTO accession process is power based and one-sided.
3. Since the technical assistance that the acceded LDCs received after WTO membership was inadequate, they faced challenges to implement their accession commitments and to reap benefits from their WTO membership, particularly in realizing trade diversification and expansion.¹⁰³ Thus, it is learnt that technical assistance is vital not only in the process of accession but also to implement accession commitments so as to enable LDCs reap the benefits of WTO membership.
4. While countries like Cambodia agreed to accept more burdensome terms, Nepal was able to negotiate relatively more favorable terms of accession. Nepal was more successful than other LDCs because of the technical assistance it received during the accession process and chiefly due to stakeholder participation in the negotiation process. Thus, it is learnt that participation of stakeholders in the accession process is useful to ease the bargain against demands of the existing WTO members.
5. There should be some form of supervision in a country to implement the commitments made at the WTO as the implementation of the accession commitments has an implication on the credibility of the domestic policy regime. It is important to set a new deadline as soon as the time limit for the execution of a certain commitment expires.¹⁰⁴
6. As part of WTO accession, ongoing commitment to trade reform is essential at the post-accession stage. However, the trade reform

¹⁰³ Baumuller, etal, *Supra* note 18, p10.

¹⁰⁴ Raj Pandey, etal, *Supra* note 29, p29.

agenda should be forsaken if it is apparent to compromise development objectives like industrial development and protection of food security and livelihood.¹⁰⁵

7. In addition to the implementation of WTO provisions and agreements at domestic level, execution of rules commitments sometimes requires legislative changes or the adoption of new laws and regulations in areas where domestic capability is insufficient. Given the significance of commitments on rules and disciplines for LDCs joined the WTO and short transition periods for the implementation of strictly difficult and multifarious rules of some WTO agreements, Ethiopia is expected to foresee required changes or development of new regulations. Early launch of the implementation process and identification of the regulatory changes and development of a comprehensive legal action plan is necessary.¹⁰⁶

6. RECOMMENDATIONS

Ethiopia should not sprint to join the WTO by accepting onerous commitments that may be requested by the existing WTO members. It should negotiate more favorable terms in line with its development objectives and the potential benefits of the membership.

It should, in particular:

- a) ensure that tariffs are bound at a higher rate than the existing applied rates;
- b) negotiate for a transition period to implement accession commitments;
- c) maintain flexibility in tariff and domestic support and subsidy for agriculture like Nepal;
- d) negotiate to make use of the flexibility under GATS to open fewer sectors with limitations and conditions in line with its development situation and implementation capacities. In so doing, it should not repeat mistakes that most acceded LDCs committed by

¹⁰⁵ *Ibid.*

¹⁰⁶ Bienen, *Supra* note 7, p38.

unconditionally accepting what was requested by the incumbent powerful members; and

- e) make use of the available support. This necessitates a rationalization of assistance by setting up a comprehensive trade related technical assistance plan.
- f) hold broader discussion on the implication of WTO membership with all relevant stakeholders including parliamentarians, business operators, researchers and civil society organizations.