

**Arrested Development:
Vanuatu's Suspended Accession
to the World Trade Organization**

*Case Study Prepared for
the International Commercial Diplomacy Project*

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The World Trade Organization (WTO) was established in January 1995 as the successor to the General Agreement on Tariffs and Trade (GATT).¹ It is located in Geneva, Switzerland, has 144 member countries currently, and administers the international trading system based on the WTO agreements. Since the launching of the WTO, there has been a surge in membership applications from developing and former communist countries. One of them was from the Pacific island nation of Vanuatu.

Vanuatu applied for WTO membership in July 1995. The country had been a *de facto* member of the GATT; colonial countries automatically attained this status when they achieved independence from colonial powers that were GATT members. However, to become full-fledged members of the GATT, these countries were supposed to apply to formally accede to the organization before their *de facto* status expired. The countries that went through this process in time automatically became members of the WTO when it replaced the GATT organization. However, the government of Vanuatu was unable to decide whether it should go through this accession process before its *de facto* GATT membership expired. As such, when it subsequently decided that it would in fact like to join the WTO, it had to apply for membership as an outsider. More importantly, the new accession process established with the WTO was much more demanding than that of the GATT.²

The government of Vanuatu expected that the industrialized countries that control the WTO would be eager to bring it into the organization. This would be in keeping with their often-declared objective of helping the developing world join and benefit from the international trade system. And being one of the poorest countries in the world, Vanuatu expected that the rich countries would chart an accommodative course and not be too demanding with respect to the terms of its accession.

Alas, events were to prove the government wrong. After a difficult six-year process, Vanuatu came close to acceding, but it ultimately decided that it could not meet the stiff requirements set down by the United States. Hence, in 2001 the government abruptly backed away from the deal struck by its negotiators and threw its accession into limbo, where it has remained since.

The purpose of this case study is two-fold. First, it traces the historical evolution of the aborted accession negotiations in order to establish a baseline against which Vanuatu's experience can be evaluated. Second, with this context established, the case study maps out the major constraints and choices Vanuatu faced at various steps along the way. These examples provide a menu of policy options and lessons that

¹ A round of the multilateral trade negotiations, which took place from 1986 to 1994, called "Uruguay Round" has resulted in the establishment of the WTO. The new organization is governed by the WTO agreements. These agreements encompass much wider areas such as services, intellectual property rights and investment measures, and they require significantly higher disciplines than the GATT.

² The main focus of GATT accession negotiations was tariff reduction, while WTO accession requires legislative and regulatory reforms and market access concessions on goods and services.

illustrate the strategic challenges of conducting international commercial diplomacy. Finally, the study concludes by highlighting some potential lessons to be learned by other countries involved in the WTO accession process.

I. VANUATU'S CONSTRAINTS

It is useful to begin by briefly recounting some basic constraints that affected Vanuatu's negotiating interests and capacities. As such, this section provides some background information about the country's domestic economic, political, social, and administrative situations, and then turn to problems it would encounter at the international level.

1. Domestic Considerations

The Republic of Vanuatu is an island nation in the South Pacific Ocean located about three-quarters of the way from Hawaii to Australia. The country is an archipelago comprising eighty-three islands spread over a distance of some 620 miles from north to south, and several of the islands have active volcanoes. It has a land area of 4,700 square miles, which is slightly larger than the State of Connecticut. The total population is about 195,000, and eighty percent of them live on the three major islands, Espiritu Santo, Malekula and Efate. The capital city is Port-Vila and has the population of 24,000. Until its independence in 1980, the United Kingdom and France jointly governed Vanuatu (then called the New Hebrides). There are over 100 different vernacular languages spoken throughout the archipelago; Bislama (English-based Pidgin), English and French are recognised as the nation's official languages.

Vanuatu is one of the Least Developed Countries (LDCs), the official status designated by the United Nations for the poorest countries in the world. International economic institutions such as the World Bank, the International Monetary Fund, and the WTO formally recognize this designation. At present, forty-eight countries are categorized as LDCs, and the average of their gross domestic products (GDP) per capita is around \$300. Although at over \$1,000 Vanuatu has the highest GDP per capita of the LDCs, this is mainly due to the existence of a sizeable, affluent, expatriate community. The income disparity between the indigenous population, called "ni-Vanuatu," and the expatriates is estimated to be over ten-fold.

The economy has many of the structural problems common to poor island countries. A joint survey by the government of Vanuatu and the United Nations reports that Vanuatu's adult literacy rate is about thirty percent for both males and females. Over seventy percent of children leave the education system at the end of primary school. About eighty percent of all employment is in the rural areas and comprises agricultural subsistence production. Fishing is also a growing activity. Cocoa, beef, timber, and copra---the dried, oil-bearing meat of coconuts---are the major export commodities.

There is little significant manufacturing activity, which accounts for just five percent of GDP; this includes some light industry like paints, beer, and food processing. In contrast, the services sector (excluding government services) accounts for about fifty percent of GDP. Major activities include domestically oriented services like the

wholesale and retail trade, and some internationally oriented services like tourism, offshore financial services and the registration of flag-of-convenience ships. The services represent an important sector for ni-Vanuatu, while expatriates and foreign capital largely control the latter. Participation of ni-Vanuatu in modern economic activities is highly limited, and integration of this population into the productive economic segment is a major policy goal for the government.

Vanuatu's most important trade partner is Australia, which accounts for forty percent of its trade. New Zealand comes second, accounting for eleven percent. In contrast, the United States does not have significant trade relations with Vanuatu. Vanuatu's trade with the United States represents less than two percent of the country's trade. External aid forms a substantial part of foreign exchange receipts, representing twenty percent of GDP.³

Vanuatu has no personal or corporate income taxes, no estate or gift duties and no capital gains taxes on residents or non-residents. At the time of its WTO application the main sources of public revenues were international trade related duties and fees.

Economic development in Vanuatu has been hindered by export dependence on a few commodities that have volatile prices on world markets. Other barrier include the prevalence of natural disasters such as earthquake and tropical cyclones, and a range of related problems common to remote island nations.

These economic conditions presented a mixed picture from the standpoint of acceding to and subsequently participating in the WTO. On the one hand, many of the country's key industries are small, inefficient, and unlikely to do well should well resourced foreign firms seek to attain market entry. Given the structure of the economy and the poverty experienced by much of the population, any real surge in foreign products and control could endanger the country's political stability and economic development. More to the point, Vanuatu's economic weaknesses and small markets would not provide its negotiators at the WTO with many big bargaining chips.

On the other hand, participation in the WTO system could bring in capital, knowledge, and related benefits, and give the country greater recognition at the international level. On balance then, the government of Vanuatu was hoping that WTO membership would be a key element of a new development strategy. However, economic problems meant that its calculations as to how much it might be worth giving up in order to achieve WTO membership were not entirely straightforward.

Domestic political conditions also provided a mixed picture from the standpoint of accession negotiations. Just as the process was gathering steam in 1996-98, the government was rocked by political scandals. There were multiple revelations of misconduct by prominent politicians, which resulted in a series of parliamentary non-confidence votes that changed the federal government twice a year during the period. In addition, revelations of large-scale misuse of public funds set off rioting in the capital city of Port-Villa.

³ The donors are Australia, New Zealand, U.K. France, China, Japan, EU, and international organizations.

In order to restore confidence in the political system and economy, the government in 1998 gave in to demands by the Asian Development Bank (ADB) that it implement a Comprehensive Reform Program (CRP).⁴ Prior to the CRP, trade taxes consisted of import and export duties, licensing fees and service charges. The CPR drastically changed the structure of trade taxes. The import duty system was simplified, and licensing fees and export duties were abolished. Service charges were replaced by a value-added tax system, but this last move resulted in significant enforcement problems as the government lacked the technical capacity to systematically collect value-added taxes. The cumulative impact of all these changes was that the government experienced a substantial reduction in its revenues, which in turn greatly increased its fiscal dependence on import duties and thereby complicated the accession negotiations.

2. International Constraints

In addition to these domestic considerations, Vanuatu's accession faced at least three major international constraints. First, the procedural rules governing WTO accession processes are very loose and permissive. Essentially, WTO members who join a Working Party are free to press any kinds of demands they want. In many cases, these go beyond the strict requirements of WTO instruments to include reforms of broader economic policies. The loose rules provide applicants with little procedural protection from pressures by WTO members to undertake such "WTO-plus" concessions. In short, the demandeurs hold practically all the cards in the negotiations.

A second constraint Vanuatu faced was the bargaining stance adopted by the United States. The United States has been, of course, the leading champion of free trade around the world. This position normally reflects both particularistic and systemic considerations. The former refers to the United States' material interests in securing access to specific foreign markets, while the latter refers to its leadership role in promoting an open global economy through strong multilateral institutions and disciplines. Ensuring that all prospective members undertake strong liberalization commitments---often akin to those of much larger and richer countries---was a way to expand the scope of the open trading system, increase the number of WTO members with strong commitments and, by extension, improve the political dynamics of international trade policy. Doing so would serve America's particularistic interests down the line, i.e. by establishing precedents that could be invoked in more economically significant accession negotiations with countries like China and Russia. In keeping with this general orientation, the U.S. Trade Representative (USTR) consistently applied very strong pressure on Vanuatu to make very demanding concessions.

⁴ While the World Bank was the sponsor of the structural adjustment programs for the larger neighboring economies such as Papua New Guinea, Fiji and Solomon Islands, for a small state like Vanuatu, the ADB was designated as the leading agency of the program.

Finally, Vanuatu's status as a remote island LDC placed it in a weak bargaining position. The government generally lacked significant international negotiating experience, as well as strong diplomatic allies which it could rely on when the going got tough. Accordingly, Vanuatu would have to respond to any pressure tactics essentially on its own.

II. VANUATU'S CHOICES

Vanuatu's accession process unfolded in two broad stages. The first lasted from 1995 to 1999 and entailed a multilateral examination of the fit between Vanuatu's policies and the general obligations and disciplines contained in the WTO's various instruments. The second lasted from 1999 to 2001 and comprised bilateral market access negotiations between Vanuatu and a small group of WTO members. The issues and dynamics that arose at each stage would prove to be dramatically different in ways that had serious consequences for Vanuatu's aspirations.

1. Multilateral Conformity Assessment

a. Preparatory Work

Vanuatu applied for WTO membership in July 7, 1995. The WTO established the Working Party on the Accession of Vanuatu on July 11, 1995, and interested WTO members---including all the industrialized countries---joined.⁵ Vanuatu was to negotiate its terms of accession in accordance with Article XII of the Marrakesh Agreement Establishing the WTO. While there was no fixed timeline for completion of the task, there was a clear set of steps to be followed. First, the Working Party would examine the conformity between Vanuatu's national policies and regulations, on the one hand, and the general obligations and disciplines contained in the WTO's various instruments, on the other. Vanuatu would then be obliged to make any requisite changes to measures identified as noncompliant. Second, group members would present their individual market access demands. Third, in light of the prior steps, Vanuatu would officially propose its terms of accession. Fourth, Vanuatu would conduct bilateral market access negotiations with individual members, and when the latter were satisfied the Working Party would then adopt a Draft Report recommending admission to the WTO. Finally, the accession would be formally approved at the next WTO Ministerial Conference, which at the time was presumed to mean the 1999 meeting in Seattle.

Before the Working Party could begin the conformity assessment, the government of Vanuatu had to complete some preparatory work. The most important activity was to prepare a Memorandum on the Foreign Trade Regime describing in detail Vanuatu's economic and trade systems. This was submitted in 1996, after which Working Party members provided a first round of questions to which it had to respond. In addition,

⁵ The Working Party comprised Australia, Canada, the EU, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, Switzerland, and the United States.

throughout the accession process, the Working Party would request that Vanuatu provide detailed economic, legislative, and regulatory information to further clarify the fit, or lack thereof, between the country's measures and the WTO obligations.

Simply gathering these inputs was a big hurdle to overcome. Like many non-members, especially the LDCs, Vanuatu did not have in place the sort of institutional machinery and expertise needed to assemble the necessary information and to reevaluate domestic policies in light of WTO disciplines. Due to lack of resources the government had only a few officials dealing with the accession process. In some ways, the challenges the government had to manage were a harbinger of things to come.

Another notable disadvantage that Vanuatu's trade policy makers faced was a lack of representation in Geneva, Switzerland. Most countries have a Permanent Mission in Geneva, the staff of which can represent them in international organizations.⁶ And usually, before a country applies for WTO membership, it applies for observer status in the organization and, if this is granted, sends mission staff to attend WTO meetings. By so doing they could learn the dynamics of WTO bodies and negotiations, including those dealing with accession. Vanuatu, however, did not have a Mission in Geneva, and hence its trade decision makers could not benefit from these information gathering and learning opportunities or get socialized into the WTO way of doing things. Moreover, Vanuatu could not have the sort of easy access to and ongoing consultations with trade officials from the major trading countries, which would be highly desirable both before and throughout the negotiations. Hence, the government of Vanuatu was forced to dive into the accession process without adequate preparation in a variety of respects.

Before the working party could proceed with the conformity assessment, there was a major configurative issue that had to be resolved.

b. Special and Differential Treatment

At the Working Party's first meeting in July 1996, Vanuatu requested that it be granted special and differential (S&D) treatment. This permits developing and least developed countries to be exempted from certain trade obligations in accordance with their levels of development and trade capacity. In operational terms, this may mean greater flexibility in choosing the extent of market liberalization, and longer transition periods in which to phase in the implementation of commitments. Table 1 of the Annex provided some examples of S&D treatment for the LDCs.

Vanuatu was keen to obtain S&D status because, to date, the developing countries that had acceded or were about to accede to the WTO had been obliged to undertake liberalization commitments that were as substantial and sometimes even exceeded

⁶ The city of Geneva hosts a number of international organizations, for example, the WTO, International Telecommunication Union, World Health Organization, International Labor Organization, World Intellectual Property Organization and the United Nations and its various agencies. Some countries, mostly LDCs, do not have representations in Geneva due to resource constraint.

those made by the industrialized countries in some areas.⁷ Vanuatu was the first LDC to enter into accession negotiations, and it was very concerned that despite its status as one of the world's poorest countries it would be compelled to make similar commitments. Accordingly, it hoped to receive *a priori*, across-the-board protection from any demands that it undertakes really sweeping liberalization commitments as the price of entry into the WTO. Doing so would significantly bolster its bargaining position.

The government of Vanuatu had two reasons for hoping that its request would be granted. First, it believed that since the country's share of total international trade was so tiny, whether or not it had S&D treatment would not matter much to other WP members. Second, on a number of occasions WTO members had formally acknowledged the problems confronting LDCs and had pledged to assist with their integration into the international trading system. Taken together, these considerations seemed to constitute a straightforward case for according the country S&D treatment.

Nevertheless, to its surprise, the Working Party refused Vanuatu's request. The United States played a lead role in the decision. U.S. negotiators argued that S&D treatment was available only to WTO members, not to countries that were merely prospective members. Moreover, they maintained that if Vanuatu wanted flexibility with respect to the extent and the pace of implementation of its commitments, this would have to be negotiated on a case-by-case basis, rather than granted across-the-board at the outset. Other Working Party members supported the U.S. position, or at least did not publicly object to it. Hence, Vanuatu's negotiators had to begin down the road to accession without the enhanced bargaining leverage that S&D status would have provided. This was an critically important turning point that would have a substantial impact on the subsequent evolution and eventual outcome of the accession negotiations.

c. Land Laws

With the S&D issue out of the way, the Working Party began to examine Vanuatu's policies in order to identify reforms that would be needed for WTO compliance. The government of Vanuatu admitted that a number of its policies were indeed inconsistent with the WTO framework and committed to reform or replace them, as required. For example, it agreed to abolish its overly restrictive licensing and surcharge systems and to replace these with tariffs. The government also agreed to eliminate the legal authority of the Ministry of Trade to restrict imports unilaterally, i.e. without the constraints of WTO procedures. In a similar vein, it offered to eliminate provincial authorities' authority to impose import duties. However, the government of Vanuatu did not always concur with its counterparts in the group. At times it insisted that its policies were entirely consistent with the WTO framework, and/or that the demands being placed on it actually went beyond the framework's requirements---i.e., that they were "WTO-plus" demands. In these instances, more intensive negotiations ensued. One such case involved Vanuatu's land administration.

⁷ These countries included Ecuador (January 1996), Bulgaria (December 1996), Mongolia (January 1997) and Panama (September 1997)

For historical reasons, the issue of land ownership was particularly sensitive in Vanuatu. The 1980 constitution declared that, “All land in the Republic belongs to the indigenous custom owners and their descendants.” Hence, with the abolition of the colonial freeholder system, all land that had been occupied by colonialists reverted to its traditional owners. However, the development of custom land is frequently frustrated by numerous disputes over ownership and boundaries. Such problems have been common among Melanesian countries, and none of them have been able to deal with these effectively because of the high political risks involved.

Some industrialized country members of the Working Party argued that Vanuatu’s land laws did not provide foreigners with adequate access to real estate or protection of property. In consequence, they demanded that the government undertake legal reforms. Vanuatu’s negotiators were surprised by this demand, since the question of domestic land policy was not a subject covered by the WTO’s general obligations and disciplines. The issue might only be relevant if Vanuatu chose to make negotiable Specific Commitments on market access and national treatment under the General Agreement on Trade in Services (GATS) that involved commercial presence. Even so, since the procedural rules of the accession process did not specifically define which subjects were or were not permissible to raise, governments were free to press the issue. Nevertheless, Vanuatu said it would not budge, even if its WTO accession was therefore jeopardized. In the end, the Working Party members involved opted to abandon this “WTO-plus” demand and hand Vanuatu a rare victory in order to keep the process moving forward.

d. Quantitative Restrictions and Export Price Supports

Vanuatu also defended as being WTO-compliant several other kinds of policy measures challenged by Working Party members. One set of these involved the use of quantitative restrictions and export price supports.

Vanuatu had long imposed seasonal quantitative restrictions on potatoes to develop the Irish potato production capacity in the island of Tanna, situated in the northwest of Vanuatu. The potato production program was considered a key rural agricultural development project. However, under the WTO Agreement on Agriculture, current and potential members are obliged to convert any non-tariff measures to tariffs. But in doing so, Vanuatu wanted to retain the right to protect potato production in accordance with the agreement’s Article 5 provision on special safeguard (SSG) measures.

SSG measures allow members to impose additional tariffs on agricultural products when import volumes exceed defined trigger levels, or when import prices fall below defined trigger prices. They are available only when countries specifically reserve access to them in their negotiated schedules of commitments. For example, Bulgaria and Panama, which had acceded to the WTO previously, managed to obtain the right to employ SSG measures. Vanuatu believed that it was perfectly reasonable to expect these precedents to apply in its case, especially because the value of the imports concerned was so marginal.

Another contested measure concerned copra. Vanuatu occasionally had used a price support program for this commodity. Copra was one of the main cash crops and an important income source for substantial number of local farmers, yet its international prices were volatile and resulted in substantial income fluctuations for these farmers. To ease the fluctuations, a state-trading agency called the Vanuatu Commodity Marketing Board activated the price support program when the price of copra fell to a trigger level. This scheme was financed with the funds generated by the Board and by the Stabilization of Export Earning Scheme (Stabex) Funds. The latter were provided under the first Lome Convention between the European Communities (EC) and the African, Caribbean and Pacific countries, but were eventually terminated.⁸

The government of Vanuatu wanted to retain its right to use the price support program for copra under Article 15 of the WTO's Agreement on Agriculture, which exempts LDC members from any reduction commitments. It expected that Working Party members would accept this request because the WTO had extended the exemption to its LDC members. Moreover, as in the case of potato imports, the value of copra exports was so marginal that the price support would not notably affect other countries.

Australia and New Zealand, however, refused to grant Vanuatu the right to use SSG measures or keep the price support program. Both countries are major agricultural exporters and ardent opponents of support measures. With regard to special safeguards, they argued that this was a legitimate issue during the Uruguay Round negotiations, but not in accession negotiations. For the price support program, they maintained that only existing LDC members can benefit from the LDC exemption noted in Article 15 of the Agreement on Agriculture, whereas countries seeking to accede should not maintain any support measures except within "*de minimis*" level specified in the Agreement. The fact that Mongolia, though not a LDC but surely a very poor country, acceded to the WTO while yielding to the same demands from Australia and New Zealand on these issues did not help Vanuatu's cause (see Table 2 of the Annex).

Vanuatu adamantly disagreed, pointing to the accommodative treatment accorded Panama and Bulgaria in regards to SSG measures, and the difficult condition of copra farmers in the rural area. Nevertheless, Australia and New Zealand refused to change their positions. Indeed, they threatened that if Vanuatu did not yield to their demands, their technical assistance to its agriculture sector would be terminated. A number of projects had been initiated in Vanuatu to diversify agricultural products, and Australia and New Zealand had been important donors. These projects aimed at reducing copra production and encouraged production of other commodities such as beef, coffee, vegetables, poultry, vanilla, and pepper.

Accordingly, Vanuatu decided to give in to the demands from Australia and New Zealand. As things turned out, abandoning access to SSG measures was not a difficult decision after all; the government's Trade Division was later informed by the Customs Department that the seasonal quantitative restrictions had already been

⁸ The Stabex Funds were WTO inconsistent and terminated when the WTO agreements have come into force.

abolished in 1993. The government's misunderstanding of its own policy was attributed to a lack of administrative capacity and effective knowledge management due to limited resources and high personnel turnover. On the question of the price support, Vanuatu had no cards to play in support of its position. Hence, in order to stay in the accession game, it had to relent in the hope that the increased output from alternative crops under the on-going diversification programs would eventually offset the loss of copra production as a result of the elimination of the price support program.

e. The Agreements on Government Procurement and Trade in Civil Aircraft

In another example of WTO-plus bargaining, the United States demanded that Vanuatu participate in the WTO's Agreement on Government Procurement and Agreement on Trade in Civil Aircraft. Vanuatu refused, noting that these plurilateral agreements were not obligatory WTO commitments, and that no LDC members and very few developing country members had signed onto them.⁹ As indicated in Table 2, Mongolia also refused to participate in the Agreements.

Moreover, with regard to procurement, Vanuatu said that it was obliged to observe the rules and special arrangements established by aid donors, whom it did not want to alienate. It also claimed that the country's economy was too small to be of interest to WTO members, and that there was therefore little reason to undertake legal commitments on this score. With regard to civil aircraft, the reasoning offered was in a similar vein: since the national carrier, Air Vanuatu, leases all of its aircraft, taking on new commitments here would be an irrelevant burden.

f. Transition Periods

Vanuatu requested that it be allowed two-year transition periods from the date of accession in which to implement the WTO obligations on customs valuation and on Trade-Related Aspects of Intellectual Property Right (TRIPs). It argued that it needed the extra time because of its limited resources and technical capacity and its lack of relevant legislation and training. The government also stressed that its request was very reasonable because LDC members of the WTO were allowed much longer transition periods to implement the same agreements. Under the Uruguay Round deal, LDC members had eight years to act on certain obligations with respect to customs valuation, whereas for TRIPs they had ten years except for on general

⁹ There are twenty eight signatories to the Agreement on Government Procurement are: Austria, Belgium, Canada, Denmark, EU, Finland, France, Germany, Greece, Hong Kong China, Iceland, Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Netherlands with respect to Aruba, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, and US.

There are thirty Signatories to the Agreement on Trade in Civil Aircraft: Bulgaria, Canada, EU, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Egypt, Estonia, Georgia, Japan, Latvia, Lithuania, Macao, China, Malta, Norway, Romania, Switzerland, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. and US.

obligations like national treatment and most-favored-nation treatment. Moreover, Vanuatu stressed that it was seeking transition periods for only two areas, whereas the WTO's LDC members have phased-in commitments in many others. This dichotomy is highlighted in Table 1.

These facts notwithstanding, U.S. negotiators were extremely reluctant to accept Vanuatu's request, and maintained a hard line deep into the negotiation process. But Vanuatu stood its ground, insisting that without the transition periods it would withdraw its WTO membership application. These problems were to remain unresolved as the bilateral access negotiations got underway.

2. Bilateral Market Access Negotiations

As the conformity assessment proceeded through two formal and two informal meetings, WP members began to move onto the parallel track of presenting their market access requests. Taking all these considerations into account, Vanuatu in October 1999 formally proposed its terms of accession. With its opening positions on the table, Vanuatu then entered into bilateral negotiations with each of the WP members.

Most of the bilateral negotiations went very smoothly and were completed within just a few days. For example, Australia and New Zealand demanded that Vanuatu reduce its tariffs on some daily products, but such demands did not cause particular difficulty. The vast majority of the Working Party members viewed Vanuatu's proposed terms as being more or less reasonable, and believed that its accession was an easy win-win call that would be good for the country, the WTO, and the international trading system. But on the other hand, Vanuatu also lacked ardent champions willing to expend political capital to support it if the going got rough. And as it happened, the going got very tough.

The main difficulty involved the United States. Market access negotiations between America and Vanuatu turned out to be a very difficult and lengthy affair. While Vanuatu's reluctance to rapidly open certain markets to full international competition was undoubtedly a key reason for this, America's negotiating stance undeniably played a role as well.

As was noted above, the U.S. approach to WTO accession negotiations generally reflects a mix of particularistic and systemic considerations. But in the case of Vanuatu, the United States did not have especially strong stakes in its tiny markets. Total trade between the two countries in the year prior to the commencement of bilateral negotiations was less than a paltry \$1 million.¹⁰ Indeed, the most likely source of competition for Vanuatu post-accession appeared to be companies from Australia, New Zealand, Japan, and the EU, and in most instances market access negotiations with those countries went rather easily. While of course Vanuatu's accession could be expected to open up some new opportunities, there was not a long

¹⁰ Roman Grynberg and Roy Mickey Joy. "The Accession of Vanuatu to the WTO: Lessons for the Multilateral Trading System," *Journal of World Trade* 34.6 (2000), p. 167.

list of powerful American firms just champing at the bit and demanding that the USTR take a tough stance.

Instead, the U.S. approach seems to have been driven more by systemic concerns. Both with Vanuatu and with other LDCs, the United States very much wanted to avoid establishing any “bad precedents” in accession negotiations that could be cited by larger and more significant applicants down the line. As such, it chose to consistently take the hardest line of any WTO member and assumed that Vanuatu would have no choice but to comply with its demands.

a. Trade in Goods

Two major problems arose with respect to trade in goods. First, Vanuatu proposed to bind all its tariffs on industrial goods at a simple average rate of forty-nine per cent. In addition, it proposed to bind over one-half of these at lower than the “applied rates,” i.e. those actually applied at the time of the proposal. This meant that each tariff could be lower than but not exceed the bound rate. The United States argued that the simple average rate of forty-nine per cent was still too high and demanded that it be reduced to the rate of twenty-five per cent.

Vanuatu pointed out that its tariff offer was far better than what many WTO members had agreed to during the Uruguay Round, both in terms of product coverage and depth of tariff reduction. The veracity of this view is demonstrated by the figures presented in Table 3 (see Annex). For example, the simple averages of bound tariffs for the countries included in the table ranged from fifty-nine percent (India) to fourteen percent (Senegal). Moreover, the shares of bound tariff lines for these countries ranged from sixty-eight percent (Thailand) to eight percent (Sri Lanka), the latter reflecting much lower levels of commitment than what Vanuatu was proposing.

Of greater direct relevance, Vanuatu’s tariff offer was much better than that of the Solomon Islands, a neighboring country and an LDC member of the WTO (Table 2). Solomon Islands had acceded to the GATT during the Uruguay Round of the Multilateral Trade Negotiations by converting its *de facto* GATT membership to full membership status. It has bound all tariffs at a simple average rate of eighty per cent, a substantially higher rate than Vanuatu’s offer. Another neighboring country, Papua New Guinea, has bound all tariffs at a simple average of forty-three percent, though its economy is much larger than Vanuatu’s, and it is not a LDC (Table 2).

In addition to the tariff proposal, Vanuatu proposed that it would provide duty free access for more than 160 tariff lines in aircraft, aircraft parts, and pharmaceutical products by the year 2005. This offer was made against the backdrop of the Zero-for-Zero Tariff Reduction Initiatives and the Information Technology Agreement, which Vanuatu offered to participate in later on.¹¹ This offer was noteworthy because no LDCs and only a limited number of developing countries that were already WTO members had participated in these agreements.

¹¹ These sectoral agreements were initiated by a number of WTO members at the first Ministerial Conference held at Singapore in 1996. Participation in these agreements is not obligatory.

All these considerations notwithstanding, US negotiators took a maximalist position. They maintained that accession terms had to be benchmarked to the very lowest levels previously obtained. By the USTR's logic, since Mongolia had agreed to bind all its tariffs at the simple average rate of twenty percent (see Table 2), Vanuatu's proposal was not good enough.

The second problem area concerned Vanuatu's practice of applying tariff escalations to alcohol, tobacco, and weapons. In Vanuatu these products were treated as "sin goods," and the government wanted to maintain high tariffs in part to discourage their spread in the country. Vanuatu did not see why it should be forced to give up this practice insofar as many WTO members practiced tariff escalation on the very same products. But U.S. negotiators argued that tariff escalation discriminated against imported products, and insisted that normal taxes should be used instead.

In principle, domestic taxes are clearly preferable to border taxes as instruments for raising revenues because they are trade-neutral and nondiscriminatory. But in practice, LDCs like Vanuatu face a general problem in applying them due to the state's limited capacity to collect fees. Economic and political calculations undoubtedly come into play as well. Hence, the government levied property and service taxes and imposed business license fees. But there were no excise taxes on domestic primary producers or manufacturers, with the exception of breweries. A significant part of the population engaged in these activities was poor, which also would make introducing excise taxes difficult.

Similarly, Vanuatu did not levy income taxes, e.g. on personal or corporate income, or on estates, gifts, or capital gains. There had been debate over the years about whether to introduce such taxes, but fears were raised that this would discourage wealthy foreigners from settling in the country and undercut its status as an offshore finance center. While some of these arguments may have been overstated, there was strong opposition to income taxes in influential circles, and the government remained very skittish about eroding one of its main attractions to inbound capital flows. Accordingly, domestic income taxes did not seem a realistic option, at least for some time.

In consequence, Vanuatu instead relied on import duties for about eighty percent of its total tax revenue. Accordingly, the government was not willing to reduce the proposed bound tariff rates below forty-nine percent, or to replace its high tariffs on sin goods with more neutral tax measures. This left it at an impasse with the United States.

b. Trade in Services

Vanuatu proposed to open up eighteen sub-sectors in the fields of professional, construction, education, environmental, financial, and tourism services (Table 4 of the Annex).¹² Compared to many developing countries, this constituted a fairly liberal set

¹² For reference, Table 5 of the Annex indicates services included in the WTO Services Sectoral Classification List.

of offers. However, the proposal did not include two fields of especially strong concern to the United States.

The first was telecommunications, on which the United States was concurrently making a major push in the WTO. Vanuatu initially refused the U.S. demand that it liberalize its markets, noting that it had given France Telecom and Cable & Wireless an exclusive contract until 2012.¹³ The government was very concerned that attempting to renege on that deal would discourage the companies from investing in the nation's telecommunications infrastructure at a time when modern networks were becoming increasingly central to investment, trade, and wealth creation. Under pressure from the United States, the government later reversed this position somewhat, agreeing that it would open the sector to competition when the companies' contract expired.

The other excluded sector was retail and wholesale trade. The reasons for this were perfectly clear to everyone. Retail and wholesale trade were highly important to the ni-Vanuatu, and there was strong and widespread sentiment that their interests would be severely affected by foreign competition. Moreover, the national policy goal of promoting ni-Vanuatu's participation in the business community added to the solid political consensus that liberalization of this particular sector was virtually taboo.

With these factors in mind, the government refused to open retail and wholesale trade. Anyway, it argued, Vanuatu's offer on services was already far more substantial than those of many WTO members who were not being subject to a similar level of pressure. And indeed, as is widely recognized, the services concessions of developing country members are generally quite limited. Of particular importance, comparisons with Solomon Islands, Papua New Guinea and Mongolia (Table 2) indicated that Vanuatu's offer was notably greater than theirs.

Despite the probable benefits to Vanuatu and the low cost to the United States of bringing the country into the international trading system, neither side was willing to budge on these issues. In consequence, the negotiations in the fall of 1999 resulted in a deadlock. Given the absence of new ideas and political will and the distractions provided by other events in the United States and internationally, no follow-up meetings were held in the year 2000. Vanuatu's application was in limbo, for what would turn out to be just the first time.

3. From Compromise to Collapse

¹³ Telecom Vanuatu Limited is the sole supplier of communication services. The company consists of Cable and Wireless of UK and CID Alcatell in Paris and the Vanuatu Government. The Vanuatu Government holds a 33.3 per cent share in the form of issued capital in the company.

After a year and half pause, the two countries resumed their negotiations in 2001. By now the dynamics between the two negotiating teams had shifted in a more positive direction, in part due to a newfound measure of flexibility on the part of the United States. As such, a more productive process of give and take ensued and resulted in a package that, with one exception discussed below, both sides could more or less live with. On industrial tariffs, the United States accepted Vanuatu's tariff offer as it was. In return, Vanuatu agreed to replace its tariff escalation measures on alcohol, tobacco and weapons with trade-neutral excise taxes while leaving the tariff peak at 50 per cent on tobacco and weapons, and to bind all alcohol tariffs at the applied rate. The United States reluctantly accepted that Vanuatu would not have to participate in the Agreements on Government Procurement and Civil Aircraft. It also compromised on the matter of transition periods, allowing Vanuatu to have one year (rather than the two it wanted) in which to implement the WTO obligations on customs valuations and TRIPs.

However, one major issue remained unresolved: market access to the wholesale and retail trade. Vanuatu still insisted that opening this field to foreign entry would pose too big a threat to the livelihoods of poor local merchants and workers, and accordingly that this could undermine its efforts to sustain a political consensus for joining the WTO. Nevertheless, the United States would not accept that these concerns could not be overcome and hence refused to relent on the point.

The fourth WTO Ministerial Conference was scheduled to be held in Doha, Qatar, in November 2001. If the wholesale and retail issue somehow could be resolved, the Ministerial would then be able to make official Vanuatu's accession. From a practical standpoint this would be a huge relief to all sides, since the negotiations by then had been going on for over six years. More importantly, from a symbolic standpoint, successful completion of the negotiations would be a political and public relations coup. Vanuatu would be the first LDC to be granted WTO membership, and it could be highly beneficial to the WTO to do so in conjunction with the conference's issuing of a statement on LDC issues and launching of the "development round" of multilateral negotiations.

Conscious of these stakes, the WTO Secretariat stepped forward for the first time in the process. The Secretariat informed Vanuatu that its accession would be denied unless it gave in to the Americans and undertook strong market access commitments on wholesale and retail trade. One can only imagine how this added pressure from the institution itself focused minds in a negotiating team of an LDC that had undergone a protracted struggle with the world's superpower.

As it happened, in the wake of the Secretariat's move and under extreme time pressure, the negotiators sharply reversed course and agreed to liberalize market access in wholesale and retail services. The only conditions placed on the offer involved national treatment: non-citizens and non-resident investors would have to obtain a license and pay an additional annual fee. The United States decided it could live with this limitation.

On October 29, 2001 the WP met for its last time. With no obstacles remaining, the Working Party formally accepted the country's terms of accession. The next day, the

world press reported that Vanuatu had completed its accession negotiations and that its membership would be announced at Doha.

Alas, the story did not end there. Just a few days later, the government of Vanuatu sent a letter to the WTO Secretariat requesting a “technical delay” in its accession procedure. The letter did not publicly state how long a pause in the process it wanted, but there has been no initiative since then to conclude the matter. Moreover, the letter did not explain the reasons for this eleventh hour reversal, and the government has offered no official explanation since then to clarify the matter. Not surprisingly, this has given rise to speculations and competing accounts from various observers. For example, the website of Vanuatu Maritime Services Ltd. suggests that,

Close analysis showed that the reduction of import duties would dangerously undermine the revenue base of the country. The loss of revenue could not be recouped by other taxes. It would mean introducing an income tax, which does not currently exist. Further, the country's trade balance is already negative: any further reduction of import duties would aggravate the situation, resulting in local job losses that could not be replaced with new employment.¹⁴

This claim does not seem convincing though, since the United States had accepted Vanuatu's tariff proposal. A more plausible view that one can hear among trade policy insiders is that acting under pressure from the WTO Secretariat, the negotiators had made commitments on the retail and wholesale trade without having agreement back home. It is not clear whether the negotiators had coordinated fully with the capital before making the commitments, or whether the Minister of Trade simply decided to reverse course after the fact. Either way, the government was unable to sign off on the deal.

In an effort to come to Vanuatu's aid, Papua New Guinea stepped into the mix. The Doha Ministerial was set to approve China's accession, a decision that under WTO rules would have to be taken with the consensus of all members. Papua New Guinea rather boldly tried to put pressure on the Director-General of the WTO, threatening that unless Vanuatu's was admitted, it would not give its consent to the accession of any countries. However, Papua New Guinea is by no means a powerhouse in the trade negotiation realm and could not resist pressures itself. Lacking supporters for its cause, Papua New Guinea backed off before the Doha Ministerial Conference.

Accordingly, tiny Vanuatu was left to its own devices, and its accession was placed on indefinite hold. Since then its government representatives have participated in some trade policy training seminars and been observers to a few WTO meetings, presumably with an eye to keeping abreast of developments and perhaps building some capacity before making another move. But at present, there is no sign of when such a move might come, or of whether anything will change domestically or within the WTO setting to make accepting the agreement any easier.

¹⁴ See, Vanuatu Maritime Services Ltd., Update, January/March 2002. <http://www.vanuatuships.com/safety/fsls/updatejan2002.htm>

III. LESSONS LEARNED

Presented above in necessarily abbreviated form, the story of Vanuatu's suspended accession points to a number of possible lessons about the choices governments make under difficult circumstances. While a few of these lessons may be specific to the case at hand, others may apply to the conduct of commercial diplomacy in general and to WTO accession negotiations in particular. Here we first map out some questions concerning Vanuatu's constraints and specific choices, and then pose some broader questions of relevance to the international community.

1. Vanuatu's Constraints and Choices

a. *Domestic Constraints*

a.1. Institutional Capacity Building.

The government of Vanuatu may have needed greater institutional capacity to manage the accession process. The abovementioned lack of a permanent mission in Geneva provides a particularly clear example of this. But more generally, the government's underdeveloped administrative machinery for the formulation and implementation of economic policy in field from tax collection to telecommunications regulation added to the challenges of conforming to WTO obligations and negotiating with WTO members.

- In broad strategic terms, how could Vanuatu have sought to build its institutional capacity? To what extent might it have succeeded in this on its own, and to what extent should the government have sought out partnerships with multilateral institutions, industrialized country governments, nongovernmental organizations, consulting firms, and the like?
- What specific approaches might Vanuatu have pursued in key arenas such as trade negotiations and coordination, taxation, regulation, and so on? Which should have received top priority in the capacity building process?
- How much does sequencing matter? Should Vanuatu have waited until its administrative house was in order before beginning its accession, or could it have used the unfolding process as a lever to solicit international support for capacity building?

a.2. Knowledge Management.

A particularly important subcategory of institutional capacity is knowledge management. Here too, the government of Vanuatu may not have had in place entirely adequate mechanisms. Ideally these would include, *inter alia*, the ability to generate, access, and aggregate information, whether in electronic or print form; to corroborate and (re)assess such information in a systematic, ongoing manner; and to fully learn from it in order to adopt effective bargaining strategies. Internally, the government may not have had its informational house in order; indeed, in the case of

special safeguards for potato imports, the negotiators did not know that the government's policy had changed years prior. And externally, it may not have understood WTO dynamics or the intentions and negotiating strategies of the Working Party members.

- In general, which aspects of the knowledge management process are most important to the conduct of commercial diplomacy? How might the government of a small, poor country like Vanuatu best strengthen its abilities in these cases?
- In the evolution of Vanuatu's accession negotiations, are there identifiable decision points at which the quality of Vanuatu's strategic knowledge management may have had a significant impact on events, pro or con?

a. 3. Domestic Political Support

Democratic governments need domestic political support in order to make important choices and credible commitments in international trade negotiations. It is not clear that Vanuatu's government had aligned the relevant interest groups or built support for accession among the broader public. Indeed, its 11th hour decision to suspend the process may suggest that important stakeholders did not support the negotiating team's announced acceptance of terms in October 2001.

- Which domestic interest groups do you expect would have accepted accession on the Working Party's terms, and which would you expect may not have? What could the government have done to mobilize the former groups' support while mollifying the latter's concerns?

a.4. Government Revenues

Clearly, the government's heavy fiscal reliance on trade duties and fees was a major constraint on its negotiating freedom. Reducing or eliminating charges on imports and exports would make it difficult for the government to cover its expenditures, especially in times of national emergencies.

- What options could Vanuatu have pursued to establish alternative mechanisms for the collection of revenues? Given the difficulties it had experienced in implementing value-added taxes, how feasible would it have been to rely on a new national income tax or other trade-neutral measures to make up the shortfall? How might such measures have affected Vanuatu's status as an offshore financial center?
- Could the government have attempted to strike a deal with Working Party members linking trade concessions with technical assistance in the field of taxation? What might such a deal have looked like, and how likely would it have been to garner support from the industrialized countries?

b. International Constraints

b.1. Coping with U.S. Demands

The government needed a greater ability to assess and respond to the U.S. demands. If one assumes that particularistic interests ordinarily define national policies, then it might have seemed reasonable to expect that the United States would have no reason to really insist, down to the bitter end, on securing strong market access commitments from a country with tiny markets. But the United States had a wider and more long-term agenda that was really not so much about Vanuatu at all, but was rather about precedents and building adherence to the WTO's institutional framework and disciplines. It hence insisted when it might have been expected to relent, and this left Vanuatu in a difficult position.

- How, if at all, could Vanuatu have assuaged American interests? When viewed as a total package, what compromises across sectors and issues might have been possible?

b.2. Lack of Allies

A major obstacle to more effective bargaining throughout the process was Vanuatu's lack of significant allies it could turn to in attempting to soften the American demands. While some member countries such as Vanuatu's neighbor, Papua New Guinea sympathized with its situation, they had no ability to influence the U.S. position. And for their part, the other industrialized countries had their own problems and agendas and seemed unwilling to expend political capital on Vanuatu's behalf. Vanuatu was therefore on its own in an extremely asymmetric bargaining relationship.

- Could Vanuatu have attempted to forge a more useful linkage with the EC? After all, the European Commission had long made it a practice to present the EC as more friendly than the Americans to the poor countries and their concerns, and as indicated later it proposed at the Seattle Ministerial Conference new procedures to facilitate the accession of LDCs, no doubt with the experience to date of Vanuatu in mind.
- Given the widely reported dissatisfaction of many developing countries with the results of the Uruguay Round, the decision to focus the next round on development issues, the growing role of nongovernmental organizations (NGOs) and of anti-globalization policy discourse, and the successive ministerial declarations about the need to address the special problems of LDCs, was quietly pursuing such lopsided negotiations the only option? Could greater attention to the press and public relations, developing linkages to certain NGOs, and so on have helped to create an political environment in which the Americans would be less inclined to play hard ball?

c. *Multilateral Conformity Assessment*

During the multilateral conformity assessment, there were some decision points in which Vanuatu had options in deciding its course.

c.1. Special and Differential Treatment

The government of Vanuatu apparently believed that the industrialized countries would be so interested in bringing an LDC into the fold, and would see so little cost in doing so, that they would allow it to have S&D treatment. The failure to secure even narrowly targeted S&D treatment had a pervasive impact on the ways individual issues were addressed throughout the duration of the negotiations.

- Did Vanuatu have any other options in arguing its case for S&D treatment, or in building support for its position?
- Once the battle was lost, how should Vanuatu have proceeded? Might it have been advisable to delay further negotiations and try to use the defeat to muster political support, or was it better to plunge ahead anyway?

c.2. Export Price Supports

The government argued that its export subsidies for copra were consistent with the WTO Agreement on Agriculture, and that calls for their elimination constituted “WTO-plus” demands. Nevertheless, Australia and New Zealand insisted that they be eliminated.

- Could the fact that the price supports were provided from the European Union’s Stabex funds have provided Vanuatu with any leverage, either in the negotiations or in providing alternative support to Vanuatu’s poor copra farmers?

c. 3. Other Agreements

Vanuatu refused to participate in the WTO’s agreements on government procurement and civil aircraft, and doggedly insisted that it would need two years from accession to implement the disciplines on customs valuation and TRIPs. Irrespective of the substantive merits of the arguments behind them, these positions became a source of friction with American negotiators and did not provide any tactical advantage.

- Given the Americans’ systemic concerns on these issues and the relatively low cost to Vanuatu of relenting on some of them, could the government have explored offering concessions here in exchange for accommodation on other matters it cared more about, e.g. retail and wholesale trade?

d. Bilateral Market Access Negotiations

d..1. Trade in Goods

Vanuatu’s insistence on a forty nine percent bound tariff rate and its desire to retain some tariff peaks on sin goods met with strong opposition from the United States and may have contributed to America’s hard line on other points.

- Beyond simply capitulating by lowering the bound rate and shifting entirely to administratively demanding trade-neutral taxation (mentioned in question a.4,

above) on sin goods, were there any other options Vanuatu could have explored to reduce tensions over these issues?

d.2. Trade in Services

Vanuatu's ability to respond to American demands was limited by the telecommunications monopoly granted to France Telecom and Cable & Wireless until 2012, and by the very high level of domestic sensitivity with regard to retail and wholesale services.

- Is there anything Vanuatu could have done either internally or in its international relationships---with foreign corporations, governments, and aid donors---to help facilitate a near-term adjustment toward open markets and thereby make a deal politically acceptable at home and abroad?

e. *From Collapse to Renewal?*

As there is no expiration date for Vanuatu's accession application, the main question is, what should the government do now?

- Would it make sense to hold off on restarting negotiations until conditions are riper? Perhaps somewhere in the course of the "development round" a strategic window of opportunity will open up to mobilize support more effectively. Or perhaps domestic political conditions will somehow evolve so as to make sweeping liberalization commitments more viable.
- Alternatively, would waiting be risky? With the passage of time the rules of the international trade regime may become stricter and international markets may become more hotly contested. Perhaps the costs of entry---in terms of commitments and relative national competitiveness---will be significantly higher in a few years, particularly once the current round is over.
- If waiting therefore is deemed to be risky, should Vanuatu promptly resume bilateral negotiations with the United States? Could the government try to negotiate compensation measures in exchange for accepting U.S. demands on wholesale and retail trade? For example, while these are not normally to the Americans' tastes, mandatory measures to employ and train local personnel or partial liberalization, e.g allowing foreign investments in distribution of imported products, might be explored.

2. Considerations for the International Community

a. *Institutional Issues*

If the objective is to increase membership in the international trading system, then it is not in the WTO institutional interest to have accession negotiations fail. While large industrial economies like China and Russia can defend their interests in negotiations and handle the adjustment costs that accession entails with comparative ease, the LDCs---the poorest of the poor---are clearly in a less advantageous position. A

pressing outstanding question then is whether procedural rules should be established to assist such countries and allow them a “soft landing,” in keeping with the WTO’s charter provisions on progressive liberalization.

At the third WTO Ministerial Conference at Seattle in December 1999, LDC members proposed granting acceding LDCs the full LDC status permitted under the WTO framework, to include S&D treatment. The main thrust of the proposal is indicated in Table 6 in the Annex.¹⁵ These members argued that such an initiative would be in accordance with the formal ministerial pledge to assist LDCs in their integration into the international trading system. In addition, the EU proposed to simplify and facilitate the accession process for LDCs. The main thrust of the proposal is indicated in Table 7 in the Annex.¹⁶ While the other industrialized countries have not taken formal positions and the proposal has not been discussed subsequently, the idea is still out there and has received support from countries in both the North and the South. If the current round is in fact intended to promote global development, should a serious effort be made to advance this issue?¹⁷

b. The Industrialized Countries

The case of Vanuatu may offer some lessons that merit contemplation in Washington D.C. The average annual per capita income of the LDCs is just \$300. Is it necessary to insist that such countries undertake immediate and deep liberalization commitments that go way beyond what existing members have undertaken, and that the LDCs might not be able to handle either politically, economically, or administratively? For example, how much damage would it do to the trading system to allow LDCs to have S&D treatment with phased in commitments and so on? Would not it be possible to argue to the Russians and other non-LDC applicants (China having already acceded in the meanwhile) that any flexibility shown toward these exceptionally poor countries does not establish precedents applicable to their cases? At a minimum, these and related points could be appropriate subjects for an open international debate.

The other industrialized countries might also consider the efficacy of their approaches to the accession of LDCs. In Vanuatu’s negotiations, the EC and other countries

¹⁵ WTO Document, “The Challenge of Integrating LDCs into the Multilateral Trading System - Coordinating Workshop for Senior Advisers to Ministers of Trade in LDCs in Preparation for the Third WTO Ministerial Conference, Sun City, South Africa, 21-25 June 1999 - Communication from Bangladesh,” WT/GC/W/251, 13 July 1999.

¹⁶ WTO Document, “Communication from the European Communities: WTO Accession,” WT/GC/W/153, 8 March 1999.

¹⁷ Since then, the discussions on the issue of LDCs’ accession continued in the WTO, and the guidelines for accession of LDCs were adopted in December 2002 (WTO Document, “Accession of Least-Developed Countries: Decision of 10 December 2002,” WT/L/508, 20 January 2003). The adoption of the guideline is a major step to facilitate and accelerate LDCs’ accession negotiations, however, as shown in Table 8 of Annex, the power of the text was considerably weakened than those proposed by the LDCs or by the EU.

tended to keep quiet and let the Americans “do the dirty work” of pressing the cause of swift liberalization, knowing that MFN would generalize any benefits that were achieved. But the EC and other industrialized countries have made a series of political commitments to help the LDCs in integrating these countries into the international trade system (Table 9 of Annex). If, as they often suggest, they have broader and more long-term view of the processes of building an inclusive international system and promoting development in the poor countries than that of the United States, perhaps this could be more fully reflected in their bargaining positions.

c. The Developing Countries

Vanuatu’s experience also suggests some potential lessons and forward-looking considerations for other players. Clearly, the story presented here points to difficulties that other LDCs entering into accession negotiations should anticipate and seek to manage. Eight LDCs---Bhutan, Cambodia, Cap Vert, Lao PDR, Nepal, Samoa, Sudan, and Yemen--- began accession process after Vanuatu. Not surprisingly, the problems Vanuatu has experienced are a real source of concern for these countries. All kinds of precedents were being established in its negotiations---in terms of both legal and procedural issues and bargaining dynamics---that could directly bear on their own cases.

At a minimum, current and future LDC applicants must do everything they can to strengthen their analytical and bargaining capabilities. By employing multiple public and private information resources and sources of expertise, they could enhance their capacities to assess the domestic requirements of WTO conformity and market access commitments, the interests and strategies of dominant WTO members, and the dynamics of negotiating in the WTO context. Similarly, they must carefully consider the mechanics of coalition building to offset their individual weaknesses, e.g. by reaching out more effectively to the EU, Canada, and other LDCs already in the WTO, and perhaps by working the press, public relations, and NGO angles.

Conclusion

Commercial diplomacy is a field fraught with difficult choices in which trade-offs and compromises must be made within frequently tight constraints. This is especially so for diplomatically inexperienced governments of the world’s poorest countries, especially when their counterparts across the table represent the world’s richest and most powerful nations. Vanuatu’s aborted drive to join the WTO amply demonstrates the point. Six years and two ministerial conferences passed as the government struggled to align its policies with the WTO’s demanding requirements and to negotiate the hurdles erected by the industrialized countries, most notably the United States. And by the end of the process, Vanuatu was left with a “take it or leave it” offer that was judged to entail domestic adjustment costs that were beyond anything the government could cope with. Could Vanuatu have played things differently and won, even with the cards it had been dealt as a remote island LDC? Or were the rules and power dynamics of the game simply too prohibitive? This case should provide ample grounds for students to consider the strategic challenges of asymmetric bargaining in order to answer these questions.

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ANNEX

Table 1

Examples of S & D Treatment for LDCs

Instruments	S & D Treatment
Ministerial Decision on Measures in Favour of LDCs	LDCs are required to take commitments consistent with their individual development
Agreement on Agriculture	Total exemption from reduction commitments in tariffs, domestic support and export subsidies for an indefinite period
Agreement on Trade-Related Investment Measures	Delay in the application of the Agreement by seven years
Agreement on Trade-Related Aspects of Intellectual Property Rights	Delay in the application of the obligations by ten years
Agreement on Subsidies and Countervailing Measures	Total exemption from prohibition against subsidies contingent upon export performance for an indefinite period
Agreement on Trade in Services	Process of liberalization shall take place with due respect for national policy objectives and the level of development of individual members
Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation)	Delay in the application of the Agreement by five years, and further three years for specific provisions

ANNEX

Table 2

Commitments by Vanuatu, Solomon Islands, Papua New Guinea and Mongolia

Demands from Australia (Aus), New Zealand (NZ) and US	Vanuatu	Solomon Islands	Papua New Guinea	Mongolia
No special safeguard right in trade in agriculture (Aus, NZ)	Accepted	LDC S&D treatment	Developing country S&D treatment	Accepted
No support measures except within "de minimis" level (Aus, NZ)	Accepted	LDC S&D treatment	Developing country S&D treatment	Accepted
Binding all tariff lines (US)	Yes	Yes	Yes	Yes
Reducing simple average rate to 25% (US)	49%	80%	43%	20%
Liberalizing basic telecommunications (US)	Yes	No	Yes	No
Liberalizing value-added telecommunications (US)	Yes	No	Yes	Yes
Liberalizing wholesale and retail trade (US)	No	No	No	Yes
Joining Agreement on Government Procurement (US)	No	No	No	No
Joining Agreement on Trade in Civil Aircraft (US)	No	No	No	No
Zero-for-Zero Tariff Reduction Initiatives (US)	Yes	No	No	No
Information Technology Agreement (US)	Yes	No	No	No

ANNEX

Table 3

Tariff Concessions on Industrial Products

Country	Share of Bound Tariff Lines	Simple Averages of Bound Tariffs
Vanuatu	100%	49%
Indonesia	93%	39%
Thailand	68%	28%
India	62%	59%
Malaysia	62%	17%
Philippines	59%	26%
Tunisia	46%	34%
Turkey	36%	43%
Senegal	32%	14%
Hong Kong	24%	0%
Sri Lanka	8%	28%

ANNEX

Table 4

Service Sub-Sectors Included in Liberalization Commitments of Vanuatu,
Solomon Islands, Papua New Guinea and Mongolia

Vanuatu	Papua New Guinea	Solomon Islands	Mongolia
Professional services	Professional services	Professional services	Professional services
Basic and value-added telecom services	Basic and value-added telecom services	Hotels and restaurants	Value-added telecom services
Environmental Service	Other business services	Insurance	Courier services
Wholesale trade	Computer and related service	Banking	Wholesale trade
Retail trade	Courier services	General construction work for buildings	Retail trade
Insurance	General construction work for building	General construction work for civil engineering	Insurance
Banking	General construction work for civil engineering		Banking
Hotels and restaurants	Banking		Hotels and restaurants
Primary education	Hotels and restaurants		Travel agencies
Secondary education	Maritime transport services		Tourist guide services
Higher education			Other business services

Continued

ANNEX

Table 4

Vanuatu	Papua New Guinea	Solomon Islands	Mongolia
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Adult education			Postal services
Other education			Installation and assembly work
Sewage services			Building completion and finishing work
Refuse disposal services			
Sanitation and similar services			
General construction work for buildings			

ANNEX

Table 5

Services included in the WTO Service Sectoral Classification List
(MTN.GNS/W/120)

SECTORS AND SUB-SECTORS

1. BUSINESS SERVICES

A. Professional services

- a. legal services
- b. accounting, auditing and bookkeeping services
- c. taxation services
- d. architectural services
- e. engineering services
- f. integrated engineering services
- g. urban planning and landscape architectural services
- h. medical and dental services
- i. veterinary services
- j. services provided by midwives, nurses, physiotherapists, paramedical personnel
- k. other

B. Computer and related services

- a. consultancy services related to the installation of computer hardware
- b. software implementation services
- d. data processing services
- e. other

C. Research and development services

- a. R&D services on natural sciences
- b. R&D services on social sciences and humanities
- c. interdisciplinary R&D services

D. Real estate services

- a. involving own or leased property
- b. on a fee or contract basis

E. Rental/leasing services without operators

- a. relating to ships
- b. relating to aircraft
- c. relating to other transport equipment
- d. relating to other machinery and equipment
- e. other

F. Other business services

- a. advertising services
- b. market research and public opinion polling services
- c. management consulting services
- d. services related to management consulting
- e. technical testing and analysis services

Continued

Table 5

- f. services incidental to agriculture, hunting and forestry
- g. services incidental to fishing
- h. services incidental to mining
- i. services incidental to manufacturing
- j. services incidental to energy distribution
- k. placement and supply services of personnel
- l. investigation and security
- m. related scientific and technical consulting services
- n. maintenance and repair of equipment
- o. building-cleaning services
- p. photographic services
- q. packaging services
- r. printing, publishing
- s. convention services
- t. other

2. COMMUNICATION SERVICES

- A. Postal services
- B. Courier services
- C. Telecommunication services
 - a. voice telephone services
 - b. packet-switched data transmission services
 - c. circuit-switched data transmission services
 - d. telex services
 - e. telegraph services
 - f. facsimile services
 - g. private lease circuit services
 - h. electronic mail
 - i. voice mail
 - j. on-line information and data base retrieval
 - k. electronic data interchange
 - l. enhanced/value-added facsimile services
 - m. code and protocol conversion
 - n. on-line information and/or data processing
 - o. other
- D. Audiovisual services
 - a. motion picture and video tape production and distribution services
 - b. motion picture projection service
 - c. radio and television services
 - d. radio and television transmission services
 - e. sound reording
 - f. other

Continued

Table 5

E. Other

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

- A. General construction work for buildings
- B. General construction work for civil engineering
- C. Installation and assembly work
- D. Building completion and finishing work
- E. Other
- 4. DISTRIBUTION SERVICES**
- A. Commission agents' services
- B. Wholesale trade services
- C. Retailing services
- D. Franchising
- E. Other
- 5. EDUCATIONAL SERVICES**
- A. Primary education services
- B. Secondary education services
- C. Higher education services
- D. Adult education
- E. Other education services
- 6. ENVIRONMENTAL SERVICES**
- A. Sewage services
- B. Refuse disposal services
- C. Sanitation and similar services
- D. Other
- 7. FINANCIAL SERVICES**
- A. All insurance and insurance-related services
 - a. life, accident and health insurance services
 - b. non-life insurance services
 - c. reinsurance and retrocession
 - d. services auxiliary to insurance
- B. Banking and other financial services (excluding insurance)
 - a. acceptance of deposits and other repayable funds from the public
 - b. lending of all types
 - c. financial leasing
 - d. all payment and money transmission services
 - e. guarantees and commitments
 - f. trading for own account or for account of customers
 - g. participation in issues of all kinds of securities

Continued

Table 5

- h. money broking
- i. asset management
- j. settlement and clearing services
- k. advisory and other auxiliary financial services
- l. provision and transfer of financial information, financial data processing and related software services

C. Other

8. HEALTH RELATED AND SOCIAL SERVICES

A. Hospital services

B. Other human health services

C. Social services

D. Other

9. TOURISM AND TRAVEL RELATED SERVICES

A. Hotels and restaurants (including catering)

B. Travel agencies and tour-operators services

C. Tourist guide services

D. Other

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

A. Entertainment services (including theatre, live bands and circus services)

B. News agency services

C. Libraries, archives, museums and other cultural services

D. Sporting and other recreational services

E. Other

11. TRANSPORT SERVICES

A. Maritime transport services

a. passenger transportation

b. freight transportation

c. rental

d. maintenance and repair

e. pushing and towing services

f. supporting services

B. Internal waterways transport

a. to f. same as above

C. Air transport services

a. to f. same as above

D. Space transport

E. Rail transport services

a. to f. same as C

F. Road transport services

a. to d. same as above

e. supporting services

Continued

Table 5

G. Pipeline transport

a. transportation of fuels

b. transportation of other goods

H. Services auxiliary to all modes of transport

a. cargo-handling services

b. storage and warehouse services

c. freight transport agency services

d. other

I. Other transport services

12. OTHER SERVICES NOT INCLUDED ELSEWHERE

ANNEX

Table 6

LDCs' proposal

- The least-developed countries status should be automatically granted at the first Working Party meeting and should be specifically referred to in the report of the Working Party;
- The forthcoming new round of the multilateral trade negotiations should not divert attention from the need for a streamlined and accelerated accession process;
- The peculiar situation of LDCs calls for the establishment of a fast-track approach for accession, of no more than one year from the date of the submission of the Trade Memoranda, with a maximum of two Working Party meetings, which ever is earlier for the completion of the accession process of the LDCs;
- In the process of accession, LDCs should not be called upon to assume obligations or commitments that go beyond what is applicable to WTO LDC Members.
- Special and Differential treatment provisions should be automatically granted to acceding LDCs for the same transitional period as stipulated in the respective agreement for LDCs, counting from the date of accession;
- No commitments and obligations should be sought from acceding LDCs on issues which are not covered by the MTAs or going beyond them both in the context of WTO accession and bilateral trade negotiations between an acceding LDC and a WTO Member;
- No commitments and obligations should be sought from an acceding LDC as a condition for its accession, on membership in the Plurilateral Trade Agreements and acceptance of optional sectoral market access initiatives or other optional legal instruments of the GATT 1994;
- Market access negotiations for acceding LDCs should be simplified by agreeing on specific minimal targets for them in industrial tariffs, agricultural tariffs and services sectors. These should broadly correspond to the actual commitments by WTO LDC Members;

ANNEX

Table 6
(continued)

- The least-developed countries seeking accession to WTO require technical assistance to strengthen their negotiating capacity and to enhance their efforts to implement domestic legislative and economic policies compatible with WTO Agreements. They also need support to enable them to have periodical consultations and exchange experiences on the accession process. A "Special Window" should be established in the Trust Fund for LDCs, administered by UNCTAD, for this purpose. LDCs' development partners, both bilateral and multilateral are invited to make generous contribution to the Trust Fund for the above purpose.

ANNEX

Table 7

EU's Proposals on LDCs' WTO Accession

Industrial tariffs

LDCs could bind at a level something like 30% across the board over a maximum five-year period (i.e. to 01.01.2004), with the possibility remaining to agree a limited number of higher tariffs on "exceptional" products.

Agricultural sector

LDCs could aim at 40% across the board. LDCs should not be asked to undertake reduction commitments as regards domestic support and export subsidies. Their commitments in these areas should be inscribed directly in their schedules. Any problems of specific products of LDCs should be addressed in a flexible manner.

Services

LDCs could be asked to make commitments in at least three services sectors. As far as horizontal commitments are concerned, the EC does attach great importance to good commitments in Mode 3 (commercial presence), in particular on foreign capital participation and employment requirements and in Mode 4 (movement of personnel).

Alignment to WTO rules

WTO Members could agree on the automatic applicability of transition periods agreed in the Uruguay Round for LDCs towards full compliance with WTO Agreements. Candidate countries would, however, be expected to provide a work programme for the completion of legislative alignment.

ANNEX

Table 8

Guideline for Accession of LDCs

Market Access

- 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 LDCs' 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, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.

WTO Rules

- 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;
- 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;
- transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules. The implementation of the Action Plans shall be supported by Technical Assistance and Capacity Building measures for the acceding LDCs'. Upon the request of an acceding LDC, WTO Members may coordinate efforts to guide that LDC through the implementation process;
- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. As provided in paragraph 5 of Article IX and paragraph 3 of Article XII of the WTO Agreement, decisions on the Plurilateral Trade Agreements shall be adopted by the Members of, and governed by the provisions in, those Agreements. WTO Members may seek to ascertain acceding LDCs interests in the Plurilateral Trade Agreements.

ANNEX

Table 8

(continued)

Process

- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDCs' Accession Working Parties in implementing this decision;
- 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. The Secretariat will assist in this regard. Such efforts will, *inter-alia*, be based upon the WTO Reference Centres that are already operational in acceding LDCs;
- WTO Members may adopt additional measures in their bilateral negotiations to streamline and facilitate the process, e.g., by holding bilateral negotiations in the acceding LDC if so requested;
- upon request, WTO Members may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.

Trade-Related Technical Assistance and Capacity Building

- Targeted and coordinated technical assistance and capacity building, by WTO and other relevant multilateral, regional and bilateral development partners, including *inter alia* under the Integrated Framework (IF), shall be provided, on a priority basis, to assist acceding LDCs. Assistance shall be accorded with the objective of effectively integrating the acceding LDC into the multilateral trading system;
- effective 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 in order to enable the acceding LDC to benefit from and comply with WTO rights and obligations.

ANNEX

Table 9

Major Decisions Agreed by Industrialized Countries

Singapore WTO Ministerial Conference, December 1996

Problems of LDCs in being integrated themselves into the international trading system was recognized. Though the issue of LDCs' WTO accession was not raised, the WTO members adopted the Ministerial Declaration (WT/MIN(96)/DEC) which addressed LDCs' problems, as well as the action plan "COMPREHENSIVE AND INTEGRATED WTO PLAN OF ACTION FOR THE LEAST-DEVELOPED COUNTRIES" WT/MIN(96)/14).

Geneva WTO Ministerial Conference, May 1998

The Ministerial Declaration (WT/MIN(98)/DEC/1) reiterated the pledges made for LDCs' cause.

Seattle WTO Ministerial Conference, November/December 1999

No Ministerial Declaration was adopted.

Third United Nations Conference on the LDCs (LDC-III), Brussels, Belgium, May 2001

The United Nations Conference on the LDCs adopted "Declaration" (A/CONF.191/L.20), which addressed the issue of LDCs' WTO accession as "We believe that increased trade is essential for the growth and development of LDCs. A transparent, non-discriminatory and rules-based multilateral trading system is essential for LDCs to reap the potential benefits of globalisation. The accession of LDCs to the WTO should be encouraged and facilitated. We commit ourselves to seizing the opportunity of the fourth WTO Ministerial meeting in Doha in November 2001, to advance the development dimension of trade, in particular for the development of LDCs.

Doha WTO Ministerial Conference, November 2001

The Ministerial Declaration addressed the issue of LDCs' WTO accession as "We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs' accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO's mandate, adopted at LDC-III.