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Report

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The Institutional Dimension of WTO Accession

Observations and Practical Guidelines for Improving Na- tional Trade-related Governance Capacities

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This study is a reviewed and more general adaptation of the former report „Inter-ministerial Coordination During WTO Accessing. Experiences of Selected (Transition) Economies and First Considerations for Vietnam”, which was written between June and August 2001 under the auspices of the German Federal Ministry for Economic Cooperation and Development’s (BMZ) technical assistance project “Promoting International Competitiveness of Developing Countries (WTO)”.

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Abbreviations

AFTA	ASEAN Free Trade Agreement
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of South-East Asian Nations
ASEM	Asia -Europe Meetings
BMWi	Federal Ministry for Economics and Technology (Germany)
BTA	Bilateral Trade Agreement
CNWTO	Commission on Negotiation with the WTO (Kyrgyz Republic)
CVA	Customs Valuation Agreement
DDAGTF	Doha Development Agenda Global Trust Fund
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GEER	(Prime Minister's) Group on External Economic Relations
GO	Government's Office
GTZ	German Technical Cooperation
HRD	Human Resource Development
IMC	Inter-ministerial Coordination
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ITC	International Trade Center
MEA	Multilateral Environmental Agreement
MER	Ministry of Economy and Reform (Moldavia)
MoCI	Ministry of Commerce and Industry (India)
MoE	Ministry of Economics
MoFA	Ministry of Foreign Affairs
MoFin	Ministry of Finance
MoT	Ministry of Trade
MPI	Ministry of Planning and Investment (Vietnam)
MTFEC	Ministry of Trade and Foreign Economic Cooperation (Bulgaria)
MTPD	Multilateral Trade Policy Dept. (Ministry of Trade, Vietnam)
NCIEC	National Committee for International Economic Cooperation (Vietnam)
NTB	Non-tariff Barrier
ODA	Official Development Assistance
PMG	Permanent Mission to Geneva
PMRC	Prime Minister's Research Group (Vietnam)
QRs	Quantitative Restrictions
S&D	Special and Differential Treatment
SPS	(Agreement on) Sanitary and Phytosanitary Measures
TA	Technical Assistance
TBT	(Agreement on) Technical Barriers to Trade
TPR	Trade Policy Review
TRIPs	Trade-related Aspects of Intellectual Property Rights
TRTA	Trade-related Technical Assistance
UNCTAD	UN Conference on Trade and Development
VCCI	Vietnam Chamber of Commerce and Industry
VIT	Vietnam Institute for Trade
WB	World Bank
WIPO	World Intellectual Property Organization
WP	Working Party
WTO	World Trade Organization

Foreword

In April 2001 the German Agency for Technical Cooperation (GTZ) invited the Vietnamese Prime Minister's Research Commission (PMRC) to work jointly on a study on the topic of inter-ministerial coordination during WTO accession. The background of this offer was the shared view of the need to improve national trade-related governance capacities. A few weeks later, a group consisting of two PMRC specialists and one representative of the Vietnam Institute for Trade (VIT), together with four other experts from the Prime Minister's Group on External Economic Relations (GEER), conducted a one-week study trip to Geneva. The result of this joint effort was a comprehensive study on the issue of "Inter-ministerial Coordination during WTO Accession," including practical recommendations on how to improve the Vietnamese system of trade-related coordination.

Since the empirical and less sensitive part of the original report might be useful for a broader audience - in particular for gaining a better understanding of the institutional challenges developing and transition countries face during the current round of global trade talks -, INEF is now publishing, with the permission of GTZ, a substantially revised and updated version of the previous study¹.

¹ The earlier study, "Inter-ministerial Coordination During WTO Accession. Experiences of Selected (Transition) Economies and some Considerations for Vietnam," was written by Bui Xuan Nhat, Tran Ngoc Anh, and the author of this report.

1. Introduction

1.1. The general need for effective inter-ministerial coordination

For developing countries and economies in transition, accession to and membership in the global trade body is a delicate and cumbersome experience. The need to bring national legislation into conformity with WTO rules, negotiating and implementing concessions on market access for trade in goods and services, transparency requirements, emerging new trade issues (e. g. environmental

standards), and the necessity to establish and maintain professional trade-related research competence places heavy burdens on applicants and developing members that not infrequently exceed their institutional capacity for formulating policy options or negotiation strategies.

National preparation for and participation in the WTO system is subject to two sets of constraints, which must be taken into account at the outset when management and coordination mechanisms are designed or upgraded. Externally, the WTO application (and later member-

THE WTO ACCESSION PROCESS

Any state or customs territory having full autonomy in the conduct of its trade policies may join the WTO, but WTO members must agree on the terms. Therefore, accession to the WTO is essentially a process of negotiation—quite different from the process of accession to other international entities. Broadly speaking, accession goes through four stages:

Fact-finding / Information-gathering: The government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This is submitted to the WTO in a Memorandum which is examined by the Working Party dealing with the country's application. At the initial meeting of the Working Party, members examine previously submitted questions and answers to study the conformity of the Applicant's trade regime with the various requirements of the WTO Agreements. In subsequent Working Party Meetings, additional questions in writing, responses, and further information papers are exchanged.

Negotiation Phase: When the Working Party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. They are bilateral because different countries have different trading interests. These talks cover tariff rates, specific market access commitments, and other policies in goods and services. The new member's commitments must apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits other WTO members can expect when the new member joins.

Protocol of Accession: The summary of the discussions in the Working Party is contained in a Report of the Working Party. In addition, Schedules of Concessions and Commitments on Goods and of Specific Commitments on Services are prepared. These three documents are annexed to the so-called Protocol of Accession, which encloses the terms of accession agreed by the Applicant and members of the Working Party.

Membership: All documents elaborated by the Working Party are presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization.

Compiled from WTO's Training Package and the WTO Guide Trading into the Future. For a comprehensive description of the accession process, see WTO: Technical Note on the Accession Process, Geneva 1999, WTO Document WT/ACC/7/Rev.1.

ship) generates a common set of requirements which all countries must respond to in a more or less standardized way. Internally, each country must develop an intra-governmental system of trade policy preparation and coordination adapted to its own circumstances and needs, including the allocation of governmental power and authority.

Often underestimated, the intensity and focus of trade-related coordination processes during the phase of accession and the later stage of full membership differ somewhat:

1. *Negotiating WTO membership* appears to create what may be termed a "peak load" problem. The political priority of securing membership, and the difficulties of coming to terms with a huge mass of new policies and legislation require the creation of a team dedicated to this task. One aspect that is essential during this phase is perceptible and continuous support from the center of the government². Short-term pressures foster the illusion that after accession is achieved, things will become easier and the peak of demands on government administration will be over. But things will never go back

to "normal." Experience suggests the opposite is true. Membership creates a different situation, but not an easier one.

2. *After accession*, the obligations of membership have to be met during the negotiated transition period. This requires considerable investment in capacities for policy implementation in line with the accession protocol and WTO provisions. The built-in review of some WTO agreements obliges members, in addition, to keep track of the progress of intra-organizational discussions. The country's Permanent Mission to Geneva is the national "watchdog" and should attentively monitor the dynamics of daily WTO work. In addition, new issues are continually being placed on the WTO agenda. The Doha Ministerial Meeting provided a mandate, for example, to clarify the relationship between the multilateral trade and environment regimes as well as to negotiate on the liberalization of trade in environmental goods and services. The implications of conceivable liberalization have to be considered and assessed by all domestic stakeholders in order to establish national bargaining positions that reflect what is desirable and feasible. A well-managed mechanism of trade-related information and coordination in the capital helps to absorb and digest information from the mission and ensures that national stakeholders' interests and participation in the global trade

² In this report, the term "center of government" means the top national echelons of a country's system of political decision-making; it thus comprises more than only the Prime Minister, the Chancellor or the President. Other eminent forces, such as the national leader's immediate "auxiliary machine" (i.e. Government Office, Chancellor's Office, or - in some transition economies - the still functioning Secretariat of the Central Committee) are explicitly included in this term.

negotiations are given appropriate consideration.

It is worth noting that the result of accession (as well as of later liberalization talks) depends on the general system of domestic policy coordination. Since WTO membership is a severe test of governmental capacities (and thus can be considered a touchstone for the country's capacity to meet and manage global challenges), it calls for a re-thinking and re-designing of the internal preparation and coordination process within national governments. If there are weaknesses or shortcomings in the domestic system, it is very likely that they will be come to the fore in negotiations with WTO members - perhaps at considerable economic and political cost. Conversely, deliberate efforts to improve and upgrade national policy coordination capacities with a view to more effective management of external relations is likely to have the added benefit of supporting the strengthening of domestic policy coordination capacities.

1.2. Objective of the study and selection of country examples

The focus of the original study was the support of the Vietnamese government's own consideration of adjusting and improving the inter-ministerial coordination process for an effective integration in the WTO as well as other relevant international and regional trade-related organizations. Because of its direct practical relevance and its wider implications for accession processes in general, this paper concentrates on how the governments of some selected WTO mem-

ber countries have sought to assert their national trade interests in the process of accession. The background information provided on experiences of recent WTO members with inter-ministerial coordination is intended to make it possible for other applicants to draw conclusions for their own accession process beyond the preliminary observations and recommendations of this study.

The joint mission to Geneva engaged in comprehensive research at WTO, UNCTAD, as well as several country missions and conducted interviews with some prominent resource persons. The focus of this research was in the following key areas:

- Difficulties encountered by selected countries in organizing inter-ministerial coordination during accession to the global trade body,
- Functions and authority of inter-ministerial coordination (IMC) units in selected WTO member countries,
- Interplay of the IMC unit with the "nodal point" of the government, line ministries and the country's Permanent Mission to Geneva,
- The endowment of actors with human resources and technical infrastructure (in particular the IMC unit),
- Daily operation of the coordinating unit and ways to strengthen cooperation among national stakeholders.

Methodologically, the present study draws on the ideas and perceptions of the New Institutional Economics, discussing the "performance" of different approaches to domestic coordination during international trade negotiations. It aims to identify various outcomes of

different institutional set-ups, whose common goal is to maximize the internal gains resulting from cooperation.

attempt to gain a broad view of experiences made with inter-ministerial coordination during accession by discussing

New Institutional Economics (NIE)

New Institutional Economics is a tree with many branches and twigs. The terminology “institutional economics” covers a wide range of schools of thought and methods. It includes several varieties of transaction costs economics, from Coase to North and Williamson, as well as various branches of organisation theory, including property rights and incomplete contracts theory, and its analysis of organisational design.

All these schools of institutional economic thought have a common characteristic: they examine how informational problems affect organisational performance, though from different angles. Transaction cost economics looks at the cost of obtaining information required to conclude a contract or exchange and the potential costs of postcontractual uncertainty or absence of information. Property rights theory examines how different allocations of this residual contractual uncertainty create different incentive structures. Modern organisation theory combines these different techniques to study incentives and delegation of tasks in large organisations or hierarchies. Institutions – rules of behaviour – exist precisely because they are means to partially overcome these informational problems and the resulting uncertainties. Bilateral contracts, general laws and informal agreements ensure that some of these are kept within acceptable limits.

For an introduction, see Furubotn, Eirik G. and Richter, Rudolf: Institutions and Economic Theory: The Contribution of the New Institutional Economics, Ann Arbor 1997.

The material presented below is mainly empirical, though it also contains some analytical elements. Empirically, the focus is on how some recently joined member states prepared their national policy positions for negotiations at the WTO level. Consideration is given to the different contexts and requirements of accession negotiations. Analytically, the report provides some ideas of how national governmental capacities for WTO accession and active membership can be assessed in a more systematic and standardized way.

The country missions interviewed in Geneva neither represent an accurate cross-section of WTO members nor is the selection based on a deliberate political agenda. Basically, the aim was to

relevant issues with recently joined WTO members, preferably transition economies. Since this expertise is easily accessible at WTO headquarters in Geneva, no plans were made to seek additional information in the capitals of WTO member countries, mainly because of time constraints and cost-benefit considerations.

The countries studied include those with strong and highly effective coordination mechanisms as well as some in which the instruction of the center of government to join the global trade body as quickly as possible became first priority.

The foreign missions that have contributed to this report³ are (in chronological order of visit):

- Permanent Mission of Vietnam,
- Permanent Mission of Germany,
- Permanent Mission of Bulgaria,
- Permanent Mission of India,
- Permanent Mission of Lithuania,
- Permanent Mission of Kyrgyz Republic,
- Permanent Mission of Moldova,
- Permanent Mission of Croatia.

The revised and updated report also contains information on Vietnam's preparations for accession. Since membership negotiations are not yet concluded, the reader may be willing to excuse the in part patchy description of applicant coordination mechanisms.

Additional discussions were conducted with representatives of UNCTAD and some selected resource persons (A. Dunkel, K. Kautzor-Schröder). They provided additional input on inter-ministerial coordination experiences of other WTO members. Without their assistance and the highly appreciated support of the missions named, the findings of the study would have been less detailed and focused.

³ The commitments of some recently acceded member countries are downloadable at the WTO under the document numbers WT/ACC/KGZ/26 (Kyrgyz Republic), WT/ACC/LTU/52 (Lithuania), WT/ACC/HRV/59 (Croatia), WT/ACC/MOL/37 (Moldova), WT/ACC/BGR/5 (Bulgaria). First information on Vietnam's trade regime can be found under WT/ACC/VNM/2.

2. Managing National Policy Coordination: Experiences of some Selected (Transition) Economies

2.1. Institutional Variables

Depending on constitutional parameters and the political priorities set, inter-ministerial coordination during WTO accession and membership can be organized in various ways. Different framework conditions offer different opportunities to structure and guide the administrative process. It is evident that most transition economies failed to conduct a careful assessment of alternative institutional options during the initial phase of accession. IMC is organized by "trial and error" and is best considered more a learning process on how to meet the demands and requirements of full WTO membership than a deliberate design of optimal institutions. Since the complexities of (approaching) WTO membership and the impact on domestic institutions are quite commonly underestimated, these empirical findings are not at all so surprising.

In improving the performance or *efficiency*⁴ of a given national trade-related

⁴ The term "efficiency" is somewhat problematic within the NIE context. Since attempts to assess the efficiency of various organizational arrangements in the narrow (techno-economic) sense can generate only absurd results (i.e. there are no common, incontestable criteria for the efficiency of organizations in an insecure, continuously changing world!), the distinctive feature of "efficient" vs. "inefficient" must be appraised more qualitatively. (see Furubotn, E. & Richter, R.: op. cit. p. 488ff. and p. 504f.). In general it may be said that a coordination structure is "efficient" if it offers incentives strong enough to induce continued and voluntary contributions of all relevant stakeholders.

coordination system, a first set of institutional questions must be answered:

- What administrative functions fall within the authority of which protagonists? How is the division of labor organized?
- What is the position of the administrative unit dealing with IMC issues within the governmental apparatus?
- What is the IMC unit's sphere of authority? Where are the institutional limits of its responsibility, and who determines them?
- Are staff and other resources sufficient to meet the coordination task?
- How is the coordination work actually organized? (frequency of meetings, reporting etc.)?

The following case studies try to answer those questions. Since the information provided here on institutional aspects and internal problems of government actions also shed some light on delicate procedures and decisions of recently joined WTO members, the reader may

For the purpose of this study, some more distinctive performance criteria are indispensable. They are (1) the internal dissemination of trade-related information (do relevant stakeholders perceive themselves as sufficiently informed?), (2) the packaging for negotiations (did the packaging process proceed smoothly, without any severe obstruction by relevant stakeholders?), (3) arbitration and conciliation (have domestic differences been arbitrated internally in a fair and transparent manner?), (4) cross-sector conformity (are there any serious violations of indisputable, non-negotiable WTO-provisions?), and (5) allocation of Technical Assistance (do relevant stakeholders complain about the extent to which they have received support (requested in advance) for WTO-preparations?). For a more detailed description of the parameters assessed, see Chapter 2.2 as well as Chapter 4.2 + 4.3.

be prepared to excuse the – in some cases – somewhat fragmentary nature of the information provided.

2.1.1. Protagonists and their status

In *Lithuania*, a recent WTO member (May 2001), coordination work during accession was conducted by the Ministry of Foreign Affairs (MoFA). This unusual decision was the result of the recognition by the government that MoFA occupies „a somewhat higher position“ in the governmental apparatus than other line ministries. Since WTO-related capacity was very limited in the first phase of accession, a so-called “Economic Department” was established to coordinate the accession process and help MoFA foster its „primus inter pares“ function.

Technical aspects of accession were handled in close cooperation with key line ministries such as the Ministry of Agriculture, the Ministry of Economy, the Customs Department, the Patent Office and the Ministry of Culture. Since the IMC unit was located at MoFA, communication with and instructions to the Permanent Mission proceeded smoothly and without any significant problems. In particular, during the very intensive final stage of accession when the concern was to eliminate some remaining obstacles with a few bilateral trade negotiation partners, effective and timely communication was one vital prerequisite for asserting as many identified national bargaining positions as possible.

Aside from the strong axis between MoFA and the Permanent Mission, parliament played a very distinctive role during accession, since the commitments

codified in the accession protocol must be ratified by parliament before full WTO membership is achieved. Moreover, good internal communication with the legislative body was essential because MoFA was faced with a serious internal conflict with the Ministry of Agriculture about the negotiation strategy concerning market access for agricultural products. As a result, MoFA cooperated closely with the parliament's "Committee on Agriculture." Other committees of the national assembly were informed and likewise involved, which later turned out to be extremely useful for a rapid ratification of the accession protocol.

„Foreign Economic Relations Department“ within MoE. The representative to Geneva acknowledged that coordination was a tricky issue at the beginning of the accession process, but has improved considerably over time. Beside the special WTO unit at the MoE, Croatia set up an "Inter-ministerial Working Group." One senior official as well as one technical expert of relevant government entities participated in the regular meetings (including the Standardization Association, the State Inspectorate, the Agency for Intellectual Property).

A "Negotiation Team" under the authority of the Inter-ministerial Working Group conducted the actual bargaining

	Coordination Point	Chief Negotiator
Lithuania	Ministry of Foreign Affairs (Economic Department)	N.A.
Croatia	Ministry for Economics (Foreign Economic Relations Dept.) plus "Inter-ministerial Working Group"	Status: Assistant to Minister of Economics, headed the Inter-ministerial Working Group
Moldova	Ministry of Economy and Reform (MER), WTO Dept.	Status: Vice Minister (MER)
Bulgaria	Ministry of Trade and Foreign Economic Cooperation (MTFEC) plus "Inter-ministerial Working Group"	Status Vice Minister (MTFEC)
Kyrgyz Rep.	Commission on Negotiations with the WTO (CNWTO)	Deputy Prime Minister (and at the same time Minister of Trade)
Vietnam	Ministry of Trade (MoT), National Committee for International Economic Cooperation (NCIEC), Government Office (GO)	Vice Minister (MoT)
India	Ministry of Commerce and Industry (MoCI), Trade Policy Div.	"Special Secretary WTO"

In the case of *Croatia*, responsibility for inter-ministerial coordination fell under the authority of the Ministry for Economics (MoE) or, to be more precise, the

with WTO members. The Ministry of Economy and the Ministry of Agriculture provided considerable assistance. The Chief Negotiator was assigned the

position of an Assistant to the Minister of Economy.

One important aspect, though perhaps less significant than in other accessions, was the role of the Permanent Mission to Geneva. Because of the Croatia's proximity to WTO headquarters it served mainly as a contact and information point, and was thus staffed by only one WTO expert.

In *Moldova* things were organized in a more or less similar way. The key institution was the Ministry of Economy and Reform, which also provided the Chief Negotiator (Vice minister level). The WTO Department contributed expertise and staff. One major difficulty for Moldova during accession was the repeated replacement (3 times) of the chief negotiator, which impacted significantly on the continuity and to some extent on the outcome of the negotiations. Since the Permanent Mission to Geneva is under authority of the Ministry of Foreign Affairs, tensions were exacerbated when the Economics Ministry tried to give the mission instructions. At the same time, the Ministry of Foreign Affairs was unable to develop sufficient WTO expertise to handle related issues on its own.

To settle the dispute, an IMC body was established ("Inter-ministerial Committee on Accession to WTO"), which included, in addition to the standard line ministries, the national Intellectual Property Agency. A representative of the Chamber of Commerce attended the meetings too, albeit with no voting rights.

The IMC unit approved the mandate of the Ministry of Economy as well as the interim results of the negotiations. It also gave instructions on implementing some of the expected WTO commitments. Formally, the IMC body was critical in reaching consensus on important decisions, but the actual work was done by the WTO Division in the Ministry of Economy.

The government of *Bulgaria* set up, under the auspices of the Ministry of Trade and Foreign Economic Cooperation (MTFEC), an inter-ministerial working group that consisted of representatives of all ministries involved in the formulation and implementation of trade policies. The Deputy Minister of Trade, who was in charge of managing the accession process, headed the coordination structure. His main responsibility was to define the objectives and to define Bulgaria's negotiation priorities.

During the course of the accession process, a second, more technical coordination structure emerged. Headed by the Chief Negotiator, the group was composed of civil servants working at Director General level (or lower). The main task was to arbitrate divergent views between ministries before they reached the ministerial level (see 2.2.3).

The *Kyrgyz Republic* was - due to the country's political priority of gaining accession before China and Russia had joined the organization - the candidate with the quickest accession time in entering the global trade body to date. A powerful "Commission on Negotiations with the WTO" managed the inter-ministerial coordination process. Based on a Prime Minister's Decree, the mem-

bers of this commission were fully authorized to negotiate on behalf of the Kyrgyz Republic. The commission was chaired by a Deputy Prime Minister, who also holds the position of the Minister of Trade. Relevant government entities delegated one representative each.

Since not enough local WTO expertise was available, and because of language problems, technical input for the IMC units work was provided mainly by a USAID-supported group of WTO professionals (Foreign Trade Memorandum, translation of national legislation into English, initial offer for services etc.). The IMC unit – including the Trade Minister – were given one month of technical training at the WTO in Geneva.

During the accession process, the parliament has not played the role assigned to it by the constitution. There were no national experts with some background in WTO that were at the same time members of the national assembly or relevant sub-committees. Because of the parliament's capacity constraints, the ratification process proceeded on a largely uncontroversial course. Although the accession process may have been relatively painless, the compromises made produced serious strains which today have led the parliament and the business sector to form an awkward alliance against the government's far-reaching commitments.

In *Vietnam*, in the process of accession to GATT/WTO since 1994, integration-related coordination work is done more or less simultaneously by three administrative bodies: at the (1) Ministry of Trade (MoT) the Multilateral Trade Policy Dept. prepares all documents

geared to advancing the accession process. The (2) National Committee for International Economic Cooperation (NCIEC) was established in 1998 to “assist the Prime Minister in directing and coordinating ministries and local governments in [...] negotiating access and participation in the WTO as well as other international and regional trade-related organizations”⁵. Chaired by a Deputy Prime Minister, the 20-member institutions (ministries as well as the Communist Party's Economic Commission) ensure their commitment by sending high-ranking officials (usually a deputy minister) to the regular coordination meetings. The national Negotiation Team, which is headed by a deputy minister of trade, was attached to the NCIEC in early 2001. Finally, the (3) Government Office also lays claim to responsibility for coordination. Here, the International Economic Organization Division is in charge of facilitating interaction between ministries. Letters and requests on WTO-related issues from ministries submitted to the Prime Minister must go through this division.

Since responsibilities between the three bodies are not well defined, coordination work has lacked coherence during the past few years.⁶ With the recent increase in WTO activities, the present coordination mechanism has turned out to be inefficient and insufficiently focused to satisfy the needs of a targeted integration

⁵ Decision 31/1998/QĐ-TTg of 10 February 1998.

⁶ For this reason, one expert of the Vietnamese Prime Minister's Research Commission (PMRC) labeled the present coordination mechanism “liquid.”

road map (yet to be worked out!). For this reason, the government of Vietnam has started to think about some institutional changes in coordinating integration efforts.

Another, more sophisticated, approach to *post-accession* IMC is pursued by *India*.⁷ Based on a civil service system with strong British traditions, the focus of WTO-related activities lies with the Ministry of Commerce and Industry. At the Ministry's Trade Policy Division, a WTO Unit (headed by a "Special Secretary WTO") comprises about three sub-units dedicated to GATT, GATS, and TRIPs issues. Approximately 20 experts, 12 of them junior officials, are exclusively occupied with WTO matters. All specialists have attended WTO Trade Policy Courses and Dispute Settlement Courses in Geneva.

The Permanent Mission plays a vital role in this targeted system of coordination (see 2.2.1, information). Staff from the Ministry's WTO unit therefore works on a job-rotation basis in Geneva, which means posting changes every 3-4 years.⁸ One ambassador's work is devoted entirely to the WTO and is supported by up to six trade specialists (including some lawyers with a sound background in domestic trade legislation). In order to provide officials from functional ministries with an inside perspective of the global trade body, more or less regular

visits are organized for their participation in WTO Councils or Committee meetings.

2.1.2. Resources and daily operations of the IMC unit

The case of India's Permanent Mission clearly demonstrates the high priority the capital has accorded to an active, dynamic WTO membership. The endowment and the internal organization of the mission reflect this political determination very clearly. However, since intervention in specific WTO committees requires substantial effort, the way in which membership obligations are met depends first and foremost on the financial and human resources available, as well as on language capacities and the strength of the support structures in the capital.

Inter-ministerial coordination is usually performed by a small group of well-trained experts. In *Lithuania* the IMC unit at MoFA comprises six professionals, four of which work solely on WTO issues. The *Kyrgyz Republic* had a coordination group of ten specialists from different line ministries. The members of *Bulgaria's* IMC group were personally appointed with an eye to ensuring the continuity necessary to cope with the realities of a protracted process. The accession of *Moldova* was handled basically by 5-6 experts at the WTO Department of the Ministry for Economy and Reform⁹. And even in important trading nations like *Germany*, the re-

⁷ India is a well-established GATT '47 member and has one of the most dynamic WTO missions to Geneva of all developing countries.

⁸ One reason is to avoid vested interests or making some professionals believe that they are indispensable.

⁹ One difficulty for Moldova's WTO accession was training people and retaining them in public administration. The department suffered from considerable "brain drain."

sponsible department at the Federal Ministry of Economics (BMW_i) consists of only 5 professionals. However, additional experts in two other departments are also working on specific WTO issues like TRIPs, Antidumping, Customs Valuation etc.¹⁰

In contrast to the above-named WTO members, *Vietnam's* quantitative endowment with trade-related human resources is remarkable. At MoT's Multilateral Trade Policy Dept. 11 professionals are concerned with WTO matters (total staff: 32 experts). The NCIEC Office comprises 6 specialists (2001) plus the Secretary General. At the Government Office's Department roughly 2-3 officials are entrusted with coordination duties. So the main obstacle to effective coordination is likely to be less a quantitative lack of coordination capacity than the unsolved problem of vague responsibilities and the bureaucratic power struggles this entails.

The frequency of formal coordination meetings varies considerably. Depending on stage of accession and level of centralization, meeting frequency ranged from a monthly basis to daily fine-tuning. In *Moldova* as well as in the *Kyrgyz Republic*, the IMC unit met once per month (if necessary – e. g. before important negotiations – more often).

“Solid” coordination was achieved in *Lithuania*. The Economic Department at MoFA organized more or less daily coordination gatherings. These meetings also verified the conformity of legislation prepared by line ministries. *Croatia* had no fixed meeting mechanism. Coordination meetings were held as the need arose, on average every 2-3 weeks. During peak periods, the Inter-ministerial Working Group initiated daily meetings to solve urgent problems. One thing that changed over time in *Croatia* as well was the attendance at those conventions. In the early stage of accession all players had a stake in WTO issues, and thus participation was high. The more technical the process became, the fewer officials were present at the meetings. In *Vietnam*, the National Committee assembles every 2-3 months. The deputy ministers exchange views on and debate WTO-related issues. Technical coordination at the line ministry level, however, is weak. Lateral consultations take place only on initiative of the MoT to demand written answers to questions from the members of the WTO Working Party. The line ministries have very seldom been more active in putting forward proposals in their sphere of responsibility.

2.2. Functional variables

Beside institutional aspects and the paramount technical question of how to organize the coordination mechanism in such a way that it fits the administrative tradition of an (acceding) member country, a need could arise for some basic analytical tools for national coordination mechanisms. For this purpose, and based

¹⁰ It must be stressed here that in the WTO context the function of the BMW_i is to formulate national bargaining positions only. Since the 15 member states of the European Union have a common commercial policy toward non-member countries, national trade negotiation authority was transferred to the Commission's DG Trade in Brussels. The main basis of the common commercial policy is Article 133 of the Treaty of Amsterdam (1997).

on the interviews conducted in Geneva and Hanoi, several core functions have been identified that are perceived as essential for efficient trade-related coordination work:

1. Internal dissemination of information,
 2. Preparation of and packaging for negotiations,
 3. Arbitration and conciliation of contentious points,
 4. Ensuring cross-sector cohesiveness, and
- at least for developing countries or economies in transition –
5. Facilitation of a meaningful allocation of technical assistance.

These functions have – as discussed below - to be ensured by the coordination unit in charge of developing, maintaining, and defending a common line of national negotiation positions. Moreover, these parameters serve as a first reference point for assessing the performance of the coordination arrangement decided on.

2.2.1. Internal dissemination of information

The most eminent function of cross-institutional coordination is information. In bureaucratic politics, information is power. The flow of information from the WTO (and its environment) via the Permanent Mission in Geneva back to the capital must be well organized in order to provide a sound basis for decision-making.

What is needed to overcome barriers to communication are norms and conven-

tions which oblige officials to maintain adequate flows of information across organizational boundaries.¹¹ Often, the information required must be obtained from a wide variety of outside sources, domestic and foreign, and then assembled and recast to fit the needs of various ministries responsible for different aspects of trade policy. Relevant key persons and institutions must be kept informed. Decision-makers must arrive well briefed at the right time at the right place. The center of the government must receive regular, unbiased written and verbal reports on the accession or negotiation progress.

Clear and complete communication is particularly critical when the Mission to Geneva is engaged in advocating internally agreed-on bargaining positions. The mission is the “information broker” or “spearhead” of the national trade authorities. It is the most important interface between the global trade body and the national administration and has to be organized, trained, and equipped in keeping with these requirements.

Dissemination of information is not only relevant for facilitating communication within administrations. Since WTO membership impacts on business, administration, as well as many other issues under public law, the IMC unit should initiate and contribute substantially to keeping the general public informed about the accession process (e.g. through publications, broadcasts,

¹¹ An interesting example for such a code of conduct (which also has practical relevance for arbitrating disputed issues) is given in Raiffa, Howard: *The Art & Science of Negotiation*, Cambridge 1982, pp. 341f.

etc.)¹², and - once full membership has been achieved - about WTO developments and trade-related events of national interest.¹³

The interviews conducted in Geneva have clearly demonstrated that distribution of information is organized in very different ways. Usually, the arrangement decided on outlasts the phase of accession and remains more or less unchanged after full membership is achieved.

In *Lithuania* all mission reports were channeled through the Ministry of Foreign Affairs. Since the focus of interest of some line ministries varied considerably, MoFA filtered and forwarded only the information that was “necessary” for the other line ministries to understand actual WTO developments.

Croatia followed another line. During accession, there was frequent communication between the mission and Ministry of Foreign Affairs, the Ministry of Economy, as well as the IMC unit. The Inter-ministerial Working Group briefed other line ministries, compiled their responses, and tried to achieve consensus about decisions. Occasional meetings with several parliamentary committees were held to keep them informed, the aim being to facilitate the ratification procedure later on. The negotiation team under the Inter-ministerial Working Group reported to the cabinet on a

weekly basis on progress made as well as on issues of concern. In summary, distribution of information was well organized within the government apparatus and provided relevant players with the basic facts they needed for decision-making.

The Permanent Mission of *Moldova* reported to the Chief Negotiator at the Ministry of Economy and Reform, rarely to MoFA, which is in charge of missions abroad. As described in Chapter 2.1.1, considerable political friction was caused by this decision and required repeated replacement of the chief negotiator. Thus it can be supposed that the decision on how to channel what information channeled to whom substantially affected not only the pace of accession but also the actual outcome of the negotiations.

Vietnam's Mission's WTO-related reports are submitted on a regular basis to the Ministry of Trade, the Multilateral Economic Relations Dept. of the Ministry of Foreign Affairs, and the Office of the National Committee for International Economic Cooperation. Among those key-players, the MoT has, however, a comfortable information lead over other domestic stakeholders. At present, the responsible department in the ministry receives much more (background) information from Geneva because of its close (informal)¹⁴ link to the Mission's staff. Moreover, the flow of WTO-related information within the administration seems not to be adequately

¹² Despite the constant need to disseminate information widely on the domestic front, it must be carefully targeted (as regards audience, scope and channels of information).

¹³ Usually, research institutions, business associations, and civil society groups mirror, complement or, comment on the information provided by the government.

¹⁴ The Mission's WTO staff are former MoT (MTPD) experts and have established an additional, very informal information channel.

organized. Only occasionally do other line ministries receive updated information from Geneva.¹⁵ For this reason many officials are concerned about the lack of accession-relevant information from Geneva and complain that they are impeded in meeting their WTO-related duties because of the clogged information channel.

Beyond the accession experience it is important to know how well-established WTO members organize their internal flow of information: *India's* permanent mission, for instance, is instructed to attend *all (!)* WTO meetings and to report to the capital. The leading Ministry of Commerce and Industry is very much aware that the bulk of key decisions taken in Geneva are made during informal meetings outside the organization. If a member is not present (and perceptible!) at formal WTO meetings, its mission representatives are not invited to participate in the more relevant meetings in restaurants or private clubs outside the organization. When reporting to the capital, special attention is given to the standpoints and proposals of the four eminent players in global trade, the "Quad." Then, the announcements of other active members such as Australia, Switzerland, Brazil, Argentina, ASEAN are covered in a faithful written account. The Ministry of Commerce in Delhi filters these reports, and relevant sections are forwarded to the line ministries concerned or in some cases even to

companies. The reports form the basis of a newsletter ("India & the WTO") compiled by MoCI and distributed freely.

The *German* approach is somewhat different. Due to European integration, the mission is basically an information interface ("ear" but not "mouth"). Its reports are directed to the Ministry of Foreign Affairs. Copies of these reports are cabled to the leading Ministry for Economics, relevant line ministries, embassies concerned, the Germany missions in Brussels (EU) and Paris (OECD). Since final decision-making takes place after European consensus is reached in Brussels, delegates attend most of the meetings without instructions from Berlin. The mission collects only issues and opinions and forwards them to the capital for internal discussion and national policy formulation. The information link is therefore not a bilateral issue between the mission and the ministry; it is more a triangular connection between Geneva, Berlin, and Brussels.

In addition to the internal distribution of information inside the government apparatus, the way in which the business community and the general public were informed during accession differed widely among the interviewed member countries. WTO Reference Centers, set up to enable officials of the government, business, and academic communities to obtain trade-related information, were established after (!) accession. In the *Kyrgyz Republic* a center of this kind was set up under the authority of the central coordination unit. As in *Vietnam*, such centers are yet to be set up in the other recently joined countries (*Croatia*,

¹⁵ Most of them are not aware of the WTO's online document database. An additional problem is language. A basic knowledge of English is not enough to understand the technical language of the official documents produced by or for the WTO.

Lithuania, Moldova)¹⁶. Interim results of the accession process were made public only in *Moldova*. During the negotiations, the IMC unit published all offers (goods & services) in the official gazette, allowing the business community to take notice of the commitments made.

2.2.2. Packaging and repackaging for negotiations

During accession, concessions on market access for trade in goods and in services have to be made and adapted in several rounds of negotiations. Whereas responsibility for the first-named offer falls due to its budgetary implications – primarily under the portfolio of the Ministry of Finance – and hence the process of formulating a negotiation position is basically a *bi-ministerial* process between MoFin and the ministry responsible for trade issues – the picture for services is quite different. Since jurisdiction for banking, insurance, telecommunication, construction, wholesale & retail trade, financial, legal or other business services is usually divided among several line ministries, compiling and agreeing upon common negotiating positions is a delicate and time-consuming process. Regardless of the constitutional set and the power of the coordination unit, line ministries can find many ways to obstruct, complicate, and delay the formulation of market access concessions. Securing support from the very center of the government for smoothing

the drafting of (initial) offers and the packaging of negotiations are therefore another basic function of the coordination unit.

Individual offers, elaborated independently by line ministries within their own area of competence, are compiled and processed according to WTO standards by the coordination unit. Divergent views on market access in subsectors of overlapping or neighboring competence must be solved through a structured dialogue between ministries concerned (i. e. through an arbitration framework or other clear procedures, see 2.2.3).¹⁷

Once disagreements have been settled, the *internal* room for maneuver in WTO negotiations must be explored. Thus the different national stakeholders are encouraged to indicate their maximum bargaining position.¹⁸ Based on the identification of national leeways (under given conditions and at a given time!), and only after the interests and sore spots of foreign negotiation partner(s) have been given due consideration, national bargaining strategies (including “bargaining chips”) and scenarios must be elaborated jointly.¹⁹ The IMC unit has

¹⁶ Since these new members were requested to accede as a “Developed Country” (!), they have no access to the WTO Technical Assistance Funds, which sponsor e.g. the establishment of such Reference Centers.

¹⁷ Here, informal communication on the expert level is often the key to overcoming disagreements between ministries!

¹⁸ Because this procedure might be overshadowed by previous disputes, it requires sincere conciliation and much trust among parties involved to ensure optimal negotiation results.

¹⁹ See also Saner, Raymond: *The Expert Negotiator. Strategy, Tactics, Motivation, Behavior, Leadership*, The Hague 2000; Kremenyuk, Victor (ed.): *International negotiation. Analysis, Approaches, Issues*, San Francisco 2002; Grossman, Gene & Helpman, Elhanan: *Interest Groups and Trade Policy*, Princeton 2002.

the vital function to ensure that this task is achieved efficiently and on time.

The next steps include forwarding of the negotiation package to the center of the government for approval and formulation of instructions for the national negotiation team and/or the Permanent Mission to Geneva.

Since the dynamics of negotiations often requires flexibility and quick responses, an overall package may have to be untied, regrouped, and repackaged. The IMC unit's task is to facilitate this process by supporting the chief negotiator. This means not only ensuring that he is in a position to respond to suddenly emerging needs for strategy adjustments beyond what was previously agreed to, but also seeing to it that relevant domestic stakeholders are kept abreast of developments and understand the negotiator's position. One important function of the coordinating body is therefore to act as an "honest broker" of the chief negotiator.

Packaging of negotiation positions in *Lithuania* was done by MoFA with the strong support of the Prime Minister, the President, and the Speaker of the Parliament. The political commitment of the government to join WTO within a reasonable time frame made possible a smooth packaging process without any long-lasting frictions.²⁰ In the *Kyrgyz Republic* the formulation of national bargaining positions also made rapid progress. Since the Ministry of Trade prepared both the initial and as well as further offers on goods, and, since

USAID-supported experts were in charge of the more complex service sector, no major problems occurred during the preparation process.

In Moldova packaging efforts were the task of the WTO Department. For goods, some extra preparation time was necessary because the offer had to be updated into the HS01 format. Since Moldova has little domestic service industry and was in greater need of foreign direct investment (FDI), no conscientious consideration was devoted to maximum market access concessions during preparation for negotiations. All interim results were approved by the Interministerial Committee on Accession to WTO without any substantial disputes.

It was only recently that *Vietnam* gathered experience with WTO-related negotiation packaging. Initial offers on trade in goods and in services were submitted in early 2002. Formulating a national negotiation position turned out to be in particularly difficult for the service sector.²¹ Political reservations and misperceptions of relevant WTO provisions by some line ministries protracted a straightforward formulation of the country's initial offers. Another hampering factor was the unclear division of labor between MoT, the National Committee (NCIEC), and the Government Office. The former practice of submitting proposals of line ministries individually either to the Multilateral

²⁰ Difficulties occurred only concerning agriculture issues, see Section 2.2.3 on arbitration.

²¹ Frictions occurred in the goods sector too. Achieving consensus about tariff concessions was difficult for MoT and the Ministry of Finance. Since some state-owned enterprises lobbied for continued protection, the initial offer was "not stable."

Trade Policy Department (of MoT), the NCIEC, or the Government Office was confusing and hampered the elaboration of a consistent and coherent national bargaining position. Meanwhile, the government of Vietnam has taken some first steps to streamline the preparation procedure.

Some established WTO members have, however, cultivated a complex packaging procedure. In *India*, identification of bargaining positions is facilitated by a “National Trade Committee” which meets under the auspices of the Ministry of Commerce. Every three weeks representatives from business associations, district organizations, NGOs as well as senior government officials get together to provide input on the position India should take on WTO issues. Before each meeting the topic is fixed by the ministry and participants are encouraged to prepare position papers. A final summary is made by the ministry after discussions.²² If necessary, responsible line ministries provide more input for the formulation of national bargaining positions. Then the Secretary of Commerce finalizes the common line of defense as well as the instructions for the mission to Geneva. The Minister of Commerce approves both proposals.

Due to European integration, packaging for negotiations in *Germany* (as in the other EU member states as well) is

handled in a very special way. Formulation of national bargaining positions, for the Ministerial Meeting in Doha (November 2001) for instance, was guided by the Federal Ministry of Economics and Technology. Issues and opinions of other line ministries, e.g. the views of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BUMi) about trade and environmental standards²³ or of the Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL) about liberalizing agricultural imports, were collected by the BMWi. Business associations, research institutions etc. likewise forwarded their comments to the lead ministry, the Economics Ministry. The BMWi extracted - under consideration of given national economic interests and the usually well-known negotiation positions of other EU members - the jointly agreed instructions for participating in the so-called “133 Committee” in Brussels.

2.2.3. Arbitration and conciliation

One essential element of any packaging process for negotiations is a smoothly functioning system of arbitration and conciliation. The function of the coordination unit in this regard is to moderate domestic differences internally. During accession negotiations (working out initial offers, concluding bilateral trade agreements, negotiations about WTO rules), it is first and foremost govern-

²² The main purpose of this body is not to delegate government decision-making power to civil society groups. Beside identifying and conciliating critical issues, it is rather a tool for “teaching” the various national players the dynamics of (and sometimes the very limited national impact on) WTO policy.

²³ Other ministries involved are (for this issue) the Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL) or the Federal Ministry for Economic Cooperation and Development (BMZ).

mental entities that are concerned with arbitration.²⁴

Beyond the need for intra-governmental arbitration, the business community also demands that its concerns about market access concessions be heard. Whether these are taken into account during the formulation of national bargaining positions depends on development priorities, economic as well as political parameters, and the influence of lobby groups serving the interests of specific sectors/industries.²⁵

In *Lithuania* disputes occurred mainly between MoFA and the Ministry of Agriculture. One contentious issue was the level of protection for dairy products, meat (pork, poultry), sugar, as well as support (subsidies) for agriculture. Since it turned out during the discussion with the WTO members that the desired result was not likely to be achieved, tensions arose about the negotiation strategy. The Ministry of Agriculture opted for a delay in the negotiations. MoFA was much in favor of a revision of the domestic agricultural policy in order to comply with the time frame set for full WTO membership.

The first attempt to solve the problem was made at the level of the Vice Minister. Finally, the case had to be arbitrated by the Prime Minister. This progressive

model of arbitrating conflicts worked well in other (minor) cases as well and helped to reduce the workload for the top level of government.

Moldova had no such deliberate system of arbitration. Since the country trades mainly with Russia and Ukraine (65 % of all external trade) and, moreover, WTO membership was perceived as absolutely necessary as a means of demonstrating and maintaining national sovereignty, no major disputes about market access concessions in goods or services surfaced. The only concern was some resistance of the Customs Department regarding implementation of the Customs Valuation Agreement. But even here clear WTO rules and Moldova's dependence on ODA²⁶ allowed little leeway for negotiations.

In *Bulgaria* divergent views between line ministries were arbitrated by the chief negotiator. Because his close personal relations within the negotiation team, the chief negotiator was able to solve the main conflicts with the representatives of the various ministries before they reached the ministerial level. It was only when no conciliation was feasible that controversial issues were forwarded to the next arbitration level. No formal mediation mechanism was established to that end.

Once the initial internal difficulties were overcome, inter-ministerial arbitration in *Croatia* proved to be well organized. Issues under dispute were in most cases solved during the frequent coordination meetings. Where no agreement could be

²⁴ For example, disputes between the Ministry of Finance and the Ministry of Trade about the budgetary impact of tariff reductions or the selection of subsectors or industries which are considered to maintain a certain level of protection etc.

²⁵ See also Grossman, Gene M. & Helpman, Elhana: *Interest Groups and Trade Policy*, Princeton 2002.

²⁶ About 60 % of national income comes from ODA sources.

reached, the problem was forwarded to a higher level by the IMC unit. In particular agricultural issues (domestic support, transition periods) gave rise to some need for arbitration, since the resistance of several WTO members to concessions was stronger than expected. The corresponding experience of the Chief Negotiator had to be explained to national stakeholders.

Trade-related inter-ministerial arbitration is an extraordinarily difficult issue in *Vietnam*. Since only a few of the line ministries (beside MoT) were able to send some of their staff to training courses abroad,²⁷ WTO-related knowledge is rare and not equally distributed among government entities. Moreover, because line ministries insist strongly on their autonomy and try to avoid sharing (ODA) resources beyond institutional boundaries, lateral arbitration capacities are weak.

A structured dialogue aimed at overcoming institutional barriers at the technical level is still in its infancy. Even the National Committee (NCIEC) is not perceived as an independent unit that aims at facilitating interaction among ministries and other government entities. Partly due to the fact that the budget and staff of the Committee's secretariat is allocated through the Ministry of Trade,²⁸ most ministries have doubts

about the effectiveness of the committee's arbitration function (and capacity), a fact that sometimes leads to obstruction and concealed lobbying for individual ministry positions.

Due to their longer and different administrative traditions, arbitration procedures in well-established WTO members are somewhat more complex than in recently acceded member countries. *India*, for instance, first tries to settle disputed issues on an expert level among the ministries concerned. If no accord can be reached, the case is forwarded to the "Inter-ministerial Meeting of the Cabinet," which is chaired by the Prime Minister. Each party writes a "Cabinet Note" that elaborates on the problem and the position of the ministry concerned. Based on the written statements, the Prime Minister then decides.

A different procedure is established in *Germany*. Because line ministries are provided with a high degree of autonomy, arbitration of critical issues falls within the authority of the so-called "lead ministry," but remains basically a voluntary matter.²⁹ The lead ministry seeks consensus with other ministries concerned. Agreement on a cabinet bill or any other proposal which requires inter-ministerial consensus is indicated by a written comment of the ministries concerned that the document has found approval. If differences among ministries cannot be settled by compromise and mutual adjustment, there is generally reluctance to force the issue because

²⁷ See also the insightful report of Pannatier, Serge: Assessment of Vietnam's institutional and human infrastructure for the formulation of trade policy and the undertaking of multi-lateral trade negotiations, restricted report prepared for UNDP Hanoi's Project VIE/95/024. May 2000.

²⁸ Moreover, the NCIEC is physically located in the offices of the MoT.

²⁹ The Chancellor has some powers to coordinate in general. But administrative traditions and coalition politics act counter to strong central coordination.

there is no guaranteed process of arbitration. However, despite the lack of clear conflict-solving capacities, it is important to note that the ministry level has generally high standards of competence and is endowed with sufficient resources. Policy coordination is therefore highly reliant on horizontal working relations and voluntary consensus-seeking.

Thoughtful arbitration and conciliation with the business community reduces the risk that justified complaints will be lodged when commitments entered into are to be implemented after (accession) negotiations. The interviews held in Geneva clearly indicated that, due to the strong centralist traditions of transition economies and because of the resistance expected against any lowering of tariff and non-tariff barriers, most of acceding member countries have neglected the wish of the business community to provide its own opinions and inputs for the negotiations.

In *Croatia* industry and service providers were consulted during accession negotiations but were not allowed to participate directly in the IMC unit's meetings (with very few exceptions of some "important" associations or companies). Things went much worse in the *Kyrgyz Republic*. The business community had no opportunity to express its concerns about commitments made. Neither state-owned nor private enterprises were allowed to raise their voice, directly or indirectly, in the Negotiations Commission. Today, this has resulted in serious complaints by domestic industries and service providers that the government has conceded too much too fast.

In *Vietnam*, a formal mechanism for involving the business sector in WTO negotiations is only beginning to emerge. In the past, individual companies or corporations (SOEs as well as some prominent Joint Ventures in car, motorbike or cement production) have aired, in a non-transparent way, their opinion about the reduction of protective barriers.³⁰ An official link between the Ministry of Trade and Vietnam's Chamber of Commerce and Industry (VCCI) was not established before the year 2000³¹ when the newly appointed Minister of Trade met the Chairman of VCCI to ease the complicated relations between the two institutions. So those who are actually affected by or benefit from WTO membership have had few chances to express their views in a structured, open dialogue.

2.2.4. Ensuring cross-sector conformity

During accession, current members seek assurances that the applicant will fully abide by all binding WTO rules. Existing legislation is scrutinized for its consistency with WTO agreements and, in particular, the possibilities to bring it into conformity where necessary. Since other WTO provisions leave room for interpretation – i. e. commitments and transition periods are negotiable – the applicant's inter-ministerial coordination unit has two functions: First, the applicant should try to achieve sufficient internal cross-sector "cohesiveness" to

³⁰ Resulting in discretionary tariff peaks and/or the imposition of NTBs (non-tariff barriers).

³¹ I.e. five years after applying for membership.

defend a common line of shared national interests. Second, but building on the first demand, a deliberate mechanism for ensuring the conformity of government decisions with corresponding WTO rules must be developed and maintained.

Lithuania met these challenges by means of intensive screening of national legislation, which was carried out by MoFA. All WTO-related legislation drafted by line ministries was checked at the expert level before it was submitted to a higher (political) level. *Moldova* and *Kyrgyz* achieved cross-sector conformity more easily because EU and USAID experts drafted relevant legislation. In the *Kyrgyz Republic* a new department solely responsible for the “conformity check” was established at the MoT. Today this department fulfills the notification requirements³² for WTO membership. In *Croatia*, the IMC unit brought national legislation into conformity with WTO norms *before* the government entered into in-depth negotiations with the members of the global trade body. Not only were customs regulations in full compliance with corresponding WTO agreements, the same applied for IPR issues and anti-dumping legislation as well.

In *Bulgaria*, lack of trade-related expertise was a big challenge at the beginning of the accession process and hindered

the formulation of legal documents in conformity with WTO standards. The problem was partially overcome by the organization of a training course for government officials involved in the accession process. All the teaching material was translated into Bulgarian and distributed in advance to the participants. Organized by a private law firm, this course was very helpful to participants in understanding the basic principles of the multilateral trading system and later facilitated the drafting of legislation in conformity with the WTO and formulation enforcement regulations.

Vietnam has gained some comparable experiences. Examination of trade-related legislation is progressing only gradually because of a lack of qualified human resources. The Law Department of the Office of the National Assembly is bogged down with other tasks and - thus far - not entitled to support the “conformity check”. And revision by the Ministry of Justice, which has set up a corresponding working group, is also slow in pace. Since the establishment of an expert panel in mid-2000, only 148 legal documents of central authorities have been reviewed.³³ Legal documents of provincial authorities have not yet been inspected.

Precautionary capacities are also weak in Vietnam. The “WTO Desks” at the line ministries have severe difficulties in making sure that legal documents to be issued by their ministries are in line with WTO provisions. Frequent staffing

³² In order to achieve greater coherence in global economic policy-making, the WTO members have enforced a general obligation to report to the relevant body of the WTO the adoption of trade measures that might have an effect on the members of the WTO agreements (e.g. tariffs, quantitative restrictions, other non-tariff measures, technical barriers to trade, safeguard action, anti-dumping measures, etc.)

³³ About 50 % of the examined legislation has been found to be inconsistent with WTO provisions, and thus in need of amendment, renewal or rescission.

changes and limited attendance at trade-related capacity-building measures (training courses etc.) have meant that insufficient note has been taken of WTO principles.

Meanwhile, WTO accession has assumed top priority for the newly appointed government. The Ministry of Justice has therefore announced the setting up of a “Department for Integration Legislation” to facilitate ex-post compliance with the WTO rules.³⁴ Other line ministries may also be expected to strengthen their WTO capacities in the near future as well.

Difficulties in achieving conformity with WTO rules are not limited to small transition economies. According to one (Russian) UNCTAD official, *Russia* initially set up a unit of 3-4 professionals at the President’s office, but it turned out that this approach was not sufficient. Therefore, an “Experts Council” was attached to Parliament; its aim is to verify WTO conformity before bills are discussed in parliament. Independent units at the line ministry level were perceived as inappropriate and ineffective for achieving cross-sector conformity.

2.2.5. Facilitating the meaningful allocation of technical assistance

In practice, WTO accession and membership require a huge set of different capacities that are, in most cases, not sufficiently available when the decision is made to join the global trade body.

Particularly transition economies face serious difficulties in fulfilling the requirements for compiling the information requested during the fact-finding phase and in effectively negotiating the conditions of accession with the other WTO members. Furthermore, implementation of some WTO agreements (such as SPS, TBT and CVA) calls for comprehensive trade-related technical assistance (TRTA) to help alleviate the burden of membership obligations.

On a global scale, the demand for WTO-related technical assistance exceeds by far the resources which are made available - e.g. within the “Doha Development Agenda”, the “Integrated Framework” or by other multilateral or bilateral sources. At least for developing countries and economies in transition, another significant function of national trade-related coordination body is to create transparency about the TA needs of various domestic stakeholders.³⁵

None of the missions interviewed indicated that their country has systematically carried out a TRTA needs-assessment study. Not only because technical assistance was scarce (or not sufficiently requested to come up to the needs), but also because applicants were under considerable pressure to accede to WTO under “Developed Country” status. Aside from severe implications for negotiations on Special and Differen-

³⁴ Phap Luat Thanh Pho Ho Chi Minh, 10 June 2002, p. 1.

³⁵ For a more comprehensive debate on TRTA, see OECD: The DAC Guidelines. Strengthening Trade Capacity for Development, Paris 2001 or Kostecki, Michel: Technical Assistance Services in Trade Policy. A Contribution to the Discussion on Capacity-building in the WTO, ICTSD Resource Paper No. 2, Geneva 2001.

tial Treatment (S&D), transition periods etc., another impact is the limited access to technical assistance offered by the WTO.

Moreover, since technical assistance takes time to be mobilized – depending on the donor, between 1-2 years – emerging needs are difficult to meet during “peak times” of the transparency phase or during negotiations on the time frame for compliance with WTO rules or market access issues. The general problem is that during the first phase of accession there is a lack of local appreciation of future needs for support and advice. Consequently, when the need becomes apparent and urgent, it is very difficult to mobilize sufficient donor support on short notice.

In the *Kyrgyz Republic* basically all TA was provided by USAID. In *Moldova* advice and support provided by EU and US experts focused more or less exclusively on the WTO Department at the Ministry of Economics and Reform. And in the case of *Croatia* German professionals provided input, mainly to the Ministry for Economics.

However, in retrospect none of the missions interviewed considered the support received to have been sufficient to ensure a “healthier” negotiation result. Acceding member countries should therefore ensure that TRTA needs are identified at an early stage of membership preparations and that the later allocation of outside support corresponds to the needs and priorities of the government/relevant ministries. The coordination unit should become the central “drop-in” center for facilitating trade-related technical assistance matchmaking

and helping to reduce the risk of overlapping support measures.

In contrast to the other countries mentioned above, *Vietnam's* preparation for WTO membership has attracted considerable interest by the international donor community. In particular Switzerland, Japan, and Finland contributed considerably to Vietnam's early preparations for accession (1997-2000) by providing trade policy advice to the MoT or by implementing capacity-building measures for makers of trade policy. The impact of these initial activities has, however, remained limited because of the grave reservations of the Communist Party concerning WTO membership.³⁶ Since the government tried to centralize all trade expertise in the MoT, the needs of other central authorities for trade-related capacity building have been widely ignored. The current lack of relevant expertise in other ministries is now hindering timely, efficient, and deliberate preparations for bilateral market access negotiations as well as binding commitments on when and how conformity of national legislation with WTO provisions will be achieved. China's accession to the WTO as well as the pioneering bilateral trade agreement (BTA) with the U.S. – ratified in December 2001 after more than five years of cumbersome negotiations - has somewhat stirred up the government's approach towards TRTA. Meanwhile, a lot of effort is being put into addressing the trade-related capacity needs of other

³⁶ For an overall assessment of Vietnam's trade policy formulation capacity, see Pannatier, Serge, op. cit.

ministries in a more coordinated, demand-driven manner.

3. Empirical Results: Basic Institutional Options for Inter-ministerial Coordination

The case studies presented in the previous chapter have clearly demonstrated that the question of how to organize national trade-related coordination capacities must take place against the backdrop of given constitutional parameters and established administrative traditions. Frictional losses, inappropriate information filtering, unacceptable processing times, clogged coordination capacities, poor internal arbitration, an inadequate sense of responsibility, ritualistic behavior, or insufficient institutional flexibility – to name some but not all the problems emerging - can only be reduced or overcome if stakeholders understand and accept the functions of the different “nodal points” within the national trade-related coordination network.

Ensuring effective trade-related coordination is an issue that extends beyond the phase of accession. It is even more important to reaping the full benefits of WTO membership. The key difference between active, dynamic WTO members and those with a “back seat” approach is usually directly linked with the structure and the performance of member national trade coordination mechanisms and the performance of their Permanent Missions to Geneva.

Empirical evidence has shown that inter-ministerial coordination must take into account the views and opinions of other,

non-governmental stakeholders as well in order to avoid justified complaints when the commitments entered into are subsequently implemented. More sophisticated coordination mechanisms therefore must involve the following protagonists:

- *Government*: In democratic societies the focal point of political decision-making is the Prime Minister, the Chancellor, or the President.³⁷
- *Line Ministries* are the immediate support institutions of the government, helping to prepare and implement political decisions within their sphere of influence.
- The *Permanent Mission to Geneva* maintains contact with the WTO Secretariat, compiles and distributes information, receives instructions, and organizes official visits of government or parliamentary representatives to the global trade body. The mission helps to “translate” the dynamics of daily WTO business and is, first and foremost, the information broker or “interface” between the international trade authorities in Geneva and domestic stakeholders in the capital.³⁸
- *Parliament*: the legislative body controls the government and has to approve internationally negotiated (trade) commitments. Specialized

³⁷ Some transition economies (such as Vietnam) or countries with a People’s Democracy background still rely on the Central Committee’s Secretary General as a “sideline” authority.

³⁸ In particular LDC’s have difficulties in establishing or maintaining a costly permanent representation endowed with sufficient human resources, and this reduces their ability to shape the multilateral trade regime.

committees and subcommittees deliberate on trade issues and should therefore be informed (or involved) at an early stage of negotiation in order to later facilitate parliamentary ratification.

- The *Business Community* advances its economic interests through lobby activities of specialized associations as well as through the mass media and the political parties (financing of election campaigns). Its impact on the negotiation process depends upon the resources available, membership, and political ties.
- *Research Capacity* assesses the impact of different negotiation scenarios or options, thus providing input for the shaping of public opinion.
- *Civil Society*: national pressure groups are increasingly important protagonists whose influence and mobilization capacity should not be underestimated. Finding a suitable way to include them in national preparations for international trade negotiations creates transparency, demonstrates participatory understanding and could help to legitimize outcomes.³⁹
- *Coordination Point*: balances particular interests of various stakeholders, either prior to the political decision-making phase or during the phase of implementation. Usually this task is awarded to a line ministry with direct trade authority or to an inter-ministerial entity close to the

center of government. Sufficient communication and arbitration capacities are essential to safeguard this function.

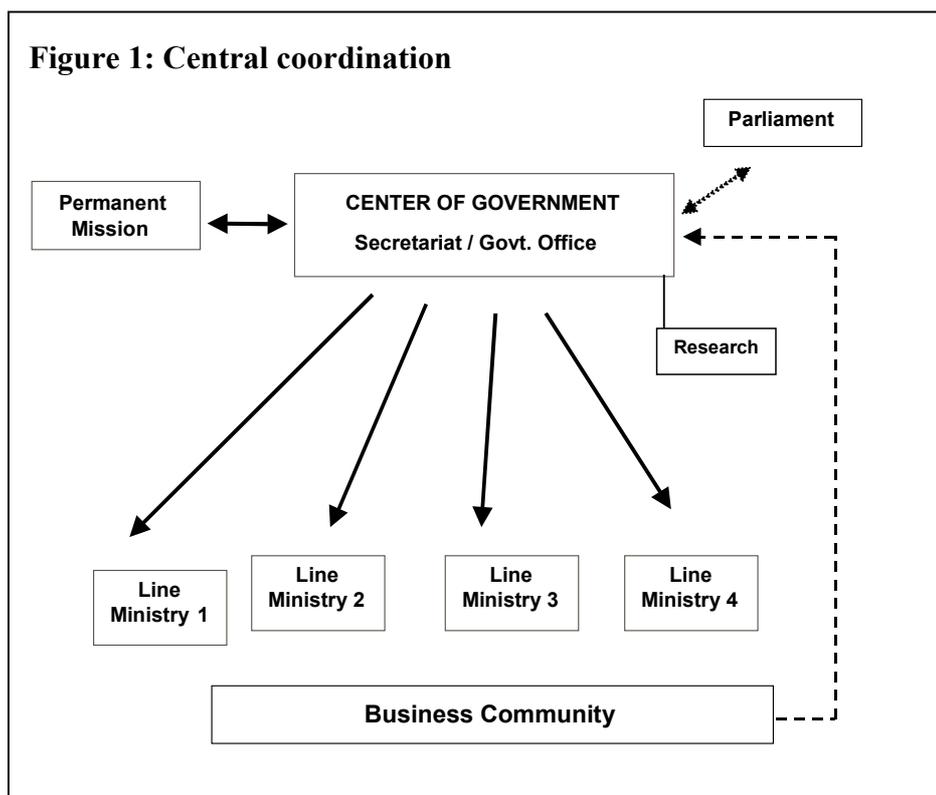
Considering the complex nature of the daily work of the numerous WTO committees and subcommittees, and taking into account the different constitutional frameworks and administrative traditions involved, at least four basic approaches to organizing national trade-related coordination can be identified: (1) a centralistic approach, (2) a special coordination unit or secretariat, (3) line ministry as coordination focus, and (4) a decentralized model with arbitration. The principal – although somewhat exemplary – options are discussed in more detail below.

3.1. Centralistic approach

The constitutional set-up of (acceding) WTO member countries varies as far as degree of ministerial autonomy or, conversely, the emphasis on collective government and/or the Prime Minister's constitutional prerogative to intervene in the conduct of ministerial policy is concerned. The practice of closely coordinating trade matters reflects these different national weightings in the interplay of forces between Prime Minister / Cabinet / Ministers.

Some WTO member countries with a planned economy background follow a tradition with a strong central direction of policy-making. While the government holds the political responsibility in trade issues, a secretariat or department within the government's office (institutionally as close as possible to the Prime Minister/ President / Chancellor), acts as a

³⁹ The actual impact of civil society groups depends, first and foremost, on the political system, on their trade-related expertise, on financial resources, and on ties with the media and/or prominent political stakeholders.



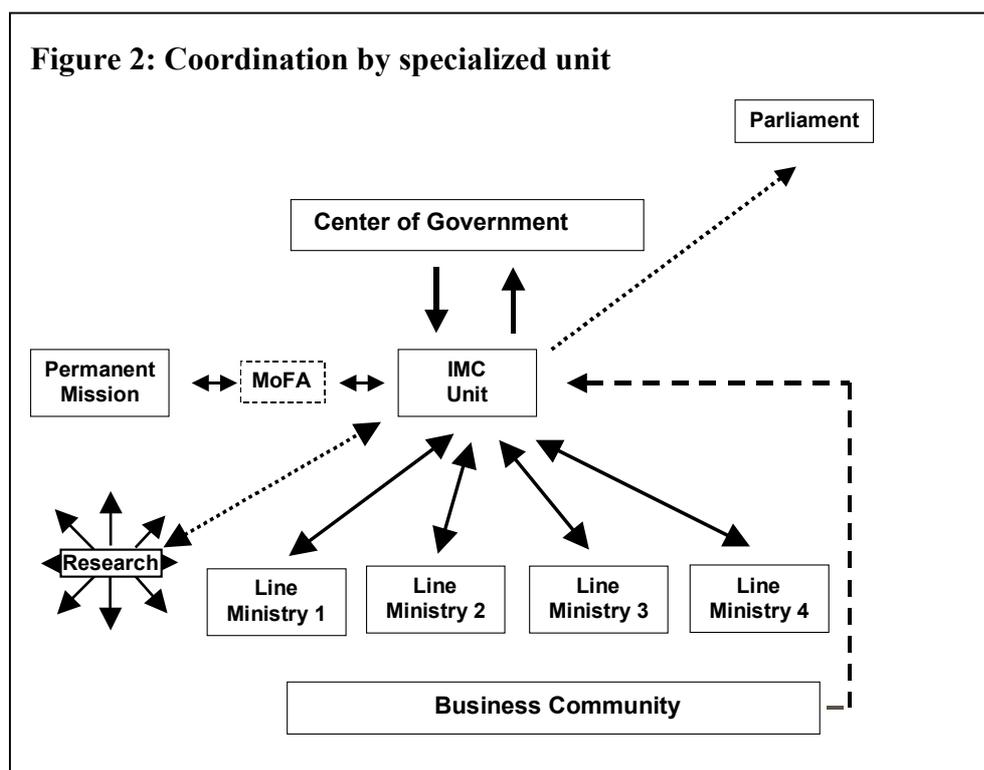
strong inter-ministerial coordination unit and as an intra-governmental center for information, transmission, and instruction on WTO matters. Research is government-initiated, and the business community has established close links to the central coordination point.

In terms of strategic direction - the ability to establish linkages between policy fields (packaging and "repackaging" during the negotiation process) and the coherent intervention of national representatives in the WTO's various councils and (sub-) commissions - this system could be rated as one of the "tightest" on the WTO scene. An example for this type of coordination mechanism is – with some reservations – the Kyrgyz Republic.

3.2. Special unit as coordination focus

Another way of organizing trade-related coordination can be found close to the government, i.e., under the Prime Minister's/President authority, but not located in their office: a permanent secretariat or unit focusing exclusively on trade issues.

All inter-ministerial meetings concerning national positions in the WTO are convened by this unit for arbitration and consensus, and all information from the Permanent Mission in Geneva, as well as instructions addressed to it, must pass through the unit. Inter-ministerial controversies which cannot be solved at this unit's level may be referred to the center of the government. Countries with substantial elements of this coordination



type include Vietnam, Croatia and Bulgaria.⁴⁰

The IMC Unit might be made into the “Center of WTO Excellence,” and thus have a sufficient number of (permanently employed) professionals as well as public servants at its disposal. To make it work and to avoid the difficulties involved in creating a “trade super entity,” the unit must forge close links with the line ministries. This could be handled by establishing a system of job rotation in which technical experts are drawn from the line ministries on a secondment basis.

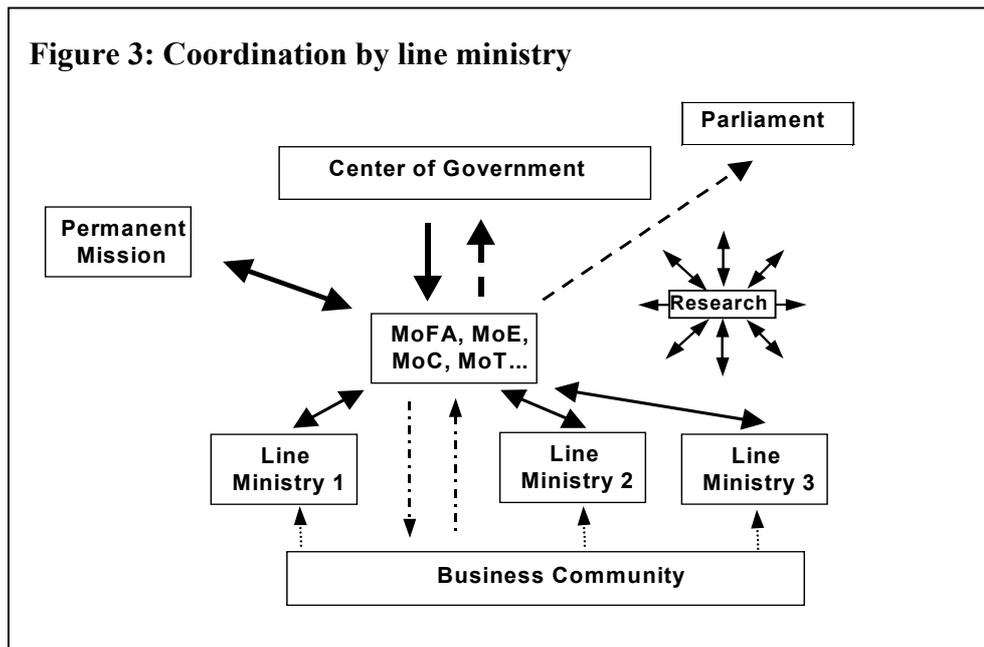
3.3. Line ministry as coordination focus

Among established WTO member countries, the third option for organizing trade-related coordination is the most

popular one: the focus for coordination is located in one prominent line ministry (usually in the Ministry of Trade/Commerce/Economics, or in the Foreign Office). Depending on the overall size of the ministry as well as some other administrative and political variables, the coordination entity is headed by a Director General, up to the level of a Permanent Secretary/State Secretary/Vice Minister. Lithuania, Croatia, Moldova, Bulgaria, India and Vietnam have used core elements of this coordination approach.

The main functions of such entities are: 1) to support the Minister in exercising political responsibility in the field of overall integration policies, 2) to act as an information and document distribution center, 3) to convene and arbitrate inter-ministerial meetings, 4) to prepare cabinet meetings, and 5) to finalize and transmit instructions to the country’s permanent representation in Geneva. Contacts between the unit and other

⁴⁰ In these economies the coordination function was/is split between a line ministry and a special coordination unit.



important line ministries are usually very close, practically daily.

This approach leaves a fair amount of decision-making and coordination to line ministries, while at the other end ensuring cross-sector conformity of trade policy in national negotiation planning.

3.4. Decentralized model with inter-ministerial arbitration

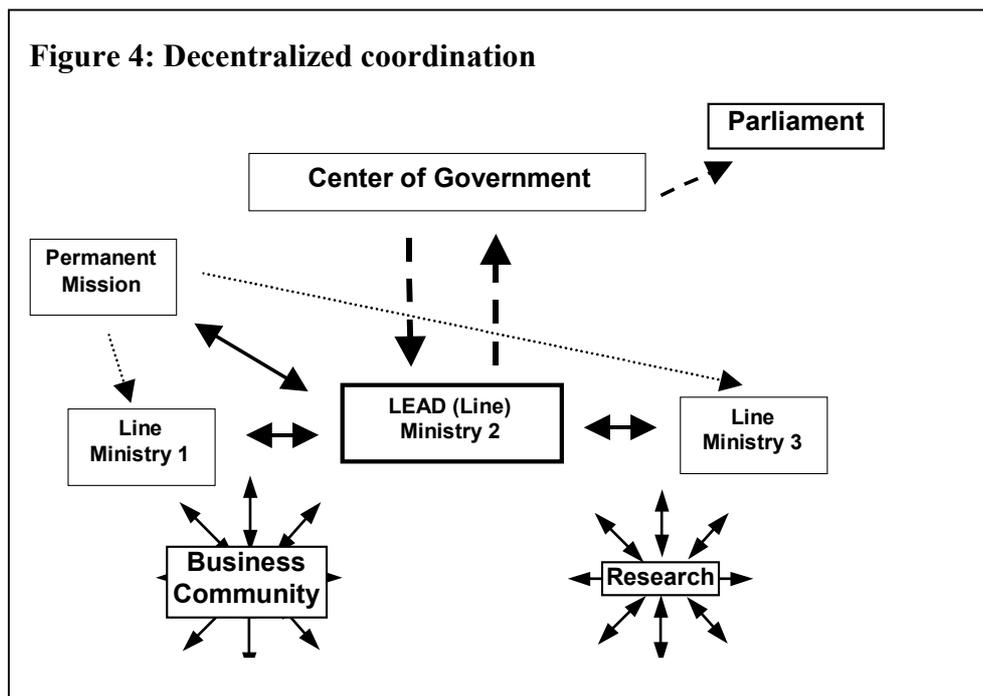
A considerable number of WTO member countries can be characterized as having a *high degree of ministerial autonomy* within the general policy guidelines set out by the center of government and/or the cabinet. Policies are, in such cases, primarily generated by the lead ministry subsequent to intensive arbitration with other ministries concerned, and then presented to the higher authorities for final approval. Germany is, for instance, a good example for this kind of coordination.

In the WTO context, primary development of policy stances is highly section-

alized, with much civil service expertise and continuity in the ministries. Relevant ministries may have a *WTO/Trade Desk* or *Focal Point* for internal coordination and handling incoming information from the Permanent Mission. *Inter-ministerial arbitration* is convened by the lead ministry in subsequent stages up through the civil service hierarchy, if need be, leading to meetings between ministers. Instructions for the representation in Geneva are formalized during regular inter-ministerial civil servants' meetings at the Ministry of Commerce/Trade or the Ministry of Foreign Affairs. For practical reasons and in order to ensure internal coherence, the lead ministry also accommodates the central transmission post for Geneva.

4. Conclusions

What lessons can be learned from the case studies on India, Moldova, Lithuania, Croatia, Bulgaria, the Kyrgyz Republic, Vietnam, and Germany, aside from distilling some schematic coordination approaches from them? What coun-



try coordinates “efficiently” and which has considerable scopes for institutional development? Is it actually feasible to assess the “effectiveness” of the sampled coordination mechanisms on the basis of the information provided here in this report? Or does fragmentary information prevents the formulation of any more general maxims aiming to improve the performance of national coordination mechanisms?

These questions are difficult to answer in a satisfactory way since the interviews conducted in Geneva were limited in time and depth. Any comparative analysis of national coordination mechanisms is thus fraught with imponderabilities. Designed to come up in short term with some empirical information and guidelines for improving Vietnam’s inter-ministerial coordination mechanism, the current study is only an analytical approximation aimed at shedding more light on how the “effectiveness” of WTO membership can better be “assessed.”

Thus the following section gives a broad overview of institutional parameters concerned with the allocation of power and duties (or of property rights). Second, the section draws some general conclusions on each of the five functional variables identified. The chapter concludes with a synoptic chart compiling some more in-depth information on what is perceived as essential for an „effective“ WTO accession (and membership).

4.1. Institutional variables

The formal picture of national trade-related coordination in many developing and transition economies mirrors conventional thinking about how policy processes work. Policy preparation is presumed to work according to a top-down approach in which the Prime Minister / President makes decisions which are elaborated in more detail by officials from the line ministries. Administrative action is programmed in line with political priorities. This model puts

the main emphasis on defining structures, especially top-level structures, while assuming that they have adequate institutional capacities and the appropriate processes to manage policy preparation.

Often these assumptions are not realistic. Under the top-down model, the crucial issue is designation of a particular government unit as “the coordinator”. As noted in the study, there are several candidates for this function. In dealing with WTO affairs, it is natural to see the Economic or Trade Ministry as key coordinator for advancing integration-related issues. Even so, this can never be the exclusive responsibility of any one ministry or unit. At the political level, prime minister, president, and cabinet also claim a role, and the ministries of economics, finance, and foreign affairs are invariably involved. If each presses its claims to dominance, disagreements about where responsibility for coordination should be located may degenerate into a bureaucratic power struggle!⁴¹

The conventional top-down approach describes the manner in which policies are legitimized and authorized, rather than the way in which they are effectively managed in practice. In reality, no single ministry or central institution can exercise a monopoly. Coordination is a collective process to which the expertise of the functional ministries as well as the overview of central institutions contributes. Coordination refers to the manner in which the efforts of different parts of

the system mesh with each other rather than how one part of the system attempts to control the rest. Effective coordination therefore requires a clear recognition of the plurality of organizations (ministries and other bodies) that must be involved in the preparation of WTO membership. It is an adaptive, networking process rather than a hierarchical control process.

Another problem with the central control model of coordination is that it accords too little attention to the contributions of *horizontal coordination* between ministries. The Vietnamese example has demonstrated the built-in central suspicion of the willingness and the ability of functional ministries to coordinate with each other. But in practice the effectiveness of a coordination system depends crucially on “coordination without a coordinator.” That is, direct, often informal, horizontal coordination without a central coordinator to supervise ongoing events.

If coordination at the technical level is weak, seldom practiced, or perceived as a loss of institutional autonomy, too much of the workload of preparation and arbitration will fall to top-level coordinating institutions. Consequently, they will be overloaded and clogged with a large numbers of technical problems which require detailed decisions. Thus the structural approach runs the risk of over-centralization and slow responses. This is an important weakness because WTO accession and membership often requires quick responses.

In a well-managed system of government, there is a division of labor in coordination as well as in operational

⁴¹ See the conflict in Moldova or Lithuania’s between the Ministry of Foreign Affairs and the Ministry for Agriculture.

responsibilities. In this perspective it is more important to consider coordination *capacities* and *processes* rather than the more conventional emphasis on *structures*. Since WTO membership stands mainly for identifying and formulating domestic interests inside as well as outside the national government, ministries and other interest groups must overcome exaggerated institutional egoism and develop sufficient capacities for aligning divergent positions in order to achieve a negotiation result that serves national trade interests to the highest degree possible.

There is enough evidence to conclude that the performance of trade-related governance capacities is the main determinant of competent WTO membership. Economies whose national stakeholders make constant effort to optimize their pattern of internal communication and cooperation are rewarded by an increasing ability to place their views and position on the global trade agenda. It is this very specific, difficult-to-obtain “comparative advantage” which makes some economies more successful than the others in leaving their mark upon the multilateral trading system.

4.2. Functional variables

But how should the “performance” of a given coordination system be evaluated? Is it possible to compare different national approaches to inter-ministerial coordination or “rank” them according to their “effectiveness”?

The introduction to Chapter 2 has stressed the somewhat problematic connotation of the term “efficiency” in the context of the New Institutional

Economics (NIE). Since constitutional frameworks and administrative traditions differ, there is no “ideal” design or even “blueprint” for the organization of trade-related coordination capacities. Each country needs its own tailor-made “mix” of structures and procedures, of central control vs. decentralized decision-making. The solution perceived as the “best possible” or the “most efficient” may become backward and inappropriate as modernization and economic development progress. Since countries in transition are characterized by a very dynamic legal framework there may be a greater need for constant institutional upgrading than in mature market economies. Thus any improvement of the national coordination mechanism may be perceived as “suitable” only for a limited period of time.

Because there is no common, incontestable criteria for the overall “efficiency” of institutions, an evaluation of institutional performance must focus on some selected parameters which *play a certain, but distinctive role* in the satisfactory functioning of trade-related coordination mechanisms. Important contributions are made by the five functional variables identified: (1) information dissemination, (2) packaging for negotiations, (3) arbitration and conciliation, (4) cross-sector conformity, and – at least for developing countries or economies in transition – the (5) allocation of Technical Assistance.

The *internal dissemination of information* has to be organized, first and foremost, with the intention of meeting the information needs of prominent national stakeholders. Here, efficient provision of

information means that the costs for the acquisition, verification, processing, and distribution of information as well as the follow-up costs of incomplete information (causing avoidable inquiries) are kept at a minimum. The case of India has shown how important it is to maintain a continuous and comprehensive presence at official and informal WTO meetings for a sound reporting to the capital. The daily business at the WTO is so dynamic and complex that the major information “interface,” a country’s Permanent Mission to Geneva, must be endowed with sufficient, well-qualified, and motivated professionals keep track of relevant trade issues.

Infrastructure matters too. Since relevant documents and proposals are circulated among WTO members in electronic format, a country’s mission should set up and maintain its own, tailor-made information management system, which complements WTO’s on-line document database. Additional background information gathered in the “vicinity” of the global trade body must be processed and forwarded to the capital as well. The mission’s reports have to be addressed to all affected ministries/departments in the government apparatus. A well-defined division of labor and clear responsibilities at home help to process and utilize such information within the framework of identified national trade interests.

Outside the government apparatus, important domestic stakeholders also have to be kept informed. Establishing a mechanism for regular provision with WTO-related information and regularly monitoring the opinions of business associations, parliamentary committees,

academia, and civil society groups creates transparency and common awareness on approaches to trade issues. Advanced means of communication (World Wide Web) and sophisticated, publicly accessible databases (e. g. WTO’s online document search facility) offer additional chances for the cross-border and cross-institutional flow of information. WTO Reference Centers, where interested representatives of business, academic and civil society communities can obtain trade-related information and data in electronic form as well as in print, serve as an important additional information link to the global trade body.

The study has provided enough evidence indicating that member countries with a targeted system of internal information distribution are more successful in participating and negotiating WTO-related issues than those with a more secluded approach. In countries like Vietnam, where the internal dissemination of information is organized suboptimally (i. e. transaction costs for acquiring WTO-related information are high), stakeholders face severe difficulties in gaining a shared and timely understanding of emerging trade issues and agreeing on a common negotiation position. So sufficient, up-to-date and unbiased information is one key element for the later formulation of national bargaining positions. Even though it becomes more difficult to achieve consensus, more difficult the more stakeholders are involved in this process, the cases of Croatia, India, and Germany show that the result of (trade-related) negotiations here enjoys greater legitimacy than a position

elaborated by a handful of “omniscient” professionals in two or three line ministries directly affected.

The effectiveness of the *packaging process for negotiations* is likewise difficult to evaluate. Here, performance depends as much on the communication skills of the coordination unit as on domestic stakeholders’ perception of the fairness and transparency of the packaging process. So performance is deeply linked with the coordinator arbitration capacity to be discussed. Beside a clear objective (i.e. national trade interest) around which the activity of the chief negotiator is organized, another determinant of efficient packaging is well-defined property rights. Property rights are the rights which transaction partners appropriate⁴² over their own (or assigned) goods and services. For trade negotiations this means the ability of administrative bodies to enter - under a clear mandate of the center of government - into binding commitments about market access, rule-making etc.⁴³ On the one hand, property rights define, guide, and limit the protagonist’s warranty of authority. On the other hand, they generate certainty by restricting possible scopes of action, thus making the behavior of transaction partners more predictable and resulting in reduced transaction costs.

The difficulties Vietnam faces in compiling the initial offers demonstrate the

effects inadequately defined property rights. Since accession-related communications of line ministries can be forwarded either through the Government Office, the Ministry of Trade, or the National Committee for International Economic Cooperation, transaction costs for achieving consensus on possible bargaining positions have been substantially higher than in the case of the Kyrgyz Republic, where a powerful “Commission on Negotiation with the WTO” set the stage for membership negotiations.⁴⁴ The same is true for Lithuania. Here, the Ministry of Foreign Affairs received strong support from the Prime Minister and Parliament and ended up – according to the interview in Geneva – with a relatively smooth packaging process without any protracted frictions.

One element of the packaging process is to widen as far as possible the conceivable corridor of a negotiation result later perceived as “sound.”⁴⁵ To this end, a sufficient number of bargaining chips - possible concessions that are traded in exchange for reciprocal concessions by counterparts - have to be identified. Since efficient packaging means creating options for action, domestic stakeholders must realize that it may become unavoidable during negotiations to give up certain bargaining position(s) in order to maintain overall, more important national trade interests.⁴⁶ Hence, in talking

⁴² Appropriation is a function of legal rules, organizational forms, enforcement, and norms of behavior (North 1990, 33).

⁴³ Those property rights which are defined in a country’s chosen economic system and the government’s rules of internal procedure.

⁴⁴ Well-defined property rights, however, need not necessarily correspond with a “healthy” negotiation result.

⁴⁵ Thus an early fixation on only one “best” solution should be avoided.

⁴⁶ Here we must distinguish between “interests” and bargaining “positions.” The position taken is only a means to an end, is *one* con-

about market access commitments more attention should be devoted to the elaboration of the initial offer, which is critical in creating the setting in which negotiations take place. Making a first offer at the level of the expected settlement is not an effective means of reaching an agreement, because such a tactic may raise the other party's level of aspiration and provide few possibilities to gain reciprocal concessions. More successful is a rather low offer which expresses an attempt to reduce the other party's level of aspiration. Endowed with a sufficient number of bargaining chips, the chief negotiator possesses enough options to achieve a result that falls within the corridor of reasonable bargaining outcomes.

Although the interviews conducted in Geneva did not provide many details about the national packaging process, it is also obvious from the downloadable Schedules on Concessions on Goods and on Specific Commitments in Services⁴⁷ that the mechanism has not worked well in some of the countries looked into. Concessions on market access are considerable, transition periods or benefits from S&D provisions are few.⁴⁸ The repeated replacement of the chief negotiator in Moldova at the beginning of the bargaining for WTO membership would seem to suggest that this has impacted on

the packaging process. And in the case of the Kyrgyz Republic the preparation of the initial offer on services by legal experts of USAID seems to be questionable as well. Even if the capacity to develop such an offer is limited, one must ask whether it is appropriate to give away the opportunity to set the stage within the delicate negotiations on market access takes place. It would have been more advisable to seek the support of a private law firm with a good reputation in WTO issues. Bound to observe professional discretion and endowed with a sound background in international bargaining, such independent advice might have not recommended such a generous negotiation opener. The fact that the business community complained about the government's far-reaching concessions⁴⁹ indicates an inappropriately managed packaging process (or rather inappropriate consideration of national development priorities!).

Efficient preparations for WTO membership entail a mechanism for gradually *arbitrating disputed issues* and conciliating conflicting parties. Sound performance here means that disagreements within the government apparatus or between administration and the business community are solved in a structured, transparent way. This implies the right of each conflicting party to raise the disputed issue to the next higher arbitration level. India's approach to aligning divergent positions is a good example for a formal arbitration procedure in which the

ceivable materialization of the identified national interest behind. Bargaining positions can be relinquished, but sacrificing national trade interests must be avoided.

⁴⁷ The schedules are reproduced in documents mentioned in Chapter 1.2.

⁴⁸ These details can be gathered from the Reports of the Working Party.

⁴⁹ Even considering the usual laments over less competitive enterprises, the domestic complaints are justified, not at least because of the packaging procedure.

conflicting parties provide their opinion in writing to the higher decision-making body. The effective functioning of the internal arbitration mechanism and the resulting internal coherence is probably one reason for India's generally acknowledged performance at the WTO in Geneva.

But efficient arbitration does not necessarily imply a codified procedure for defusing conflicting situations. Countries like Bulgaria or Germany have not made use of such a formal mechanism. Sound working relations, well-qualified staff, and a profound "team spirit" makes it largely possible to avoid clogging higher decision levels with inter-ministerial arbitration. Mediation between departments of line ministries is principally sought first at the technical level. Because most disputed issues are due to a lack of information, regular horizontal communication at the technical level substantially reduces the risks (and costs!) of misperceptions. Only if no success is met with in mediating contradictory positions and no compromise can be reached, the controversial issue is forwarded to the next arbitration level. Interestingly, this informal mode of conflict management does not correlate with the different administrative traditions of the two countries. Bulgaria, with its background of a centrally planned economy, relies as much as Germany's Federal Ministry for Economics and Technology on informal approaches to conflict solving.

Vietnam, by contrast, still has to overcome its internal barriers to communication. Insufficiently defined property rights, red-tapism, and a mentality in

which personal relations are generally more important than a conscientious discharge of duties sometimes make it difficult to cut the Gordian knot of disputed issues without forwarding the case to the very top political decision-making level. While still using a central control model of coordination, administrative action is programmed in line with political priorities. The top-down approach, however, results in risk aversion at the technical level and a limited willingness to become engaged in inter-ministerial disputes without sufficient support from "above." This means weak institutional capacities for aligning divergent positions.

A further aspect of efficient arbitration is conciliation. Defusing disputed issues is only feasible when the decision concerned is made in an objective, transparent, and understandable manner. During the interviews conducted in Geneva, the representatives of two recently joined member countries (Lithuania and Croatia) reported on internal disputes between the Chief Negotiator and their Ministry of Agriculture. Established WTO members had pressed for comprehensive market access for agricultural products, thus putting a great strain on the working relations between the two administrative entities. Whether the later arbitration by the Prime Minister was perceived as fair and transparent cannot be assessed on the basis of the information available. Here, only an in-depth survey in the capitals might reveal the additional details needed to make a qualitative assessment of the effectiveness of the conciliation procedure.

Another delicate issue is successful “arbitration” with the business community. Because bilateral market access negotiations impact heavily on the competitive situation of domestic manufacturers and service providers, complaints about the level of openness are common and unavoidable. But the way in which a government elaborates initial (and any further) offers seems to be crucial for reducing the risk that justified complaints will be raised when the commitments entered into are to be implemented. Past accessions have given clear evidence that even if there is little chance of real success, it is more appropriate to take contentious issues into the negotiations with the WTO members than to leave them out. Criticism for failing to secure a concession or for not maintaining an internally agreed tariff level is easier to deal with (at least politically!) than criticism for not trying in the first place. Ignoring the business community in negotiating the conditions of accession therefore simply shows that those governments have not sufficiently realized the importance of a trust-based relationship with the business community in reaping the benefits from the country’s membership in the WTO.

The safeguarding of *cross-sector conformity* is the fourth key element of an effective preparation for WTO membership. Because the accession procedure requires applicants to bring their legislation into line with WTO standards, it is essential to develop and maintain a deliberate mechanism for revealing (actionable!) inconsistencies.

Whether all these standards are coherent with a country’s development, financial,

and trade needs cannot be discussed here.⁵⁰ It is, however, one main characteristic of the progressive liberalization of goods and factor markets that the options open to governments for regulating issues within their sphere of authority have been narrowed down considerably within the past few decades. In the WTO context this means that maintaining domestic regulations not in compliance with WTO commitments entails the risk of complex dispute settlement proceedings.⁵¹

Efficient safeguarding of WTO conformity requires – at best - a screening of bills and decrees before they are enacted. The ex-post revision of legislation is cumbersome, costly, and may cause confusion during implementation. However, for those laws and provisions which are already in effect, a deliberate review mechanism has to be set up.⁵² In principal there are two options: The first is a central review by one single institu-

⁵⁰ Past accessions have shown that there is a tendency to deny the application for S&D treatment, which considers the specific situation of developing and transition economies. Moreover, commitments beyond the requirements of WTO agreements have been increasingly requested during accession negotiations (e.g. for industrial development policy, privatization, enforcement of WTO agreements by provincial governments, specific deadlines for joining the plurilateral Agreement on Government Procurement etc.). If entered into, these commitments are binding and actionable as well.

⁵¹ Thus the term “sovereignty” is being somewhat eroded in that national “property rights” are increasingly “transfused” to regional institutions or to international bodies of rules and regulations.

⁵² First hints on lacking consistencies can be deduced from questions submitted by the members of the Working Party during the fact-finding phase.

tion such as the Ministry of Justice, the Parliament's Law Department, or the responsible inter-ministerial coordination unit (line ministry / inter-ministerial committee); an approach which has been used by virtually all transition economies investigated (Lithuania, Moldova, the Kyrgyz Republic, Croatia and Vietnam). The second option is a decentralized evaluation in which the individual line ministries review the legislation within their portfolio. Here, empirical evidence is less striking. It seems that only Bulgaria has followed this approach. However, both ways of achieving WTO-compatible rules and regulations have their pros and cons. There is no "best practice," since both require a sufficient number of legal specialists who have the capacity to understand WTO rules as well as to put their knowledge into practical use.

One integral part of an efficient conformity check is the development of realistic action plans for redressing existing inconsistencies. Elaborated by the coordination unit under intensive consultation with relevant stakeholders (ministries, parliament's committees), these plans have to serve as internally binding schedules. Nevertheless, to demonstrate a serious commitment to reform, action plans could also be forwarded to the WTO secretariat, which would circulate them among the members of the Working Party.

However, many countries lack the expertise to understand the intricacy of the WTO agreements. Consequently, ensuring the conformity of domestic regulations with international commitments (or the setting up of a distinctive time frame)

is a severe test of governmental capacities. Some countries bypass the "litmus test" by outsourcing review functions to an international private law firm. Such an approach, however, cannot spare national authorities the task of later drafting, adopting, and enforcing WTO-compatible rules. Deeply linked with the self-conception of legislative as well as of administrative authorities, the challenges of integration can only be met if the national bureaucracy has fully absorbed the rules and principles of the global trade body. An external review - or even the drafting of legislation - must offer the perspective of a respite (or a remedy?) until national legal capacities are sufficiently developed.⁵³

The *allocation of technical assistance* is closely connected with the previously discussed issue of comprehensive human resource development. Understanding the WTO agreements and being able to act according to the rules of the multilateral trading system require a long-term process of investment in human capital. Here, trade-related technical assistance (TRTA) can help to acquire the necessary knowledge and to build institutional

⁵³ Ministries and parliamentary committees must establish teams of legal experts who have received intensive training in WTO rules, either at home or abroad. Where national trade law institutes have been not established so far, sending civil servants to vocational training courses at, for instance, the Canadian Centre for Trade Policy and Law, or the recently inaugurated Advisory Centre on WTO Law in Geneva, could help to develop sufficient legal capacity in the long run. However, appropriate incentives should be provided to preventing qualified legal experts from moving to jobs that are not trade-related (promotion prospects). Again, effective human resource management is essential within this context.

capacities. Efficient allocation of it requires a systematic approach to identifying own needs and suitable supply sources. A “trial-and-error” approach, followed by virtually all transition countries interviewed, would seem to suggest that, first, multilateral and bilateral supply sources were not tapped in a very targeted way. And, second, the trade-related technical assistance provided appears not always to have been able to respond to the actual needs of the different trade constituents, because national authorities had a rather limited appreciation of their requirements.

But how is the objective of a useful and efficient allocation of trade-related support measures translated into action? In order to serve identified national trade interests to the greatest degree possible, several steps have to be taken:

- To create transparency of actual needs and to reduce the risk of overlapping HRD support measures, it would be essential to establish a national focal point with the mandate to review, coordinate, and prioritize requests for TRTA. The focal point would serve as central “drop-in center” for both national stakeholders and for the donor community. However, it must be stressed here that the purpose of assuming this function is *not* to gain control of the allocation of scarce TA resources but to facilitate their efficient use. A sound orientation toward “good governance” plus a clear definition of roles and divisions of responsibilities supports the achievement of this task.
- In order to structure a needs assessment in an appropriate way, a questionnaire should be circulated among

those who have a role to play in trade policy making and in improving trade performance. Here, line ministries, parliamentary committees, business representatives (associations, chambers of commerce), the Permanent Mission to Geneva (provided there is one), and national trade-related research and training institutes (universities, business colleges) should be addressed. Because local understanding of future needs for support and sources of supply may be limited, authorities at WTO/UNCTAD should be approached help in identifying TA requirements that may have been overlooked as well as in obtaining information on who can supply the requested assistance (bilateral and multilateral donors).

- The next step is compilation of a TRTA plan by identifying and prioritizing immediate as well as medium- and long-term support needs.⁵⁴ Here it is important to maintain enough flexibility to deal with urgent and ad hoc requests.
- The delivery of trade-related support measures should be accompanied by an in-house auditing and control system, which should be maintained by the coordinating unit. Internal monitoring and evaluation help to secure the on-time achievement of expected results and the proper utilization of available resources and includes a systematic and neutral appraisal of

⁵⁴ Moreover, in order to be effective in this area, technical assistance must take a holistic approach by linking trade-related issues with macroeconomic and structural reforms (business law / jurisdiction, administrative reform, etc.).

the relevance and the performance of the TRTA activities implemented.

- To further improve the design and implementation of support measures, the relevant information obtained from internal auditing should be incorporated into future activities.

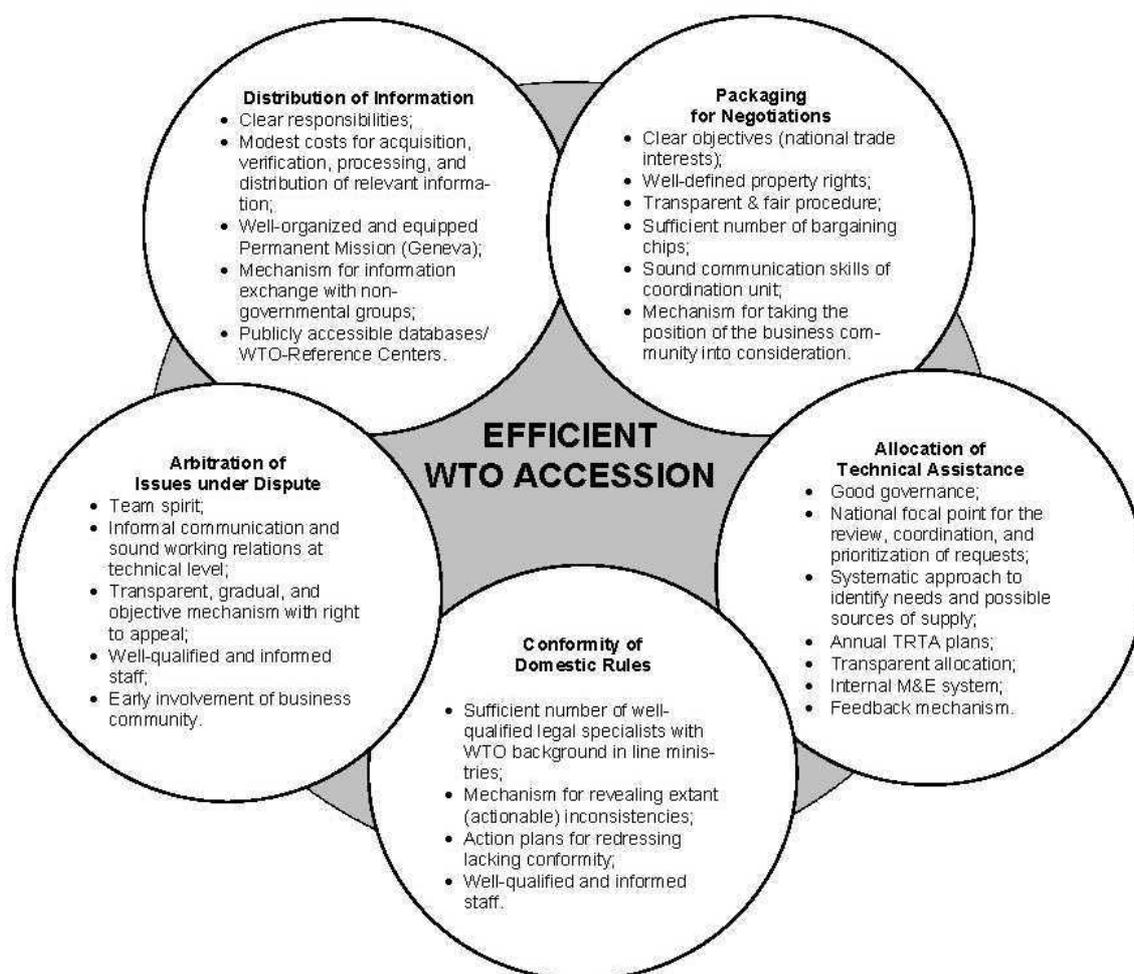
Use of such an iterative approach makes it more likely that trade-related technical assistance will be allocated efficiently and in a targeted fashion. Operating “losses” caused by overlapping or even duplicating support measures as well as by corruption or repeated preferential treatment of certain domestic beneficiar-

ies can be substantially reduced in this way. Addressing TRTA needs in a structured and transparent way will raise overall confidence in the work of government and it gives a clear indication of the intention to derive benefits from full participation in the global trade body as well as to become an active, established WTO member.

4.3. Final remarks

Some striking features of “efficient” preparation for WTO accession and membership are reproduced in the chart below. Future studies will focus more on

Figure 5: The institutional dimension of efficient WTO accession



the contribution and the impact of other non-governmental stakeholders, such as parliament, the business community, academia, or civil society groups, which were not the primary objective of this initial research. Second, more in-depth investigations are necessary to appraise whether the five functional parameters identified sufficiently depict the objective of sound WTO performance. It would appear that other variables, such as the “participation of national interest groups,” “HRD support measures for government officials,” or a “country’s noticeable involvement in WTO’s daily business at Geneva” would provide additional insights into the institutional dimension of effective WTO membership.

To conclude, assembling sustainable national trade policy institutions and networks requires action in many areas. Efforts aimed at a better distribution of information must go hand in hand with the endeavor to design an informal arbitration mechanism; trade-related capacity-building measures have to be used to complement efforts to improve the compliance of national legislation with WTO provisions etc. Although it

seems somewhat problematic to recommend a single trade policy framework that fits all the conceptions and demands of developing and transition economies, the study has outlined several key features that should be taken faithfully into account when addressing the issue of upgrading a given trade-related coordination system.

Endowed with a clear understanding that the approach to trade policy formulation and implementation has to be an integral part of the national development strategy, domestic stakeholders can contribute much to meeting the challenge of efficient WTO accession and membership. On the other hand, the international donor community must support this process through more sophisticated technical assistance concepts and the financial resources needed to implement them. Otherwise the increasing complexity of the multilateral trading system will run the risk of further widening the gap between those WTO members who are able to make their voice heard and those whose silence undermines the credibility of the global trade body.

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