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BUILDING CAPACITIES TO CARRY OUT WTO OBLIGATIONS: MAIN ISSUES**

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## **BUILDING CAPACITIES TO CARRY OUT WTO OBLIGATIONS: MAIN ISSUES**

### **Executive Summary**

This paper discusses problems that are experienced by countries negotiating accession to the WTO and countries that have recently acceded and are in the process of implementing WTO rules and obligations. It focuses on the special problems of countries in transition from centrally planned to market economies and cites examples from the experiences of Russia, which is currently negotiating the terms of its accession, and China, which became a member in December 2001.

For most countries, meeting the conditions for accession requires comprehensive trade reforms designed to open their markets and integrate their economies into the world trading system. While many WTO members consider the accession process a useful lever to encourage market opening, acceding countries have often had difficulty meeting the demands of the accession process. In part, the difficulty of the accession process is a result of the increasing complexity of WTO rules, as the GATT/WTO agreements have begun to discipline new kinds of economic activities. The difficulty is often compounded by the negotiating procedures for accessions, which appear to contribute to commitments that are more ambitious for newly acceding countries than for existing members of WTO.

For countries in transition, the accession process has been especially difficult. The legacy of central planning has weighed heavily on their applications for membership in the WTO. The WTO's emphasis on non-discrimination and reduction of trade barriers implies trade based on market forces, rather than central planning. That is, the rules apply primarily to market economies, in which decisions about the allocation of resources, domestic production, and foreign trade are made by private actors on the basis of market prices, not by central planners in the government. Consequently, in the past, the centrally planned economic systems of the former Soviet Union, China and other non-market economy countries have been considered incompatible with WTO. WTO members have encouraged domestic economic reforms, in addition to adoption of WTO rules, as a precondition for membership.

The Chinese and Russian negotiations illustrate many of the difficulties of acceding to the WTO. Like other accession negotiations involving transition economies, both have addressed fundamental questions about market reforms in addition to ways to implement WTO rules and market access issues. Both have required many years of negotiations and a commitment of considerable government resources. In both cases trade negotiators and government officials responsible for implementation have continuing obligations to ensure that domestic laws and institutions are compatible with multilateral trade disciplines.

The experience of countries negotiating accession to the WTO demonstrates the need for substantial government capacity—skilled negotiators, specialists who are knowledgeable of the wide range of policy areas covered by the WTO agreements, and skilled analysts to assess the effects of trade agreements. After accession, active participation in the WTO requires continued negotiating and administrative capacities. The governments of new members must take steps to maintain a team of negotiators to represent their trade interests in the WTO and qualified specialists who have knowledge of WTO disciplines and the skills to draft and enforce new laws and regulations that implement their WTO commitments. They must also develop institutions and human capacity to coordinate the implementation of new rules among government agencies at all levels and communicate effectively with stakeholders about the benefits of WTO accession.

## 1. General Requirements for Accession to the WTO

1. Article XII of the Agreement Establishing the WTO provides that any state may accede “on terms to be agreed between it and the World Trade Organisation.” Formally, accession requires approval by a two-thirds majority of the members of the WTO. In practice, it requires the negotiation of an acceptable protocol of accession – a complex and often time-consuming process that involves a thorough review of the applicant’s trade-related laws, institutions, and policies to ensure that they conform to the disciplines of the WTO. A Working Party, composed of interested WTO members, must determine the conditions of accession, which include commitments to observe WTO rules and disciplines and any transitional periods needed to make legislative or structural changes to implement these commitments. Accession also requires extensive bilateral negotiations with the applicant’s trading partners on market access issues for trade in goods and services.

2. For most countries, meeting the conditions for accession requires comprehensive trade reforms designed to open their markets and integrate their economies into the world trading system. While many WTO members consider the accession process a useful lever to encourage market opening, acceding countries have often had difficulty meeting the demands of the accession process.<sup>1</sup>

3. Among countries that have acceded to the WTO, the length of negotiations has varied from two years and ten months, in the case of Kyrgyzstan, to 15 years and five months, in the case of China. Among the countries that are still engaged in negotiations are Russia, Ukraine and Belarus, which applied in 1993, Uzbekistan (1994), Kazakhstan (1996), and Tajikistan (2001).

4. In part, the difficulty of the accession process is a result of the increasing complexity of WTO rules, as the GATT/WTO agreements have begun to discipline new kinds of economic activities. In particular, the Uruguay Round Agreements in 1994 expanded the reach of multilateral trade rules beyond trade in goods and restrictions at the border to new areas, such as trade in services, protection of intellectual property rights, and trade-related investment measures. The 1994 Agreements also liberalised trade in agricultural products and textiles and apparel. In effect, the Uruguay Round raised the standard for countries to accede to the new WTO.

5. In addition, the negotiating context for accessions appears, in some cases, to contribute to commitments that are more ambitious for newly acceding countries than for existing members of WTO. A WTO study of commitments on services by the nine countries that have acceded between 1995 and 2000 (of which six were transition economies), for example, showed that all assumed higher levels of commitments, in terms of sectors included, than current members at comparable levels of development. Furthermore, the commitments assumed by the acceding countries in that period were generally deeper (subject to a smaller number of limitations) than the commitments undertaken by other comparable members. The WTO study attributes these ambitious commitments in part to the differences between accession negotiations and ordinary trade rounds: “Terms of accession are agreed in detail between the applicant country and current WTO Members, while the majority of current country schedules have been negotiated in a more anonymous setting, and in particular, subject to tighter time and resource constraints.”<sup>2</sup> Another possible explanation for such ambitious commitments is that some acceding

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<sup>1</sup> For a discussion of the issues confronted by transition and developing countries in the accession process, see Rolf J. Langhammer and Matthias Luecke, “WTO Accession Issues,” *The World Economy*, summer 1999, pp. 837-873.

<sup>2</sup> World Trade Organisation, *Market Access: Unfinished Business—Post-Uruguay Inventory*, WTO Special Study No. 6, 2001.

countries consider them not as concessions, but a means to liberalise and spur development of their external trade.<sup>3</sup>

## **2. Special Issues for Countries in Transition**

6. For countries in transition, the accession process has been especially difficult. The legacy of central planning has weighed heavily on their applications for membership in the WTO. The WTO's emphasis on non-discrimination and reduction of trade barriers implies trade based on market forces, rather than central planning. That is, the rules apply primarily to market economies, in which decisions about the allocation of resources, domestic production, and foreign trade are made by private actors on the basis of market prices, not by central planners in the government. Consequently, in the past, the centrally planned economic systems of the former Soviet Union, China and other non-market economy countries have been considered incompatible with WTO.

7. Several examples illustrate how policies and institutions of the centrally planned economies were considered incompatible with WTO rules. WTO rules encourage tariffs in preference to non-tariff barriers, because tariffs, even though they restrict trade, are transparent, allow market prices to work, and are relatively easier to reduce through negotiations. Although the former centrally planned economies had official tariff systems, tariffs had little practical role in regulating trade; imports were largely determined by central planners. Centrally planned foreign trade also often conflicted with the WTO principles of non-discrimination, national treatment and transparency. State-owned enterprises had little incentive for conducting foreign trade operations on a market basis, as required by WTO rules. WTO rules on dumping and subsidies were difficult to enforce because of the absence of market prices. Most centrally planned economies did not provide protection of intellectual property rights that conformed to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

### ***Relevance of domestic economic reforms***

8. In evaluating the compatibility of countries in transition with the international trading system, WTO members have expressed concerns about domestic, as well as foreign trade, reforms. In the negotiations on accession for countries in transition, WTO members have devoted considerable attention to domestic reforms related to price liberalisation, privatisation, and government subsidies. Although negotiators for acceding countries have sometimes complained that the attention the WTO working parties to domestic institutions represented a double standard, some members have maintained that the adoption of domestic laws and institutions that are market-oriented is a precondition to accession.

#### *Price Liberalisation*

9. Price liberalisation is an essential element of market reforms. Domestic markets can work efficiently only if prices reflect actual costs of production and demand and supply conditions. Moreover, an economy can become integrated into the world economy only to the extent that domestic prices are linked to world market prices. If prices are controlled, as they were under central planning, producers and consumers cannot make rational decisions about what to import and export. That is, controlled prices for exports and import-competing products are likely to distort trade flows and prevent trading countries from realizing the gains from trade. Consequently, price liberalisation is frequently a precondition for accession to the WTO.

#### *Privatisation*

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<sup>3</sup> This was an important rationale, for example for the Baltic countries' commitments in the GATS. OECD, *Promoting Trade in Services: Experience of the Baltic States*. Paris, 2004

10. Economic reformers in some transition countries have emphasised the political and economic importance of privatisation. Politically, they see it as a means of dismantling the central planning system, reducing the power of the old economic bureaucracies, and making the reforms irreversible. Economically, privatisation encourages enterprises to respond to the market signals generated by price liberalisation. From the standpoint of WTO membership, privatisation is important, but not essential. It is important because private owners usually operate under market conditions, largely unaided and unencumbered by central planners. State-owned enterprises may operate under similar conditions if governments do not give them subsidies and other preferential treatment or allow them to gain monopolistic power in the market.

11. The WTO allows members to retain state-owned enterprises, as long as they operate on a commercial basis. Although some transition economies have undertaken massive privatisation programs, many governments continue to play an important role in the economy, including state or collective ownership of factories. For WTO members, the prospect of continued state ownership or control of enterprises in transition countries raises concerns about how state-owned enterprises compete with foreign-owned firms. Do the prices of exports and import-competing goods produced by state-owned enterprises reflect real costs? Are imports allowed to compete freely with the products of such firms? Do state-owned firms get preferential treatment in matters of taxation and regulation?

#### *Government support for Industry and Agriculture*

12. Whether domestic enterprises are privately owned or state owned, they may benefit from a variety of government policies – direct subsidies, tax preferences, or other preferential regulatory treatment – that lead to trade distortions. While all governments have such policies, the legacy of central planning and state ownership make them particularly widespread in the countries in transition.

13. WTO rules stipulate the conditions under which such policies can be used: they should be transparent and avoid unnecessary trade-distortions. The rules also set conditions under which trade partners may implement countermeasures. WTO members have expressed concerns that some policies of transition governments inevitably lead to distortions of trade flows, often to the detriment of foreign firms. They are particularly concerned about exports of subsidised products or dumping unfairly priced products on foreign markets.

### **3. The Examples of China and Russia**

14. An important aspect of the market reforms undertaken by the Chinese Government beginning in the late 1970s and the Russian Government in the aftermath of the break-up of the Soviet Union was the opening of their economies to international trade and capital flows. In adopting a policy of international economic liberalisation, the two governments departed sharply from the rigid, protectionist policies of their recent pasts. To further their economic reform goals, both applied (China in 1986 and Russia in 1993) to become contracting parties to the General Agreement on Tariffs and Trade (GATT)<sup>4</sup> and subsequently to accede to GATT's successor, the World Trade Organisation (WTO).

15. After its application to accede to the GATT, China began to make major reductions in tariffs and non-tariff barriers: it liberalised its agricultural sector, reduced barriers to imports of industrial goods, addressed important issues on protection of intellectual property rights and trade-related investment measures, and offered measures to make its service sector more open. Its insistence on maintaining

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<sup>4</sup> The Soviet Government experimented tentatively with foreign trade reforms in the late 1980s. As part of the reform effort, the Soviet Union applied for and received observer status in the GATT in 1990. As its successor government, Russia assumed the observer status in 1992. China, though a founding member of the GATT, did not actively participate in the organisation and was required to apply again to becoming a contracting party.

protection for some agricultural and industrial producers and its reluctance to open some service industries proved to be major impediments to accession, but ultimately it made commitments in these important sectors that facilitated the agreement on accession in December 2001.

16. Russia has made substantial progress since its application for accession in 1993, but its negotiations have proceeded slowly in recent years. The Russian Government is in the process of changing many laws and policies such as technical barriers to trade, trade-related intellectual property rights, customs, antidumping, safeguards and countervailing duties to make them compatible with WTO rules. Successful negotiations on accession depend in part on enactment and successful implementation of such measures. A WTO working party is currently reviewing Russia's application and, in the future, will recommend whether and under what conditions Russia's application should be approved.

### *China's Commitments in the WTO*

17. Like all countries acceding to the WTO, China's protocol of accession consists of two parts – bilateral market access commitments for goods and services, which it concluded with all interested WTO members, and an agreement on how to implement the general rules of conduct of the WTO. Typically, the bilateral agreements differ for each acceding country: they reflect the “concessions” on market access that China has agreed to with each negotiating partner, extended to all members in accordance with WTO's most-favoured-nation principle. The agreements on the general rules of conduct, on the other hand, have generally been very similar for all acceding members: they are meant to reflect the principle that all WTO members are bound by the same set of rules. In China's accession agreement, however, there are a number of provisions that impose special rules on Chinese import and export procedures.

### *China's Market Access Commitments*

18. China's market access commitments can be divided into three groups: tariffs and non-tariff barriers that apply to imports of industrial goods; special commitments on agricultural imports; and commitments to open parts of the service sector to foreign participation.

#### Tariffs and Non-Tariff Barriers

19. China has agreed to lower many tariffs, which had already been significantly reduced during the negotiations and to bind all its tariff rates. An OECD analysis of the tariff regime adopted by China upon accession showed that it is relatively open, predictable and transparent compared with OECD countries and selected non-member countries.<sup>5</sup> Its mean applied tariff fell from 15.3% to 12.1% (16% for agricultural products and 11.3% for industrial products), and its mean bound rate is 9.8%.<sup>6</sup> China has relatively few tariff peaks and a relatively flat distribution of tariff levels: nearly 70% of China's tariff lines are below 10%, and only 0.12% are above 50%. The tariff schedule exhibits moderate tariff escalation. It has few non- *ad valorem* rates, and thus its tariff schedule exhibits a high degree of transparency. China has also agreed to sign the Information Technology Agreement, which eliminates tariffs on high technology products such as computers, telecommunications equipment and semiconductors by 2005.

20. China has also committed to eliminate many non-tariff measures: quotas, import licenses and other quantitative restrictions were either eliminated upon accession or phased out over two to five years. Trading

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<sup>5</sup> Organisation for Economic Cooperation and Development, *China's Tariff Regime*, Paris, 28 March 2002, CCNM/TD(2002)9/FINAL.

<sup>6</sup> Thus, it must reduce its tariffs further to the latter rate. When tariffs are bound, they cannot be rescinded without compensating trade partners who are adversely affected.



rights for industrial goods, which had already been expanded for Chinese firms, will be extended to all enterprises in China, foreign-owned and domestic, within three years after accession.

#### Agriculture

21. In addition to tariff reductions, China has agreed to eliminate quantitative restrictions on many commodities, such as wheat, corn, rice, sugar, and cotton, and replace them with tariff rate quotas TRQs. (Tariff rate quotas allow a specified amount of the product to be imported at a low tariff, with imports above the limit at a higher tariff.) Quota limits are to be expanded through 2004, and TRQs for a number of products will be replaced by a single tariff.

22. Trading rights for agricultural imports will be expanded to include non-government enterprises over a three-year period. State-trading will continue for some key commodities, but will be subject to WTO rules. China has agreed not to use export subsidies for agricultural produces and to reduce trade-distorting subsidies for domestic production.

#### Services

23. China has committed to open up important parts of its service sector to foreign investment and participation within specified times. Significant commitments were made for financial services (such as banking, securities, and insurance), distribution services, business services, communications, and tourism. In banking for example, foreign financial institutions are permitted to provide foreign currency services immediately after accession and, within specified periods, will also be able to provide local currency services. In securities foreign financial institutions will participate in domestic enterprises three years after accession. In insurance, foreign firms will be allowed to participate in a range of activities.

#### *China's WTO Rules Obligations*<sup>7</sup>

24. In acceding to the WTO China, like all other members, has agreed to abide by the basic rules of the WTO agreements. This commitment includes both the general principles of the WTO and comprehensive rules on matters such as standards, protection of intellectual property rights, customs administration, dispute settlement, and subsidies. Unlike the market access agreements, these basic rules are generally non-negotiable; acceding countries must adopt domestic laws and regulations to implement them. However, because other members were concerned about the incompatibility of some aspects of China's economic system and aware of China's importance in world trade, they imposed special obligations on China that exceed the normal requirements of WTO membership.

25. Julia Ya Qin has identified extensive obligations related to transparency, judicial review, uniform administration, national treatment, foreign investment, market economy, and transitional review in China's WTO protocol, which she and others have called "WTO-plus".<sup>8</sup> While commitments in some of these areas

<sup>7</sup> China WTO commitments are detailed in World Trade Organisation, *Report of the Working Party on the Accession of China*, WT/MIN(01)/3, Geneva, 10 November 2001.

<sup>8</sup> Julia Ya Qin, "WTO-Plus" *Obligations and their Implications for the World Trade Organisation Legal System*, *Journal of World Trade* 37(3), 2003, pp. 483-522. Many observers would disagree with the characterisation of such measures as "WTO-plus," noting that accession is to be based on "terms to be agreed" between an acceding country and existing members. Others have pointed out that some provisions of China's accession protocol could be considered "WTO-light." Examples of the latter include extended phase-in periods for market access to the telecommunications sector and for chemical harmonisation and agreement by other WTO members to allow China to accede without enacting the legal provisions necessary for implementation. See Robert B. Cassidy, "Trade in Services in China: Implementing the WTO," in National Bureau of Asian Research, Special Report, *China's WTO Accession: The Road to Implementation*, Seattle, November 2002.

are standard for acceding countries, China's commitments go beyond those required by the WTO agreements.

*Transparency.* While transparency is fundamental to the WTO system, China has committed to additional measures – obligations to seek public comment on laws and regulations, to respond to information inquiries, and to make foreign language translations – that go beyond WTO requirements.

*Judicial review.* China has undertaken, in addition to normal WTO requirements related to independent tribunals, to review certain administrative actions and to the right to appeal.

*Uniform administration.* Whereas, all WTO members are required to “take such reasonable measures as may be available to it” to ensure that sub-national governments abide by WTO rules, China has also agreed to nullify local rules that are inconsistent with WTO obligations, and take other special steps to ensure uniform administration of laws and regulations.

*National treatment.* In addition to the normal WTO requirements on national treatment, China has undertaken special requirements with respect to treatment of foreign persons and foreign-funded enterprises and trading rights.

*Investment rights.* In addition to WTO requirements on trade-related investment measures (TRIMs), China has agreed to provide special market access to foreign investment, including commitments not to impose performance requirements, nor to restrict foreign investment to protect competing domestic industries.

*Market economy commitments.* China has made commitments to “allow prices for traded goods and services in every sector to be determined by market forces” (with specified exceptions); not to influence state-owned and state-invested enterprises; and to liberalise the foreign trade regime.

*Transitional review.* A special transitional review procedure was established to examine China's implementation of its WTO obligations.

26. In response to pressures from WTO members, China also stated its intention to accede to the Government Procurement Agreement (GPA) in the future, which is not required of all members. It committed to interim regulations on government procurement that are consistent with the spirit of the GPA. China has also accepted measures to allow trade partners to use special trade remedies (antidumping, countervailing duty and safeguard measures) that will make it easier for them to protect their domestic producers from Chinese exports.

### ***Russia's Accession Negotiations***

27. Russia has also made substantial progress since its application for accession in 1993, but its negotiations have proceeded slowly in recent years. The government has abolished the state foreign trade monopoly and replaced it with laws and regulations that resemble the foreign trade systems of market economies, and it is considering many other legislative changes on matters such as technical barriers to trade, customs, antidumping, safeguards and countervailing duties. Nevertheless, many important issues remain on market access and on Russia's implementation of WTO rules.

28. The WTO working party reviewing Russia's application has expressed concerns about Russia's tariff code, foreign exchange regime, state trading enterprises, and new laws related to services trade, intellectual property rights, foreign investment, and other trade matters.

### *Market Access Negotiations*

29. Russia submitted a tariff offer in 1998 and an offer on opening its services market in 1999. While the tariff and services offers have provided a basis for negotiations, Russia's trading partners are asking for significant improvements in the offers. Important issues also remain on agricultural trade barriers.

### Tariffs

30. Under Russia's new foreign trade regime, tariffs are the primary means of regulating foreign trade, as quantitative barriers have been largely removed. In general, Russia's most recent tariff schedule (introduced in January 2002) is comparatively liberal. An OECD analysis of the 2002 tariff concluded that Russia's mean tariff has been consistently falling and now stands at 10.8%. Like China, it has relatively few tariff peaks, exhibits a relatively flat distribution (with almost all tariffs concentrated within the range of 5 to 20%), and relatively little tariff escalation. However, it has more non-*ad valorem* duties, and is therefore somewhat less transparent than most countries. In short, Russia's tariff indicators are generally more similar to those of relatively open OECD countries than to non-OECD countries.<sup>9</sup>

31. Nevertheless, tariffs have been a major issue in Russia's accession negotiations: some WTO members have complained that Russian tariff rates for some products are too high and they have changed too frequently. Russia wants to maintain high tariff levels for some industries that would not otherwise be able to compete with their foreign counterparts. Tariffs are also a significant source of revenues for the Russian government. Many trade partners are asking for large reductions for selected products. U.S. officials, for example, are reportedly requesting substantial tariff cuts for aircraft, automobiles, oil and gas equipment, some food products, distilled spirits, and other products. WTO members are also asking for most Russian tariffs to be bound, so that rates will be more predictable. Russia has responded to the complaints by making many concessions on tariff rates in bilateral negotiations and has agreed to tariff bindings upon accession.

### Agriculture

32. In addition to high tariffs for certain agricultural products, WTO members have also expressed concern about Russia's intention to use tariff rate quotas, continuing existing TRQs for some products and, in some cases, imposing new ones. Some trade partners have noted that, while TRQs are allowed in the WTO, the methods for allocating quotas or licenses must be in accordance with relevant rules. They have also warned that TRQs should not be used to impose higher protective barriers for agriculture.

33. Russia also wants to retain the right to use domestic subsidies and export assistance for its agricultural producers to help them compete with foreign producers. WTO members have asked Russia to limit the level of such subsidies and to ensure that they are compatible with the WTO Agreement on Agriculture.

### Services

34. Market access for the services sector has been one of the most difficult aspects of Russia's negotiations on accession. Several major trade partners, especially the European Union and the United States have been asking Russia to open key service industries to foreign service suppliers. Russia has made an offer on services, but has insisted that key domestic service industries remain protected for a period of time because they have not developed sufficiently to compete in the world market. In particular, its offer on financial services, such as banking and insurance, and telecommunications, has not satisfied key WTO members.

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<sup>9</sup> Organisation for Economic Co-operation and Development, *Russia's Tariff Regime*, CCNM/TD(2002)4, Paris, 27 May, 2002.

WTO members have also criticised the lack of transparency in licensing requirements for service providers in Russia.

*Negotiations on Russia's implementation of WTO rules*

35. While Russia has done much to bring its trade-related laws and institutions into conformity with WTO rules, key issues remain. For example, member countries have raised concern about Russian customs practices – import licensing requirements for certain goods, customs valuation and other customs procedures – that may unduly restrict imports. Russia introduced a new customs code in January 2004, which addresses many of the concerns raised in Geneva. Russia has also enacted new legislation on technical barriers to trade, which is intended to meet continuing concerns about the procedures for setting standards and carrying out conformity assessment, the low level of harmonisation of domestic standards with international standards, and the lack of transparency, especially with respect to institutional responsibility for implementation. Other laws currently under consideration include measures on intellectual property rights, arbitration procedures, and state regulation of foreign trade.

36. Some of the remaining issues in the accession negotiations relate to laws and institutions that are part of the legacy of Soviet central planning. Despite major market reforms, the Russian government continues to play a major role in the economy, especially through ownership of some enterprises and natural resources, subsidies, price controls, and state trading. Although such state involvement in the economy is not necessarily inconsistent with WTO rules, Russia's trade partners have frequently questioned whether government activities in these areas are non-discriminatory, transparent, and neutral in their effects on trade.

37. The Russian government's involvement in energy prices has been the most controversial of such issues. Some WTO members, especially the EU, have maintained that government controls on energy prices constitute a subsidy to energy-intensive exports from Russia. EU negotiators have claimed that low domestic energy prices provide a subsidy of around USD 5 billion to Russian industry, allowing some producers to compete unfairly on world markets. They have asked Russia to eliminate such distortions.<sup>10</sup> Russian negotiators have argued that the issue of energy prices and similar issues related to Russia's economic system exceed WTO requirements, and have declined to assume commitments on anything other than the standard terms of accession.<sup>11</sup> EU negotiators, in turn, have argued that there are no standard terms of accession: the WTO agreement merely stipulates that accession should take place on terms to be agreed between the country seeking accession and the WTO.<sup>12</sup> One suggested compromise is an agreement that would result in a gradual loosening of price controls on domestic energy prices.

38. As in China's accession negotiations, the role of sub-national governments in implementing WTO-related policies has been an important issue. The potential for divergence of regional and local policies from Russia's multilateral commitments was highlighted in a series of case studies carried by the OECD.<sup>13</sup> The case studies revealed several kinds of laws and practices at the sub-national level that pose particular concerns from the standpoint of observance of multilateral trade rules and sound economic policy. First, some policies at the regional level are openly discriminatory. While border restrictions are apparently no longer a problem, sub-national governments continue to discriminate against producers from other regions or countries. They provide, for example, a variety of subsidies to local producers and sometimes reserve

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<sup>10</sup> Pascal Lamy, "The EU Supports Russia's WTO Bid," in *Russia and the WTO*, London, Centre for European Reform, 200, p. 33.

<sup>11</sup> Maxim Medvedkov, "Russia's accession to the WTO: the view from Russia," op. cit., p. 43.

<sup>12</sup> Pascal Lamy, op. cit., p. 30.

<sup>13</sup> Organisation for Economic Co-operation and Development. *Trade Policies in Russia: the Role of Local and Regional Governments*, Paris, 2003.

government contracts for favoured enterprises that are based in the region. Second, some policies at the regional level are not transparent or predictable. Regional customs agencies, for example, appear to have considerable discretionary authority in setting rules on customs classification and valuation, leading to different customs rates for the same product. Similarly, laws and regulations on licensing in some regions provide only vague criteria for officials to make decisions on granting licenses. Third, some regional and local policies impose unnecessary burdens on businesses and raise costs for consumers. The large number of economic activities that require licenses and products that require certification are prime examples.

39. The OECD study detailed some of the steps taken by the Russian government to make regional and local laws consistent with its WTO obligations, and to inform stakeholders. (The Chinese initiated similar steps before accession, and the process is continuing). Russian Federal authorities have taken steps to bring regional laws into conformity with the Russian Constitution and federal laws and to consult with regional governments on Russia's international trade commitments. President Putin has spoken out on a number of occasions about the need to create a unified legal and economic space in Russia, and his Administration has attempted to curb the independence of some regional governments. The Ministry of Justice has reviewed a large number of laws and regulations from the regions and found many to be inconsistent with federal laws. In many cases, regional governments have agreed to change the laws. In other cases, the President has suspended such laws, and the Russian courts have struck down regional statutes that it found unconstitutional.

#### **4. Concluding Remarks**

40. The Chinese and Russian negotiations illustrate many of the difficulties, especially for transition economies, of acceding to the WTO. Like other accession negotiations involving transition economies, both have addressed fundamental questions about market reforms in addition to ways to implement WTO rules and market access issues. Both have required many years of negotiations and a commitment of considerable government resources, and, in both cases, implementation of WTO commitments is ongoing. Trade negotiators and government officials responsible for implementation have long-term obligations to ensure that domestic laws and institutions are compatible with multilateral trade disciplines.

#### ***Implications for Trade Negotiators in WTO***

41. The experience of countries negotiating accession to the WTO demonstrates the need for substantial government capacity – skilled negotiators, specialists who are knowledgeable of the wide range of policy areas covered by the WTO agreements, skilled analysts to assess the effects of trade agreements, and officials who can effectively communicate with stakeholders. Trade officials must negotiate with trade partners while trying to develop a broad domestic consensus on the benefits of trade agreements. For many acceding countries, these tasks have been complicated by the need to simultaneously negotiate trade agreements in the WTO and regional forums. For small countries in particular, the demands of accession can severely tax the resources that governments have at their disposal.

42. After accession, active participation in the WTO imposes continued negotiating and administrative burdens on trade policy-makers of member countries. They must, for example, devote time and resources to stay abreast of changes in the organisation and to represent national trade interests in ongoing negotiations and the dispute settlement mechanism. China, for example, has already assumed an active role in negotiations in the Doha Round and is involved in several dispute settlement consultations, both as a respondent and a complainant. Such obligations require that new members maintain the capacity to address complex trade issues.

43. China has also accepted comprehensive obligations with respect to notification requirements and transitional trade policy reviews in the WTO. China's protocol of accession spells out detailed

requirements for notification and clear instructions regarding which WTO bodies should receive such notifications. It provides for transitional reviews each year for eight years, with a final review in year 10 or at an earlier date decided by the General Council, of China's implementation of its commitments under the Protocol. By comparison the current Trade Policy Review Mechanism requires reviews of the four largest trading entities (the EC, the U.S., Japan and Canada) every two years; the next 16 largest trading partners, every four years; and the remaining WTO members, every six years, with a longer interval envisaged for least developed countries. China's review is not only more frequent, but potentially more comprehensive: each committee of the WTO with a mandate covering China's commitments reviews its implementation. China is required to provide relevant information in advance of the review. The review covers economic data, economic policies, framework for making and enforcing policies, policies affecting trade in goods and services, trade-related intellectual property rights, and responses to any specific questions received from the General Council or a subsidiary body.<sup>14</sup>

### ***Implications for Government Officials Implementing Accession Protocols***

44. Because of the complexity of WTO rules, and the extension of multilateral trade disciplines into new areas, the number of laws and regulations that must be changed to adapt to accession has grown. Adopting the necessary changes requires both time and human resources. The examples of Russia and China demonstrate that governments must take steps to maintain qualified specialists who have knowledge of WTO disciplines and the skills to draft and enforce new laws and regulations that implement their WTO commitments.

45. Another important requirement for new member governments is developing institutions and human capacity to coordinate the implementation of new rules among government agencies at all levels. An important element in effective co-ordination between the federal and sub-federal levels of government is to ensure that federal trade-related legislation provides clear guidelines to officials responsible for implementing policies in the regions. The OECD study on the role of regional and local governments in Russia, for example, found that a major reason for divergent regional and local laws and procedures in the past has been the absence of clear, unambiguous federal legislation in trade-related areas.

46. It is also important that new WTO member governments communicate effectively with stakeholders about the benefits of WTO accession. The general role of trade policy has evolved considerably in recent years, requiring new analytical instruments, institutional settings and communication skills for trade policy-makers. In particular, the increasing interaction between trade and domestic policies and a more active involvement of the business community and public at large in trade policy issues require that governments have solid economic arguments both ex ante and ex post for their trade policy decisions and are able to communicate them effectively to civil society.

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<sup>14</sup>. World Trade Organisation, Annex 1A of Accession of the People's Republic of China, WT/L/432, 23 November 2001.