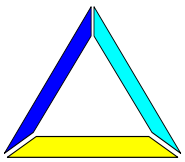
INSTITUTE FOR ECONOMIC RESEARCH AND POLICY CONSULTING IN UKRAINE
GERMAN ADVISORY GROUP ON ECONOMIC REFORM

Reytarska 8/5-A, 01034 Kyiv, Tel. (+38044) 228-6342, 228-6360, Fax 228-6336
E-mail: institute@ier.kiev.ua, http://www.ier.kiev.ua



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UKRAINE'S WTO ACCESSION: FORGOTTEN CHALLENGE AND BENEFIT

Resume

In Ukraine is a consensus growing about the necessity to join the WTO. Now discussions are focused on the analysis of costs and benefits for specific sectors and some other related problems. But the important issue of national policy-making in the post-accession period was not even mentioned yet.

In this paper:
1) We argue, that the implementation of commitments related to the membership in WTO must become part of wider reform efforts, due to their profound impact upon national policy-making, and
2) We propose both, a number of measures to accelerate Ukraine's WTO accession, and the implementation of new approaches to economic policy-making consistent with WTO disciplines.

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1. Introduction

1993 Ukraine applied for WTO (then GATT) membership. In 1994 the Working Party on Ukraine's WTO accession was established. The progress in the negotiations on principles and policies during the recent years allowed parallel to start bilateral talks between Ukraine and individual countries. These talks cover tariff rates and specific market access commitments, as well as other policies in goods and services.

At the same time Ukrainian politicians, policy-makers, and representatives of the business community raised concerns about the ability of Ukraine's economy to fully enjoy the benefits of a membership in WTO, and to weather the storm of international competition in liberalized environment.

Unfortunately, at the moment the process of WTO accession lacks publicity and transparency necessary to involve all interested parties in the discussion. This bears the potential danger that the future ratification of the Accession Protocol by the Ukrainian Parliament will encounter serious difficulties, because Parliamentarians have not been involved in the process of accession and lack understanding how the WTO operates. Besides, commitments to be taken as precondition of WTO membership are often viewed in Ukraine as something imposed from outside.

The process of negotiating Ukraine's WTO accessions has been traditionally viewed in Ukraine as (1) bringing Ukrainian trade and trade-related regulatory policies in line with WTO rules and norms, and (2) radical liberalization of foreign companies' access to the Ukrainian domestic market. But the broader context of WTO accession and its implications for national policy-making has been rarely discussed.

It is nearly impossible to understanding these implications without a clear idea of the benefits a WTO membership delivers for policy-making in the areas of (1) market access, (2) credibility of national governance, (3) improvement of domestic institutions and policy-making mechanisms. The very benefits are the strongest arguments in favor of WTO accession, which to often have been overlooked in Ukraine.

2. Benefits of accession for policy-making.

Every country entering the negotiation process for WTO accession has specific problems. The effects of accession depends, inter alia, on the outcome of the negotiations, that is the conditions of accession, which every country is able to negotiate with WTO members. In this respect analogies with other countries are hard to find.

The foremost benefits of the WTO are the improved access to markets and the international dispute settlement mechanism to defend national interests in case of conflicts with trading partners. In practice, countries have often benefited from reductions of MFN rates even if they remained outside the GATT/WTO. In such situations the main benefit of joining the WTO would be the certainty and predictability of such benefits, which are by no means guaranteed for outsiders. As a member of WTO a country can actively participate in multilateral talks aimed at further liberalization of international trade thus improving the future standing of national exporters.

The second practical gain from joining the WTO is the beneficial effect of the WTO on the credibility of government policies. By framing the countries' concessions into legal commitments, the WTO membership provides powerful guarantees of government's policy directions. The increased credibility makes country more attractive for foreign investors and improves its standing compared to other countries. In fact WTO membership maybe seen as an international acknowledgement that the national regulatory environment and policies are based on internationally accepted norms and rules. But in this case

the country has not only to comply with WTO norms and disciplines at the moment of accession, but also to ensure the compliance in the future.

A third gain is the beneficial effect of the membership on domestic policies and institutions involved in the conduct of international trade. Acceding countries are required to put in place a set of norms and institutions to support the liberalization of markets, to increase transparency, to promote the rule of law, to improve contract enforcement and enable the evolution of an independent judicial system. Though in principle nothing would prevent governments from putting in place these norms and regulations on a unilateral basis, the WTO also helps to introduce harmonized policies based on best-practices. That is why the implementation of WTO disciplines must be viewed as an integral part of national reform efforts.

Beyond its direct impact on efficiency through import liberalization, the most immediate effect of a WTO membership should be its indirect impact through improved governance. In providing countries with what are perhaps the most powerful institutional checks and balances in the international economic sphere the membership in the WTO helps to reduce incentives for corruption, various forms of rent-seeking, etc.

In general, due to the improved access to markets, the development of competition, and a better resource allocation, the Ukrainian economy will substantially gain in efficiency through the implementation of WTO disciplines, coupled with the liberalization of both, trade and investment regime.

But to fully enjoy the benefits a country needs to implement a number of changes into the process of policy-making and to establish proper institutional basis.

3. WTO accession: challenges for national policy-making.

Among the different challenges, which the WTO accession poses for Ukraine, the following one is of utmost importance: Ukraine will have to carry out significant changes in its policies and institutions to ensure full compatibility of the domestic legislation with the WTO disciplines and to ensure the existence of all institutions necessary for the implementation of the commitments. This raises serious concerns for the Ukrainian government. The following two are the most important ones – first the specific content of changes to be implemented and second investments necessary for the implementation.

For example, WTO membership implies reducing the use of such instruments like subsidies. According to the Agreement on Subsidies and Countervailing Measures (ASCM) all subsidies directly affecting trade are explicitly prohibited. This means that Ukraine has to check every proposal regarding "financial contributions made by or at the direction of a government that provides a benefit" (that is subsidy according to ASCM):

(1) The proposed subsidy must be checked whether it fits the specificity definition, i.e. enterprise-specificity, when a particular company or companies are targeted, industry-specificity, when a particular sector affected, and regional-specificity.
(2) If the subsidy fits the specificity definition it is to be placed into one of three categories – prohibited, i.e. subsidies on exports and subsidies on the use of domestic over imported inputs, actionable, in this category the complaining country has to show that the subsidy has an adverse effect on its interests, or non-actionable, i.e. non-specific or specific subsidies for industrial research and pre-competitive development activity, assistance to disadvantaged regions, etc.

This example clearly shows that (1) certain subsidies are prohibited (and thus such a prohibition can be treated as a certain policy constraint related to non-availability of the specific policy instrument), and (2) the process of decision-making requires to establish procedures of "checking" a policy decision for compliance with WTO. This comes with some costs.

Hence, the general conclusion, which has not attracted proper attention so far, is that accession imposes not only certain disciplines and rules but requires also the establishment of those institutions and policies that are central for the enforcement of these disciplines.

As already stated, WTO membership imposes disciplines on national policy-making. In this capacity a new approach to economic regulation is required. The regulation is not simply a collection of laws and regulations in different areas, but a process in its own right. In order to be fully effective, the regulatory process needs to be based on a comprehensive and coherent long-term framework with clearly defined priorities and strategies. Ukraine needs such a comprehensive and coherent long-term framework to harmonize regulatory policies. Until now policies have been either largely developed sector-by-sector, i.e. the various programs for the development of agriculture, metallurgy etc., or driven by outside commitments, like the amendment of legislation on intellectual property rights, done in response to a US threat to ban certain Ukrainian exports to punish intellectual property right violation in the field of CD production. Such an approach could be implemented as a part of broader reform of state administration.

Second, one of the main duties WTO members is the obligation to notify all legislation, trade policies, and practices. This obligation provides additional transparency in the system. Each country has to submit to WTO all legislation, regulations, and legal texts, in fact, all trade policies it has replaced or that it introduces, modifies, etc. All information will automatically be transmitted to the other members, so that all know about changes in regulation in a particular country. The same refers to Ukraine. So far this issues has been neglected in Ukraine and problems of developing the relevant institutional capacities haven't been even mentioned.

Third, WTO membership implies the necessity to implement policy-making procedures preventing the appearance of legislative and regulatory acts contradicting WTO disciplines. Such a task requires special institutional capacity and coordination mechanisms within the Government.

4. Investing into modernization of policy-making.

Being a WTO member requires certain investments. First, there are the necessary investments to implement the WTO commitments. In order to calculate their magnitude correctly it is necessary to distinguish between budgetary expenses and private adjustment costs incurred by business.

Budgetary expenses are needed for establishing new institutions, information networks – the institutional capacity necessary to implement membership obligations. Private costs are adjustment costs incurred by certain business due to increased competition and reduced market-distorting state interventions. So under the new conditions, the state must make clear to the companies that adjustment to new post-accession realities is their own responsibility.

The experience of other countries showed that the budgetary implications of the WTO Agreements should not be underestimated. The financial expenses may vary from country to country, but the full implementation expenses of accession are not negligible. And if we add that in Ukraine administrative and enforcement capacity is rather low, the state needs to identify priorities of financing state administration reform taking into account WTO membership commitments.

Even though the benefits of accession will by far outweigh the investments in the long run, the necessary short-run expenses are likely to be high enough to put the government in sensitive situations in which it will be expected to ease the burden of implementation of WTO Agreements and the costs of adjustment.

When we consider benefits and losses, we usually refer to the state and structure of the Ukrainian economy as it was yesterday (or, in the best case, today). It might be that existing enterprises view the prospects for Ukraine's accession to the WTO as grim, especially the ones relying on subsidies and cheap energy, or the ones suffering from inefficient management. Therefore, this policy is seen as not beneficial for present owners. However, without the changes in the future it means only preservation of the obsolete economic structure of the country.

It is necessary to stress the fact that the WTO system has been constantly developing. It means that delay in accession will go along with the development of new WTO agreements and obligations to be taken by the acceding country. That means any delay will increase the expenses for necessary investments.

In fact both budgetary and private expenses are investments either in improving public administration or companies' performance in competitive environment and without these investments the stable economic growth in the long run is unattainable.

These investments will be to the benefit of Ukraine's economic performance in general, and from this perspective Ukraine's WTO accession and membership are in fact a vehicle for must for economic modernization.

5. Conclusions and policy recommendations.

Ukrainian government must try to complete negotiations on WTO accession as soon as possible. Being outside WTO for Ukraine means to loose a number of potential benefits, which will be by far outweighing the costs of membership.

Taking into account the very fact that Ukraine's WTO accession needs to be ratified by the Parliament (Verkhovna Rada) **it is necessary to involve the Parliament into the negotiation process**. The Government should persuade the Parliament **to stage special Parliamentary Hearings on Ukraine's WTO accession before considering whether to ratify or not the Protocol of Accession itself**.

The present situation – when most discussions regarding WTO accession are focused either on sector specific problems or global issues - **poses the danger of a biased approach towards policy-making**. **To avoid such a bias the government must make clear to Ukrainian companies that it is their responsibility to elaborate global strategies based on realistic assessments** in the fields (sectors) of their operation. **The competitiveness of Ukraine will depend on the efforts at the enterprise level**.

After Ukraine's WTO accession the country will face the **serious and difficult task to carry out its WTO membership commitments in the field of liberalizing the access to domestic markets** as well as implementing WTO consistent principles of national economic policy making. In order to find institutional solutions for the latter task the following measures need to be taken:

- **Analyzing the activities of Intra-Agency Commission on Ukraine's WTO Accession and consider the possibility to use this mechanism (with the necessary modifications, of course) as a "gatekeeper" able to stop policy decisions and documents non-compliant with WTO provisions.** Another option in this field is to consider the possibility of granting these "control powers" to the Commission on International Trade.

- **The existing Concept of Industrial Policy (adopted in 1996 and amended in 2000) must be reconsidered.** This document must

include enumeration of industrial policy principles and relevant policy instruments compatible with WTO requirements. In fact this document should specify clear guidelines for governmental agencies preparing proposals regarding specific industrial sectors and for the Ukrainian business community, as a basis for dialogue with government.

- The same recommendation refers to the Program of Export Stimulation adopted by the Cabinet of Ministers (26 October, 2001).

Attempts of reforming the state administration and their implementation should be geared towards meeting the obligations of the membership in the WTO. Special attention in terms of modernization and harmonization need the various institutions directly involved in the conduct of trade, and foreign investment policies, in the protection of intellectual property rights, etc. In this respect state administrative reform must include the following measures:

- **The establishment of effective system of notification of WTO on Ukraine's legislation, trade policies and practices**. Such a system must be able not only to provide the information mentioned but also to support dialogue with the WTO and individual members in terms of providing timely and adequate replies to their enquiries regarding specific issues.

- **Creating a framework of regular consultations with the business community, to involve all interested or affected parties into the discussions**. This approach should become one of the basic principles in the course of state administration reform.

In fact these measures must be taken not only as tasks to be fulfilled but must also be treated as the principles of economic policy-making.

The investments required with the WTO membership are not negligible. The state budget should provide the funds necessary to finance fairly large investment into the modernization and harmonization of various institutions. Thus these expenditures should be taken into account while drafting state budget.

Though a number of changes in the procedures of policy-making are to be implemented after completing accession talks, some issues require at least consideration how to deal with them. In order to prepare different governmental agencies as well as the business community to the changes accompanied with Ukraine's WTO accession, the following steps must be undertaken:

- The Agreement on Subsidies and Countervailing Measures (ASCM) requires reconsidering both, the current policies of granting privileges to certain sectors, and in more general terms the principles of industrial policy.

- **The government should publish White and Green Books** to state Ukraine's international competitiveness. That would stimulate the discussion of problems at different levels. The Governments needs to establish its position on investment policy and the role of the state in providing prerequisites for modernization of the productive capacities in the medium and long-run perspectives. A discussion along the lines of these documents will enable the Government to elaborate a more weighted approach how to deal with certain specifics. This would also **help the Cabinet of Ministers to counteract attempts by lobbyists.**

- In case Ukraine becomes a member of the WTO the government should publish various documents carefully explaining Ukraine's commitments and the implications for policy-making and the business community.

I.B., Lektor: R.G.
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