Pacific Institute of Public Policy

JOINING THE WORLD'S ECONOMIC PARLIAMENT

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Vanuatu's WTO accession package explained

Contents

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PMB 9034,
4th Floor, Datec Innovation Centre
Lini Highway, Port Vila, VANUATU

Tel: +678 29842 Email: pipp@pacificpolicy.org

1. Introduction

After 16 years of negotiations, Vanuatu is poised to join the World Trade Organisation. By taking a seat at what is in effect the world's economic parliament, Vanuatu is staking a claim as a member of the world economy to make decisions affecting itself and the rest of the world. It is a controversial decision depending on your viewpoint: seen as a surrender to powerful global interests by critics, and as a mature policy of engagement by its supporters. What is the reality? Did Vanuatu get the best deal it possibly could have?

With politicians due to vote to ratify the accession package in parliament by November 2011, it's crucial that people understand what the WTO is, based on accurate information. Only with proper knowledge of the all facts will Vanuatu be able to make a good decision about whether or not to join. There is a need to tailor analysis to Vanuatu, not to just copy analysis from other countries.

The Pacific Institute of Public Policy has undertaken its own study of the deal and hopes the following analysis can provide a more reasonable discussion of what is at stake, leaving out the emotions, which have often run high, and to demystify a process that ultimately is neither a catastrophe nor a God-send.

The banal reality is that WTO ascension is just not that big a deal: in short, Vanuatu would appear to gain little and lose little, but will at least have a seat at the table. Because the process has gone on for so long, Vanuatu has already become WTO compliant on many fronts to participate in trade deals with many of its trading partners. In the end, joining the WTO is formalising what has been happening incrementally anyway.

In an era of globalisation and often well-founded suspicion of world bodies such as the International Monetary Fund and World Bank, it is not surprising that the WTO should be lumped in with them and be judged as guilty by association. It is understandable that sections of the community would be automatically suspicious and raise concerns, particularly after poor deals some countries have signed up to, including Tonga. Perhaps that is more a reflection of poor negotiation outcomes than any attempt by the WTO to impose excessive concessions.

Vanuatu seems to have benefited from the passage of time, learning from other deals done and ensuring that it retains some control over the process. It continues an already established policy of opening up the economy and providing an international rules-based framework for trade. Despite concerns, government revenue from reduction of tariffs will not be severely affected. Joining the WTO is not a free trade agreement (FTA). Joining the WTO will not lead to complete liberalisation. What is of far more concern – and need for scrutiny – are the potential deals Vanuatu and its Pacific neighbours do with Europe via the European Partnership Agreement (EPA), and with Australia and New Zealand under PACER Plus, since they will lead to much greater liberalisation.

Outlined here is a brief summary of what the WTO is and the deal Vanuatu has done.

What is the WTO?

The World Trade Organisation (WTO) sets the rules for global trade and provides a forum for trade negotiations. The WTO was established in 1995 after seven years of talks, when it superseded the General Agreement on Tariffs and Trade (GATT). Every few years since the establishment of the GATT in 1947, countries have met to negotiate lower barriers to trade at successive 'rounds' of discussions. The current round is the Doha round, which commenced in November 2001.

The WTO is driven by 153 member countries which make decisions at Ministerial Conferences (held at least every 2 years) and via the secretariat in Geneva. The secretariat itself has limited authority, instead coordinating and supporting negotiations and discussions between countries. If one country argues that another is breaking agreed trade rules the secretariat acts as a neutral platform, adjudicating on the dispute. If necessary it will recommend penalties. The secretariat also analyses world trade; gives technical support to developing countries; and provides advice to governments considering membership.

Decisions at the WTO are made by consensus, meaning that all members must agree. No decision can be reached if even a single country disagrees with a proposal. Most things are decided during long discussions before and during official meetings, and no official vote is held. This process differs from parliamentary democracies like Vanuatu, where only a majority is needed and a large minority of MPs can disagree. A consensus-based procedure can be unwieldy, which is why WTO talks are so slow.

Each country carries the same formal influence irrespective of its size, unlike the International Monetary Fund or the World Bank where representation depends on how many votes each country has, which in turn is based on how much it pays in contributions. At the WTO, all countries pay the same membership fees - except Least Developed Countries (LDCs) like Vanuatu which pay less[1] - and in theory have the same power.

The highest body of the WTO, the Ministerial Conference, meets every few years. Below that are the General Council, the Dispute Settlement Body and the Trade Policy Review body. Servicing these bodies are the Goods Council, the Services Council, the Intellectual Property Council and a series of other committees on the environment, development, regionalism, investment and other issues.

What the WTO does

1. Settles disputes

Countries with a complaint about trade practices elsewhere can take action via the WTO Dispute Settlement Body. The first stage is to seek consultations and aim for a settlement. If no agreement is reached, the case goes to the panel. Third parties can take part, and countries can appeal. From over 400 disputes so far, around half have involved developed countries and half developing countries.

2. Reviews trade policy

The WTO regularly conducts reviews of trade policy for information purposes. The trade policy review body does not enforce rules but tries to ensure transparency and publish documents about each WTO member. In LDCs, trade policy reviews take place every six years.

1. If Vanuatu graduates from LDC status it will get a transitional period before it becomes a full WTO member, during which it will continue to experience many of the benefits of being an LDC. This follows the precedent of countries like the Maldives and Cape Verde, which have both graduated from LDC status.

3. Administers existing agreements

The main WTO legal agreements - established during the 60 or so years since beginning of international trade talks - cover the GATT, goods, services and intellectual property.

4. Examines new issues

New issues under examination since 1996 include investment; electronic commerce; trade facilitation; government procurement; and competition. Few new rules have been adopted, mostly because developing countries don't want to make the WTO more complicated.

Basic principles

The WTO legal agreements set out a number of rules, the most important of which are outlined below. Some deviation from these rules is allowed, and each country may have special terms. Vanuatu's WTO package will be outlined in the next section.

1. Most favoured nation treatment

The single most important rule of international trade law. It says that a country can't treat goods or services from one country any less favourably than those from another. For example, Vanuatu couldn't levy an import duty of 40% on Chinese computers whilst taxing computers from Thailand at 30%.

2. National treatment

This says that a government isn't allowed to treat imports less favourably than similar domestic goods, and that it must treat overseas investors no worse than domestic investors. Vanuatu wouldn't be allowed to apply a 12.5% VAT rate on imported coffee but let Tanna Coffee pay no VAT. Similarly, with a few exceptions, foreign investors shouldn't pay more or jump through more bureaucratic hoops than local investors.

3. Binding of tariffs

When countries join the WTO they must agree an upper limit for each good beyond which tariffs must never rise. In many countries, like Vanuatu, this upper limit, known as the bound rate, can be higher than the existing rate. Governments must agree not to impose quantitative restrictions on imports, which means that most protection of national products and services must be in the form of tariffs rather than full or partial bans.

4. Progressive liberalisation

The WTO aims gradually to liberalise trade. But there will always be areas in which trade is not fully open. The objective of the WTO is not to cut all tariffs or protection to zero. Vanuatu will not have to reduce its tariffs to zero.

Exceptions

The four main principles can be waived in a number of areas.

1. Safeguards

All countries have access to special safety mechanisms. If a large quantity of cheap goods or services suddenly flood the market the government can put up protective barriers for a certain period of time. Vanuatu doesn't currently have the infrastructure in place to do this.[2]

2. Paragraph 70 of the Vanuatu working party report, page 16.

2. Special and differential treatment

Developing countries get concessionary treatment for their goods and services. This means that they can escape the rulings on many parts of the WTO agreements. Additional special and differential treatment applies to LDCs like Vanuatu. For example, the Agreement on Agriculture doesn't require LDCs to reduce export subsidies.

3. General exceptions

There are several other exceptions to the usual rules. Trade liberalisation sometimes conflicts with national security. Certain GATT rules can also be waived on grounds of public morality and safety. And if a country is a member of a regional trade bloc (e.g. MSG Trade Agreement) it can escape some of the normal WTO requirements, although the agreement must cover most trade.

What's in it for Vanuatu?

Countries join the WTO for different reasons, but the most important is that lowering import taxes and other obstacles should increase the overall volume of global trade, raising average wealth. Globally, the average potential gains from cutting tariffs and lowering barriers to trade are large – recent estimates suggest that the worldwide benefits of the Doha round could run into the hundreds of billions of US dollars. But small less-developed countries may not benefit much even if there is an average improvement in global prosperity. Others might win a bigger share. LDCs joining the WTO need to ensure that they gain as much as possible of the newly-created average wealth.

A multilateral agreement is simpler than negotiating single agreements with over a hundred other countries. One country probably wouldn't lower trade barriers unless it was confident that others would also do so. Governments therefore place their trust in a central agency to enforce laws – the WTO secretariat – and promise to abide by its rulings. Multilateralism also prevents trade from being diverted unnecessarily from one country to another via different trade agreements.

Global trade rules are supposed to stop arbitrary changes in trade policy, making trade fairer for smaller and less-developed countries, which can't retaliate through a trade war. If there were no laws, bigger and stronger economies and companies could dominate global trade even more than they already do. Law is the only protection for poorer or weaker nations. Rules also can help the domestic trading environment by stopping politicians from enacting bad policies at short notice.

Unfortunately, many smaller countries like Vanuatu have little choice but to join the WTO. The WTO is gradually raising the standards of goods and services, particularly for agricultural products, making it very hard for outsiders to export to WTO members unless they are in the club. Most regional trade agreements must be WTO-compliant, which means that countries must abide by WTO rules even if they are not members of it. Vanuatu's neighbours and regional trading partners – the Solomon Islands, Papua New Guinea, Fiji and Tonga – are members (Samoa looks likely to join in 2011). That's why Vanuatu has already spent so much time amending its laws so as to be WTO-compliant.[3] The range of issues covered by the WTO is likely to expand in future, covering matters like government procurement and trade facilitation. Given that Vanuatu is subject to the laws of international trade anyway, it would be better to have a seat at the table rather than for rules to be dictated by other nations.

3. Page 36 of the working party includes a three-page table detailing 16 areas in which Vanuatu has already amended its legislation to be WTO-compliant.

What's in it for other countries?

Whenever richer, more powerful countries push for changes to global rules, there's bound to be a reason. They're unlikely to be doing it out of charity. Businesses in big countries need access to more markets, and the WTO helps open these markets by lowering tariffs, reducing subsidies in destination markets and pushing governments to treat their investors and products equally with their local equivalents. Many bigger companies want to protect their intellectual property (trademarks, copyrights, patents), to avoid copying and to safeguard their inventions. A lot of countries want to make it easier to invest overseas and they want legal protection for their companies' investments.

But this doesn't mean that other countries are resisting the WTO at all costs. Apart from the benefits outlined above, the WTO should help some poorer economies to export more goods to developed markets. For example, Europe and the US heavily protect and subsidise their farmers. Under the WTO, attempts are being made to change these policies, which would make it viable for farmers from African and other countries to sell their cheaper goods in these rich markets.

What are the potential drawbacks?

Under the WTO a government promises to cement some of its policies in place and not to bring in new legislation that violates its commitments. For example, Vanuatu can't suddenly ban foreign investors without good reason or raise import tariffs above the upper rates specified in its accession package. Most services will be opened for the future and can't be closed off again to foreign investment – such as telecoms, business services, construction, finance and transport. These areas are all already open to foreign competition, so WTO accession wouldn't make much immediate commercial difference. WTO services negotiations are a bit like a ratchet – they aren't about opening up new areas, more about preventing the government from backtracking in the future.

Many WTO rules are unnecessarily liberal. At an early stage of development, countries should be allowed subsidies or protective duty tariff rates. While Vanuatu has some space to protect and subsidise, and as an LDC it isn't subject to the normal rules, the WTO has been criticised for pushing an agenda that benefits bigger, richer countries by giving them access to developing country markets – without allowing poor countries to protect themselves enough.

The principle of national treatment has been criticised precisely because it prevents developing country governments from favouring domestic companies at the expense of foreigners. Active promotion of local firms was a key route to development for many newly-industrialised countries.

Because the WTO pushes for progressive liberalisation, it obliges new members to submit to more rigorous terms than existing members. Vanuatu, as a result, is being forced to open up its services industries more than the likes of Australia or the United States – a situation which is patently unfair.

Vanuatu's small government already faces many difficult administrative tasks. Accession requires a raft of new legislation, some of which is only there to satisfy WTO requirements and doesn't help with development. A list of legislative changes is detailed in the accession documents. Intellectual property legislation, for instance, is generally a cost, and may divert funds from more important development activities. Vanuatu does have a lot of traditional knowledge, but does not have much registered intellectual property or own many copyrights or trademarks. Some people argue that these laws are actually harmful because they prevent learning and copying from more developed countries.

2. Vanuatu's accession package

Although several basic principles underlie the WTO, each country joins on slightly different terms, with a series of documents detailing its individual membership. It's important to realise that the only reason bigger countries like the United States joined Vanuatu's working party is that it is likely to set a precedent for the future. Vanuatu is so small that the US isn't interested in achieving greater access to its markets. The WTO operates a form of case law, with earlier decisions used as a guide to current decisions. Vanuatu's package may be used in the accession of bigger countries like Russia, which hasn't yet joined the WTO.

Vanuatu's negotiators struck the best deal they could in the circumstances despite suspending accession in 2001 and renegotiating a decade later. Bigger developed nations like the US negotiated hard against Vanuatu, failing to stick by an earlier commitment to go easy on LDCs. But average bound tariffs are higher than in Tonga, which joined in 2007, and in Samoa, which is due to join in 2011. Vanuatu is also allowed to prevent access to its services sectors much more than these two countries, with new restrictions negotiated in retail, wholesale, education, health, environmental and audiovisual services. For Vanuatu to reject the package after so many years of talks would not only undermine Vanuatu's reputation on the international stage, but might open the possibility of being forced into membership on worse terms in the future, perhaps as a condition of an IMF or ADB loan, should the government run out of money.

The main accession document[4] is the 56-page report of the working party, which is a group of countries set up to deal with Vanuatu's WTO accession, including the United States, the European Union, Australia, New Zealand and others. The document mostly describes Vanuatu's economy, recording in detail various features of the economy and policy. Addenda 1 and 2 of the document describe the goods and services offers respectively.[5]

Goods[6]

This part of the working party report shows the rates at which Vanuatu promises to set maximum tariffs (the bound rate). Vanuatu agreed to bind all of its tariff rates, most of which are above the current applied rate. The average final bound rate will be 39.7% (43.6% for agricultural products and 39.1% for industrial products) and 85% of tariff lines are either at 35% or 40%. Tariffs relating to most industries that Vanuatu currently protects can be kept as they are.

For 98 tariff lines related to products such as wines, spirits, beer, turbo propellers, tobacco, weapons, turbo jets, chemicals, cell phones, radios and televisions, Vanuatu will phase in tariff reductions by 2012 to 2015, depending on the product. Beer tariffs, for example, must fall from 80% to 75% by 2015. For spirits, the reduction is bigger over a shorter period: from 80% to 40% by 2013. These tariff cuts probably won't reduce on government revenues much because excise tax can be increased in compensation, as long as this is done equally for foreign and domestic goods. Vitamin tariffs, currently 5%, have to be removed completely by 2012. For these and some other products, such as cell phones, radios and televisions, the tariff cuts should be good news for consumers, who'll be able to buy them cheaper.

4. Document WT/ACC/VUT/16, 2 May 2011

5. WT/ACC/VUT/16 add.1 and 2

6. Document WT/ACC/VUT/16 add.1

Services[7]

This section lists the areas of the services sector in which the government retains the right to impose limitations on market access or to treat foreigners differently (national treatment) on domestic territory. After it has committed to market-opening in these areas the government can't bring in new restrictions after accession unless they are compatible with WTO rules.

Vanuatu managed to renegotiate its original 2001 package, making specific market-opening commitments on 10 services sectors and on 72 sub-sectors such as accounting, architectural services, engineering, telecommunications, audio-visual, hospital and social services, tourism and travel, and air transport. This is a marked improvement on its earlier package, when Vanuatu would have been obliged to make service sector market-opening commitments in 18 services sectors. By comparison the Solomon Islands committed to opening nine areas, higher than the LDC average of around five. Tonga and Samoa were forced to make many more market-opening commitments than Vanuatu.

The following are the general areas that Vanuatu can retain restrictions in relation to services sectors. Apart from the specific restrictions outlined, all other parts of the services sector are opened up on a commercial presence and national treatment basis.

- If any foreign investor wants to invest in Vanuatu, they must first get government approval.
- For professionals who work in Vanuatu under the terms of the Labour Act, the government promises not to make it harder in future for foreigners to come to Vanuatu or operate here.
- "The Vanuatu constitution prohibits freehold ownership of land. Indigenous Ni-Vanuatu alone can own land under customary law provisions. Indigenous citizens and expatriates can hold land in leasehold."

Apart from the above general exceptions, the following specific exceptions apply:

- Law services from another country must be supplied through a domestic law firm. If they want to invest on Vanuatu soil, law companies have to form sole proprietorships or partnerships.
- After 2012, Vanuatu has to end its monopoly contract for telecoms, opening up the sector entirely to foreign investment. In addition, Vanuatu commits to the standard conditions in a reference paper attached at the end of the working party report.
- Audiovisual services are liberalised, except that national treatment doesn't apply for government programmes aimed at preserving or promoting the cultural identity of Vanuatu. This means that the government should be able to prioritise local music and TV documentaries for cultural reasons.
- Foreigners who want to act as agents in Vanuatu must pay an annual fee of VT 91,800 and get a VIPA certificate before they can invest. The same applies to wholesalers and retailers.
- In any case, Vanuatu makes no commitments to allowing market access to foreigners wishing to have a commercial presence in wholesaling or retailing. If it wishes, the government can keep these areas closed to foreigners.
- The government commits to allowing the supply of education from overseas, such as via

7. Document WT/ACC/VUT/16 add.2

the Internet, but it makes no commitment to letting foreign education companies operate in schools or colleges funded by government. Similarly, the government doesn't have to provide the same conditions to foreigners as it does to state educational institutions. This is to ensure that foreign companies can't ask for the same subsidies as those given to state schools and colleges. Companies investing in education must be up to a certain standard, or they won't be allowed access to Vanuatu.

- In environmental services – eg. rubbish collection – the government is allowed to maintain a monopoly, either through state-owned companies or an exclusive private contract. It doesn't have to open up fully to foreigners or to treat them equally with locals.
- Banks, if they want to operate in Vanuatu, have to comply with banking regulations.
- Foreign companies that wish to run hospitals in Vanuatu are not automatically granted access to areas funded from state resources, and neither are they entitled to national treatment. As with education and environmental services, this ensures that foreigners can't claim the same subsidies or rights as state-provided institutions.
- Any item in the current reserved investment list is reserved for citizens (see Annex 2).

To repeat, it is important to remember that Vanuatu promises to keep its services sector open except for the above areas. This won't mean that it has to open its services sector any more than it currently does – foreigners are already allowed to operate in most sectors – but it prevents the government in future from closing down the 30 areas listed in the services schedule.

Working party report

Introduction

Paragraphs 1-8 provide background to Vanuatu's WTO accession and provide information about the economy. Vanuatu applied for accession in June 1995 and established a draft package in 2001, but decided to renegotiate starting in 2008 and 2009. As part of its accession process Vanuatu provided a full list of all relevant laws and answered a series of questions from WTO members. These questions and answers can be found in various WTO documents.[8]

Paragraph 5 emphasises the economic vulnerability that gives Vanuatu its LDC status, highlighting that it is exposed to frequent shocks such as cyclones. Major exports are described, as well as export markets. The document points out that Vanuatu runs a regular goods trade deficit but that the services balance is positive. A number of advantages of WTO membership are listed in paragraph 6, including integration into the world economy, a rule-based system and the special and differential rights given to LDCs. Paragraph 7 says that some (presumably not all) members would take into account Vanuatu's LDC status during accession. This is controversial because in 2001 WTO members officially agreed to show restraint during LDC accession negotiations[9] – but some have reneged on that promise. As might be expected, this paragraph doesn't discuss the risks of accession.

Economic policies

Paragraphs 9-10 discuss the tax system, saying that the tax base is narrow and that WTO entry would affect revenue collection from indirect taxes (mostly import tariffs). In reality it probably

8. Documents WT/ACC/VUT/2; WT/ACC/VUT/4 and Add.1; WT/ACC/VUT/6; WT/ACC/VUT/7 and Addenda 1 to 2 and Add.1/Corr.1; WT/ACC/VUT/9 and Addenda 1 to 6, WT/ACC/VUT/10 and WT/ACC/VUT/11

9. Document WT/L/508 reflects a decision adopted by the General Council on 10 December 2002.

won't, as most applied duty rates are below bound rates. There is no mention of monetary policy, despite a heading which includes the term. Vanuatu has no personal or corporate income taxes, no estate or gift duties, and no capital gains taxes. If the government wanted to impose a new tax in the future it would have to ensure that it was WTO-compatible.

Paragraph 11 states that there are no capital controls or foreign exchange controls, meaning that investors can bring money in and out of the country freely. Committing to the absence of capital controls can be unnecessarily restrictive, since it may be necessary to limit the amount of money flowing out of the country during a crisis. There's nothing to stop Vanuatu doing this, but the fact that it is in the accession document tends to suggest that it would be difficult. The document points out that Vanuatu has been a member of the International Monetary Fund (IMF) since 1981. The next paragraph describes the way in which the vatu is traded and gives an approximate exchange rate.

Paragraphs 13-19 describe the investment regime, outlining how VIPA works and the issuance of work and residence permits. Paragraph 19 confirms that custom ownership of land is preserved but that leasehold of some land is permitted. "All land belonged to the indigenous population of Vanuatu".

The following section lists the companies owned by the government, summarised in the table.

Companies owned by government

Name of Company	Percentage Government Ownership
Commercial GBEs under the Companies Act	
Air Vanuatu (Operations) Ltd	100
Airports Vanuatu Ltd	100
Ifira Wharf and Stevedoring (1994) Ltd	49
Metenesel Estates Ltd	99
Northern Islands Stevedoring Ltd	100
Sino-Van Fisheries Limited	49
Vanuatu Abattoirs Ltd	33.94
Vanuatu Livestock Development Ltd	100
Vanuatu Post Ltd	100
Commercial GBEs under their own Acts	
National Bank of Vanuatu	100
Vanuatu Agriculture Development Bank	100
National Housing Corporation	100
Vanuatu Broadcasting and Television Corporation	100
Non Commercial GBEs under their own Act	
Asset Management Unit	100
Vanuatu Agriculture College	100
Vanuatu Agriculture Research and Training Centre	100
Vanuatu Commodities Marketing Board	100
Vanuatu Financial Services Commission	100

The document says that the government plans to privatise and corporatise companies supplying water electricity, stevedoring and television and broadcasting, and that Telecom Vanuatu's monopoly would end on 31 December 2011, although UNELCO's monopoly would remain.

The report points out that the VCMB is the only enterprise with an exclusive licence to import and export, although it is in the process of being shut down. Vanuatu has no price controls, and in the document the government promises that any future price controls would accommodate GATT III:9 (national treatment and price controls). This means that any price controls must try and take into account exporters' interests. Any goods and services put under price control should be published in the official Government Gazette.

Framework for making and enforcing policies

Although the WTO's supporters often portray the organisation as purely technical, in reality it has political implications. Many critics have charged the WTO with overriding government decisions. Whilst all international organisations affect politics, too much 'mission creep' at the WTO would be undesirable. In fact this is a good argument for joining the WTO, because even if Vanuatu does not become a member it will be affected by WTO decisions. It is better to join and to try to temper the WTO's inroads into domestic politics rather than remaining outside the organisation with no voice.

Paragraphs 26-27 discuss how the political and legal system works. There is a detailed description of the parliamentary system, highlighting the main agencies responsible for trade policy: the Ministry of Trade, Industry and Investment; the Ministry of Finance and Economic Management; and the Ministry of Agriculture, Forestry and Fisheries. Vanuatu confirms that it will give foreign and local importers and exporters the right to appeal about anything related to WTO provisions.

Paragraphs 30-31 point out that international treaties like the WTO agreements have to be debated in parliament, and that presidential approval and gazetting are mandatory. "...if laws or other acts of Vanuatu should be found to contradict treaties or agreements, the provisions of the international treaty or agreement, such as the WTO, would apply."

Policies affecting trade in goods

Paragraph 32 outlines import and export rights, including business licence fees. The paragraph incorrectly states that the *Import of Goods Control Act* has never been used to limit the type or quantity of goods to be imported by business licence holders. In recent years the Act has been used to ban chicken and biscuits, with a negative impact on the economy. As stipulated in the Legislative Action Plan, Vanuatu promises to review the Act, which violates article III (national treatment – the requirement to treat foreigners no less favourably than locals) and article XI (quantitative restrictions) of GATT. Repealing the Act would benefit the economy, as it has been used suddenly and without due consultation a number of times, resulting in Fiji banning kava imports and leading to a deterioration in diplomatic relations. One of the members of the working party requested that the government removes restrictions on who can import goods.

The gist of paragraphs 34-38 is that the government must bring in a new type of business licence which would let companies import and export without making anything or operating a shop. Two current categories of business licence should be merged, allowing any company that runs a shop to import and export as well. These legislative changes would eliminate violations of national treatment.

Vanuatu must ensure that its laws on trade in goods, as well as the fees, taxes and charges on them, are subject to the GATT 1994 article VIII:1(a) (which basically says that fees and charges must be for the service rendered rather than to generate revenue); article XI:1 (quantitative restrictions); and article III (national treatment).

Paragraphs 40-45 say that Vanuatu uses the latest Harmonised System of codes for goods imports and that here isn't much protective effect of tariffs because Vanuatu hasn't got many industries. Tariffs are largely for generating revenue and are mostly calculated as a proportion of the value of goods, rather than being a fixed sum levied on quantity. There are no duties and charges on imports other than import tariffs. As promised in its initial package negotiated in 2001, Vanuatu agreed to set other duties and charges at zero.

Vanuatu's duty exemption system features in paragraphs 46- 51. After a description of how the system works, the working party report suggests that Vanuatu should revise its import tax law. Although this isn't compulsory, it would be a good idea. "Rather than using a complex and potentially discriminatory tariff exemption scheme, the Government of Vanuatu should give careful consideration to providing low bound tariff rates to import items which served as inputs for those enterprises for which the Government would seek to encourage operations."

In reply, Vanuatu states that it is trying to do this but that import tariffs remain important for government revenues. Exemptions are supposed to be issued on objective criteria and shouldn't violate the most-favoured nation principle.

Paragraphs 52-53 detail fees and charges for importing, which are shown in a table in the document. Vanuatu agrees not to introduce new charges on imports.

The subsequent paragraphs detail internal taxes on imports, with a lengthy discussion of excise taxes on alcohol. The government promised to change excise so that it doesn't discriminate between certain similar spirits, something which was achieved by reforms to the *Excise Act and Import Duty Act* in 2010.

Paragraphs 59-63 discuss quantitative restrictions on imports, with a table showing which products are banned and restricted, such as pornography, guns and drugs. After accession Vanuatu won't be able to introduce new quantitative restrictions which don't conform to WTO rules. It is worth noting that Article XX of the GATT, mentioned in this section, allows general exceptions to the rules on grounds of public morality and safety.

The next part of the report discusses the way in which goods are valued by the Department of Customs, an area which was controversial in the original accession document because WTO members didn't want to allow a transition period for training in customs valuation. Vanuatu has already been WTO-compatible in this area for about 12 years, so it should prove relatively uncontroversial.

In some areas, Vanuatu doesn't take advantage of special get-out clauses provided by the WTO. For instance there is no provision for trade remedies such as the use of anti-dumping duties (special higher tariff rates which can be used if a foreign country dumps its goods cheaply in Vanuatu), although it reserves the right to introduce such measures via dedicated laws. Vanuatu also doesn't perform pre-shipment inspection.

Paragraphs 77 and 78 deal with export rules, confirming that Vanuatu uses export taxes on logs and seashells and will be able to do so after WTO accession. The government doesn't use export subsidies.

The next section discusses internal policies affecting trade in goods, listing local companies that are specifically encouraged: high-quality bags and leather products, aluminium boats, beer and juice, some textiles and clothing, coverings, fibreglass products, quality furniture, dairy products, coconut soap, cooking oil and hair products. Duty exemptions, which are in effect a form of subsidy, were worth about VT 3 billion in 2009. Future subsidies must follow WTO rules.

Vanuatu doesn't have many technical regulations or standards on trade. Vanuatu must in future comply with the Technical Barriers to Trade agreement of the WTO, which tries to stop countries from protecting their own industries through unnecessary hidden barriers. Plant and animal health standards, for instance, can't be used with the sole purpose of blocking incoming goods.[10] It is still possible, though, to fully protect local animals and plants, and consumers. As the report says, "Vanuatu had a very favourable pest status." The government promises to implement the WTO Agreement on Sanitary and Phytosanitary Measures immediately after acceding to the WTO without any transition period.

10. Note that Vanuatu will receive technical help from the OIE, the World Animal Health Organisation.

Paragraphs 100 and 101 say that Vanuatu has no trade-related investment measures (TRIMs) that violate the GATT and the TRIMs agreement would be implemented immediately after accession with no transitional arrangement. This means Vanuatu can't have any prohibited conditions on foreign investment that affect trade. TRIMs that require the following five measures are disallowed:

- Purchase of domestic products
- Imports of a company should be related to exports
- Restrictions on imports related to the quantity of exports
- Restrictions on access to foreign exchange that affect imports
- Exports related to the value of local production.

Paragraphs 100 to 103 show that there is the provision for free-trade zones but any future ones must be WTO-compliant.

The next section refers to government procurement, ie. contracts and tenders issued by the government. The section shows how government procurement works, stating that Vanuatu would not apply to the WTO voluntary agreement on government procurement. Essentially the WTO wants to make sure that contracts and tenders aren't issued unfairly to favoured business people, and that foreign and domestic suppliers get an equal chance to compete.

Paragraphs 110 to 113 deal with agricultural policies, with a description of the main cash crops – copra, coffee, kava and cocoa, as well as beef. Aid donors finance subsidies for copra, although the VCMB doesn't do so any more.

Trade-related intellectual property regime

Probably the most controversial part of WTO accession comes in paragraphs 114-120, where the Trade-Related Intellectual Property Regime (TRIPS) is discussed. Vanuatu has already passed the laws required for WTO membership, basing its trademark and patent laws on UK legislation as well as passing laws on copyright, designs, trade secrets and geographical indications. However, considerable work needs to be done, including recruiting and training and officer to work in the Financial Services Commission to deal with patents and trademarks administration. The Department of Customs and Trade, and the Attorney Generals chambers all need training. In addition, Vanuatu must join six international conventions before December 2012 to comply with the TRIPS Agreement.[11] Some members of the working party highlighted minor flaws in the legislation, and Vanuatu may have to change its laws to comply with WTO requirements.

The table opposite, from the working party report, details what has been done to comply with TRIPS and what tasks remain. Amongst other things it requires a TRIPS office to be set up, manuals and operating procedures, training of 15 officials, membership of international organisations and cooperation with international intellectual property rights bodies. This is an ambitious programme within a relatively short period of time.

Policies affecting trade in services

The next part of the report concerns trade in services, and the first few paragraphs discuss the main services sectors, including the financial centre, UNELCO and TVL. The report notes that a new regulatory authority was set up, and that the mobile telephone market was now open to competition, with a resulting spread of telephone coverage across the country. In general Vanuatu is already very open to foreign services investors, with a few restrictions such as the need to comply with building regulations. The specific schedule of services is discussed at the end of this document, showing which areas Vanuatu promises to keep open to foreign competition and where it will apply national treatment.

11. The Paris, Berne, Geneva, Brussels, International Union for the Protection of New Varieties of Plants (UPOV) and World Intellectual Property Organisation (WIPO) Conventions.

Transparency

The next two paragraphs, 132 and 133, say that laws only come into operation after they are gazetted, and that within four years of accession Vanuatu must publish in a journal or website showing all the laws and regulations relevant to WTO membership, so that other WTO members can see it.

What has been done to comply with TRIPS and what tasks remain

Action	Deadline
Parliamentary consideration of TRIPS-consistent legislation on copyright and related rights, patents, trademarks, industrial designs, geographical indications, layout designs of integrated circuits, and protection of undisclosed information (trade secrets).	Legislation passed during various sittings of Parliament in 2000, 2003, and 2008.
Gazetting of remaining unimplemented TRIPS-consistent legislation approved by Parliament: - Copyright and Related Rights Act No. 42 of 2000; - Circuits Layouts Act No. 51 of 2000; - Trade Secrets Act No. 52 of 2000; - Trademarks Act No. 1 of 2003; - Patents Act No. 2 of 2003; and - Design Act No. 3 of 2003.	Legislation was gazetted on 8 February 2011.
Drafting of implementing regulations. Notification of gazetted TRIPS-consistent legislation and draft implementing regulations to WTO TRIPS Committee.	No later than 1 December 2011.
Establishment (implementation) of implementing regulations. Establishment of any necessary additional legislation and regulations to provide a legal basis for enforcement mechanisms.	No later than 1 December 2012.
Establishment of Intellectual Property (IP) Office, recruitment of personnel, obtaining facilities and equipment.	No later than 1 December 2012.
Development of manuals and operating procedures.	No later than 1 December 2012.
Training of at least 15 officials, customs officers and private sector people as well as educators in TRIPS issues.	No later than 1 December 2012.
Readiness to participate in regional and international IP administrative cooperation (Forum Island countries, PCT, Madrid Protocol, etc.).	No later than 1 December 2012.
Membership in the Paris, Berne, Geneva, Brussels, UPOV and WIPO Conventions.	No later than 1 December 2012.
Full implementation of WTO TRIPS Agreement.	No later than 1 December 2012.

Trade agreements

The final part of the report mentions the trade agreements of which Vanuatu is a member: the Melanesian Spearhead Group Trade Agreement, the Pacific Island Countries Trade Agreement, the South Pacific Area Regional Trade and Economic Cooperation Agreement as well as some bilateral agreements. Vanuatu is taking part in Pacific Agreement on Closer Economic Relations (PACER Plus) negotiations. All these agreements must be compatible with the WTO, covering most trade.

The working party report concludes with some formalities, as well as noting the specific areas noted throughout the report where Vanuatu promises to change its legislation. If parliament approves the report, Vanuatu would join at the next WTO General Council meeting.

3. Frequently asked questions

Will the government lose revenue because it is forced to reduce tariffs on imported goods?

The World Trade Organisation (WTO) is not a free trade agreement (FTA) - Vanuatu has not committed to cutting most tariffs by joining WTO. As Vanuatu won't have to cut most of its tariffs there will be little effect on government revenue collection.

Will local businesses lose their protection and have to close?

Vanuatu will only have to lower import tariffs on a small range of goods. It can retain existing protective measures for domestic industries. And commitments in the services sector, although significant, won't actually mean that services industries have to open any further.

Will it be easier for foreign companies to dump their goods here and undermine local businesses?

As Vanuatu won't have to cut most of its tariffs there will be little or no additional incentive to 'dump' goods than at present. The WTO allows governments to act against dumping (e.g. charging extra import duty) that is causing injury or threatening to do so against domestic industry.

Will the government have to privatise more of its functions and open itself up to tenders from overseas companies?

The accession document says that the government plans to pursue a policy of privatising and corporatising companies supplying water electricity, stevedoring and television and broadcasting. The accession package has special provisions in relation to foreign companies that wish to run hospitals, education and environmental services to ensure they will not be able to claim the same subsidies or rights as state-provided institutions. Vanuatu has not committed to opening up government procurement, but has committed to maintaining its current system that does not permit discrimination against foreign suppliers and that no such discrimination will be introduced in the future.

If Vanuatu joins the WTO can it then take action against countries that block Vanuatu products?

If countries break WTO rules by blocking Vanuatu products, then Vanuatu could take action via the WTO dispute settlement body. Such an action would, however, be expensive and time-consuming. If other countries had a similar complaint, Vanuatu might bring a joint dispute alongside them. The government could also raise a complaint in Geneva without escalating the issue into a full dispute. Around half of the 400 or more disputes so far have been taken by developing countries, although the main purpose of the dispute settlement mechanism is to act as a deterrent to breaking WTO rules.

How will joining WTO affect the 'reserved list' of Vanuatu jobs and business investment?

Any foreign investor wanting to invest in Vanuatu will still need to get government approval. For professionals who work in Vanuatu under the terms of the *Labour Act,* the government promises not to make it harder in future for foreigners to come to Vanuatu or operate here. The business activities reserved for citizens remain in place under the existing legislation. This means that Vanuatu will not have to open its services sector any more than it currently does – foreigners are already allowed to operate in most sectors – but it prevents the government in future from closing down the 30 areas listed in the services schedule.

Will medicines become more expensive?

Vanuatu currently purchases most medicines from World Health Organisation approved sources - the impact of data exclusivity will therefore have little consequence on medicine prices.

Has Vanuatu has got a bad deal compared to other countries?

It is important to assess each country's package on its merits. Not all countries start from the same point of liberalisation. But Vanuatu got a better deal than most of the LDCs which have joined recently, like Nepal, Cambodia and Tonga. Unlike many new members, Vanuatu's economy is already very open, which means that WTO membership won't result in much new liberalisation. It is also important to note that it is not possible to compare Vanuatu's accession process with PNG, Fiji and Solomon Islands as they became members during the previous General Agreement on Tariffs and Trade (GATT) period and the terms of accession were very different and did not require the process of negotiation that is now required.

How important is it for Vanuatu to have a seat at the WTO?

Powerful countries and corporations will always find ways to dominate trade. Joining the WTO is no guarantee against this, however having a seat at the table is an important defensive mechanism that may give Vanuatu more options to ensure its best interests ahead.

Is it possible to leave the WTO?

Yes, there is a procedure that any country can follow to opt out of membership of the WTO. To date no country has opted to leave the WTO.

Annex 1: Legislation introduced as a result of WTO accession

WTO agreement or other subject-matter	Laws and other legal provisions addressing and covering the subject matter	Status of indicated legislation	Comment
General	Trade Law		Subsequent legislation to be revised where found to be incompatible with WTO provisions.
National treatment	Import Duties (Consolidation) Act [CAP. 91].	Amended	Point system based on nationality abolished.
Relationship central vs. sub-central government	Provincial Government Act 1994.		Provinces are not permitted to raise import duties or import taxes.
Trading Rights	Business Licence Act 1998; The Business Licence (Amendment) Act No. 1 of 2006; Business Licence (Amendment) Act No. 13 of 2006; Business Licence (Amendment) Act No. 19 of 2007; and Business Licence (Amendment) Act No. 34 of 2010.		Amendments made to ensure that import licenses may be granted to foreign "importers of record" and to remove business licence fees that violate any commitment to non-discrimination and national treatment.
Import duties	Import Duties (Consolidation) Act [CAP. 91].	Amended in 1998	Substantial across-the board reductions in tariffs.
Other duties and charges	Import Duties (Consolidation) Act [CAP. 91].	Amended in 1998	Service tax abolished (rolled into new tariff rates).
	Import of Goods (Control) Act No. 176 [CAP. 176].	Amended in 1998	3-4% commission issued by the Vanuatu Cooperative Federation abolished and rolled into the tariff rate.
Duty exemptions	Vanuatu Customs Tariff, Schedule III, section 1 (Economic Reliefs)	Amended in 1998	Policy made more transparent and the scope for discretion reduced.
Internal taxation	Value Added Tax Act No. 12 of 1998 and Explanatory Note; Value Added Tax (Amendment); Act No. 28 of 2002; Beer (Repeal) Act No. 25 of 2002; Excise Act No. 24 of 2002; Excise Tax (Amendment) Act No. 38 of 2006; and Excise (Amendment) Act No. 30 of 2010.	Effective 1 August 1998	Rate of 12.5% applied to goods and most services. Reforming the system of excise taxes to remove discrimination between like or similar alcoholic beverages.

WTO agreement or other subject-matter	Laws and other legal provisions addressing and covering the subject matter	Status of indicated legislation	Comment
Agreement on Import Licensing Procedures	Import of Goods (Control) Act No. 176 [CAP. 176]; and Customs Act [CAP. 257]		Bans (potatoes, T-shirts) and import orders eliminated. Import of Goods (Control) Act amended to eliminate authority of Minister to restrict imports to protect domestic production. Customs Act [CAP. 257] Amendment (see also WT/ACC/VUT/14/Add.4) would be gazetted upon the date of accession.
Agreement on Implementation of Article VII of the GATT 1994 (customs valuation)	Import Duties (Consolidation) (Customs Valuation Amendment) Act of 1999.	Effective 1 January 2001	Ensures full compliance with the WTO Agreement.
Export duties	Export Duties (Amendment) Act No. 19 of 2006; and Export Duties (Amendment) Act No. 25 of 2007.		
Agreement on Technical Barriers to Trade (establishment of TBT enquiry point)	Decision of the Ministry of Trade, Commerce and Industry; Food (Control) Act No. 21 of 1993; and Food (Control) (Amendment) Act No. 27 of 2009.	Effective 19 September 2001	The Director of the Department of Trade, Industry and Investment appointed as TBT enquiry point.
Agreement on the Application of Sanitary and Phytosanitary Measures	Animal Importation and Quarantine Act of 1988; Order No. 14 of 1994; Plant Protection Act No. 14 of 1997; Imports Specification (Plants) Manual; and Food Control Act No. 21 of 1993. Participation in international fora: OIE FAO Codex Alimentarius Commission IPPC Pacific Plant Protection Organization (PPPO)	Member since 1983 Member since 1995 Contracting party since 2007	The Director of the Vanuatu Quarantine and Inspection Services is the SPS enquiry point (decision of 26 February 2001).

WTO agreement or other subject-matter	Laws and other legal provisions addressing and covering the subject matter	Status of indicated legislation	Comment
TRIPS Agreement	Copyright and Related Rights Act No. 42 of 2000;	Approved by Parliament and gazetted	Acts have been gazetted.
	Circuit Layouts Act No. 51 of 2000;	"	
	Trade Secrets Act No. 52 of 2000;	"	
	Geographical Indications (Wine) Act No. 53 of 2000;	"	
	Trademarks Act No. 1 of 2003;	"	
	Patents Act No. 2 of 2003;	"	
	Designs Act No. 3 of 2003;	"	
	United Kingdom Patents (Amendment) Act No. 14 of 2008; and	"	
	United Kingdom Trade Marks (Amendment) Act No. 15 of 2008.	"	
General Agreement on Trade in Services	Legal Profession Act No. 49 of 2005;		
	The Telecommunication Act No. 10 of 1989;		
	Telecommunication (Amendment) Act No. 34 of 2006;		
	Telecommunication (Amendment) Act No. 15 of 2007;		
	Telecommunication (Amendment) Act No. 31 of 2009;		
	Insurance Act No. 54 of 2005; and		
	Insurance (Amendment) Act. No. 29 of 2009.		
Trade Agreements (Article XXIV of the GATT 1994)	Agreement Establishing the Melanesian Spearhead Group (Ratification) Act No. 18 of 2007;		
	Pacific Island Countries Trade Agreement (PICTA); and		
	Consolidated Amendments (Ratification) Act No. 3 of 2008.		

Annex 2: Reserved Investments

1. Tourism

(a) Local tour agent if the annual turnover is less than VT 20 million;
(b) Local tour operator if the investment is less than VT 50 million;
(c) Commercial cultural feasts (Melanesian, Polynesian etc.);
(d) Guest houses if the number of beds is less than 50, or less than ten rooms or annual turnover is less than VT 20 million; (e) Bungalows if the annual turnover is less than VT 30 million; and
(f) Hotels and motels if the total value of the investment is less than VT 10 million or the annual turnover is less than VT 20 million.

2. Trade
(a) Export of sandalwood in stick and chips form;
(b) Local trading of sandalwood;
(c) Export of seeds and other minor forest products;
(d) Second hand clothing shops; and
(e) Export of kava in root, chips and stick form.

3. Manufacturing
(a) Manufacture of handicraft and artefacts.

4. Services
(a) Kava bars;
(b) Open air vendors;
(c) Mobile shops;
(d) Door to door sales;
(e) Road transport operators - public taxi and bus services;
(f) Private security services including security guards;
(g) Category F of Business Licensing Act No. 19 of 1998 of less than VT 5 million turnover per year;
(h) Retail shops including general merchandise trading shops where the annual turnover is less than VT 30 million, excluding specialty shops;
(i) Coastal shipping of less than 80 tonnes, excluding vessels used for tourism purposes;
(j) Electricians and electro-technicians meeting prescribed standards;
(k) Residential building and construction meeting prescribed standards; and
(l) A land transport operator of any kind including but not limited to an operator of:
(a) a transport or transfer that operates from the airport to any of the following locations: (i) a hotel; (ii) a bungalow; (iii) a motel; (iv)a re sort; (v) a guesthouse; (vi) a lodge.

(b) a transport or a transfer that operates from any of the locations listed under item 4(l)(a)(i)-(vi) to the airport;
(c) a transport or a transfer that operates from any of the locations listed under item 4(l)(a)(i)-(vi) to attend any kind of tours; and
(d) a transport or a transfer that operates a tour from any particular location not listed under item 4(l)((a)(i)-(vi) to a specific location.

5. Fishing
(a) Fishing within archipelagic waters within the meaning of the Maritime Zones Act [CAP. 138] and the first six nautical miles of the territorial sea within the meaning of that Act.

Pacific Institute
of Public Policy

PMB 9034 Port Vila, VANUATU | Tel/Fax: +678 29842 | Email: pipp@pacificpolicy.org | www.pacificpolicy.org