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**WTO-plus Commitments on the Elimination of Export Duties:
Evidence of a Two-Tier Membership?**

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Abstract: This descriptive paper examines the prevalence of ‘WTO-plus’ commitments in accession protocols of newly acceded Members, with a focus on commitments on the elimination of export duties. It presents preliminary results of a mapping exercise carried out with respect to these commitments and seeks to answer two questions. First, can any general conclusions be drawn as to the prevalence of these commitments or are they, per definition, country-specific. Second, has the political nature of the WTO accession process allowed for the creation of a two-tier membership. The first question is answered by relying on data gathered as part of the ongoing PhD-research project conducted by the author. The project aims to construct a typology of WTO-plus commitments to allow for a more detailed analysis of the relationship between these commitments and the baseline obligations in the covered agreements. The accession of China to the WTO is commonly considered as the prime example of the inclusion of WTO-plus obligations in accession protocols. The paper tries to answer the question whether this particular accession was truly unique in nature, or whether the inclusion of “Plus” obligations is less exceptional than often assumed. Additionally, the accession protocols of other recently acceded-Members are examined to establish whether the hypothesis holds. In the PhD-research project this comparative methodology will also be applied to map WTO-plus commitments in other areas, such as anti-dumping and transparency. The second question will be answered in two stages. In a preliminary stage, international institutional law will be used to by analyzing the way in which the WTO’s Dispute Settlement Body has dealt with this type of WTO-plus commitment in its jurisprudence. The second stage deals with the question of hierarchy: Accession Protocols are negotiated with the WTO Membership, by each country willing to accede to the WTO. This poses questions as to their exact position in the system of WTO law. To establish whether evidence of a two-tier membership is present, one first has to turn back to the question whether Accession Protocols are a separate (or independent) legal instrument or an “integral part” of the WTO system of covered agreements. If newly acceded Members do not benefit from the general exceptions in order to balance their more stringent, WTO-plus, obligations, this may support the conclusion that the membership of the World Trade Organization is becoming, in fact, two-tiered.

Contents

1 Introduction	4
2 WTO Accession	5
2.1 Process	5
2.2 Accession Protocols in the WTO Legal Order	6
3 Typology of Accession Commitments	8
3.1 State-of-the-art	8
3.2 Mapping exercise	9
3.3 Prevalence of “WTO-plus” commitments	13
4 Conclusion: Evidence of a Two-Tier Membership?	14
References	15

1 Introduction

The accession process to the World Trade Organization (WTO) has not changed considerably compared to that of the General Agreement on Tariffs and Trade (1947).¹ It has remained highly political in nature. The process is characterized by a high degree of flexibility for incumbent Members to make accession of applicant States or Customs Territories conditional upon the acceptance of more stringent obligations. These types of obligations are commonly referred to as “WTO-plus” obligations or, where they provide for more flexibility for incumbent Members, “WTO-minus” rights. The main objectives of the research project are to provide a detailed typology of these commitments and to offer answers to the normative question whether the WTO accession process has allowed for the creation of a “two-tier membership”. To this end, the project will analyze the prevalence of “WTO-plus” commitments in the accession protocols of Members that have acceded after 1994. The picture that will emerge from this analysis will explain whether there is a trend towards the inclusion of more stringent commitments in new Members’ accession protocols or whether these commitments are purely negotiated on a country-specific basis.

This conference paper briefly summarizes the first two chapters of the PhD research project of the author, before presenting some initial outcomes of the third stage of the project. In the first chapter, the WTO accession process is described in detail, including a discussion on the rationale for WTO accession. The second chapter analyzes the status of accession protocols in the WTO legal order as it will determine the relationship with other WTO agreements, and consequently, may have a bearing on the extent to which a Respondent in a dispute may rely on exceptions provided for in these agreements. This issue is particularly relevant considering that nearly all of the newly acceded Members, as well as the States and Customs Territories currently negotiating their accession, are developing countries. Retention of regulatory autonomy in the face of more stringent obligations is especially relevant for this particular group of countries, especially considering their (limited) negotiating capacity. The third stage encompasses a mapping exercise of “WTO-plus” commitments in accession protocols which serves as a basis for the creation of a typology of accession commitments. The project discusses previous efforts by Charnovitz, Ehring, Qin and Yamaoka and aims to build upon their work, in particular with respect to obligations relating to the elimination of export duties. Finally, some preliminary conclusions are presented.

¹ Cf. Article XXXIII, GATT, 1947, and Article XII.1, WTO Agreement.

2 WTO Accession

2.1 Process

The accession process to the WTO is rooted in the GATT 1947. Article XXXIII of the GATT 1947 provided that governments not party to the agreement may accede to the agreement “on *terms to be agreed* between such government and the CONTRACTING PARTIES.” Hence, the accession process to GATT was characterized by political bargaining by the incumbent membership and the government wishing to accede. With the creation of the World Trade Organization (WTO) after the conclusion of the Uruguay Round of Multilateral Trade Negotiations some aspects of the multilateral trading system changed significantly. A Trade Policy Review Mechanism (TPRM) was introduced and the dispute settlement mechanism underwent a process of legalization.² Other institutional characteristics remained unchanged, however.³ The procedure of accession is governed by Article XII of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The text of this article to a large extent mirrors the text of Article XXXIII of the GATT 1947, which dealt with the issue of accession to GATT. It provides [in relevant part] that “any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations ... may accede to this Agreement, on *terms to be agreed* between it and the WTO.” Consequently, the essentially political nature of the accession procedure under GATT has remained unaltered with the creation of the WTO.⁴

In comparison to GATT, the scope of the WTO is considerably broader. In addition to tariff schedules, which were the main focus of GATT-negotiations, it also includes rules on trade in goods, trade-related aspects of intellectual property rights and transparency obligations.⁵ Hence, the amount of fields in which there is scope for the negotiation of more stringent commitments than those provided for in the baseline obligations has grown considerably.

² VAN DEN BOSSCHE; ZDOUC, 2013, p. 156.

³ Ibid., p. 109.

⁴ Appellate Body Report, **China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum**, WT/DS431/AB/R, WT/DS432/AB/R and WT/DS433/AB/R, circulated 07 August 2014, not yet adopted, para. 5.27. The Appellate Body clarified that “this provision does not spell out the content of, or impose limitations on, such “terms”. Rather, such terms are to be “agreed” upon by the WTO and the individual acceding Member during a specific accession process.

⁵ WILLIAMS, 2008, p. 55.

2.2 Accession Protocols in the WTO Legal Order

The status of accession protocols in the WTO Legal Order is not explicitly addressed by the WTO Agreement.⁶ Panels and the Appellate Body have dealt with accession protocols in a number of cases.⁷ To this date, no party to a dispute has challenged the enforceability of accession protocols. Consequently, practice in WTO dispute settlement indicates that Members, and in particular newly-acceded Members, accept that accession protocols are enforceable.⁸

In addition to the question of enforcement, there is the question of the relationship between accession protocols and the WTO Agreement. More specifically, the question has arisen whether a Respondent Member can rely on the general exceptions contained in Article XX of the GATT 1994 in order to justify alleged inconsistencies with the obligations arising from its accession protocol.⁹ This is a pertinent issue especially in light of the fact that these accession protocols may contain more stringent obligations, as will be shown below. The *China – Rare Earths* dispute is the latest addition to the list of cases in which China sought to justify an alleged violation of one of its accession protocol commitments by relying upon Article XX of the GATT 1994. Before the Panel, China accepted previous Appellate Body decisions establishing that there was explicit textual basis in Paragraph 11.3 of China's Accession Protocol which would allow recourse to Article XX of the GATT 1994. However, China argued that "such textual silence does not mean that it was the Members' common intention that no such defence should be available to China." Consequently, China essentially

⁶ See CHARNOVITZ, 2009; PARENTI, 2000; and KENNEDY, 2013.

⁷ Panel Report, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/R; Appellate Body Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R, adopted 12 January 2009 (*China – Auto Parts*); Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R; Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, adopted 19 January 2010 (*China – Publications and Audiovisual Products*); Panel Report, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394 and Corr.1, WT/DS395/R and Corr.1, WT/DS398/R and Corr.1; Appellate Body Report, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R, WT/DS395/R, WT/DS398/R, adopted 22 February 2012 (*China – Raw Materials*); Panel Report, *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS431/R, WT/DS432/R and WT/DS433/R, circulated 26 March 2014, not yet adopted (*China – Rare Earths*); Appellate Body Report, *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS431/AB/R, WT/DS432/AB/R and WT/DS433/AB/R, circulated 07 August 2014, not yet adopted.

⁸ See for example, Panel Report, *China – Rare Earths*, para. 7.40 and 7.85 and Panel Reports, *China – Raw Materials*, para. 7.114.

⁹ Appellate Body Report, *China – Publications and Audiovisual Products*, para. 233; Appellate Body Report, *China – Raw Materials*, para. 291 and 307.

asked the Panel to overturn the Appellate Body's previous case law.¹⁰ The Panel rejected China's argument stating that "'textual silence in a treaty provision is not, in and of itself, dispositive" cannot be regarded as a "cogent reason" for departing from the Appellate Body's finding that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994." Additionally, China argued that "[t]he terms 'nothing in this Agreement' in the chapeau of Article XX of the GATT 1994 do not exclude the availability of Article XX to defend a violation of Paragraph 11.3 of China's *Accession Protocol*".¹¹ It submitted that Article XX of the GATT 1994 is also available to justify violations of "*intrinsically GATT-related 'WTO-plus' provisions contained in post-1994 accession protocols*."¹² It clarified that this term covers "those provisions that are not part of the text of the GATT 1994 as it entered into force on 1 January 1995 but that nevertheless have to be treated as an *integral part* of the latter." The Panel dismissed the argument, referring to its finding that China's Accession Protocol is an integral part of the WTO Agreement, and not of the GATT 1994. On appeal China put forward that based on Paragraph 1.2 of China's Accession Protocol and Article XII:1 of the WTO Agreement – and at the risk of oversimplifying – the provisions of its Accession Protocol form integral parts of either the Marrakesh Agreement Establishing the World Trade Organization or of one of the Multilateral Trade Agreements "to which [they] intrinsically relate[s]".¹³ Accordingly, the obligation to eliminate export duties contained in Paragraph 11.3 of its Accession Protocol is, in China's view, intrinsically related to Article II GATT 1994 and Article XI GATT 1994.¹⁴ Consequently, Paragraph 11.3 should be subject to the general exceptions contained in Article XX GATT 1994. The AB rejected this argument and held instead that in order to determine whether a newly acceded Member may rely on one of the exceptions provided for in one of the Multilateral Trade Agreements, an analysis of the relevant provisions and the circumstances of the dispute must be carried out.¹⁵ In sum, there is no comprehensive and overall conclusion on the issue of the applicability of exceptions found in any of the Multilateral Trade Agreements to obligations contained in accession protocol provisions. Rather, for each of these individual provisions an analysis must be made of whether recourse to one of the exceptions is possible. In the words of the Appellate Body, such an "analysis

¹⁰ China argued that the Appellate Body Report in **China – Raw Materials** was incompatible with the Appellate Body Report in **US – Carbon Steel**.

¹¹ Panel Report, **China – Rare Earths**, para. 7.100 (emphasis in the original).

¹² Panel Report, **China – Rare Earths**, para. 7.100 (emphasis added).

¹³ Appellate Body Report, **China – Rare Earths**, para. 5.73.

¹⁴ Appellate Body Report, **China – Rare Earths**, para. 5.8. See also Panel Report, **China – Rare Earths**, para. 7.76.

¹⁵ Appellate Body Report, **China – Rare Earths**, para. 5.74.

must also take into account the overall architecture of the WTO system as a single package of rights and obligations and any other relevant interpretative elements, and must be applied to the circumstances of each dispute, including the measure at issue and the nature of the alleged violation.”¹⁶

3 Typology of Accession Commitments

At the time of writing, 32 states or customs territories have joined the World Trade Organization through the process of accession as prescribed by Article XII WTO Agreement.¹⁷ At the outset it is important to acknowledge that accession negotiations include discussions on both market access commitments and rules commitments. The market access negotiations are to a large extent similar to the market access negotiations under GATT, since applicant Members have to table a satisfactory offer for the incumbent membership in the form of tariff reductions and the opening of its market in the area of services. In addition, however, negotiations take place on so-called ‘rules commitments’ which stipulate the way in which a new Member will pursue its trade policy subsequent to its accession. One might consider that the WTO Agreement stipulates all of the rules that a prospective Member will have to adhere to in the future. However, given the highly political nature of the accession process, incumbent Members have insisted on the inclusion of ‘rules’ commitments in the working party reports that, together with the accession protocol, form the accession package.

3.1 *State-of-the-art*

The issue of accession commitments has received some attention in academic literature. Charnovitz was (one of) the first to develop a framework in which accession commitments could be categorized and compared.¹⁸ In his view the starting point of such a framework should be the determination of the baseline obligations of WTO membership.¹⁹ More recently, Yamaoka has also contributed to this field of literature by suggesting a more

¹⁶ Appellate Body Report, **China – Rare Earths**, para. 5.74.

¹⁷ Available at: <http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> (last accessed: 11 Aug. 2014). Yemen is the most recent Member of the WTO. It completed its accession on 26 June 2014.

¹⁸ CHARNOVITZ, 2009.

¹⁹ Ibid., p. 290.

detailed typology.²⁰ Rather than using ‘confusing’ terms such as WTO-plus and WTO-minus, he adopts the following criteria: “(i) more stringent obligations to an applicant compared with the WTO Agreement; (ii) less stringent obligations to an applicant compared with the WTO Agreement; (iii) more stringent obligations to incumbent Members compared with the WTO Agreement; and (iv) less stringent obligations to incumbent Members compared with the WTO Agreement.”²¹ In the separate opinion in *China – Rare Earths*, WTO-plus provisions were defined as “provisions of an accession package that may go beyond the WTO Members’ basic obligations and rights set out in the Marrakesh Agreement and the Multilateral Trade Agreements.”²² Most recently, Ehring has added a valuable contribution to the growing literature on WTO-plus commitments in which he provides a deeper conceptual analysis of these particular commitments.²³

3.2 Mapping exercise

At the 2012 Beijing Round Table for Least-developed Countries (LDCs) on Best Practices in the WTO Accession Process then Director-General Pascal Lamy launched the Accession Commitments Database (ACDB).²⁴ The database includes the commitments contained in Accession Protocols and Working Party Reports of the Members that have acceded to the WTO, pursuant to Article XII of the WTO Agreement.²⁵ Using this database and the relevant Accession Protocols and Working Party Reports, a mapping exercise is undertaken to determine the prevalence of “WTO-plus” and “WTO-minus” commitments and to further refine the typology proposed in recent literature. Given the nature of a conference paper, the following is an excerpt of the research carried out for the third Chapter of the PhD dissertation. Consequently, the findings are confined to the eight Members that have joined the WTO most recently and China. The latter’s accession protocol is regarded as unique in nature, and can be considered to form the starting point of the “WTO-plus” commitments debate. Working Party Reports typically list the paragraphs containing commitments relating to specific matters in one of the concluding paragraphs. As will be established however, these

²⁰ YAMAOKA, 2013.

²¹ Ibid., p. 118. As Yamaoka observes, this typology is similar to Charnovitz’ classification into WTO-plus for the applicant and incumbent Members and WTO-minus for the applicant and incumbent Members.

²² Panel Report, *China – Rare Earths*, para. 7.131.

²³ EHRING, 2014.

²⁴ See <http://www.wto.org/english/news_e/sppl_e/sppl231_e.htm> (last accessed: 3 Apr. 2014). The database can be accessed at <<http://acdb.wto.org/>>.

²⁵ Until this date, 31 states or separate customs territories have acceded to the WTO through the procedure described in Article XII WTO Agreement.

commitments do not necessarily amount to WTO-plus commitments. In this part the focus is mostly on commitments on the elimination of export duties.

China

The accession process of China to the WTO can best be described as long and arduous. In 1986 China applied for the resumption of its original membership of GATT.²⁶ After more than a decade of negotiations, China finally acceded to the World Trade Organization in 2001. China's Protocol of Accession is arguably unique in nature.²⁷ Due to concerns related to the economic clout, the incumbent Members of the WTO sought to include as many safeguards as possible in the protocol. This resulted in the inclusion of an abundance of what have been termed "WTO-plus" commitments.²⁸ Qin observes that the major WTO-Obligations undertaken by China can be found in seven areas: (1) transparency, (2) judicial review, (3) uniform administration, (4) national treatment, (5) foreign investment, (6) market economy, and (7) transitional review.²⁹ Paragraph 342 of China's Working Party Report lists a total of 143 paragraphs relating to commitments on specific matters. These commitments are incorporated into the accession protocol.³⁰

Russian Federation

The accession process of the Russian Federation to the WTO was equally long and painstaking. The country formally applied for GATT membership in the summer of 1993, having become an observer to GATT two years earlier.³¹ In August 2012 the Russian Federation finally acceded to the WTO.

The Accession Protocol of the Russian Federation and the accompanying Working Party Report contain a large number of additional commitments and rules obligations.³² Paragraph 1450 of the Working Party Report lists 163 paragraphs that contain commitments in relation to "specific matters". These commitments have been incorporated in Paragraph 2 of the Accession Protocol of the Russian Federation.

²⁶ QIN, 1993, p. 78.

²⁷ QIN, 2003, p. 489; AU, 2013, p. 109.

²⁸ QIN, 2003, p. 488.

²⁹ Ibid., p. 491.

³⁰ WTO, **Report of the Working Party on the Accession of China**, WT/ACC/CHN/49, 1 October 2001.

³¹ NÁRAY, 2001, p. 20.

³² WTO, **Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization**, WT/ACC/RUS/70, WT/MIN(11)/2, 17 November 2011.

One striking difference with China's accession commitments is that Russia will still be able to levy export duties on a wide array of products. Some analysts have pointed out that this should enable Russia to achieve its fiscal objectives and to pursue an industrial policy aimed at the modernization its economy.³³

Ukraine

Ukraine acceded to the World Trade Organization in 2008. Ukraine's Working Party Reports mentions 63 commitments related to specific matters in Paragraph 512.³⁴ Ukraine made a commitment not to apply export duties to goods not listed in Table 20(a) of its accession protocol.³⁵ Interestingly, the next sentence of Paragraph 240 stipulates that "Ukraine would not increase export duties, nor apply other measures having an equivalent effect, unless justified under the exceptions of the GATT 1994." This explicit textual reference can be seen as a means to ensure the applicability of Article XX of the GATT 1994 to alleged violations of the commitment in Paragraph 240.

Cape Verde

Cape Verde acceded to the WTO in 2008. Its Working Party Report lists 26 commitments related to specific matters in Paragraph 269.³⁶ Cape Verde confirmed in its accession protocol that it did not apply export duties, however it did not take up an explicit commitment stipulating that it would not do so in the future.

Montenegro

Montenegro was the first of four countries to accede to the WTO in 2012. Its Working Party Report contains 35 commitments relating to specific matters.³⁷ Montenegro confirmed in its accession protocol that it would not apply or reintroduce any export duty.³⁸ It is noteworthy that contrary to Ukraine's accession protocol, this commitment is not limited by the phrase "unless justified under the exceptions of the GATT 1994." Consequently, Montenegro's commitment on the abolition of export duties contains no explicit textual

³³ SUTYRIN, 2012.

³⁴ WTO, **Report of the Working Party on the Accession of Ukraine to the World Trade Organization**, WT/ACC/UKR/152, 25 January 2008.

³⁵ Ibid., para. 240.

³⁶ WTO, **Report of the Working Party on the Accession of Cape Verde to the World Trade Organization**, WT/ACC/CPV/30, WT/ACC/CPV/30, 6 December 2007.

³⁷ WTO, **Report of the Working Party on the Accession of Montenegro to the World Trade Organization**, WT/ACC/CGR/38, WT/MIN(11)/7, 5 December 2011, para. 281.

³⁸ Ibid., para. 132.

reference to Article XX of the GATT 1994. Following recent panel and Appellate Body Reports, this would mean that Montenegro would not be able to rely on the exceptions listed in this article in order to justify an alleged violation of this commitment.

Samoa

Samoa concluded its accession process to the WTO in 2012. It is widely regarded as an example of the painful road many developing countries have to take in order to be allowed to ‘join the club.’ Paragraph 254 of Samoa’s Working Party Report lists 37 commitments relating to specific matters.³⁹ Samoa did not make any specific commitments related to the elimination of export duties, but merely stated that it did not impose any export duties.

Vanuatu

Vanuatu’s acceded to the WTO in August 2012. Its Working Party Report lists 30 commitments relating to specific matters in Paragraph 145.⁴⁰ Vanuatu’s commitments on export measures can be found in Paragraph 79 of its accession protocol. Contrary to accession protocols of other Members, Vanuatu did not include a commitment to eliminate or not reintroduce export duties, merely stating that “Vanuatu would ensure that it applied its laws and regulations governing export measures and would act in conformity with the relevant provisions of the WTO, including Articles I and XI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures.”⁴¹

Lao People’s Democratic Republic (Lao PDR)

Lao PDR joined the WTO in February 2013. Its Working Party Report contains a total of 26 commitments relating to specific matters.⁴² These commitments are listed in Paragraph 248. Lao PDR is an interesting example in the list of countries that have recently acceded to the WTO. Contrary to many other Members, Lao PDR focused on the importance of export duties as a means of obtaining government revenue. As such it stated in its Working Party Report that there are “no plans, at present, to phase out the remaining duties.”⁴³ When asked to commit not to introduce export duties on products not listed in the accession package, Lao

³⁹ WTO, **Report of the Working Party on the Accession of Samoa to the World Trade Organization**, WT/ACC/SAM/30, WT/MIN(11)/1, 1 November 2011.

⁴⁰ WTO, **Report of the Working Party on the Accession of Vanuatu to the World Trade Organization**, WT/ACC/VUT/17, 11 May 2011.

⁴¹ *Ibid.*, para. 79.

⁴² WTO, **Report of the Working Party on the Accession of Lao PDR to the World Trade Organization**, WT/ACC/LAO/45, 1 October 2012.

⁴³ *Ibid.*, para. 100.

PDR responded that these duties were essential for government revenue and development purposes.⁴⁴ As such, Lao PDR did not commit itself to phase out or eliminate export duties.

Tajikistan

Tajikistan became the 159th Member of the WTO in 2013. At the moment of writing it is the last country to have joined the multilateral trade organization. Its Working Party Report contains 40 commitments relating to specific matters.⁴⁵ In its accession protocol, Tajikistan took up the commitment to eliminate all duties, taxes, fees and charges applied to exports, unless specifically provided for in Table 9 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994. Furthermore it committed itself to the obligation not to introduce new export duties.⁴⁶

3.3 Prevalence of “WTO-plus” commitments

Focusing on commitments relating to the elimination of export duties, the evidence gathered by conducting the mapping exercise of “WTO-plus” commitments in accession protocols indicates that to a large extent they are negotiated on a country-specific basis. Especially when the acceding member is a large economy with great export potential, incumbent Members seek to ensure that the accession package is crafted in a way that safeguards their defensive interests. In the case of China and Viet Nam, for example, acceding Members included so-called Non-Market Economy (NME) methodology provisions in their accession protocols.⁴⁷ However, it is clear that certain commitments on specific matters are included almost across the board. This is particularly true for commitments on the elimination of export duties. Such commitments can be found in the accession protocols of, inter alia, Ukraine, China, Montenegro and Tajikistan. It appears that incumbent WTO Members typically insist on including a commitment on the elimination of export duties in protocols of acceding Members that typically export large quantities of raw materials. This is particularly true, of course, for China, but also for Tajikistan. More than 50% of Tajikistan’s exports

⁴⁴ Ibid., para. 101.

⁴⁵ WTO, **Report of the Working Party on the Accession of Tajikistan to the World Trade Organization**, WT/ACC/TJK/30, 6 November 2012, para. 351.

⁴⁶ Ibid., para. 169.

⁴⁷ WTO, **Report of the Working Party on the Accession of China**, WT/ACC/CHN/49, 1 October 2001, Draft Accession Protocol, para. 15; WTO, **Report of the Working Party on the Accession of Viet Nam to the World Trade Organization**, WT/ACC/VNM/48, 27 October 2006, para. 255.

consist of ‘raw aluminium’ (HS 7601), amounting to almost \$500 million annually.⁴⁸ Similarly, Montenegro’s largest export item is raw aluminium, making up 36.51% of its total exports.⁴⁹ Obviously, this hypothesis would have to be assessed empirically, but this simple observation points to the conclusion that WTO-plus commitments are mostly agreed on a country-specific basis and are dependent on the export profile of the acceding Member in question.

4 Conclusion: Evidence of a Two-Tier Membership?

This descriptive paper has offered a brief overview of the second and third chapter of the author’s PhD project on the WTO accession process. It has presented some preliminary findings of the mapping exercise conducted in order to obtain a better understanding of the prevalence of WTO-plus commitments in accession protocols. The Appellate Body Report in *China – Rare Earths* has further clarified the relationship between (WTO-plus) commitments in accession protocols and the WTO Agreement. Absent an explicit textual reference contained in a Multilateral Trade Agreement, a newly acceded Member cannot rely on any of the exceptions contained in one of the Multilateral Trade Agreements annexed to the WTO Agreement. Consequently, China could not invoke the general exceptions in Article XX of the GATT 1994 to justify an alleged violation of Paragraph 11.3 of its Accession Protocol. It seems that some newly-incumbent Members have foreseen this, and have included explicit textual references to GATT 1994 in the paragraphs of their accession protocol dealing with commitments on the elimination of export duties. Whether this warrants the conclusion that the WTO’s membership is in fact “two-tiered” depends on what one defines as two-tiered. One might argue that the division between developed, developing and least-developed countries (LDCs) also has created a multi-tiered membership. However, based on the preliminary results presented in this paper, one cannot but conclude that some newly acceded Members will be able to rely on one of the exceptions contained in another Multilateral Trade Agreement (e.g. GATT 1994), whereas others, even though under similar accession protocol obligations, will not.

⁴⁸ Available at: <<http://atlas.media.mit.edu/profile/country/tjk/>> (last accessed: 11 Aug. 2014).

⁴⁹ Available at: <<http://atlas.media.mit.edu/profile/country/mne/>> (last accessed: 11 Aug. 2014).

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