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**ADDIS ABABA UNIVERSITY COLLEGE OF LAW  
AND GOVERNANCE STUDY**

**LIBERALIZATION OF THE BANKING SECTOR IN  
VIEW OF ETHIOPIA'S ACCESSION TO THE  
WORLD TRADE ORGANIZATION**

**By**

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**Addis Ababa, Ethiopia**

**October, 2015**

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# **ADDIS ABABA UNIVERSITY**

## **School of Graduate Studies**

This is to certify that the thesis prepared by Mulisa Daba Delessa entitled: *Liberalization of the Banking Sector In view Of Ethiopia's Accession to the World Trade Organization* and submitted in partial fulfillment of the requirements for Degree of Master of Laws (LL.M) in Business Law complies with the regulation of the University and meets the accepted standards with respect to originality and quality.

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## **Declaration**

I, Mulisa Daba Delessa, here declare that this “thesis is my original work and has not been presented for a degree in any other University, and that all source of materials used for the thesis have been duly acknowledged”.

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## **Abstract**

*Similar to the two complaining sides of banking liberalization in the world, there are arguments for and/ or against liberalization of the Ethiopian banking sector to the outside world. Proponents argue that opening the Ethiopian banking sector to foreigners has the benefits of efficiency, increased employment opportunity, improve NBE Regulatory and supervision capacity through regulatory spillover, foreign banks may brought new skill and quality services and new capacitate of the banking sector technological know-how. On the other hand, opponents fear liberalization for its risks of financial instability, weakening the domestic banking institutions and the possibility of leaving out the poorest section of the society.*

*Thus, this paper attempts to analyzes the Current Ethiopia's banking sector policy, regulation and market situation in order to know the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization and recommend whether Ethiopia should liberalize the banking sector in view of its accession to the WTO or not. The methodology followed in undertaking the study involves review of both primary and secondary data and information. The review of the WTO accession rule, acceding countries' WTO accession and banking sector Liberalization experiences and interview of key informants has been involved for evidence and benchmarking.*

*The finding of the study shows that, the WTO accession process and Banking sector liberalization commitment requires well informed and understanding of (the WTO, the WTO system and complexity of the accession process), capacity building and technical support of international community as well as adoption of best accession model practice. On behave of Ethiopia, along with different studies, interviews, and reports of Ethiopia banking sector shows that even though Ethiopia's gradual liberalization policy and a lot of improvements over time in banking sectors are encouraging; however, compared to international giant banking sectors, the sector is generally still found at infant, relatively undeveloped, heavy dominant role of state-owned NBE's regulation, and a non-competitive market environment.*

*Based on these, to benefit from the WTO accession and Banking sector liberalization commitment, and to save from the risk, the researcher recommends the country **three** things: **First**, before the country start bilateral negotiation as preparation to the WTO, the country should invest on capacity building relating to banking sectors (human, institutional and financial) by continuous further demanding capacity building and technical support of international community. **Second**, the country should invest on strengthen country's banking sector policy, relax heavy dominant role of NBE's regulation and make Ethiopia banking sector market situation environment competitive. **Lastly**, during bilateral accession negotiation in offering the four modes of trade supply in Ethiopian banking sector, the country should negotiate to commit in offering full liberalization of mode 2 for its risk-free and offering the temporary movement of natural persons in mode 4 for its intra-corporate knowledge transfer in banking sector. However, the country should negotiate on maintaining capital controls and cautious approach in opening mode 1, and the country should negotiate to stay at the current level of gradually liberalization commitment until it builds domestic capacity of Ethiopian banking sector in Mode 3.*

**Key Words:** *WTO, Accession, Liberalization of the Banking Sector, Ethiopia*

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## **Acronyms and Abbreviations**

AACCSA= Addis Ababa Chamber of Commerce and Sectoral Associations

ACWL=Advisory Centre on WTO Law

ADLI=Agriculture Development Led Industrialization

AEC =ASEAN Economic Community

AGOA=African Growth and Opportunity Act

AIB=Awash International Bank

AML/CFT=anti-money laundering and countering the financing of terrorism

ATM=Automatic teller machine

ADB= Asian Development Bank

BRICs=Brazil, Russia, India, China South Africa

CBE= Commercial Bank of Ethiopia

COMESA =Common Market for East and Southern Africa

CPS=Country Partnership Strategy

CRP=Comprehensive Reform Program

CSOs=civil society organizations

DSU = Dispute Settlement Understanding

DPAD=Development Policy and Analysis Division

EAC= East Africa Community

e.g. = Example

EBA=Ethiopian Bankers Association

ECCSA=Ethiopia Chamber of Commerce and sectoral Associations,

EFF= Extended funding facility

EIF=Enhanced Integrated Framework

EU =European Unions

FDI = Foreign Direct Investment

FDRE=Federal Democratic Republic Of Ethiopia

GATS= General Agreement on Trade in Services

GATT=General Agreement on Trade and Tariffs

GDP =Gross Domestic Product

GSP=General system of preference  
GTP=Growth and Transformational plan  
H.E. Mr. =Honorable Ethiopian Minister  
IMF=International Money Found  
ITC=International Trade Center  
ICTSD=International Center for Trade and Sustainable Development  
Lao PDR=Lao People’s Democratic Republic  
LDCs = least–developed countries  
LNCCI=Lao National Chamber of Commerce and Industry  
LGD=Law of Social Justice & Global Development Journal  
M=million  
MDGs=Millennium Development Goals  
MFN=most-favored-nation  
MFTR=Memorandum of Foreign Trade Regime  
MOIC= Lao Ministry of Industry and Commerce  
NBE=National Bank of Ethiopia  
NGOs=Non Governmental organization  
NT=national treatment  
OIB= Oromia International Bank  
PM=Prime minister  
PPD=Public-Private Dialogue Forum  
PSD= Private Sector Development  
PPP=purchasing power parity  
PRGF=poverty reduction and growth facility  
S&D=Special and Differential Treatment Provisions  
S.C=Share Company  
SMEs=small and medium-sized enterprises  
SSA=Sub Sahara Africa  
TPRM=Trade Policy Review Mechanism  
TRAY= Trade Related Assistance for Yemen  
TRIMs =Trade-Related Investment Measures

TRIPs = Trade-Related Intellectual Property Rights

UN=United Nations

UNCTAD= the UN's Center for Trade and Development

US=United States

USA=United States of America

US\$=United States Dollar

US\$b= United States Dollar billion

USTR=United States Trade Representative

UN/DESA= Department of Economic and Social Affairs of the United Nations  
Secretariat

Vol. =Volume

WESP=World Economic Situation and Prospects

WTO= World Trade Organization

WTO- =WTO- minus right

WTO+=WTO-plus obligations

## CHAPTER ONE

### INTRODUCTION

#### 1.1. Background

World Trade Organization is established with the main objective of liberalizing multilateral trade, based on the belief that the liberalization of trade brings multiple of benefits to the world population.<sup>1</sup> Countries also join it on the belief that a liberal trade regime will confer these benefits upon those who become members.<sup>2</sup> Since the widespread acceptance of the multilateral trade liberalization, many countries have made attempts to liberalize their banking sectors.<sup>3</sup> In the liberalization of banking sector, there are two complaining sides in the world. These are during the WTO accession to liberalize the banking sector and/or not to liberalize the banking sector. On the positive side, Banking sector liberalization, increased domestic competition; effective diversification of risk and assisting its modernization.<sup>4</sup>

On the negative side, liberalization of the banking sector would not yield a more stable source of credit for domestic borrowers; it would leaving the domestic banks with higher-risk assets and customers; and it may only service profitable market segments; depending on the banking structure and regulatory capacity, foreign financial service providers encourage the development of oligopolistic, rather than competitive, banking structures.<sup>5</sup> But, the international economic organizations, including the World Bank, the IMF and the WTO, have appreciated the need for strengthening banking sector liberalization and reducing regulations that weaken this.<sup>6</sup>

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<sup>1</sup>Marrakesh Agreement Establishing the WTO, the WTO agreement Apr. 15, 1994, p.9.

<sup>2</sup>Hussein Ahmed Tura, 2013, Making the WTO Accession Work for Ethiopia: Lessons from Cambodia and Nepal, Abyssinia Law review, p.4.

<sup>3</sup>Leo M. Tilman, 2007, Banking Regulatory Environment and Supervision In Africa, The World Bank Database, Banking Survey, 2007, p.2.

<sup>4</sup>Gebrehiwot Ageba, 2008, Ethiopia's Accession to The WTO and The Financial Services Sector, Trade and Development discussion paper, no 02/2008, p.1.

<sup>5</sup>Id, pp.1-3.

<sup>6</sup>Alemayehu Geda<sup>1</sup> 2008, The Structure and Performance Of Ethiopia's Financial Sector In The Pre And Post Reform Period: With Special Focus On Banking, Draft, p.13; Solomon Abay, 2011, Financial market development, policy and regulation: the international experience and Ethiopia's need for further reform, Dissertation Submitted to Faculty Law of University of Amsterdam, February 2011, p.25.

Different studies suggest that financial liberalization can stimulate economic development. Financial liberalization does not mean “free banking”. Governments will continue to intervene in the financial sector in a number of ways: banks will be supervised for prudential reasons; some banks may be publicly owned; and the government may be a major borrower.<sup>7</sup>

Ethiopia, a founding member of many of the international and regional organizations today and the second most populous country in the UN list of least–developed countries (LDCs)<sup>8</sup>; however, appears unique compared to its East African neighbors (namely Kenya, Tanzania, and Uganda) and many other developing countries in that it has not yet opened its banking sector to foreign participation.<sup>9</sup> Since 1992 Ethiopia has been gradually liberalizing its banking sector.<sup>10</sup> The banking sector liberalization policy, however, inhibits foreign bank entry in any form and does not allow purchase of shares by foreign nationals.<sup>11</sup> This, stipulates that the Ethiopia nationals or organizations only can run banking business with the capital is wholly owned by Ethiopian nationals and organizations. The policy prohibits foreign nationals or organizations fully or partially to open banks or branch offices or subsidiaries of foreign banks in Ethiopia or acquire the shares of Ethiopian banks.<sup>12</sup> It implies that the closed nature of Ethiopia’s banking system in which there is no foreign banks participation, a non-competitive market structure, and strong capital controls by NBE.

Similar to the two complaining sides of banking liberalization in the world, there have been arguments for and /or against liberalization of the Ethiopian banking sector to the

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<sup>7</sup> Huwpill Andahmoodpradhan, 1997, & Chibuike Uche, 2011, Financial Liberalization in Africa and Asia, *IMF Finance & Development Working Paper* No. 95/123, Washington, June 1997, pp.1-9; Financial sector Liberalization In Developing Country, *International Trade Center (ITC)*, 2011, pp.8-15.

<sup>8</sup> Melaku Geboye, 2009, 'Accession for What? An Examination of Ethiopia’s Decision to Join the WTO', *Journal of World Trade*, 43 Issue 2, 2009, pp. 339–362. <http://kluwerlawonline.com/>

<sup>9</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern, 2007, 'The Case for Financial Sector Liberalization in Ethiopia', Gerald R. Ford School of Public Policy The University of Michigan, Ann Arbor, Michigan, *Discussion Paper*, No. 565, August 17, 2007, p. 1.

<sup>10</sup> Alemayehu Geda 2008, supra note 6.

<sup>11</sup> Ashenafi Beyene, 2012, Banking reform and SME financing in Ethiopia: Evidence from the manufacturing sector, *African Journal of Business Management* Vol. 6(19), 16 May 2012, p. 6057, Ethiopian Civil Service College, Addis Ababa, Ethiopia.

<sup>12</sup> FDRE, 2008, Banking Business Proclamation No. 592/2008, *Federal Negarit Gazeta*, Year 14, No.57, Addis Ababa, 25th August 2008, Art. 2(5) and Art. 9.

outside world. Proponents argue that opening the Ethiopian banking sector to foreign investors has the benefits of efficiency, increased employment opportunity and increased accessed to the poor<sup>13</sup>. On the other hand, opponents fear liberalization for its risks of financial instability, weakening the domestic financial institutions and the possibility of leaving out the poorest section of the society from accessing the financial institutions.<sup>14</sup>

Generally, since 2003, on one hand, Ethiopia's WTO accession process has been underway and held the third working party meeting in March 2012. The Working Party on the Accession of Ethiopia was replied the fourth round WTO members answer to additional questions.<sup>15</sup> The WTO members are asking Ethiopia to clarify its timetable for privatizing this sector sooner than the time.<sup>16</sup> On the other hand, Ethiopia's closed<sup>17</sup> and isolation<sup>18</sup> nature of the banking regulation in which there is no foreign banks, a non-competitive market structure, and strong capital controls in place, and heavy dominant role of state-owned NBE's regulation are Ethiopia's banking sector liberalization barriers.<sup>19</sup> So, to come up with recommendations whether the country has to liberalize the banking sector or not in view of Ethiopia's accession to the WTO, conducting this study is timing and relevant.

## 1.2. Statement of the Problem and Questions

In the liberalization of banking sector, there have been two complaining sides in the world. On the positive side, Banking sector liberalization, increased domestic competition; easier and more effective diversification of risk, new skills, new products and technologies may be diffused into the domestic banking system, assisting its

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<sup>13</sup>Mehreteab Ghebremeskel, 2013(1) 'Integration of the Ethiopian Financial Service Sector through Regional Financial Arrangements: A Step before WTO Accession?' *Law Social Justice & Global Development Journal*, 2013, p.1.

<sup>14</sup>Kozo Kiyota, Barbara Peitsch, and Robert supra note 10, pp. 17-18.

<sup>15</sup> See the 4<sup>th</sup> round, 2012, Working Party on Ethiopian Accession to the WTO, replies to additional questions, May 2012.

<sup>16</sup>Alemayehu Bacha, 2014, Ethiopia may delay WTO accession, *Latest Business Alerts*, Reporter, 29 May 2014, p.1. According to *Latest Business Alerts* Reuters reported on May 28/2014. Kebede Chane, Minister of Trade, said Ethiopia might delay its plan to join the World Trade Organizations (WTO) by 2015, if the nation is asked to liberalize its telecom, banking and power industry sooner than the time.

<sup>17</sup>Solomon Abay, 2011, Financial market development, policy and regulation: the international experience and Ethiopia's need for further reform, *Dissertation Submitted to Faculty Law of University of Amsterdam*, February 2011, p-356

<sup>18</sup>Kozo Kiyota, Barbara Peitsch and Robert M. Stern supra note 9.

<sup>19</sup>Solomon Abay, supra note 19.

modernization.<sup>20</sup> On the other hand, liberalization of the banking sector would not yield a more stable source of credit for domestic borrowers ; it would try to “cherry pick” the most desirable markets and customers, leaving the domestic banks with higher-risk assets and customers; and it may only service profitable market segments; they may not give priority to issues of poverty alleviation and the access of low-income and rural-based savers and borrowers to financial services and this risk may be exacerbated if, depending on the banking structure and regulatory capacity, foreign financial service providers encourage the development of oligopolistic, rather than competitive banking structures.<sup>21</sup>

Similarly to the world, according to studies held in Ethiopia there have been all so,two complaining sides, arguments for and /or against liberalization of the Ethiopian banking sector to the outside world. Proponents argue that opening the Ethiopian banking sector to foreigners has the benefits of efficiency and increased employment opportunity<sup>22</sup>. On the other hand, opponents fear liberalization for its risks of banking instability, weakening the domestic banking institutions and the possibility of leaving out the poorest section of the society from accessing the banking institutions.<sup>23</sup> In addition to the two complaining idea in Ethiopian Banking sector liberalization, Ethiopia's World Trade Organization (WTO) accession process has been underway since 2003 and held the third working party meeting in March 2012 . The WTO members are asking Ethiopia to clarify its timetable for privatizing this sector sooner than the time.<sup>24</sup>

Ethiopia’s banking Sector are , on one hand,closed nature of the banking regulation in which there are no foreign banks, a non-competitive market structure, and strong capital controls in place ,and heavy dominant role of state-owned NBE’s regulation.<sup>25</sup> On the other hand, gradual liberalization policy and infant baking market situation<sup>26</sup>. The absence of a consensus with regard to weather to liberalize its banking sector in view of

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<sup>20</sup>Gebrehiwot Ageba, supra note 4.

<sup>21</sup>Id, pp.1-3.

<sup>22</sup>Gebrehiwot Ageba, supra note 22.

<sup>23</sup>Kozo Kiyota, Barbara Peitsch, and Robert supra note 10, pp. 17-18.

<sup>24</sup> Alemayehu Bacha, supra note 18.

<sup>25</sup>Solomon Abay, supra note 19.

<sup>26</sup> Kozo Kiyota,Barbara Peitsch and Robert M. Stern , supra note 9.

Ethiopia's accession to the WTO or not encourages me to conduct this research in a Ethiopian context.

This study is therefore, based on the above gap, that means, the absence of a consensus with regard to weather to liberalization of the Ethiopian banking sector in view of accession to the WTO or not analysis the Current Ethiopia's banking sector policy, regulation and market situation and current practical situation of Ethiopian banking sector. The WTO accession Rules and acceding country's Experience is also examined as benchmarking. It, accordingly, focuses on the following research questions:

1. Should Ethiopia Liberalize its Banking Sector in View of Accession to the WTO or Not?
2. What do the Current Ethiopia's banking sector policy; regulation and market situation look like?
3. What are the WTO Accession Rules look like especially for those LDC's GATS framework for Liberalization of Banking Sector?
4. What are the lesson drawn from acceding countries' the WTO Accession and Banking Liberalization Experience?
5. What is the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization?

### **1.3. The General and Specific Objectives**

The main **objective** of the study aims need to analyze to the Current Ethiopia banking sector policy, regulation and market situation in order to know the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization and recommend whether Ethiopia should liberalize the banking sector in view of its accession to the WTO or not.

It accordingly, aims at achieving to answer the following specific objectives:

1. To analysis Current Ethiopia banking sector policy, regulation and market situation.
2. To examine the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization.

3. To recognize WTO accession rule regarding LDCs GATS framework for Liberalization of Banking Sector.
4. To draw lesson from acceding countries' the WTO Accession and Banking Liberalization Commitments, opportunities, and challenges that can facilitate Ethiopia's WTO accession process and replicate the successful strategies to avoid onerous commitment on Ethiopia's banking sector liberalization, and;
5. To provide recommendation that may contribute to concerned bodies whether Ethiopia should liberalize its banking sector or not in view of accession to the WTO.

#### **1.4. Significance of the Study**

The research will be, accordingly, useful to replicate the successful strategies and avoid some of the mistakes, useful to the pursuit of knowledge and the indication of the appropriate suggestion. So, the outcome of the study will;

- provide relevant and research based information for policy makers, law makers, government officials, to NBE, to all both Ethiopia Private and public banks(bankers), for Ethiopian Bankers Association, for Ethiopia Chamber of Commerce and sectorial Associations, to the parliamentarians, Academicians, business and civil society, and other stake holders for further research,
- Serve as a reference to further researches,
- Contribute knowledge to the current Ethiopia WTO accession negotiation all stakeholders and working party.
- Since there are a number of LDCs still outside the WTO system and some of them are in the process of accession, it would be useful to document and share experience so that other acceding LDCs can replicate the successful strategies and avoid some of the mistakes.

#### **1.5. Delimitation of the Study**

The study focuses on analyzing the WTO accession rule, GATS Liberalization rule and its banking sector liberalization frame work, LDCs GATS banking sector liberalization rule. Acceding countries WTO Accession and banking sector Liberalization experience was examined to draw lesson. Analysis Current Ethiopia's banking sector policy, regulation and market situation, and Potential Effects of Ethiopia's Accession to the

WTO on its Banking Sector Liberalization. Additionally, the Study draw lesson from LDCs countries accessed after the born of WTO in between January 1/1995 and June 2015 such as Cambodia, Nepal ,Lao PDR, Vanuatu, Samoa and Yemen due to similar economic and vulnerable characteristics during their WTO accession as Ethiopia. It does not include study of other financial sector liberalization such as insurance and microfinance sectors. The study depends only private and public banking sector.

### 1.6. Literature Review

There have been two conflicting and competing views regarding liberalization of banking sector in Ethiopia. The first group argues for liberalization of the banking sector to foreign market computations to accomplishing its accession effort successfully<sup>27</sup>, to benefit the Ethiopian economy<sup>28</sup> from banking sector liberalization, especially from the entry of foreign banks and the associated privatization of state-owned banks<sup>29</sup>, to clearly charting defined time frame for liberalization and exploring foreign banks knowledge that enhance the banking sector<sup>30</sup>, to benefit to reform Ethiopian banking sector<sup>31</sup>, and help to enhance the pace and scope of economic integration amongst its members as well as to attract investment.<sup>32</sup>

On the second group, opponents, rather argue to gradual opening of the banking market to foreign investment to improving the efficiency of the banking sector will require simultaneously a certain extent of market opening,<sup>33</sup> to negotiate carefully and strategically so as to reap the potential benefits of membership in light of its development strategy, especially from long-term development perspective<sup>34</sup>, to keep until the domestic investor reached the level that makes them competitive, investing in regulatory capacity

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<sup>27</sup> Addisu Mengiste, 2008, Ethiopia's Accession WTO and the need for Liberalizing the Banking Service Sector, LLM Thesis, May 2008, p-1, Addis Ababa University.

<sup>28</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern, supra note 9.

<sup>29</sup> Ibid.

<sup>30</sup> Alemayehu Geda<sup>1</sup> supra note 6.

<sup>31</sup> Admassu Bezabeh, , Asayehgn, 2010, *Banking Sector Reform in Ethiopia: An Abstract School of Business and Leadership*, Dominican University of California San Rafael, California, 2010, p.6.

<sup>32</sup> Abebe Ababayehu , 2008, Accession to the WTO: Brightening the Prospect for Attraction of Investment? A Least-Developed Country's Perspective, 2008, p.4, University of Dundee, Scotland.

<sup>33</sup> Gebrehiwot Ageba & Derk Bienen, supra note 4, p.3.

<sup>34</sup> Hussein Ahmed, supra note 2.

for maintaining macro-economic stability and growth<sup>35</sup>, to keep until NBE become be able to absorb international risk<sup>36</sup>, and to be cautious and orderly liberalization process, added with sound regulatory and legal framework to reap the maximum benefits and avoid the threats associated with it.<sup>37</sup> Furthermore, in order to benefit from liberalization opportunities Ethiopia has to strengthen their domestic services capacities and improve the efficiency and competitiveness of their services sectors through technology transfer and enhance access to market computation and information networks before liberalizing their Banking sectors<sup>38</sup> and in order to reassessed in the light of specific requests by other WTO members.<sup>39</sup>

From international experience both mismanaged banking sector liberalization directions (rapid reform and long delay of liberalization) are not, accordingly, justified for the country as the former can lead to crisis unless followed by strong regulation while the latter will mean unduly postponing the potential benefits of international competition and inflow of finance to the country.<sup>40</sup>

Therefore, this study aims to analyzing the Current Ethiopia banking sector policy, regulation and market situation in order to examine the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization and suggest whether the country should liberalize its banking sector in view of its accession to the WTO or not.

### **1.7. The Research Methodology**

The methodology followed in undertaking the study involved review of both primary and secondary data, information and the interview of appropriate officials. The study has largely based secondary information available on an extensive and in-depth review of

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<sup>35</sup> Tony Addison<sup>1</sup> and Alemayehu Geda<sup>2</sup>, 2001, Ethiopia's New Financial Sector and Its Regulation, *Discussion Paper* No. 2001/55, August 2001, p-2.

<sup>36</sup> Solomon Abay, supra note 19, p.380.

<sup>37</sup> Tadele Geremew, 2013, The possible Benefit and Risk of Ethiopian making Multilateral Liberalization Commitments in its Financial Services Sector, *Joint LLM In Law and Development*, 15 February 2013, p.6, University of Warwick and Mekele University.

<sup>38</sup> Mussie Delelegn, 2005, Accession to the World Trade Organization: Challenges and Prospects for the Least-developed Countries (LDCs): Ethiopian Accession Case Study, *The Estey Center Journal of International Law and Trade Policy*, Volume 6, Number 2, 2005, p. 20.

<sup>39</sup> ECCSA, 2013, WTO Accession of Ethiopia: Regulation and Openness of Ethiopia's Services Sector, *Private Sector Position Paper*, July 2013, p.6.

<sup>40</sup> Solomon Abay, supra note 19, p.28.

WTO Accession rules; review of the WTO Rules on Accession and LDCs WTO accession and banking sector Liberalization experience; review of GATS Framework for Liberalization of Financial sector especially the Banking Sector; Review of the current Ethiopian banking sector policies, Regulation, Directives and market situation, and review of the banking sector regulatory and supervisory laws and practices in Ethiopia; Review of the studies available in domestic and foreign literature related with the study; and all so use of data from official reports and unpublished records of the NBE, both public and private banks of Ethiopia, the Ministry of Trade and Industry, the Ethiopian Chamber of Commerce, and other sources available in the area.

The study also supplemented primary data through field study of the Ethiopian Banking sector practice and interview the status of Ethiopia's WTO Accession Negotiation working party in the country; interviews of the appropriate personnel of key stakeholders representing various segments of society such as: the Ethiopian Ministry of Trade, the NBE, Commercial bank of Ethiopia, the Ethiopian Chamber of Commerce and sectoral Association, the private banks, Ethiopia Bankers Association and other expertise was interviewed as found relevant through purposive sampling for evidence and benchmarking. Similarly, quantitative data also used to validate conclusions.

Finally, comparative and analytical interpretation approach would be employed in the study. The approach taken will be, therefore, to draw lessons from the law, the international acceding country experience and recommendations, and the current domestic banking sector policy, Regulation and market situation of the country. It would be, however, fundamentally qualitative, focusing on need to analyze to the Current Ethiopia banking sector policy, regulation and market situation in order to know the Potential Effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization and suggest whether Ethiopia has to liberalize the banking sector in view accession to the WTO or NOT.

### **1.8. Organization of the Study**

The study is organized into *five* chapters as follows. The *first* chapter introduces the readers with the study. It highlights the reasons that necessitated the research and the objectives that are intended to be achieved. It all so presents the statement of the problem,

research questions, general as well as specific objectives of the research, literature review, significance and the research methodology briefly. The *second* chapter focuses on the analysis of WTO Rules on Accession. The *third* chapter analysis the WTO Accession and Banking Liberalization Experiences. The *fourth* chapter analysis the potential effects of Ethiopia's Accession to the WTO on its Banking Sector Liberalization. The *fifth* chapter concludes the study to recommend and indicate the policy measures that will be taken by the concerned body of the country's economy in general and the banking sector in particular.

## CHAPTER TWO

### THE WTO RULES ON ACCESSION

#### 2.1.The WTO Accession

##### 2.1.1. What is Accession?

Accessions have been one of the most active areas of negotiation in the WTO period.<sup>1</sup> Accession would mean a commitment to open one's economy to external competition and to benefit from a multilateral trading system.<sup>2</sup> Article XII of the Marrakesh Agreement (1994) forms the legal basis and provide very general conditions for accession process. According to this only three paragraph long article which read as follows:<sup>3</sup>

*“Any state or customs territory having full autonomy in the conduct of its trade policies may become a member (“accede to”) the WTO, but all WTO members must agree on the terms. This is done through the establishment of a working party of WTO members and through a process of negotiations.”*<sup>4</sup>

The provision Article of XII the Marrakesh Agreement (1994) does not specify the precise commitments expected from acceding countries, nor does it establish clear standards for which compliance is sought or identify the scope and extent of demands that could be made for accession.<sup>5</sup> The failure of Article XII to provide clear guidelines on how new members may join the WTO and “terms to be agreed” leaves the door wide open to drawn-out, decade-long, and burdensome accession experience.

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<sup>1</sup>Craig Van Grastek, 2013, *The History and the Future of the WTO*, WTO online bookshop publications, 2013, p.121. <http://onlinebookshop.wto.org>.

<sup>2</sup>Ethiopian Chamber of Commerce and Sectoral Associations, How to Optimize Advantages of Accession to the World Trade Organization and Measures to be Taken to Meet Possible Challenges, A Review of Ethiopian Economy and WTO Accession, (Not Dated ), p.3. [www.ethiopianchamber.com/how-to-optimize-advantage-of-accession-to-WTO](http://www.ethiopianchamber.com/how-to-optimize-advantage-of-accession-to-WTO)

<sup>3</sup>Hussein Ahmed, 2013, Making the WTO accession work for Ethiopia: Lessons from Cambodia and Nepal, Abyssinia Law review, 2013, p.5.

<sup>4</sup>Provision of Marrakesh Agreement Establishing the WTO, Article XII of the WTO Agreement, Apr. 15, 1994.

<sup>5</sup>Ibid.

Accession to the WTO involves a considerably more complex and difficult process than that for accession to the GATT 1947.<sup>6</sup> The WTO does not give an automatic membership to all those who wish to become members. In fact, a state has to pass through a process of negotiations processes before it is issued with a membership card on one hand.<sup>7</sup> On the other hand, it is argued that the guidelines of accession process under Article XII of the Marrakesh Agreement are vague and making the accession process demanding and time consuming. It is also contended that the absence of clear guidelines of accession to the WTO has been allowing current Member states to impose “WTO+” obligations on acceding countries, which is more burdensome especially on least developing countries.<sup>8</sup>

### **2.1.2. The Accession process**

Accession negotiations are deliberately, one-sided affairs, with all of the requests coming from the existing members and the full burden of adjustment falling on the acceding country.<sup>9</sup>

While any state or customs territory having full autonomy in the conduct of its trade policies may become a member (—accede to□) of the WTO, members must agree on the terms of accession. This is done through the establishment of a working party of WTO members and through a process of negotiations.<sup>10</sup> The applicant is not entitled to request tariff services commitments from the existing members due to Accession negotiations are deliberately one-sided affairs. WTO Article XII and its predecessor, GATT Article XXXIII, establish a framework within which accession negotiations are conducted.<sup>11</sup> Accession, will be recognized as a difficult and complicated process, which may be lengthy, requiring high-level preparations and coordination among government agencies and a broad political consensus in order to effectively pursue and defend national interests. It will also require tough negotiations with major WTO members. Such negotiations involve strategic and long-term issues which could affect the trade and

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<sup>6</sup> Victor Ognivtsev, Eila Jounela,\* Xiaobing Tang\*,2001,*Accession to the WTO: The process and selected issues*, United Nations Conference on Trade and Development,New York and Geneva, 2001, p.116.

<sup>7</sup>Marrakesh Agreement Establishing the WTO, the WTO agreementApr. 15, 1994, p.9.

<sup>8</sup>*Hussein Ahmed Tura*,supra note 3, p.4.

<sup>9</sup>Craig Van Grassek, supra note 1, p.126.

<sup>10</sup>Provisions of the Marrakesh Agreement Establishing the WTOArticle XII supra note 4.

<sup>11</sup> Craig Van Grassek, supra note 1, p.126.

development policies of countries concerned for years to come.<sup>12</sup> Membership in the WTO allows countries to design their development strategies and trade policies in a more predictable and stable trading environment. Accession to the WTO must be seen not as an end in itself but as a key element in the pursuit of national development policy objectives.<sup>13</sup>

There are two stages in an accession negotiation. The first is a discovery process in which the applicant country first describes its foreign trade memorandum of economic and trade regime in a detailed and must then respond to the many questions that are posed by the existing WTO members. The second stage is a negotiation that has two components. It is partly a multilateral process in which the WTO membership collectively negotiates with the applicant country over multiple issues. There is also a bilateral component to the negotiations, in which individual WTO members negotiate with the applicant over very specific market access commitments on tariff rates for goods and commitments on trade in services.

The end result of the process is two documents. One is a very short protocol of accession document and the second is more substantive document which is the report of the working party, in which far lengthier and very detailed document.<sup>14</sup>

Accession to the WTO has been driven by different motives in different countries. Moreover, expectations about the benefits of WTO membership and the price one would be willing to “pay” to join the organization also varied accordingly. Joining the WTO is not only about improving the efficiency of trade policies, but also about embracing certain economic and political ideas that were developed in the aftermath of World War II, and that affect the society as whole. Therefore, it is difficult to judge of the fairness of conditions attached to accession: each member tends to have its own interpretation and understanding of the “spirit and letter” of the rules – and therefore request, in good faith, different commitments from acceding countries. As a result, the main challenge for

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<sup>12</sup> Ognivtsev, Eila Jounela,\* Xiaobing Tang\*,supra note 6.

<sup>13</sup> Ibid.

<sup>14</sup> See, Provision of Marrakesh Agreement Establishing the WTO, Article IX:3 of the WTO Agreement Apr. 15, 1994. Article IX:3 of the WTO Agreement provides that an exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements.” Waivers may be granted by consensus, but can also be secured by a three-quarters vote.

candidate countries is to find a path to accession through this maze of cumulative requests.<sup>15</sup>

In today's globalization, joining the WTO, which is responsible for overseeing the implementation of the various multilateral trade agreements and their dispute-settlement mechanisms, and rules-based multilateral trading system is considered by many to be an effective lever to promote trade liberalization and substantive regulatory reform which arise from a range of economic, legal, and political issues that the policy-makers of countries aspiring to join the WTO seek to promote a more predictable access to the world market for their export products, and the desire to attract more Foreign Direct Investment (FDI) using, as it were, WTO membership as a seal of approval, which is recognized by the international business community.<sup>16</sup> In the legal context, accession to the WTO accords the legal advantages of accessing a rules-based system and benefiting from the WTO's dispute-settlement process.

To sum up, WTO membership is considered instrumental in facilitating political and economic reform measures in the acceding countries.<sup>17</sup> According to Art. XII of the WTO Agreement, duration of WTO accession negotiations acceding country was varied: if we observe from 1996-2014 the shortest accession negotiation was that of the Kyrgyz Republic, lasting 2 years and 10 months, and the longest have been with the Russian Federation, which lasted 19 years and two months. Even that last example may not set the record, for the negotiations over the accession of Algeria had, as of 2014, been underway for a quarter of a century and showed no sign of ending soon.<sup>18</sup> What accounts for the lengthening negotiations? There is only a vague relationship between the economic magnitude of an accession and the amount of time that it takes to complete. Whereas the accessions of large economies such as China (lasting 15 years and 5 months), the Russian Federation and the Kingdom of Saudi Arabia have been among the lengthiest, the same may be said for those with Nepal, Samoa and Vanuatu. The length of accession negotiations are determined by at least three factors: the extent of the accommodations

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<sup>15</sup>Olivier Cattaneo, Carlos A. Primo Braga, 2009, Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask), Policy Research Working Paper 5116, November 2009, p.29.

<sup>16</sup> Ethiopian Chamber of Commerce and Sectoral Associations, *supra* note 2, pp.86-87.

<sup>17</sup>*Ibid.*

<sup>18</sup> Craig Van Grassek, *supra* note 1, p.128.

that a country may need to make in order to meet WTO standards, the severity of the demands that are made on it by the incumbent members, and the vigor with which it bargains over these matters with the WTO membership.<sup>19</sup>

## **2.2.Strategies for Successful Accession**

As part of the preparations for accession, a country should pay due attention among others, to the following considerations:<sup>20</sup>*First*, it needs to have a clear political commitment. Political will and commitment are an absolute requirement for smooth and successful accession. Without a clear government commitment to market reforms, WTO membership will not be obtained and the process will likely result in frustrations rather than benefits. A strong commitment may create a sound basis for ensuring that policies and reforms undertaken by the government are coherent with WTO rules and requirements.<sup>21</sup>

*Secondly*, It should clearly define its economic and integration strategies and policies and their compliance with WTO principles; *Thirdly*, in its bilateral negotiations with WTO Member States on market access, the long-term interests of the country should not be unduly compromised; *Fourthly*, special attention should be given to the continuation of the process related to the development of relevant legislation in the country after accession; *Lastly*, it should clearly define the requirements for technical assistance during the accession process and the post accession implementation period.<sup>22</sup>

Adjustment to WTO accession requirements is always a source of economic, social and political stress, because it directly affects people's income and conditions of living. It also reaches far beyond the economic sphere: cultural factors, for example, can profoundly affect a country's ability to make (or implement) certain accession

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<sup>19</sup>Ibid

<sup>20</sup> H.E. Sok Siphana,2009, Background Note: Cambodia's Experiences In The WTO Accession Process, *LDCs Round Table On WTO Accession*, September 2009,P.3,

<sup>21</sup>Ibid,

<sup>22</sup>Ibid.

commitments. In some cases, exceptions can be carved out of the accession protocol; otherwise, the accession could be delayed or denied.<sup>23</sup>

The WTO does not have a standard procedure for accession, even though Article XII of the WTO Agreements provides a broad outline of the rules of accession.<sup>24</sup> There is a general concern that the process is too burdensome and onerous for acceding countries.<sup>25</sup>

Although this provides a degree of flexibility, the lack of a clear accession procedure has proven problematic for many countries. This indicates a clash between the expected benefits and the challenges facing developing countries in taking full advantage of the provisions of WTO legal instruments and the WTO system as a whole.<sup>26</sup> Whereas any breach of the obligations of membership is bound to be followed by heavy financial and social costs, the rights and benefits of WTO membership are vague, long-term, and contingent on competitiveness. The power to exercise the rights of WTO membership is also contingent upon the availability of financial and human resources and the economic influence of a country.<sup>27</sup>

### **2.3. The Scope of WTO Rule on Accession**

The WTO deals with the global rules of trade between nations<sup>28</sup> based on provisions of Article II of the Marrakesh Agreement Establishing the WTO.<sup>29</sup> Actively commended as a rule-based organization, the WTO supervises the implementation of these a number of multilateral agreements, to mention a few: the Agreement Establishing the WTO, the GATT, the GATS, the Agreement on Trade-Related Intellectual Property Rights (TRIPs), the Agreement on Trade-Related Investment Measures (TRIMs) and the Dispute Settlement Understanding (DSU). Any acceding state will be required to commit itself to all the multilateral agreements administered under the WTO, all in one scope of the WTO. These agreements are thus referred to form what it is known as 'single

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<sup>23</sup> Craig Van Grassek, *supra* note 1, p.131.

<sup>24</sup> Ethiopian Chamber of Commerce and Sectoral Associations, *supra* note 2, p.101.

<sup>25</sup> *Id.*, pp.86-87.

<sup>26</sup> *Id.*, p.101.

<sup>27</sup> *Id.*, p.102.

<sup>28</sup> WTO, 2014, [WTO Disclaimer](#), 2014, p.2..

<sup>29</sup> Provisions of Article II, 1994, of the Marrakesh Agreement Establishing the WTO, " Apr. 15, 1994, pp.9-10.

undertakings' package that allows no room for pick and choose.<sup>30</sup>Of the scope of the WTO this study considers the General Agreement on Trade in Services (GATS) rules and based on the rules the acceding countries practices.<sup>31</sup>

## **2.4. The WTO Rules on Accession and Liberalization in General**

### **2.4.1. What is Liberalization?**

**Liberalization** (or **liberalisation**) refers to a relaxation of previous government restrictions, usually in such areas of social, political and economic policy.<sup>i</sup>In the some way the meaning of liberalization refers to removal or loosen restriction on (something typically an economic or political system).Liberalization is broadly defined as giving greater role and more freedom to markets.<sup>32</sup>

### **2.4.2. The WTO Rules on Accession and Liberalization**

One of the WTO basic principles on Accession in services is Progressive liberalization *Article XIX(1)* through further negotiations<sup>33</sup>. The Provisions of Article XIX of the Marrakesh Agreement establishing the WTO analysis progressive liberalization as follows:

*Article XIX Negotiation of Specific Commitments*

- 1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of Liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.*
- 2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.*

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<sup>30</sup> Abebe Ababayehu Chekol, 2009, Accession to the WTO: Brightening the Prospect for Attraction of Investment? A Least-Developed Country's Perspective, University of Dundee, Scotland, Jun 1, 2009, p.3. [www.dundee.ac.uk/cepmlp/.../index.php?...](http://www.dundee.ac.uk/cepmlp/.../index.php?...) University of Dundee

<sup>31</sup> *Article II(2),supranote 29.*

<sup>32</sup> Samuel Adams<sup>1\*</sup> and John Agbemadegbe, 2012, Financial liberalization and banking sector performance in Ghana African Journal of Business Management Vol. 6(47), , 28 November, 2012,p.11598. Available online at <http://www.academicjournals.org/AJBM>

<sup>33</sup> Understanding the WTO, 2011, The WTO Agreement, Fifth edition, July 2011, P.33. [www.wto.org/.../thewto\\_e/.../utw\\_chap2\\_e.pdf](http://www.wto.org/.../thewto_e/.../utw_chap2_e.pdf)

*There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.*

3. *For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.*
4. *The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.*<sup>34</sup>

The rule of the Organization strives to create the legal ground rules for global trade among member states to foster international trade. The WTO's founding and guiding principles remain the pursuit of open borders, the guarantee of most-favored-nation principle and non-discriminatory treatment by and among members, and a commitment to transparency in the conduct of its activities<sup>35</sup> and more beneficial for less developed countries giving them more time to adjust, greater flexibility, and special privileges.<sup>36</sup> These fundamental principles are: Trade without discrimination; Predictability; Freer trade, gradually and through negotiations; and Fair competition.<sup>37</sup> The result is assurance<sup>38</sup> and is also a more prosperous, peaceful and accountable economic world.<sup>39</sup>

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<sup>34</sup>Provisions of *Article XIX*, 1994, of the Marrakesh Agreement Establishing the WTO“, Apr. 15, 1994, pp298-299

<sup>35</sup>Kiya Tsegaye, 2013, Ethiopia's accession to the WTO: Inevitable revision of laws and procedures, Africa, Law & Order, April 22, 2013, p.1.

<sup>36</sup> Understanding the WTO, 2011, *Written and published by the World Trade Organization Information and External Relations Division*, 2011, Fifth edition, p.10.

<http://www.wto.org>,

<sup>37</sup> Ethiopian Chamber of Commerce and Sectoral Associations, *supra* note 2, p .5.

<sup>38</sup>WTO, 2009, *The Multilateral Trading System—Past, Present and Future*, WTO Publications, downloadable from the WTO website, 2009, p.4. <http://www.wto.org>.

<sup>39</sup>*Ibid.*

Note that there are no WTO definition of 'developed', 'developing' and 'least developing' countries: WTO members announce themselves 'developed', 'developing' and 'least developing' countries for purpose of the application of the WTO agreement.<sup>40</sup> For this study I want to address issue of LDCs.

### 2.4.3. The WTO Rules on Accession and LDCs Liberalization

The LDCs category was established in 1971 by the UN as a special group of developing countries characterized by a low income level and structural impediments to growth.<sup>41</sup> According to the 2002 LDC accession guidelines, which is long, exceed capacities of LDCs and other developing countries and mostly complained by countries that joined the organization in early years.<sup>42</sup> The WTO members committed themselves in paragraph 42 of the Doha Ministerial Declaration (2001) to "facilitate and accelerate" the accession process of LDCs which were approved by a general council decision in 2002<sup>43</sup> ,on one hand, and on the other hand, WTO members "shall take into account the serious difficulty of acceding LDCs in undertaking commitments, in view of their special economic situation<sup>44</sup>, human resources and technical capabilities<sup>45</sup> and their individual development, financial and trade needs."<sup>46</sup>

Not only WTO member countries have committed and agreed to facilitate and simplify the accession process for LDCs, they have also agreed to look into other issues such as market access and technical assistance.<sup>47</sup> Therefore, "there shall be flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development

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<sup>40</sup> James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,2010, WTO commitment Vs Reported practice of foreign bank entry and regulation, Across country Analysis, Oxford University press, 2010, p.435 .

<sup>41</sup> The least-developed countries and the WTO, Module 5.Accessed on line TD-M5-E. (not dated), p.1

<sup>42</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries, Information Note, November 2012, P.1..Source: www.wto.org

<sup>43</sup> Steffen Gramming, The World Trade Organization (WTO) Accession process: Explanations and Reflections, Fact sheet on Trade and Development, Geneva ,May2009,p-1

<sup>44</sup> An Analysis of The WTO Accession Guidelines for LDCs, 2012,Information note, November 2012,P.10. .Source: www.wto.org.

<sup>45</sup> Ratnakar Adhikari and N.avin Dahal, 2008, LDCs' Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu, South Asia Watch on Trade, Economics & Environment (SAWTEE), Kathmandu, Nepal, 2008,P.3. www.un-ngls.org/orf/SAWTEE.doc

<sup>46</sup> An Analysis of the WTO Accession Guidelines for Least Developed Countries, supra note 86.

<sup>47</sup> Ratnakar Adhikari and Navin Dahal, supra note 46.

situation.<sup>48</sup> Acceding LDCs shall not be expected to offer full national treatment<sup>49</sup>, or undertake commitments in services sectors and sub sectors beyond those that have been committed by existing WTO LDC Members,<sup>50</sup> expected to undertake additional commitments under Article XVIII of GATS.<sup>51</sup> But, commitments from acceding LDCs may vary depending on each country's particular circumstances. Therefore, each acceding LDC shall identify its priority service sectors and sub-sectors and make reasonable offers commensurate with its specific situation and capacities. Because, Some LDC delegates have criticized the lack of detail in the services guidelines.<sup>52</sup>

Likewise, there is also information note provides a short analysis of the accession benchmarks for LDCs adopted by the WTO General Council at the end of July 2012 with the aim to further strengthen, streamline, and operationalize the 2002 LDC accession guideline. It focuses on benchmarks established for goods as the most concrete and measurable outcome of the decision, as well as reviews aspects related to services, special and differential treatment, transparency, and technical assistance.<sup>53</sup> The 2002 accession guidelines note, LDCs have long complained that WTO members routinely ask them to take on commitments beyond their capacities during the bidding process. These commitments also tend to exceed those required from LDCs and other developing countries that joined the organization in its early years. This reality was the rationale for strengthening the 2002 accession guidelines decision.<sup>54</sup> Therefore, LDCs are granted special recognition in the WTO, and enjoy special flexibilities in the implementation of WTO Agreements, including through Special and Differential Treatment (S&D) Provisions.<sup>55</sup>

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<sup>48</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries, supra note 45.

<sup>49</sup> Provisions of Article XVIII of the Marrakesh Agreement Establishing the WTO), Apr. 15, 1994, pp298, See *Article XVIII Additional Commitments*. Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI (Market access) or XVII (National treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

<sup>50</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries supra note 45.

<sup>51</sup> Provisions of Article XVIII of the Marrakesh Agreement supra note 50.

<sup>52</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries, supra note 45.

<sup>53</sup> Id, P.1.

<sup>54</sup> Id, P.10.

<sup>55</sup> The least-developed countries and the WTO. Supra note 42, p.3.

S&D treatment provisions can generally be classed in five main groups: provisions aimed at increasing trade opportunities through market access; provisions requiring WTO Members to safeguard the interest of developing countries; provisions allowing flexibility to developing countries in rules and disciplines governing trade measures; provisions allowing longer transitional periods to developing countries; and provisions for technical assistance.<sup>56</sup> Therefore, the WTO Committee on Trade and Development, assisted by a Sub-Committee on Least-Developed Countries, looks at developing countries' special needs. Its responsibility includes implementation of the agreements, technical cooperation, and the increased participation of developing countries in the global trading system<sup>57</sup>

#### **2.4.4. The General Agreement on Trade in Services (GATS)**

Actively commended as a rule based organization, the WTO supervises the implementation of a number of multilateral agreements, among these agreements; the GATS is one of it.<sup>58</sup> The GATS represents a first step toward the liberalization of international trade in services, which is the entry of foreign services and foreign-services providers into a country.<sup>59</sup> As stated in its Preamble, the GATS is intended to contribute to trade expansion "under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries". Trade expansion is thus not seen as an end in itself, as some critical voices argue, but as an instrument to promote growth and development.<sup>60</sup>

The main objective of GATS is to increasing international trade in services by removing unnecessary restrictions and internal government regulation that are barriers to trade in the sector<sup>61</sup> and to facilitate progressively higher level of liberalization of trade in service, including financial services, between member countries through members 'participation

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<sup>56</sup>Ibid.

<sup>57</sup> WTO, supra note 39, p.6.

<sup>58</sup> Abebe Ababayehu Chekol, supra not 30.

<sup>59</sup> Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p .7.

<sup>60</sup> WTO, *The General Agreement ON Trade in Services, 2013, WTO Trade In Services Division*, 31 January 2013, p.2

<sup>61</sup> Addis Ababa Chamber of Commerce and Sectoral Associations, *Review of the Legal and Institutional Framework for Market Competition in Ethiopia, Private Sector Development*, 2009, pp.11-12.  
Email: psdhub@addischamber.com

in periodic round of multilateral negotiation focusing on the elimination of barriers to trade among all members.<sup>62</sup> One of the primary obligations of WTO membership is for the acceding country to harmonize its national laws, regulations, and administrative procedures with WTO Agreements. This requires tariff-binding commitments and progressively liberalizing the services sector as per GATS commitments.<sup>63</sup> But, the GATS are structurally more complex than the GATT because it involves a more complicated set of modes and limitations.<sup>64</sup> Among the most conspicuous differences are the existence of four modes of supply and of two negotiable parameters, market access and national treatment, determining the conditions of market entry and participation. Members to accommodate sector- or mode-specific constraints they may encounter in the scheduling process and to progressively liberalize their services trade in line with their national policy objectives and levels of development. Complexity can thus be viewed, in part, as a precondition for effectiveness and flexibility WTO Members' Obligations in GATS.<sup>65</sup> In so doing, GATS has three layers of obligations<sup>66</sup>

The *first* layer of obligation, consist of a framework agreement, which contains a comprehensive general accord governing all possible service sectors<sup>67</sup> except only in two areas are not covered by GATS: air transport and "services supplied in the exercise of governmental authority."<sup>68</sup> This first general rules obligation consists that bind all WTO members regardless of whether they are agreed to undertake market access commitment for a particular sector,<sup>69</sup> and then there is a set of sector-specific commitments that determine the extent of liberalization undertaken by individual countries. The most important of the general rules are transparency and the MFN principle. The transparency requires that all measures of general application affecting trade in services be published by a Member, and that other Members be informed of significant changes in trade

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<sup>62</sup>James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang, supra note 41, p.432.

<sup>63</sup>Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p.101.

<sup>64</sup> Craig Van Grastek, supra note 1, p.131.

<sup>65</sup> WTO the General Agreement on Trade in Services an Introduction, supra note 102, p.14

<sup>66</sup>James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang, supra note 41, p.431.

<sup>67</sup> See GATS Part II General Obligations and Disciplines.

<sup>68</sup>Article 1.3 GATS.

<sup>69</sup>James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang, supra note 41, pp.431-463.

policy<sup>70</sup> The MFN, which makes it mandatory for all WTO members to treat services and service suppliers of any other WTO member no less favorable than it treat similar services and service suppliers of any other country –that is the MFN principle impose obligation not to discriminate among foreign services and service suppliers.<sup>71</sup>

The MFN principle applies across all sectors and all Members. However, under the Annex on Article II Exemptions, there is a possibility for Members, at the time of entry into force of the Agreement (or date of accession), to seek exemptions not exceeding a period of ten years in principle. Some 90 Members currently maintain such exemptions, which are mostly intended to cover trade preferences on a sectoral or modal basis between two or more Members. The Annex on Article II Exemptions provides for a review of all existing measures that had been granted for periods of more than five years. The review is intended to examine whether the conditions that led to the creation of the exemptions still prevail. Three reviews have been conducted thus far, and the fourth one will be launched no later than the end of 2016.<sup>72</sup>

The *second* layer of obligation, consist of special sector annexes and other agreements, such as the *Understanding on Financial Services*, contain provisions focusing specifically on the sector concerned.<sup>73</sup> The specific commitments on market access and national treatment are the core of the GATS, and the impact of the Agreement depends to a large extent on the commitments made by Members.<sup>74</sup> So, the second layer obligation consist of the specific commitments by members on market access and national treatment to services and service suppliers of any other WTO member. WTO members are free to choose which financial service will be subject to market access and national treatment to services and service suppliers of any other WTO member. Members are permitted to

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<sup>70</sup>Peter John Williams, *A Handbook on Accession to the WTO*, ,World Trade Review,Cambridge University Press / Volume 7 / Issue 04 / October 2008, p25. <http://journals.cambridge.org/WTR>

<sup>71</sup>James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,supra note 41, pp.431-463.

<sup>72</sup>WTO the General Agreement on Trade in Services,supra note102, pp.6-7.

<sup>73</sup>The list of annexes include; Annex on Article II Exemptionsof the GATS, Annex on Financial Services and Second Annex on Financial Services.

<sup>74</sup>Peter John Williams, *supra note 70*.

quality or impose limitation on their market access and national treatment commitments.<sup>75</sup>

The *third* layer of obligation consists of the existence of specific scheduled commitments on market access, national treatment and other commitments<sup>76</sup> which apply to sectors listed in a WTO member's schedule of commitment. This include the notification of new measures that have a significant impact, on trade in sector concerned the reasonable ,objective, and impartial administration of measures of general application on the advance of restrictions and eventually, on capital transaction.<sup>77</sup> GATS Sector-specific commitment contains a clear definition of the sector, subsector or activity that is the subject of the specific commitment<sup>78</sup> prevents Members from discriminating between their trading partners.<sup>79</sup> Members are free, subject to the results of their negotiations with other participants, to identify which sectors, subsectors or activities they will list in their schedules, and it is only to these that the commitments apply. It will be seen that committed sectors are sometimes very broad, as in “banking and other financial services” and sometimes very narrow, as in “noise abatement services”.<sup>80</sup>

Like any other trade agreement, this third layer of obligation of the GATS contains exception or flexible provisions which allow WTO members to depart from their obligations or commitments under the agreement in very specific circumstance .One of this exception –type provision is the so called “prudential carve- out”; which allow WTO members to take measures for prudential reasons ,including for the protection of investors, and policy holders ,and for preserving the integrity and stability of the financial system. Members do not need to inscribe such exception for prudential reasons in their

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<sup>75</sup>James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,supra note 41, pp.431-463.

<sup>76</sup>See GATS Art XX, Schedules of Specific Commitments; 1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement.

<sup>77</sup> James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,supra note 41 , pp.431-463.

<sup>78</sup>WTO, Services: Schedules, Guide To Reading The GATS Schedules Of Specific Commitments And The List Of Article II (MFN) Exemptions,p.4

<sup>79</sup>Kern Alexander, 2003, The World Trade Organization and Financial Stability: The Balance between Liberalisation and Regulation in the GATS, Cambridge University Endowment for Research in Finance, 2003, p.4.

<sup>80</sup> WTO, Services: Schedules, supra note 79.

national schedules commitment .However, such measure are not to be used as a means of avoiding a country’s commitment or obligation under GATS.<sup>81</sup>

The flexible institutional design of the GAT all so allows WTO member to adopt liberalization commitments that fit their particular economic circumstances while maintaining adequate domestic regulatory controls and provides states wide discretion to depart from their specific market access and national treatment commitments if they are doing so for a prudential reason.<sup>82</sup>

#### **2.4.5. GATS Framework for Liberalization of Banking Sector**

As we discussed above, the principal aim of the GATS in the area of financial service is to encourage greater openness among WTO member countries through Progressive liberalization, which applicable on acceding members<sup>83</sup> to the provision of financial service for foreign entities. A particular significant area of coverage for financial services agreement is member countries’ banking sectors.<sup>84</sup>

Banking sector is one of the financial services sectors that plays a critical role in any modern economy. The bundle of institution that make up an economy’s financial system can be seen as “the brain of the economy”, providing the bulk of the economy’s need for many functions<sup>85</sup>: including: facilitating transactions (exchange of goods and services) in the economy; mobilizing savings (for which the outlets would otherwise be much more limited); allocating capital funds (notably to finance productive investment); monitoring managers (so that the funds allocated will be spent as envisaged); and transforming risk (reducing it through aggregation and enabling it to be carried by those more willing to bear it.<sup>86</sup>

The GATS agreement comprises of general principles and obligations in regulating the conduct of trade in services sector and annexes dealing with rules for specific sectors. It

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<sup>81</sup> James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,supra note 41, pp.431-463.

<sup>82</sup>Kern Alexander, supra note 79.

<sup>83</sup>Provisions of Article XII of the Marrakesh Agreement Establishing the WTO,“ Apr. 15, 1994, pp.298-299.

<sup>84</sup> James R.Barth, Juan A.Marchetti, Daniel E.Nole, Wanvimole Sawangngaenyuang,supra note 41, p.431.

<sup>85</sup> WTO,2009, *Financial services,Services: Sector By Sector,Workshop to mark the tenth anniversary of the Fifth Protocol to the GATS*, 31 March 2009,p.1.

<sup>86</sup>Ibid.

is supported by a number of specific commitments and the lists of exemptions from MFN treatment, which countries do make in their schedules.<sup>87</sup>The GATS fundamental principles which deal with discriminatory barriers of trade in financial service are the MFN and Transparency. The GATS MFN rule requires each country to accord immediately and unconditionally one and the same treatment to all financial services or financial service providers of all member countries without discrimination.<sup>88</sup>The GATS transparency framework authorizes countries to publish all actions pertaining or affecting the operation of the GATS agreements in relation to liberalization of financial service.<sup>89</sup> The GATS framework for liberalization of banking sector as well entails specific obligation negotiated by parties with regard to: national treatment (NT) and market access. The NT principle of GATS requires each member state to accord to foreign financial service or service supplier's treatment is not less favorable than the treatment it accords to its own financial services and financial service suppliers.<sup>90</sup> NT, treatment not less favorable than financial services and financial service suppliers owned by receiving states, in accordance with GATS framework contends both *de jure* and *de facto* treatment.<sup>91</sup>

Besides, the GATS framework aims to create maximum competitive opportunities in banking markets,<sup>92</sup> Within GATS framework; there exists an exception for countries to depart from the obligation of GATS framework for prudential reasons. For example, countries may infringe GATS framework for the protection of investors, depositors, policy holders and for preserving the integrity and stability of the financial system.<sup>93</sup> It

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<sup>87</sup> Art. XVI, Art. XVII of GATS. See also Arts. 1 and 5, of Annex on Financial Services, WTO Agreement; Second Annex on Financial Services, WTO Agreement.

<sup>88</sup> Art. II of GATS.

<sup>89</sup> Art. III (1) of GATS.

<sup>90</sup> Art. XVII (1) of GATS.

<sup>91</sup> Art. XVII (2) of GATS.

<sup>92</sup> Tadele Geremew, 2013, The possible Benefit and Risk of Ethiopian making Multilateral Liberalization Commitments in its Financial Services Sector, Joint LLM In Law and Development, 15 February 2013, p.16. University of Warwick and Mekele University.

<sup>93</sup> See, Art. 2 (a) of the Annex on Financial Services, WTO Agreement; Second Annex on Financial Services, WTO Agreement.

may also be allowed to introduce regulation of a temporary nature in the events of serious balance-of-payments and external financial difficulties or the threat thereof.<sup>94</sup>

Generally, securing unlimited liberalization for banking sector is, thus, not the aim of GATS framework.<sup>95</sup> Quite in the contrary, GATS framework is targeted in order to eliminate adverse discriminatory measures against banking market access.<sup>96</sup> This suggests that, the GATS framework provides a set of flexible rules to introduce prudential domestic regulations in their banking sector liberalization process based on their unique needs<sup>97</sup> that fit their particular economic circumstances maintaining adequate domestic regulatory controls and provides states wide discretion to depart from their specific market access and national treatment commitments if they are doing so for a prudential reason.<sup>98</sup> However, this may not be used as a means of evasion from GATS framework with regard to liberalization of banking sector.<sup>99</sup>

## **2.5. Conclusion**

Accession to the WTO is a prolonged, multi-stage and complex process. Essentially, the way to become a WTO member is through accession “on terms to be agreed” between the acceding country or customs territory and other WTO members. Accession to the WTO is not an end by itself but it’s a key element for speed up national development objectives directly or indirectly. Securing unlimited liberalization for financial service is, thus, the aim of GATS framework. Quite in the contrary, GATS framework is targeted in order to eliminate adverse discriminatory measures against financial market access. GATS Sector-specific commitment allow acceding LDCs to adopt framework for Liberalization of Banking Sector commitments that fit with its particular economic circumstances maintaining adequate domestic regulatory controls and provides states wide discretion to depart from its specific market access and national treatment commitments if that country is doing so for a prudential reason. Acceding LDCs shall not be expected to offer full

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<sup>94</sup> Art. XII of GATS.

<sup>95</sup> Tadele Geremew supra note 92.

<sup>96</sup> Ibid.

<sup>97</sup> Art. XIX (2) of GATS; at the same time the preamble of GATS framework allow Countries, right to introduce new regulation as exception, in order to meet their domestic policy need. .

<sup>98</sup> Kern Alexander, supra note 79.

<sup>99</sup> Art. VI (2 and 4) of GATS.

national treatment, nor are they expected to undertake additional commitments under Article XVIII of GATS. But, commitments from acceding LDCs may vary depending on each country's particular circumstances. Therefore, each acceding LDC shall identify its priority service sectors and sub-sectors and make reasonable offers commensurate with its specific situation and capacities. This suggests that, the GATS framework provides a set of flexible rules for banking sector liberalization process for Ethiopia.

## CHAPTER THREE

### THE WTO ACCESSION AND BANKING LIBERALIZATION EXPERIENCES

#### 3.1. The WTO Accession Experience

##### 3.1.1. The WTO Accession

As we have discussed under unit 2.3.1, accession would mean a commitment to open one's economy to external competition and to benefit from a multilateral trading system<sup>1</sup>, and it has been one of the most active areas of negotiation in the WTO period.<sup>2</sup> The WTO is open to states or customs territories with full autonomy over their external commercial relations.<sup>3</sup> "Any state or customs territory having full autonomy in the conduct of its trade policies may become a member ("accede to") the WTO, but all WTO members must agree on the terms. To join the WTO, a government has to bring its economic and trade policies in line with WTO rules and principles and through the establishment of a working party of WTO members<sup>4</sup> negotiate with interested, individual trading partners on guaranteed minimum levels of access to their domestic markets for goods and services.<sup>5</sup>

Accession can take many years to become a WTO member because it requires the full support and consensus of the existing membership. The length of accession negotiations are determined by at least three factors: the extent of the accommodations that a country may need to make in order to meet WTO standards, the strictness of the demands that are made on it by the incumbent members, and the strength with which it bargains over these matters with the WTO membership.<sup>6</sup> However, the accession process is designed to ensure that new members are able to participate fully in the multilateral trading system

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<sup>1</sup>Ethiopian Chamber of Commerce and Sectoral Associations, How to Optimize Advantages of Accession to the WTO and Measures to be Taken to Meet Possible Challenges, A Review of Ethiopian Economy and WTO Accession, (Not Dated ), p.3. [www.ethiopian-chamber.com/how-to-optimize-advantage-of-accession-to-WTO](http://www.ethiopian-chamber.com/how-to-optimize-advantage-of-accession-to-WTO)

<sup>2</sup> Craig Van Grastek, 2013, *The History and the Future of the WTO*, WTO online bookshop publications, 2013, p.121.

<http://onlinebookshop.wto.org>

<sup>3</sup>WTO, 2014, Annual Report, 2014, p.19. [www.wto.org/ministerial](http://www.wto.org/ministerial)

<sup>4</sup> Marrakesh Agreement Establishing the WTO, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 1167 (1994)

<sup>5</sup>WTO, supra note 3.

<sup>6</sup>Craig Van Grastek, supra note 2.

from the outset.<sup>7</sup> Accession mechanisms /liberalization and reforms have made it easy for companies from any member country, to enter access ding country with huge capital investment, skills, knowledge, capability and expertise to take major market shares from local companies.<sup>8</sup>

Accession of developing and LDCs to the WTO has become an important issue, as many developing countries perceive accession as a means of integrating them-selves with the multilateral trading system. Accession has also become a development issue because only developing countries and LDCs, in the main, remain outside the WTO. In general you can see summary of the WTO accession procedures easily from (annex-8).

### **3.1.2. The WTO Accession Experience**

WTO agreement<sup>9</sup> recognized two ways of membership. The first membership is commonly known as “original members”. Original members are contracting parties of the old GATT (1947) which was opened for limited period at the establishment of WTO. The second membership is “Membership by Accession” i.e. the process of new applicant becoming a member through terms of negotiation with original members.<sup>10</sup>

Accession experience shows that there are two key factors that must be well established by the acceding country before commencement of the accession process. The first is to have a clear understanding of the WTO and the accession process itself.<sup>11</sup> The other element is to have a clear understanding and appreciation of the objectives to join the WTO. This will be the foundation that will set the direction, commitment and dedication to the process.<sup>12</sup> Because, the accession process requires patience and understanding as well as the technical support of the international community.<sup>13</sup> Moreover, the ambiguity

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<sup>7</sup>WTO, supra note 3.

<sup>8</sup> United Nations Conference On Trade and Development, 2001, Challenges and Opportunities Arising From Samoa’s Accession to the WTO, *Technical Cooperation Project*, October 2001, Apia, Samoa, p.49.

<sup>9</sup> Since Marrakesh Agreement Establishing the World Trade Organization is not only cover WTO institutional set up but also all Uruguay Round Agreements attached as Annexes, for the purpose of this article it will be referred as WTO agreement.

<sup>10</sup> WTO agreement article XII.

<sup>11</sup> LDCs Roundtable on WTO Accession, 2012, “Best Practices in the WTO Accession Process”, 29 May – 1 June 2012, Beijing, China, p.1.

<sup>12</sup>Id, p.2.

<sup>13</sup> Adhikari, Ratnakar 2003, “Acceding LDCs Need Fair Treatment” in EU-LDC Brief, EU-LDC Network, (September 2003), Rotterdam.

of the accession process, demands the accession process very difficult for LDCs and forced to accept more onerous commitment. Thus, a major reason for the inability of LDCs to enter into the system is the prolonged negotiation process leading to accession – which results in tiredness of human, administrative, political and capital of the LDCs<sup>14</sup>

Newly- acceding country could be “forced “to undertake obligations that exceeded those applying to existing WTO members(often called ‘WTO-plus obligations‘) while they acquired less-than full rights within the system(often called ‘WTO- minus right’).<sup>15</sup>Indeed, lessons from recently accessed countries indicate that, the WTO accession process was quit complex and demands thorough preparation to allow well informed decisions on trade policy reforms to meet the requirement of accession.<sup>16</sup>

Until 26 April 2015 the WTO has comprises 161st<sup>17</sup>members compared to the 192 member states of the United Nations<sup>18</sup> and currently govern approximately 97% of all world trade.<sup>19</sup>The opening of national markets to international trade, with justifiable exceptions or with adequate flexibilities, will encourage and contribute to sustainable development, raise people’s welfare, reduce poverty, and foster peace and stability.<sup>20</sup> Finally, to enhance the ownership of the WTO accession as well as to support implementation processes, ensure full representation formal and institutionalized mechanism of acceding countries all stakeholders in the pre and post accession process<sup>21</sup>and ensuring the international community assist LDCs in place.<sup>22</sup>

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<sup>14</sup>Ibid

<sup>15</sup> Melaku Geboye, 2008, Ethiopians Reluctant Move to Join the WTO: A Preliminary Look at Legal and Institutional Implications of Accession, *Journal of Ethiopian law*, 2008, p. 33

<sup>16</sup>UNDP, 2012, Trade Policy Studies on Implications of Ethiopia’s Integration into Regional and Global Trading Systems, Summary of Commission Studies UNDP, No2/2012(2012), p2. Available at <http://www.google.com/m?q=Trade%20policy%20studies%20on%20implications%20of%20ethiopia&client+ms-opera-mini&channel=new>.( accessed on 14 November, 2014).

<sup>17</sup> WTO, Seychelles Accession to the WTO, News Items, 27 April 2015.

<sup>18</sup> Steffen Gramming, 2009, The WTO Accession process: Explanations and Reflections, Fact sheet on Trade and Development, Geneva, May 2009, p.1.

<sup>19</sup>Kiya Tsegaye, 2013, Ethiopia’s accession to the WTO : Inevitable revision of laws and procedures, *Africa. Law & Order*, April 22, 2013, p.1

<sup>20</sup>Ibid

<sup>21</sup>Ratnakar Adhikar, et al. 2008, *Ensuring Development-Supportive Accession of LDCs to the WTO: Lessons from Nepal*, South Asia Watch on Trade, Economics & Environment, 2008, p.40. [www.un-ngls.org/orf/SAWTEE.doc](http://www.un-ngls.org/orf/SAWTEE.doc)

Since 1995 to June 2014 thirty-two countries acceded to the WTO and another 23 countries were still seeking to accede at the end of the period (see Annex- 1&2).<sup>23</sup> Countries acceded to the WTO since 1995 and seeking to accede are categorized in to three major kinds. The first major category consisted, ten of the 32 countries that acceded through the end of June 2014 were formerly part of the Soviet Union, and another ten either had been or remained non-market economies. The second major category consisted of net oil-exporting countries which accounted for four of those that acceded and five of those still acceding(see Annex- 3).<sup>24</sup>The third major category classified by the United Nations as least-developed countries (LDCs). Since 1995, only seven LDCs have joined the WTO: Cambodia and Nepal in 2004, Cape Verde in 2008, and Samoa, Vanuatu in 2012<sup>25</sup>, Lao People's Democratic Republic February 2013<sup>26</sup> and Yemen in June 2014.<sup>27</sup> In general, when the WTO was created in 1995, 30 LDCs joined the organization. Most were already members of the General Agreement on Tariffs and Trade and entered the global trade body as part of the Uruguay Round deal. Since then, only seven LDCs have joined the WTO.<sup>28</sup>The only Tajikistan was Commonwealth of Independent states and Georgia member country and not categorized in the above three major category(see Annex-4).<sup>29</sup>

Currently, there are 23 UN members in various stages of the accession process (see Annex- 5)<sup>30</sup>: among that eight of them have been LDCs members of the WTO and negotiating to accede. <sup>31</sup> The Eight LDCs Date of Working Party Establishment were (see

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<sup>22</sup>Ratnakar Adhikari and Navin Dahal, 2008,LDCs' Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu,South Asia Watch on Trade, Economics & Environment (SAWTEE), Kathmandu, Nepal, 2008,P.3. [www.un-ngls.org/orf/SAWTEE.doc](http://www.un-ngls.org/orf/SAWTEE.doc).

<sup>23</sup> Craig Van Grastek, supra note 2.

<sup>24</sup>Id,p.136 ,

<sup>25</sup> An Analysis of the WTO Accession Guidelines for LDCs,2012 information note, November 2012. P.1. Source: [www.wto.org](http://www.wto.org)

<sup>26</sup>WTO, The Organization Members and Observers, News, 2014,p-1. <http://www.wto.org/English/news-e>

<sup>27</sup>WTO, supra note 3, p.20.

<sup>28</sup>Ibid

<sup>29</sup> Country classification,2014, *World Economic Situation and Prospects* ,Economies in transition ,2014 ,p.145.

<sup>30</sup> Lisa Toohey, Barriers To Universal Membership Of The World Trade Organization, Australian International Law Journal, 2013,,P.105

<sup>31</sup>See WTO, supra note 23,p.22.

Annex-6)<sup>32</sup> and the remaining five such as Eritrea, Kiribati, Somalia, Timor-Leste - , and Tuvalu have not yet requested to become members.<sup>33</sup>

## **3.2. WTO Accession and Banking Liberalization Experience**

### **3.2.1. The WTO Accession and Banking Liberalization**

Financial sector include all insurance and insurance-related services, and all banking and other financial services (excluding insurance).<sup>34</sup> In this study the author's main objective is to study the WTO Accession and Banking Liberalization Experience of country accede to the WTO after 1995. The notion of the WTO Accession and Banking Liberalization is given various meaning in the different literature. In broader sense, the notion of the WTO Accession and Banking Liberalization essentially involves <sup>35</sup> loosing or removing government restrictions on foreign banks business regarding entry, the ownership, the operation and the establishment of foreign banks, as well as those concerning their branches and restrictions on issuing licenses, would be removed in view of accession to the WTO.<sup>36</sup>

Liberalization of LDCs requires Compliance with WTO provisions Art VII of GATS agreement, S&DT given to LDCs which adopted by WTO General Council at the end of

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<sup>32</sup> An Analysis of the WTO Accession Guidelines for LDCs supra note 25

<sup>33</sup> Ibid.

<sup>34</sup> Annex 1b, GATS, *Annex on Financial Services*, Page 308.

<sup>35</sup> See Tadele Geremew, 2013, The possible Benefit and Risk of Ethiopian making Multilateral Liberalization Commitments in its Financial Services Sector, Joint .LL.M in Law and Development University of Warwick and Mekelle Universit, 15 February 2013, pp.8-9.

The notion of the WTO Accession and Banking Liberalization is given various meaning in the different literature. In broader sense, the notion of the WTO Accession and Banking Liberalization essentially involves liberalization of trade in banking sector, capital account liberalization and Liberalization of domestic banking services. The *first* refers to liberalization of banking sector, which means the removal of discriminatory regulations that discriminate against foreign bank entry for foreign banking service providers by loosing or removing government restrictions on foreign banks business regarding entry, the ownership, the operation and the establishment of foreign banks, as well as those concerning their branches and restrictions on issuing licenses, would be removed in view of accession to the WTO. The *second* refers to liberalization of capital account, which regards the free movement of domestic and international capital across borders. It encompasses the elimination of or reducing government measures on capital and the tradability of currency. The *third* stand for domestic banking liberalization which denotes measures directed at deregulation of the domestic banking system Liberalization of domestic banking services typically involves lifting of restrictions on domestic banking sectors through, privatizing state-owned financial sectors; freeing interest rates, and exchange rates. It in addition accompanies the withdrawal of government regulation on the introduction of new financial instruments by easing the conditions for the participation of firms. Moreover, deregulation involves among other things, the intermediation or integration of the domestic financial institutions.<sup>35</sup>

<sup>36</sup> Javier Serrado, Banco Sabadell, 2003, China's Entry Into The WTO and the Financial Sector, Beijing, February 2003, p.1

July 2012 with the aim to further strengthen, streamline, and operationalise the 2002 LDC accession guideline.<sup>37</sup> Liberalization had allowed the entry of foreign competitors<sup>38</sup> which increase competition between all banks in the country to; improved services quality and choices, an expanded banking market, improved the potential for risk management and, strengthened the incentive for better macroeconomic management.<sup>39</sup>

So, liberalization requires legislative reform which is an exercise demanding of significant time, resources and active engagement with stakeholders<sup>40</sup> to create the stable context required much to more successful. This presupposes that banking liberalization cannot be implemented in a vacuum and that at the firm level, the legal, accounting, management, and supervisory infra-structure of the banking sector should be strengthened. It is also important to take note of the fact that banking liberalization may systematically favor short term projects with front-loaded returns at the expense of projects with strong learning effects. Thus, it should be managed in such a way that it does not hinder entrepreneurial development<sup>41</sup>, private sector development, growth, and economic development strategies.<sup>42</sup>

Because, liberalizing of the banking sector is one of the most sensitive issues causes the problem in the bilateral and multilateral negotiations.<sup>43</sup> Therefore, it is essential that prerequisites such as; Prudential regulation and supervision of banking systems, adequate macroeconomic policy and reforms of domestic banking frameworks, appears to be crucially in place for achieving the potential gains of liberalization of banking sector.<sup>44</sup>

### 3.2.2. WTO Accession and Banking Liberalization Experience

Financial sector is generally considered brain for the economy as it engenders financial innovation and promotes efficiency in the financial system, potentially leading to higher

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<sup>37</sup> LDCs Roundtable on WTO Accession, *supra note 11*, p.5.

<sup>38</sup> United Nations Conference on Trade and Development *supra note 8*.

<sup>39</sup> *Id.*, p.7.

<sup>40</sup> LDCs Roundtable on WTO Accession, *supra note 11*.

<sup>41</sup> Samuel Adams<sup>1\*</sup> and John Agbemadegbe<sup>2</sup>, 2012, Financial liberalization and banking sector performance in Ghana *African Journal of Business Management Vol. 6(47)*, 28 November, 2012, p.11607.

Available online at <http://www.academicjournals.org/AJBM>

<sup>42</sup> Olivier Cattaneo, Carlos A. Primo Braga, 2009, Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask), *Policy Research Working Paper 5116*, November 2009, pp.25-26.

<sup>43</sup> Justin Yifu Lin, 2001, WTO Accession and Financial Reform in China, *Cato Journal*, Vol. 21, No. 1 (Spring/Summer 2001), p.14.

<sup>44</sup> Tadele Geremew *supra note 35*, p.11.

economic growth.<sup>45</sup> However, an uncompetitive market does not reflect the true position of the market and hence, banking sector liberalization will allow countries to reach the optimal productive frontier. An important characteristic of the banking liberalization process for most of the developing world is the influx of new foreign banks,<sup>46</sup> which have mostly its own benefit and risk.<sup>47</sup> Banking sector is among the most common service sectors that require most concern in the course of the WTO accession process, but it is not the only one.<sup>48</sup> Global experience with financial liberalization has been a mix of bewildering array of experiences. “Several countries have suffered serious banking crises following the opening of their financial markets, and, as formal econometric work shows, banking crises have generally been good predictors of currency crises.”<sup>49</sup>

Despite banking liberalization and some growth in more recent years, Sub-Saharan Africa remains generally weak. This raises the question: what precisely was achieved by banking liberalization? Improving the region’s low rate of mobilization has been one of the policy concerns of adjustment programmed in general, and World Bank financial-sector adjustment loans in particular, since the mid-1980s.<sup>50</sup>

Compared to other economies, Sub Sahara Africa (SSA) financial system is broadly bank-based and weakly contestable, therefore, any systemic bank failures would have serious contagious repercussions in these economies.<sup>51</sup>

Ethiopia’s in the process of accession to the WTO since January 2003 is not an end by itself but it’s a key element for speed up national development objectives directly or indirectly. The WTO accession process is quit complex and demands thorough preparation to allow well informed decisions on trade policy reforms to meet the

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<sup>45</sup>Jennifer Moyo§; Boaz Nandwa; Jacob Oduor§ and Anthony Simpasa, 2014, Financial Sector Reforms, Competition And Banking System Stability In Sub-Sahara Africa, *Paper To Be Presented At The IMF/DFID Conference On “Macroeconomic Challenged Facing Low-Income Countries” International Monetary Fund*, Washington DC, January 30 – 31, 2014,p.1.

<sup>46</sup>Samuel Adams1\* and John Agbemade2, supra note 41, p.11598.

<sup>47</sup> Tadele Geremew ,supra note 35,p.11.

<sup>48</sup> Craig Van Grastek, supra note 2, p.131.

<sup>49</sup> Tilahun Esmael , 2012, Ethiopia’s WTO Accession and Financial Services Liberalization,*Mizan Law Review Vol. 6 No.2*, December 2012,p.219.

<sup>50</sup>John Serieux,2008,Financial Liberalization and DomesticResource Mobilization in African Assessment, *Working Paper on International Poverty Centre United Nations Development Programme*, Department of Economics,University of Manitoba , April,2008,Paper number 45,p.1.

<sup>51</sup> Jennifer Moyo§; Boaz Nandwa; Jacob Oduor§ And Anthony Simpasa, supra note 45.

requirement of accession.<sup>52</sup> Thus, this study analyses and examines the experience of six least developed of countries' namely Nepal, Cambodia, Samoa, Vanuatu, Lao PDR and Yemen commitment scenarios of, the WTO Accession and Banking Liberalization Experience, which have been finalized their WTO accession process after 1995 and those country's economic background and vulnerable characteristics during their accession process similar with Ethiopia. Note that these six countries are not the only acceding country similar economic background and vulnerable characteristics during their accession process, but those countries purposively selected by the author to address the issues of the study.

The possible lessons acquired from those countries will help Ethiopia to mitigate onerous commitment comes from the WTO Accession and the Banking Liberalization, which assist Ethiopia to negotiate and liberalize banking sector in wisely, strategically based on the long-term interests of the country and in well planned manner.

### **3.3. Countries WTO Accession and Banking Liberalization Experience**

In order to examine the experience of the six countries' namely Nepal, Cambodia, Vanuatu, Samoa, Lao PDR and Yemen's, the WTO Accession and Banking Liberalization Experience; first, Status of each six countries' Banking Sector before and after WTO Accession has been examined. Then, each six countries' WTO Accession Process and Commitment on its banking Sector has been examined. Thirdly, Opportunity and Challenges of each six countries' Banking Liberalization has been examined. Lastly, Lessons drawn from the six countries' WTO Accession and Banking Liberalization Experience has been summarized.

#### **3.3.1. Nepal's WTO Accession and Banking Sector Liberalization Experience**

##### **3.3.1.1. Status of Nepal's Banking Sector before and after WTO Accession**

Nepal, a land-locked<sup>53</sup> LDCs<sup>54</sup> country nestled between India and China, is one of the poorest countries in the world. Poverty reduction was the main policy objective of the government. Broad-based economic growth has been identified as a prerequisite for

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<sup>52</sup> UNDP, supra note 8.

<sup>53</sup> Ratnakar Adhikar, supra note 21, p.1.

<sup>54</sup> The Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA), World Economic Situation and Prospects, Country classification as of November 2013, 2014, p.149

poverty reduction, and increasing trade—particularly through export diversification—has been identified as one of the strategies for achieving broad-based economic growth. Membership in multilateral, regional and bilateral trade agreements has been seen as an important instrument for increasing trade.<sup>55</sup>

Historically, the services sector in Nepal has been highly protected, not only against foreign investment but also in terms of the participation of the private sector. The services sector in Nepal witnessed gradual opening up in the last two decades.<sup>56</sup> Serious concerns have been raised regarding Nepal's preparedness involving regulatory institutions to support the commitment financial liberalization.<sup>57</sup> In order to assess the likely impact of services sector commitments the Central Bank of Nepal, conducted different assessments suggested financial services sector Nepal before opening up the financial services sector needed major regulatory reforms<sup>58</sup> and substantially strengthened the regulatory mechanism.<sup>59</sup>

On January 1, 2010, per its accession commitments to the WTO and completion of granted a transition period until 1 January 2007 for implementing important WTO agreements,<sup>60</sup> Nepal opened the domestic banking sector to foreign banks after about more than five years it accessed to WTO April, 2004.<sup>61</sup> Currently according to the World Bank Doing Business 2015 reports Nepal ranks 108<sup>th</sup> out of 189 world member which is all most comparable rank to 105<sup>th</sup> of 2014 World Bank Doing Business report.<sup>62</sup>

### 3.3.1.2. **Nepal's WTO Accession process and Commitment on Banking Sector**

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<sup>55</sup>Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23, p.1

<sup>56</sup>Id, pp.39-40.

<sup>57</sup>Ibid.

<sup>58</sup>Id, p.1

<sup>59</sup>See Ratnakar Adhikar, *et al.*, supra note 21, pp.39-40. The studies suggest that major regulatory reforms are needed to make the reforms work for Nepal. These include establishment of a more elaborate licensing and approval procedure, enhanced regulation and supervision of service-related transactions to keep pace with financial innovation, formation of a legal unit to continuously monitor external developments regarding service safeguards and prepare NRB's negotiation position in financial services. The studies have also highlighted the need to establish an institutional mechanism to evaluate the existing monetary and exchange rate policy in light of changingscenario with Nepal's WTO membership.

<sup>60</sup> Ratnakar Adhikar, *et alsupra note 21*, p.31.

<sup>61</sup> U.S .Department of State, 2014, Nepal's Investment Climate Statement [Executive Summary](#), June 2014,p.2.

<sup>62</sup>World Bank, Online collection of business laws and regulations relating to business, *Doing Business reports*, 2015,p-4. <http://www.doingbusiness.org/law-library>

Nepal application for accession was filed on 16 May 1989 and re applied on 5 December 1995 and became the 147th member of the WTO<sup>63</sup> on 13<sup>th</sup> April, 2004, along with Cambodia were the first and the only two LDCs to have succeeded in gaining accession to WTO<sup>64</sup> through the full working party negotiation<sup>65</sup> since 1995.<sup>66</sup>

During its WTO accession process, Nepal had to negotiate even for securing S&DT, to which all LDC<sup>67</sup> members are automatically entitled.<sup>68</sup> Serious concerns have been raised regarding Nepal's preparedness involving regulatory institutions to support the commitment financial liberalization.<sup>69</sup> On the areas of services Nepal was asked to open all services sector commitment, for 100 percent equity participation by foreigners within a period of five years. However<sup>70</sup>, Nepal rejected the request to open sectors which could have an adverse impact on the socio-economic situation,<sup>71</sup> it could finally open the developed countries to get contend with only up to 80 percent foreign equity participation,<sup>72</sup> and opened up 11 major sectors and 77 sub-sectors, constituting 48 percent of all the sub-sectors in the WTO categorization.<sup>73</sup>

The schedule of services commitments of the Nepal shows that Nepal made full market access and national treatment commitments on all Banking and other Financial Services.<sup>74</sup> Nepal's banking sector commitment to allow the services required by business that could contribute to improving the quality and efficiency of services from the beginning of accession.<sup>75</sup> All so, Nepal committed to allow foreign wholesale banks to

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<sup>63</sup> Ratnakar Adhikar, *et al.*, *supra* note 21, p.31.

<sup>64</sup> Sok Siphana, 2005, Lessons from Cambodia's Entry into the World Trade Organization, *Asian Development Bank Institute (ADBI) Policy Papers No. 7*, Tokyo, 2005, p.6. [www.adbi.org](http://www.adbi.org)

<sup>65</sup> WTO home page, 2014, *Nepal and the WTO members' information/Nepal*, Accessed on, 12 November 2014). available at [Http://www.wto.org/english/thewto\\_e/countries\\_e/nepal\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/nepal_e.htm).

<sup>66</sup> Sok Siphana, Lessons *supra* note 64.

<sup>67</sup> Ratnakar Adhikar, *et al.*, *supra* note 21, p.1.

<sup>68</sup> Id, p.31.

<sup>69</sup> Rajkarnikar, P.R. *Nepal: The Role of an NGO in Support of Accession, 2005*, WTO, as cited in Ratnakar Adhikar, *et al.*, *supra* note 22, p.37.

<sup>70</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 22.

<sup>71</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé, 2014, Nepal's Accession to the World Trade Organization: Case Study of Issues Relevant to Least Developed Countries, *Department of Economic & Social Affairs, CDP Background Paper No. 23*, November 2014, p.13.

<sup>72</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 22.

<sup>73</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé, *supra* note 71, p.13.

<sup>74</sup> Tilahun Esmael Kassahun, *supra* note 49, P.211.

<sup>75</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé\*, *supra* note 71, p.25.

open their branches in Nepal from 1 January 2010<sup>76</sup> and as per its accession commitments to the WTO, Nepal opened the domestic banking sector to get best quality and efficiency of services experience for foreign giant investors<sup>77</sup> after five years and seven months it accessed in April, 2004 to WTO.<sup>78</sup>

### 3.3.1.3. Opportunity of Nepal's Banking Sector WTO Accession

Nepal considers using WTO membership for disciplining its trading partners, achieving enhanced market access, benefiting from the special and differential treatment within the WTO system for LDCs.<sup>79</sup> Although Nepal's negotiation process for WTO membership was demanding and time-consuming, the technical assistance Nepal received during its accession process proved vital but not adequate.<sup>80</sup> Nepal also received an important technical assistance from UNDP, including support in the preparation of negotiating documents, commissioning some background papers, building negotiating capacity and promoting public awareness of WTO membership.<sup>81</sup>

Nepal's accession package was a result of a thoughtful negotiating approach taken by the country. It entailed, among other things, coordination across government agencies, mobilization of external support and diplomatic capital, and wide consultations with a range of stakeholders, including the private sector, civil society organizations and farmers' groups,<sup>82</sup> a limited number of international and national NGOs, and business communities were involved from the late 1990s in Nepal's accession process.<sup>83</sup> Nepal often saw WTO membership as an important step in gaining access to foreign markets for

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<sup>76</sup>Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23, pp.39-40.

<sup>77</sup>Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23.

<sup>78</sup> U.S .Department of State note 61.

<sup>79</sup>Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23, p.32.

<sup>80</sup> David Legge<sup>1</sup>, Deborah Gleeson<sup>1</sup>, Wendy Snowdon<sup>2</sup> and Anne Marie Thow<sup>3</sup>, Trade Agreements and Non-communicable Diseases in the Pacific Islands, 1. School of Public Health and Human Biosciences, La Trobe University, 2. Pacific Research Centre for the Prevention of Obesity and Non-Communicable Diseases 3. *Menzies Centre for Health Policy, The University of Sydney*, First prepared August 2011, Revised January 2013, pp.10-11.

<sup>81</sup> *Hussein Ahmed Tura*, Making the WTO accession work for Ethiopia: Lessons from Cambodia and Nepal, *Abyssinia Law Review*, 2013, p.8.

<sup>82</sup> *Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé\**, supra note 71.

<sup>83</sup> Ratnakar Adhikari, Navin Dahal and Manisha supra note 23, p.32.

their exports, attracting foreign investment and reforming its own economies and policies.<sup>84</sup>

#### **3.3.1.4. Challenges of Nepal's Banking Sector Liberalization**

Although, Nepal undertake wide consultations with a range of stakeholders since the late 1990s of its accession process,<sup>85</sup> and implement a number of regulatory reform measures that it had committed to during the process<sup>86</sup> Nepal had not been able to implement a number of regulatory reform measures mainly due to the following main reasons. Those reasons were capacity constraint (countries' weak human and institutional capacities as well as limited technical know-how and financial resources)<sup>87</sup>, the negotiation process come to be demanding and time consuming,<sup>88</sup> promises were not put into practice by the WTO members agreed "to facilitate and accelerate negotiations with acceding LDCs" and transitional periods to all acceding LDCs at the 2001 launch of the Doha Round of trade negotiations, and due to unfavorable political situation in the country in the past few years.<sup>89</sup>

The other Nepal's Challenges were, Nepal's negotiating team was not supported by in-depth studies and scientific or objective position papers on various topics. Rather they were mostly carried out based on personal efforts, knowledge and information of the negotiators. In addition, a lack of timely communication for policy decisions and a lack of clear guidelines from the government<sup>90</sup> desire for policy space and its institutional and infrastructure capacity<sup>91</sup> which forced to make commitments considered as excessive relative to their LDC Member status.<sup>92</sup> There was also, lack of coordination among the different donors<sup>93</sup>, due to the lack of a formal and institutionalized mechanism for

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<sup>84</sup> David Legge<sup>1</sup>, Deborah Gleeson<sup>1</sup>, Wendy Snowdon<sup>2</sup> and Anne Marie Thow<sup>3</sup>, supra note 80.

<sup>85</sup> Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23, p.32

<sup>86</sup> *id.*, pp.39-40

<sup>87</sup> Hussein Ahmed Tura, supra note 81, p.7

<sup>88</sup> *Ibid.*

<sup>89</sup> Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga supra note 23, p.37.

<sup>90</sup> *id.*, p.28.

<sup>91</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé\*, supra note 71, p.2.

<sup>92</sup> Hussein Ahmed Tura, supra note 134, p.12.

<sup>93</sup> *Ibid.*

stakeholders involvement, the majority of stakeholders felt that they were left out from the accession process.<sup>94</sup>

On the areas of services Nepal was asked to open all services sector commitment, for 100 percent equity participation by foreigners within a period of five years.<sup>95</sup> In the course of accession to the WTO, the country was dedicated to enact 10 new laws and regulations and amend 25 existing laws and regulations by 2007.<sup>96</sup> Thus, accession to the WTO did not lead to major changes in Nepal's trade openness and market access opportunities, which could be the reason for the limited significance of WTO membership on Nepal's trade performance.<sup>97</sup> Consequently, WTO membership has not helped achieve key policy objectives related to trade, i.e. trade diversification and expansion.<sup>98</sup> As a result, the costs associated with WTO accession can be very high and Nepal is examples of low income countries that were forced to make WTO+ commitments.<sup>99</sup>

### **3.3.1.5. Lesson Drawn from Nepal's WTO Accession and Banking Sector Liberalization Experience**

Nepal's getting UNDP significant technical assistance to the government, including support in the preparation of negotiating documents, commissioning some background papers, building negotiating capacity and promoting public awareness of WTO membership<sup>100</sup> and active participation of different stakeholders also have a positive side in mitigating burden of commitment even though the majority of stakeholders felt that they were left out from the accession process due to the lack of a formal, institutionalized mechanism for engagement. Nepal's banking sector commitment to allow the services required by business that could contribute to improving the quality and efficiency of services from the beginning of accession<sup>101</sup> and Nepal's firm stand and rejecting the request to open sectors to all services sector including banking sector commitment, for

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<sup>94</sup> *id*, p.8.

<sup>95</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 23.

<sup>96</sup> Ratnakar Adhikar, *et al supra* note 22, p.37.

<sup>97</sup> *ibid*

<sup>98</sup> Hussein Ahmed Tura, *supra* note 81, p.12-13.

<sup>99</sup> David Legge<sup>1</sup>, Deborah Gleeson<sup>1</sup>, Wendy Snowdon<sup>2</sup> and Anne Marie Thow<sup>3</sup>, *supra* note 80.

<sup>100</sup> Ratnakar Adhikar, *et al.*, *supra* note 21.

<sup>101</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé\*, *supra* note 71, p.25.

100 percent equity participation by foreigners within a period of five years<sup>102</sup> which could have an adverse impact on the socio-economic situation,<sup>103</sup> were the lesson drawn from commitment and opportunity side of Nepal's WTO Accession and Banking Liberalization Experience.

On the other hand, Nepal's lack of in-depth studies and scientific or objective position papers on various topics before accession, the lack of a formal and institutionalized mechanism for stakeholders involvement,<sup>104</sup> and a lack of clear guidelines from the government<sup>105</sup> cause Nepal's negotiators mistaken by accepting some commitments incompatible with its national development goal.<sup>106</sup> Moreover, Nepal's institutional and infrastructure<sup>107</sup> capacity constraint<sup>108</sup> and WTO membership promises "to facilitate and accelerate negotiations with acceding LDCs, has not put into practice"<sup>109</sup> causes the negotiation process come to be demanding and time consuming.<sup>110</sup> As a result, the costs associated with WTO accession could be very high and Nepal is examples of low income countries forced to make WTO+ commitments.<sup>111</sup> So, that all is the lesson drawn from Challenges side of Nepal's the WTO Accession and Banking Liberalization Experience for LDCs on Accession Negotiation and seeking future accession.

### **3.3.2. Cambodia's WTO Accession and Banking Sector Liberalization Experience**

#### **3.3.2.1. The Status of Cambodia's Banking Sector before and after WTO Accession**

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<sup>102</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 22.

<sup>103</sup> Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé, *sputa* note 71.

<sup>104</sup> Hussein Ahmed Tura, *supra* note 81.

<sup>105</sup> Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga *supra* note 23, p.28

<sup>106</sup> United Nations Department of Economic and Social Affairs (UN-DESA), *Nepal's accession to the World Trade Organization: case study of issues relevant to least developed countries*, Excerpt from Posh Raj Pandey et al (2011), p.4, One of the most controversial issues during Nepal's accession process was that it was asked to join UPOV. Agreeing to this could have led Nepali farmers to compromise their traditional right to save, exchange, replant and sell seeds For instance contrary to Article 15 of the Agreement on Agriculture (AoA) which excludes LDCs from all reduction commitments under the Agreement, Nepal has withdrawn the right to subsidize agriculture exports. On the other hand Nepal did not have any TRIMs at the time of accession, but was asked to make a commitment not to introduce any such measures in the future.

<sup>107</sup> *Id.*, p.3.

<sup>108</sup> Ratnakar Adhikar, *et al.*, *supra* note 21, p.50.

<sup>109</sup> General Council Decision on LDC accession, Section II.

<sup>110</sup> Hussein Ahmed Tura, *supra* note 81, p.7.

<sup>111</sup> David Legge<sup>1</sup>, Deborah Gleeson<sup>1</sup>, Wendy Snowdon<sup>2</sup> and Anne Marie Thow<sup>3</sup>, *supra* note 80.

Cambodia is East Asia Least developed country and began the transformation from a command economy to the free market in the late 1980s.<sup>112</sup> The decision to join the WTO in Cambodia was made with adequate preparation and evolution of the processes and analysis of its advantage and disadvantage of joining the WTO. The accession of Cambodia's to the WTO enhanced greatly improved trade performance, with continued commitment to the process from the government and the private sector.<sup>113</sup> Cambodia has experienced rapid economic growth over the last decade, with gross domestic product (GDP) grew at an average annual rate of over eight percent between 2000 and 2010 and over seven percent since 2011.<sup>114</sup> Cambodia's 1997 Law on Foreign Exchange allows the National Bank to implement exchange controls in the event of a foreign exchange crisis.<sup>115</sup> Currently according to the World Bank Doing Business 2015 reports Cambodia ranks 135<sup>th</sup> out of 189 world member.<sup>116</sup>

### 3.3.2.2. Cambodia's WTO Accession process and Commitment on Banking Sector

The Government of the Kingdom of Cambodia applied for accession to the WTO in October 1994 and completed its negotiations and submitted its acceptance of the terms and conditions of membership set out in the accession protocol, which was approved by the Fifth Ministerial Conference on 11 September 2003. Cambodia became the 148<sup>th</sup> member of WTO on 13 October 2004 and was the first LDCs to have succeeded in gaining accession to WTO since the latter's transformation from Article XII of the Marrakesh agreement the General Agreement on Tariffs and Trade in 1995.<sup>117</sup>

Cambodia has separate laws and institutions governing insurance and banking services considering the existence of sound legislative and regulatory framework of financial

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<sup>112</sup>US, supra note 61, p.1

<sup>113</sup>WTO, 2012, The conference on Lao PDR's WTO accession commitments and possible business implications, *Business and Trade Policy Section News*, 30 Nov. 2012, p.2. See more at: <http://www.intracen.org/news/Lao-PDR-accession-commitments-discussed-ahead-of-WTO-accession/#sthash.SDXlnrI6.dpuf>

<sup>114</sup>Ibid.

<sup>115</sup>U.S, supra note 61, p.5

<sup>116</sup>World Bank, 2014, Online collection of business laws and regulations relating to business, *Doing Business reports*, 2014. Internet: [www.worldbank.org](http://www.worldbank.org).

<sup>117</sup>Hussein Ahmed Tura, supra note 81, p.9.

sector was crucial for the protection of the public.<sup>118</sup> The Cambodian Law on Banking and Financial Institutions and subsequent regulations guaranteed foreign banks rights and obligations equal to local banks and there was no restriction regarding foreign ownership of banks.<sup>119</sup> Cambodia committed itself to opening up almost all sub-sectors in services, including telecommunications services, distribution, financial and transport services on believed to set Cambodia on a path benefiting its economic development<sup>120</sup> progressively and substantially<sup>121</sup> and to encourage foreign investment in financial services sector.<sup>122</sup> So, foreign investors may own 100 percent in the area of services including banking sector except<sup>123</sup> in a very limited number of areas where local initiatives might be threatened<sup>124</sup> without limits on the rights of foreign and domestic entities to establish and own business enterprises or to compete with public enterprises.<sup>125</sup> The Cambodia's commitments for banking sectors refers to commercial banking only.<sup>126</sup> Cambodia made excessive commitments to liberalize the trade in services, opening up all of the 11 service sectors under the WTO classification, some fully and others partially and with transition periods including 74 sub-sectors in.<sup>127</sup> Consequently, the Cambodia's accession packages was described as overly extensive.<sup>128</sup>

Even though, the WTO members agreed "to facilitate and accelerate negotiations with acceding LDCs" at the 2001 Launch of the Doha Round of trade negotiations,<sup>129</sup> and leading to the adoption by the General Council of the Guidelines for the Accession of LDCs in December 2002<sup>130</sup> the accession process of Cambodia was not much shorter than that of other countries mainly because of capacity constraints and lengthy process in

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<sup>118</sup>Sok Siphana, 2005, Lessons from Cambodia's Entry into the World Trade Organization, Asian Development Bank Institute (ADBI) Policy Papers No. 7, Tokyo, 2005, p.71. [www.adbi.org](http://www.adbi.org)

<sup>119</sup>Tilahun Esmael Kassahun, supra note 49, P.210.

<sup>120</sup>Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p.109.

<sup>121</sup>Sok Siphana, supra note 119, p.37 [www.adbi.org](http://www.adbi.org)

<sup>122</sup>id, p.71.

<sup>123</sup>U.S. supra note 61, p.3.

<sup>124</sup>WTO home page, Cambodia and the WTO members' information/Cambodia (Accessed on, 12 November 2014). available at [http://www.wto.org/english/res\\_e/booksp\\_e/casestudies\\_e/case8\\_e.htm](http://www.wto.org/english/res_e/booksp_e/casestudies_e/case8_e.htm).

<sup>125</sup>U.S, supra note 61, p.8.

<sup>126</sup>WTO, 2005, The Kingdom Of Cambodia Trade In Services, Schedule Of Specific Commitments, GATs/Sc/140, 25 October 2005, P.17.

<sup>127</sup>Hussein Ahmed Tura, supra note 81, pp.10-11.

<sup>128</sup>Sok Siphana, supra note 49, p.37.

<sup>129</sup>Hussein Ahmed Tura, supra note 81, p.7.

<sup>130</sup>Craig Van Grastek, supra note 1, pp.133-134.

proceeding with the negotiations.<sup>131</sup>The commitment Cambodia in the area of services generally show a tendency towards liberalization and were characterized in banking sectors that could contribute to improving the quality and efficiency of the services required by business.<sup>132</sup>

### **3.3.2.3. Opportunity of Cambodia's Banking Sector Liberalization**

Cambodia less capability to become major players in the world market or power to disrupt other WTO members' domestic markets was contribute large to facilitate and expedite their accession negotiations.<sup>133</sup> On the other hand, Cambodia's legislative and institutional improvements before accession have been a key to its successful accession.<sup>134</sup> A group of experts from UNCTAD offered extensive technical advice to Cambodian negotiators while other bilateral and multilateral donors provided some (albeit limited) help to the government in conducting its accession negotiations.<sup>135</sup> Even so, the country was not obtained support which was crucial to its negotiations, that efforts was face a problem to bear fruit due to lack of "targeted and coordinated technical assistance" to support LDCs' accession.<sup>136</sup>

### **3.3.2.4. Challenges of Cambodia's Banking Sector Liberalization**

Cambodia's accession into the WTO constitutes a major challenge for the country. The accession process was a complicated, long, hectic and demanding and time consuming<sup>137</sup>because of the countries' weak human and institutional capacities as well as limited technical know-how and financial resources. In addition to lacking detailed studies and scientific or objective position papers on relevant topics, makes the negotiation process demanding and time consuming, negotiations were mostly carried out based on the personal efforts, knowledge and information of Cambodian negotiators. To this end, the Cambodia's negotiator subsequently distinguished: "Insufficient knowledge,

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<sup>131</sup> *Hussein Ahmed Tura*, supra note 81, p.7.

<sup>132</sup> *Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé\**, supra note 71, pp.24-25.

<sup>133</sup> Sok Siphana 2007, , *Cambodia Enters the WTO: Lessons Learned for Least Developed Countries, Research Policy Brief (2005)*, as cited in Fuzhi Cheng, *Cambodias WTO Accession*, Cornell University(2007), p.3.

<sup>134</sup> Hussein Ahmed Tura, supra note 81, PP.7-11.

<sup>135</sup> Adhikari and Navin Dahal, supra note 23, p. 5.

<sup>136</sup> *Hussein Ahmed Tura*, supra note 81.

<sup>137</sup> H.E. Sok Siphana, 2009, Background Note: Cambodia's Experiences in the WTO Accession Process, *LDCs Round Table on WTO Accession*, September 2009, p.1.

inadequate experience, limited resources and limited analytical capacities required for accession negotiations were also recurrent sources of delay.”<sup>138</sup> There was really no miracle prescription that would render the accession process easy.<sup>139</sup> Cambodia often see WTO membership as an important step in gaining access to foreign markets for their exports, attracting foreign investment and reforming its own economies and policies. Actually the costs associated with WTO accession can be very high for low income countries. Cambodia is examples of low income countries that were forced to make WTO+ commitments.<sup>140</sup>

The other major Cambodia's accession challenge for the country was Cambodia's required to prepare voluminous and complex documentation regarding its trade regime for goods and services,<sup>141</sup> which however, the country could not perform these plans at the scheduled time and adopted just only 24 of the 47 laws and regulations<sup>142</sup> and has engaged in lengthy negotiations with the WTO Member Countries both at the bilateral and multilateral level<sup>143</sup>, due to limited capacities to draft, implement and enforce the laws and regulations and set up and manage the necessary institutions. Multilateral and bilateral technical assistance activities have not been sufficiently comprehensive and effective even though they have improved subsequent to the countries' accession and the challenge due to lack of coordination among the different donors.<sup>144</sup>

In the Services Offer, the challenges lie in its understanding on the policy and economic implications arising from the various services sector commitments like telecom, financial services and professional services.<sup>145</sup> Moreover, Cambodia had to ensure that its concessions and commitments made under the WTO accession process are consistent

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<sup>138</sup> *Hussein Ahmed Tura*, supra note 81, p.7.

<sup>139</sup> H.E. Sok Siphana., supra note, 137.

<sup>140</sup> David Legge1, Deborah Gleeson1, supra note 111.

<sup>141</sup> Fuzhi Cheng, 2007, *Cambodias WTO Accession*, Cornell University, 2007,p.3.

<sup>142</sup> *Hussein Ahmed Tura*, supra note 81, p.12.

<sup>143</sup> Fuzhi Cheng, supra note 141, p.3.

<sup>144</sup> *Hussein Ahmed Tura*, supra note 81, p.12.

<sup>145</sup> Fuzhi Cheng, supra note 141.

with other international obligations.<sup>146</sup> The Cambodia's commitment for banking sectors refers to commercial banking only was very high risk for low income country.<sup>147</sup>

Generally, the technical assistance that the country received after WTO membership has been inadequate. As a result, WTO membership has not helped achieve key policy objectives related to trade, i.e. trade diversification and expansion.<sup>148</sup>

### **3.3.2.5. Lesson Drawn from Cambodia's WTO Accession and Banking Liberalization Experience**

Cambodia less capability to become major players in the world market or power to disrupt other WTO members' domestic markets was contribute large to facilitate and expedite their accession negotiations.<sup>149</sup> On the other hand, Cambodia's unilateral legislative and institutional improvements before accession have been a key to its successful accession.<sup>150</sup> A group of experts from UNCTAD offered extensive technical advice to Cambodian negotiators while other bilateral and multilateral donors provided some help to the government in conducting its accession negotiations<sup>151</sup>, were the Lesson Drawn from Cambodia's the WTO Accession and Banking Liberalization from the opportunity side.

On the other hand, the countries' weak human and institutional capacities as well as limited technical know-how and financial resources, lack of detailed studies and scientific or objective position papers on relevant topics, makes the negotiation process demanding and time consuming. Negotiations were mostly carried out based on the personal efforts, knowledge and information of Cambodian negotiators. To this end, the Cambodia's negotiator subsequently distinguished: "Insufficient knowledge, inadequate experience, limited resources and limited analytical capacities required for accession negotiations were also recurrent sources of delay."<sup>152</sup>

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<sup>146</sup>Ibid.

<sup>147</sup>WTO home page, 2014, *Nepal and the WTO members' information/Nepal*, Accessed on, 12 November 2014). available at [Http://www.wto.org/english/thewto\\_e/ccountries\\_e/nepal\\_e.htm](http://www.wto.org/english/thewto_e/ccountries_e/nepal_e.htm).

<sup>148</sup>Hussein Ahmed Tura, *supra* note 81, ,pp.12-13.

<sup>149</sup>Sok Siphana *supra* note 137.

<sup>150</sup>Hussein Ahmed, *supra* note 81.

<sup>151</sup>Adhikari and Navin Dahal ,*supra* note 23.

<sup>152</sup>Hussein Ahmed Tura, *supra* note 81, p.7.

Cambodia's required to prepare voluminous and complex documentation regarding its trade regime for goods and services,<sup>153</sup> the challenges lie in its understanding on the policy and economic implications arising from the various services sector commitments like telecom, financial services and professional services.<sup>154</sup> The technical assistance that the country received after WTO membership has been inadequate. As a result, WTO membership has not helped achieve key policy objectives related to trade.<sup>155</sup> Cambodia is examples of low income countries that were forced to make WTO+ commitments<sup>156</sup> and the accession packages was described as overly extensive.<sup>157</sup> Those were the Lesson Drawn from Cambodia's the WTO Accession and Banking Liberalization from challenge side.

### **3.3.3. Samoa's WTO Accession and Banking Sector Liberalization Experience**

#### **3.3.3.1. Status of Samoa's Banking Sector before and after WTO Accession**

Samoa is Small island East Asia country<sup>158</sup> graduated from LDC status in January 2014.<sup>159</sup> Samoa apply to the WTO in April 1998 and accede to the WTO in May 2012 after negotiating for about fourteen years. The decision to join the WTO in Samoa be made with adequate preparation and evolution of the processes and adoption of best practices, set upping the National WTO Working Committee comprised of key stake holders prior to the submission of WTO application, and at large extent accessions negotiating reliedding positions of model accessions were foundations that would set the direction, commitment and dedication to the process of accessions to conclude.<sup>160</sup> The Government has been in consultation with the private sector and civil society on WTO

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<sup>153</sup> Fuzhi Cheng, *supra note 141*.

<sup>154</sup> *Ibid*.

<sup>155</sup> Hussein Ahmed Tura, *supra note 81*, p.12-13.

<sup>156</sup> David Legge1, Deborah Gleeson1, Wendy Snowdon2 and Anne Marie Thow3, *supra note 111*.

<sup>157</sup> Sok Siphana, *supra note 137*, p.37.

<sup>158</sup> The Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA), World Economic Situation and Prospects, Country classification as of November 2013/2014, pp.149-150.

<sup>159</sup> U.S .Department of State, 2014, Nepal's Investment climate statement,, Executive summary, June 2014, p.1

<sup>160</sup> LDCs Roundtable on WTO Accession *supra note 11*, p.4

accession and continues the consultation with the private sector and civil society as to meet its obligations following accession.<sup>161</sup>

Samoa is an active member of regional and international organizations (the United Nations, the International Monetary Fund,<sup>162</sup> the World Bank since June 1974<sup>163</sup>), and the United States.<sup>164</sup> The Samoa—Relations with the Asian Development Bank Group Country Partnership Strategy (CPS) 2008-2012 for Samoa focuses on poverty reduction with three pillars for intervention: (i) removal of infrastructure constraints, (ii) improvement of access and delivery of public services, and (iii) promotion of private sector development.<sup>165</sup> The World Bank has also executed a range of trust fund financed activities focused on supporting the successful reform efforts since the mid-1990s.<sup>166</sup>

Samoa's economic growth has been slow and volatile over the past five years as a result of a series of shocks. Over the medium term, growth was projected to rise to around 2½ percent, a rate still significantly lower than what Samoa achieved in the decade before the current slowdown. This outlook was also subject to considerable downside risks in the current global, regional and domestic environment.<sup>167</sup> Annual real GDP growth was projected at 1.5 percent for fiscal year 2011/12, improving gradually to 2.5 percent over the long term, which is higher than the average GDP growth of 0.9 percent for 2005/06-2010/11, a period when the Samoan economy was subject to a series of adverse shocks.<sup>168</sup>

Many Samoan enterprises felt uneasy after the first wave of reforms. Accession mechanisms liberalization and reforms have made it easy for companies from any member country, to enter Samoa with huge capital investment, skills, knowledge,

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<sup>161</sup> Samoa Sixteenth Plenary Session of the Committee for Development Policy, *Monitoring of Graduating Countries from the Category of Least Developed Countries*, New York, March 2014, p.6.

<sup>162</sup> U.S. 2014, Relations with Samoa, *Bureau of East Asian and Pacific Affairs Fact Sheet*, January 31, 2014, p.ii

<sup>163</sup> IMF, 2012, *IMF Country Article Iv Consultation Report No. 12/250*, Washington, D.C. August 2012, p.39.

Internet: <http://www.imf.org>

<sup>164</sup> U.S. supra note 162.

<sup>165</sup> IMF, 2012, *IMF Country Article Iv Consultation Report No. 12/250*, Washington, D.C. August 2012, p.37. Internet: <http://www.imf.org>

<sup>166</sup> IMF supra note 165.

<sup>167</sup> Id. p.1.

<sup>168</sup> Id. p.45

capability and expertise to take major market shares from local companies.<sup>169</sup> Currently, the liberalization and reform programmed implemented in order to accede to WTO, has affected not only the banking sector, but all sectors of Samoa's economy.<sup>170</sup> The World Bank Doing Business 2015 report ranks Samoa 67<sup>th</sup> which was shown almost nearer comparable to 61<sup>th</sup> ranking with 2014 published report out of 189 world member.<sup>171</sup>

### 3.3.3.2. Samoa's WTO Accession process and Commitment on Banking Sector

Banking in Samoa, opening up of monopolies<sup>172</sup> with the removal of direct controls. The Central Bank has strengthened its prudential supervision of the banks through adopting international standards under the Basle Core Principles of Supervision and amendment the Act by Parliament in January 2001<sup>173</sup>.

Concerning right to Private Ownership and Establishment different sectors shows that, foreign Investors are permitted 100% ownership in all different sectors of the industry including the banking sector, with the exception of conditions for restricted activities.<sup>174</sup> Financial institutions financial sector liberalization has seen the rise of many small finance companies and a number of foreign exchange dealers and money transfer operators in the country. This has encouraged more competition in the financial system giving the general public a wider range of financial services providers to choose from at lower costs.<sup>175</sup>

### 3.3.3.3. Opportunity of Samoa's Banking Sector Liberalization

Even though, the WTO law of the Marrakesh Agreement Article XII provision governing accessions does not provide rules for the conduct of negotiations or benchmarks for the

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<sup>169</sup>United Nations Conference On Trade and Development,2001, Challenges and Opportunities Arising From Samoa's Accession to the WTO, Technical Cooperation Project, October 2001, p.49. Apia, Samoa..

<sup>170</sup>Ibid.

<sup>171</sup>Bank, 2014 & 2015, Online collection of business laws and regulations relating to business, Doing Business reports, 2014, p.3 & 2015, p.228. Internet: [www.worldbank.org](http://www.worldbank.org).

<sup>172</sup>United Nation Conference on Trade and Development, supra note 8.

<sup>173</sup>Ibid.

<sup>174</sup>id, p.53.

<sup>174</sup>See USA, Samoa's Investment Climate Statement, June 2014, p.4.

Foreign Investors are permitted 100% ownership in all different sectors of the industry with the exception of conditions for restricted activities below. The following businesses are reserved for Samoan Citizens only: 1. Bus transport services for the general public, 2. Taxi transport services for the general public, 3. Rental vehicles, 4. Retailing, 5. Saw milling, 6. Traditional lei garment designing and printing. Restricted List – Open to foreign investors upon condition.

<sup>175</sup>United Nation Conference on Trade and Development, supra note 169, p.53.

outcomes, the accession process of Samoa has benefitted from<sup>176</sup> the evolution of the accession processes<sup>177</sup> and adoption of best practices<sup>178</sup>, setting up the National WTO Working Committee comprised of key stakeholders prior to the submission of WTO application<sup>179</sup>, and Samoa's negotiating positions to a large extent relied on model accessions of other LDCs with similar economic and vulnerable characteristics as Samoa namely Cambodia, Nepal, and Vanuatu, and Tonga<sup>180</sup> were foundations that would set the direction, commitment and dedication to the process of accessions to conclude.<sup>181</sup>

#### **3.3.3.4. Challenges of Samoa's Banking Sector Liberalization**

The first challenging task of the accession process was the compilation of Samoa's Memorandum of Foreign Trade Regime (MFTR) as it was the first time the compilation of such information, took 2 years to complete through extensive consultations and engagement with national authorities<sup>182</sup>, and the ITC, particularly through close collaboration with Samoa's private sector.<sup>183</sup> The speed of progress of Samoa's accession was also challenged by our non-residency in Geneva due to technological communication barriers.<sup>184</sup>

The other challenge was, the liberalization and reform programme implemented in order to accede to WTO, has affected not only the banking sector, but all sectors of Samoa's economy.<sup>185</sup> Above all challenges, a key challenge was to reduce the fiscal deficit to bring public debt to a more sustainable level while supporting economic recovery.<sup>186</sup>

#### **3.3.3.5. Lesson Drawn from Samoa's WTO Accession and Banking Sector Liberalization Experience**

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<sup>176</sup>LDCs Roundtable on WTO Accession supra note 11, p.2.

<sup>177</sup>Ibid.

<sup>178</sup>id,p.1.

<sup>179</sup>Id,p.2.

<sup>180</sup>Ibid.

<sup>181</sup>Id,p.4.

<sup>182</sup> United Nation Conference on Trade and Development, supra note 169.

<sup>183</sup> LDCs Round table on WTO Accession supra note 11, p.6.

<sup>184</sup>Ibid.

<sup>185</sup>United Nation Conference on Trade and Development, supra note 169.

<sup>186</sup>IMF, 2012, IMF Country Article Iv Consultation Report No. 12/250\_ Washington, D.C. August 2012, p.1. Internet: <http://www.imf.org>

The accession process of Samoa has benefitted from<sup>187</sup> the evolution of the accession processes<sup>188</sup> and adoption of best practices<sup>189</sup>, set upping the National WTO Working Committee comprised of key stake holders prior to the submission of WTO application<sup>190</sup>, and Samoa's negotiating positions to at large extent relied on model accessions of other LDCs similar economic and vulnerable characteristics as Samoa<sup>191</sup>were foundations that would set the direction, commitment and dedication to the process of accessions to conclude.<sup>192</sup> Such model accessions should be well digested to provide orientation to drive other LDCs on the accession process or seeking accessions to conclude is what recommend the use of the Enhanced Integrated Framework (EIF) and Lesson drawn from Samoa's the WTO Accession and Banking liberalization experience from opportunities sides.

On the other hand, the lesson drawn from the WTO Accession and Banking liberalization experience accession commitment and challenges sides of Samoa is the liberalization and reform programmed implemented in order to accede to WTO which was opening up of the financial services sector especially the banking sector to foreign Investors permitted 100% banking sector ownership at all<sup>193</sup>,which the banking sector is complex and confusion and a number of misconceptions can arise regarding the consequences of banking sector liberalization, that ownership to any foreign huge, complex and modernized companies investment, with the removal of direct controls, before the Central Bank has strengthened its prudential supervision of the banks, has affected not only the banking sector, but all sectors of Samoa's economy was lesson drawn from challenges sides.

### **3.3.4. The Vanuatu's Banking Sector Liberalization Experience**

#### **3.3.4.1. Status of Vanuatu's Banking Sector before and after WTO Accession**

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<sup>187</sup>LDCs Round table on WTO Accession supra note 160, p.2.

<sup>188</sup>Ibid.

<sup>189</sup>Ibid,

<sup>190</sup>Id.,p.2.

<sup>191</sup>Ibid.

<sup>192</sup>Id,pp.1-7.

<sup>193</sup>USA supra note 174.

Vanuatu is Small island East Asia Least developed country<sup>194</sup> and its economy generally closed and an import-substitution policy in place. Since the country gained its independence in the 1980s, some policymakers and politicians were convinced that the time had come for Vanuatu to integrate itself with the global economy.<sup>195</sup> A push toward accession was further prompted by the fact that all of Vanuatu's neighbors and principal trading partners further enhanced under the WTO framework.<sup>196</sup> Vanuatu's banking sector were closed because its economy generally closed until 1980s.<sup>197</sup> Vanuatu was expedited with the advent in 1997 of the World Bank's structural adjustment package known as the Comprehensive Reform Program (CRP) which aimed at improving governance, enhancing the role of the private sector, increasing economic growth, and further liberalizing the economy by reducing trade barriers within the context of WTO membership.<sup>198</sup> Currently according to the World Bank Doing Business 2015 reports Vanuatu ranks 76<sup>th</sup> out of 189 world member which is almost comparable rank to 74<sup>th</sup> of 2014 World Bank Doing Business report.<sup>199</sup>

#### **3.3.4.2. Vanuatu's WTO Accession process and Commitment on Banking Sector**

Vanuatu applied for WTO membership in July 1995<sup>200</sup>, and accessed to WTO membership in August 2012 after about for seventeen years.<sup>201</sup> Vanuatu's accession process was suspended due to the doubts and frustrations, the general economic downturn and the failure of the Comprehensive Reform Program (CRP), and the political instability in the country.<sup>202</sup>

In the area of services, Vanuatu was asked to make offer in 18 areas, which is more than four times the average for existing LDC members of the WTO. The only two major

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<sup>194</sup> The Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA), supra note 158, pp149-150

<sup>195</sup> Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p119.

<sup>196</sup> Id. p119

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> World Bank, Online collection of business laws and regulations relating to business, Doing Business reports, 2015, p-4. <http://www.doingbusiness.org/law-library>

<sup>200</sup> Ratnakar Adhikari and Navin Dahal supra note 22, P-3.

<sup>201</sup> Craig Van Grastek, supra note 1, p-149

<sup>202</sup> See, Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p120

exceptions in which Vanuatu was not willing to commit itself were telecommunication and distribution services, due to domestic political compulsions. However, towards the end of the negotiations it had to give in to the pressure of the USA and agreed to open up retail and wholesale services for foreign investment including the banking sector.<sup>203</sup>

Although members say that they would give special consideration to LDCs, in practice, the process of accession was made very difficult by the fact that, they try to get maximum concession from the acceding member, the ambiguity of the accession process and for the inability of LDCs to enter into the system was the protracted negotiation process leading to accession – which results in exhaustion of human, administrative and political capital of the LDCs.<sup>204</sup> This problem is faced by the developing countries as well as LDCs alike, however, the rigorousness of the problem is more acute in the case of LDCs.<sup>205</sup>

#### **3.3.4.3. Opportunity of Vanuatu's Banking Sector WTO Accession**

It is difficult to get Opportunity of Vanuatu's Banking Sector WTO Accession due to Vanuatu's accession process was too burdensome and power-based for the small, capacity-constrained country.<sup>206</sup> It was not prepared to sustain in the long run and that were in excess of what many developed and developing WTO-member countries were committed to.<sup>207</sup> Vanuatu agreed to open up retail and wholesale services for foreign investment including the banking sector from beginning of its accession day, August 2012<sup>208</sup> In short, it was felt that Vanuatu did not have sufficient control over the outcome of the negotiations. And in the absence of consultations and information, skeptics found a pretext to oppose the entire WTO process which was very difficult resist to the banking sector as well as the whole economy.<sup>209</sup> So, this all it had better say Challenges of Vanuatu's Banking WTO Accession than Opportunity of Vanuatu's Banking Sector WTO Accession.

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<sup>203</sup> *Ratnakar Adhikari and Navin Dahal*, supra note 22., P.3

<sup>204</sup> Adhikari, Ratnakar (2003), "supra note 21,

<sup>205</sup> *Ratnakar Adhikari and Navin Dahal*, supra note 22, P.3

<sup>206</sup> See, Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, pp.120-121

<sup>207</sup> Ibid.

<sup>208</sup> *Ratnakar Adhikari and Navin Dahal*, supra note 22.

<sup>209</sup> See, Ethiopian Chamber of Commerce and Sectoral Associations, supra note 2, p.121

#### **3.3.4.4. Challenges of Vanuatu's Banking WTO Accession**

The positive disposition toward accession was not, nonetheless, helped by the economic conditions on the ground, as the Comprehensive Reform Program(CRP) became a source of frustration to the country.<sup>210</sup> Vanuatu's accession process was suspended due to the doubts and frustrations, the general economic downturn and the failure of the Comprehensive Reform Program (CRP), and the political instability in the country.<sup>211</sup>

Vanuatu's accession process to the WTO was too burdensome and power-based for the small, capacity-constrained country. It was burdened with concessions that it was not prepared to sustain in the long run and that were in excess of what many developed and developing WTO-member countries were committed to.<sup>212</sup> Vanuatu agreed to open up retail and wholesale services for foreign investment including the banking sector from beginning of its accession day, August 2012<sup>213</sup> In short, it was felt that Vanuatu did not have sufficient control over the outcome of the negotiations. And in the absence of consultations and information, skeptics found a pretext to oppose the entire WTO process which was very difficult resist to the banking sector as well as the whole economy.<sup>214</sup>

#### **3.3.5. Lao People's Democratic Republic WTO Accession and Banking Sector Liberalization Experience**

##### **3.3.5.1. Status of Lao People's Democratic Republic Banking Sector before and after WTO Accession**

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<sup>210</sup>Id,p119

<sup>211</sup>Id,p120

<sup>212</sup>Id.,pp.120-121

<sup>213</sup>*Ratnakar Adhikari and Navin Dahal, supra note 22, P-3.*

<sup>214</sup> See, Ethiopian Chamber of Commerce and Sectoral Associations, *supr note 2, p.121*

Lao People's Democratic Republic is East Asia Least developed country<sup>215</sup> launched since 1986 the "New Economic Mechanism", and gradually implemented major reforms of its economic and trade laws and regulations and built the institutions necessary to a market economy. Over the last thirty years, the trend has been slow but steady progress, culminating in accession to the World Trade Organization after about more than about fifteen years in February, 2013.<sup>216</sup>

Lao People's Democratic Republic accession was organized by Coordination to give different discussion conference among the Lao National Chamber of Commerce and Industry (LNCCI), and the Lao Ministry of Industry and Commerce (MOIC), and International Trade Center (ITC) on WTO accession commitments and possible business implications to private sector representatives, academia, society players and government officials Lao PDR's was one of good opportunity to banking sector.<sup>217</sup>

The 2010 Law on Investment Promotion introduced foreigners ,with ought any statutory limits on foreign ownership or control of commercial enterprises including the banking sector, may invest in any sector or business except those that the government deems to be detrimental to national security, health or national traditions, or to have a negative impact on the natural environment.<sup>218</sup>

The Lao government is now working to implement the commitments embodied in those laws, and to meet the 2015 goal for creation of the ASEAN Economic Community (AEC), which will further liberalize the trading environment and economy.<sup>219</sup> Also the government of Lao PDR officially welcomes both domestic and foreign investment as it seeks to graduate from Least Developed Country status by the year 2020. The pace of foreign investment has increased over the last several years.<sup>220</sup> Currently according to the

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<sup>215</sup>The Development Policy and Analysis Division (DPAD) of the Department of Economic and Social Affairs of the United Nations Secretariat (UN/DESA), supra note 158.

<sup>216</sup> U.S.Department of State: Investment Climate Statement,Executive Summary, June 2014,p.1

<sup>217</sup>WTO supra note 61.

<sup>218</sup>U .S Department of State: Investment Climate Statement, *Openness To, and Restrictions Upon, Foreign Investment*, June 2014,p.1. There are no statutory limits on foreign ownership or control of commercial enterprises, but companies with large FDI projects, in mining and hydropower, often seek a local partner to give the government partial ownership, either frequently with money borrowed from the investor or multilateral institutions.

<sup>219</sup> U.S.sura note 159

<sup>220</sup> U.S. supra note 218.

World Bank Doing Business 2015 reports Lao PDR ranks 148<sup>th</sup> which were all most all most non-comparable rank <sup>159<sup>th</sup></sup> with 2014 World Bank Doing Business report out of 189 world member.<sup>221</sup>

### **3.3.5.2.Lao People’s Democratic Republic WTO Accession Process and Commitment on its Banking Sector**

Since July 1997, after more than 15 years of negotiating, the Lao PDR officially became the WTO’s 158th member in February 2013.<sup>222</sup> On services, Laos made specific commitments in 10 out of 12 sectors and 79 out of 160 sub-sectors.<sup>223</sup> In the services sectors, it was mentioned that the ASEAN integration process was said to have been the determining factor in the WTO negotiations and the Lao PDR offered some market opening in the areas of banking.<sup>224</sup> Allowing market opening in the banking sect’”;or is of vital importance for small and landlocked countries, to bring about efficiency and cost effectiveness of backbone services. Improved openings and regulation of services can contribute substantially to improving the Lao PDR business environment and competitiveness of the economy as a whole.<sup>225</sup>

Financial institutions in Lao PDR must adopt a specific legal form. All the commitments were subject to entry requirements, domestic laws, rules and regulations and the terms and conditions of the Bank of Lao PDR, the Ministry of Finance and/or any other competent authority in Lao PDR, as the case may be, which were consistent with Article VII of the GATS and paragraph 2 of the Annex on Financial Services and do not damage the commitments undertaken herewith.<sup>226</sup> Banking Commitment was with respect to commercial banking only and direct branching was not allowed and limited to financial institutions licensed to provide banking services.<sup>227</sup>

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<sup>221</sup>World Bank, supra note 199.

<sup>222</sup>WTO, 2009, The Multilateral Trading System–Past, Present and Future,WTO Publications, downloadable from the WTO website, 2009. <http://www.wto.org>.

<sup>223</sup>A global membership,2013,Annual Report, 2013,p.8.

<sup>224</sup> WTO Supra note 61.

<sup>225</sup> Ibid.

<sup>226</sup>WTO, 2012, The conference on Lao PDR’s WTO accession commitments and possible business implications, BusinessandTrade Policy Section, News, 30 Nov. 2012,p13.,. See more at: <http://www.intracen.org/news/Lao-PDR-accession-commitments-discussed-ahead-of-WTO-accession/#sthash.SDXInrI6.dpu>

<sup>227</sup> Id,p.14

### **3.3.5.3. Opportunity of Lao People’s Democratic Republic Banking Sector Liberalization**

Laos Integration with the regional economy and openness to international trade and investment has been key elements of the development strategy<sup>228</sup> and the determining factor in the WTO negotiations. Allowing market opening in the banking sector, was of vital importance, to bring about efficiency and cost effectiveness of backbone services business environment and competitiveness of the economy as a whole<sup>229</sup> which increased foreign direct investment from USD 25 million in 2002 to almost USD 3 billion in 2011.<sup>230</sup> As result the recent expansion of the banking sector seems to be attracting government attention. Loans and deposits have risen, exiting banks are expanding, and foreign banks are opening branches in the capital. However, the government declared that an increase in the working capital required to open a bank (from US\$10m to US\$33.5m) would be in effect within the next five years, and the central bank has set up a fund guaranteeing deposits.<sup>231</sup> Following the conclusion of the negotiations, the post-accession phase also represents an opportunity to continue to improve the Lao PDR business environment.<sup>232</sup>

### **3.3.5.4. Challenges of Lao People’s Democratic Republic Banking Sector Liberalization**

The challenges of Laos was complicated by the legacy of the past. Long years of war and past efforts at central planning have left the country with poor infrastructure, underdeveloped market institutions, an embryonic private and a public sector with little experience of managing a modernizing market economy and lack of awareness of modern, transparent, market-based ways of doing business.<sup>233</sup> The financial sector has been still limited, with only the banking sector involved in attracting savings and granting conventional loans to the economy. Recent reforms have been undertaken to liberalize

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<sup>228</sup>Building Export Competitiveness In Laos,Summary Report,(Not Dated), p.1. [Document hosted by: www-wds.worldbank.org](http://www-wds.worldbank.org)

<sup>229</sup>WTO supra note 226,p.168.

<sup>230</sup> A global membership *supra note* 223.

<sup>231</sup> Thibaut Muzart, 2010, Management Systems International,Laos’s Economic Prospects and Challenges1, April 23, 2010,p.3. [egateg.usaid.gov/term/resource-library/region/asia/laos](http://egateg.usaid.gov/term/resource-library/region/asia/laos) [Cache](#)

<sup>232</sup>WTO, supra note 61.

<sup>233</sup>Building Export Competitiveness In Laos supra note 228, p.30.

the sector: commercial banks are now free to set their own savings rates above the Government set minimum rate.<sup>234</sup>

Although, the recent expansion of the banking sector seems to be attracting government attention, loans and deposits have risen, existing banks are expanding, and foreign banks are opening branches in the capital,<sup>235</sup> The banking sector however, remains weak<sup>236</sup> due to the banking legal framework and the regulatory capacity still being developed up to 2011, was one of the Policies Affecting Trade in Services.<sup>237</sup> Foreign banks have the necessary capital, staff and technology but they were not allowed to operate outside Vientiane. The capacity of the banking sector to mobilize savings was low.<sup>238</sup> Technical assistance to Laos' banking sector has led to some reforms but overall capacity within the governance structure remains poor<sup>239</sup> due to Policies Affecting Trade in Services.<sup>240</sup> Future development of this sector relies on aid agencies to improve the training of personnel and to set up management and financial systems. The Government is focusing on the improvement of state commercial banks, to make them more competitive with the private sector. The aim is to enable them to operate efficiently and mobilize more long-term savings for long-term investment.<sup>241</sup> Access by foreign services suppliers and the provision of new financial services have not yet been provided by the private sector in Lao PDR at the date of accession, may be subject to measures adopted for prudential reasons.<sup>242</sup>

Even though services accounted for a quarter of all trade and around 37 per cent of Lao PDR's GDP in 2011 in which the country has averagely grown since 2009 approximately eight percentGPD<sup>243</sup>, and with market-oriented reforms and privatization, the private sector was gaining prominence in eight services sectors including banking sector. The

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<sup>234</sup> Lao's Current Financial Sector – Overview, pp.1-2.

[www.bol.gov.la/english/financial\\_overview\\_2.html](http://www.bol.gov.la/english/financial_overview_2.html) [Cached](#)

<sup>235</sup> Thibaut Muzart, supra note 231.

<sup>236</sup> Lao's Current Financial Sector – Overview supra note 224, p.2.

<sup>237</sup> WTO,2012, Working Party on the Accession of LAO PDR ,Report Wt/Acc/Lao/45 to the WTO, 1 October 2012,P.56.

<sup>238</sup> Lao's Current Financial Sector – Overview supra note 224, p.2.

<sup>239</sup> U.S. supra note 218.

<sup>240</sup> WTO,supra note 237.

<sup>241</sup> Lao's Current Financial Sector – Overview supra note 224,p.2

<sup>242</sup> WTO, supra note 237.

<sup>243</sup> Ibid.

banking legal framework and the regulatory capacity still being developed up to 2011, was one of the Policies Affecting Trade in Services.<sup>244</sup>

### **3.3.5.5. Lesson Drawn from Lao People's Democratic Republic WTO Accession and Banking Sector Liberalization Experience**

In general, economic integration among neighboring countries<sup>245</sup> and Coordinating different national and international stake holders of during and post-accession phase were determining factor in the WTO accession that, the best lesson for access dinning countries and countries seeking accession draw from Lao PDR.<sup>246</sup>

The challenges for Laos was complicated by the past legacy of long year's war and efforts at central planning that left the country with poor infrastructure, underdeveloped market institutions, an embryonic private sector and a public sector with little experience of managing a modernizing market economy and lack of awareness of modern, transparent, market-based ways of doing business.<sup>247</sup> In additionally, even if the country has led to some reforms measures in banking sector and allow foreign participation in banking sector, overall capacity within the governance structure remains poor<sup>248</sup> due to the banking legal framework and the regulatory capacity still being developed up to 2011, was one of the Policies Affecting Trade in Services.<sup>249</sup>

That was the best lesson drawn for acceding countries and countries seeking WTO accession.

### **3.3.6. Yemen's WTO Accession and Banking Sector Liberalization Experience**

#### **3.3.6.1. Status of Yemen's Banking Sector before and WTO Accession**

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<sup>244</sup> Ibid.

<sup>245</sup> WTO, supra note 237.

<sup>246</sup> Ibid.

<sup>247</sup> Building Export Competitiveness In Laos, supra note 228, p.30.

<sup>248</sup> U.S. Department of State: Investment Climate Statement, supra note 218.

<sup>249</sup> WTO, supra note 237.

Yemen the country established on May 22, 1990,<sup>250</sup> and presently subject to civil society organizations in the Arab region,<sup>251</sup> economy has been forced to sustain the consequences of support for the Iraq 1990–91 Gulf War and the 1994 civil war. As a result of that, since 1995 Yemen has relied heavily on aid from multilateral agencies such as IMF, the World Bank, other lenders and funds pledged in the US to sustain its economy. These international economic organization adopted different assistance strategy and economic support package known as the poverty reduction and growth facility (PRGF) and the extended funding facility (EFF) for Yemen.<sup>252</sup>

Several attendees raised concerns about Yemen's lack of economic expansion, high population growth, worsening water crisis, and inability to contain security threats, all of which threaten to diminish the efficacy of international financial support. Yemen remains one of the poorest of the world's low-income countries; more than 45 percent of the population lives in poverty.<sup>253</sup> As a result of that Yemen's financial services sector was underdeveloped and dominated by the banking system.<sup>254</sup>

As part of its WTO accession package, Yemen was being forced to offer further stringent commitments, to fully implement the WTO-Agreement on TRIPS by 31 December 2016.<sup>255</sup> This represents a blatant violation of the 2012 Accession Guidelines adopted by the WTO General Council that recognized the entitlement of acceding countries to Special and Differential Treatment provisions<sup>256</sup> and the reflection of the disinclination of the rich world in safeguarding the interests and the rights of the poorest and most vulnerable populations of the international community. These concerns have been voiced in a letter sent to Director General of the WTO, on 28 November, 2013, and to which 162 CSOs from around the world were signatories, including 70 Yemeni

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<sup>250</sup> Republic of Yemen, Country Profile: Yemen, *Library of Congress – Federal Research Division*, August 2008, P.1

<sup>251</sup> LDC watch Arab NGO Net work for Development, Yemen's WTO Accession Commitments: A Stalemate to Development, *For Immediate Release*, 4 December 2013, pp.1-2.

<sup>252</sup> Republic of Yemen, Country Profile supra note 250.

<sup>253</sup> Republic of Yemen, supra note 250, P.9.

<sup>254</sup> Republic of Yemen, supra note 250, P.12.

<sup>255</sup> LDC watch Arab NGO Net work for Development, supra note 251, p.1

<sup>256</sup> Ibid.

organizations.<sup>257</sup> Currently according to the World Bank Doing Business 2015 reports Yemen ranks 137<sup>th</sup> out of 189 world member which was all most all most comparable rank to 133<sup>th</sup> of 2014 World Bank Doing Business report.<sup>258</sup>

### 3.3.6.2. Yemen's WTO Accession Process and Commitments on Banking Sector

Yemen applied for WTO membership on 12 April 2000 and WTO Ministers adopted Yemen's WTO terms and conditions of entry at the 9th Ministerial Conference in Bali, Indonesia on 3-6 December 2013 and on 26 June 2014, the WTO welcomed Yemen as its 160th member.<sup>259</sup> Yemen would become the seventh least-developed country to join the multilateral trading system since 1995.<sup>260</sup> Yemen has made specific commitments in all 11 core services sectors<sup>261</sup> to liberalizing services,<sup>262</sup> including telecommunication services, financial services (insurance and banking), and the rest nine core services sectors.<sup>263</sup>

### 3.3.6.3. Opportunity of Yemen's Banking Sector Liberalization

During the accession process, WTO members have worked with Yemen to adapt its trade regime to WTO rules and have trained Yemeni government officials and also committed to provide technical assistance in its post-accession process.<sup>264</sup> The EU has been supporting Yemen's accession to the WTO since 2003. The EU Trade Related Assistance for Yemen (so called TRAY) would support banking sector and relevant institutions in implementing the commitments undertaken upon accession.<sup>265</sup>

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<sup>257</sup> Id, pp.1-2.

<sup>258</sup> World Bank, Online collection of business laws and regulations relating to business, Doing Business reports, 2015. <http://www.doingbusiness.org/law-library>

<sup>259</sup> WTO home page, 2014, Yemen and the WTO members' information/ Briefing note: *Yemen's accession to the WTO*, 13 November 2014). available at [http://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/brief\\_acc\\_yemen\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_acc_yemen_e.htm). (Accessed on, 13 November 2014).

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> LDC watch Arab NGO Net work for Development, supra note 251.

<sup>263</sup> WTO home page, supra note 259.

<sup>264</sup> Ibid.

<sup>265</sup> See EU statement at the final meeting of the Working Party on Yemen's accession to the WTO, *Mission to the WTO*, 26/09/13, available at <http://www.google.com/m?q=Eu%20statement%20at%20final%20meeting%20yemen%20accession&client-ms>.

#### 3.3.6.4. Challenge of Yemen's Banking Sector Liberalization

Yet, Yemen's WTO accession and Banking Liberalization challenged by worsened humanitarian conditions including millions of its citizens lacking adequate access to clean water (12 million), food (10 million), basic health care (6 million) as well as around a million children suffering from acute malnutrition, evidently signals lack of access to basic services in Yemen<sup>266</sup>, Technological under development, the economic and social injustices and the rising inequities that have for long dominated the Yemeni prospect have spawned increasing security imbalances and political turbulences that escalated to worrisome levels and often were manifested in armed conflict.<sup>267</sup> WTO members' obvious violation of the 2012 Special and differential treatment arrangements accession guidelines adopted by the WTO General Council was another challenge.<sup>268</sup>

Moreover, a fair trade agenda was necessary to overcome the challenges outlined above and respects the needs of LDCs and their right to development, including allowing them to adopt substantial domestic regulatory and administrative reforms related to the services sector before, or at least associating, the liberalization process, so as to avert the potential negative consequences of opening the market to foreign corporations..<sup>269</sup> But, with all problem existing in Yemen, the extra demands from WTO to open up specific commitments in all 11 core services sectors especially in banking sector regardless of Yemen's development level would cause harm and further violations for Yemeni citizens.<sup>270</sup> Within this context, civil society organizations in the Arab region and worldwide, voice their concerns over the present '*corporate wish list*' agenda that Yemen was subject to, and that will further exacerbate many of the challenges faced by Yemen as an LDC.<sup>271</sup>

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<sup>266</sup> LDC watch Arab NGO Net work for Development, supra note 251, p.1.

<sup>267</sup> Id. p.2.

<sup>268</sup> Id., p.1.

<sup>269</sup> Id, p.2.

<sup>270</sup> Id, p.1.

<sup>271</sup> Ibid.

Since 12 April 2000 up to 26 June 2014, for about 14 years, Yemen was at the negotiation table with the WTO trying to secure its place in the international organization which was prolonged and complex accession process.<sup>272</sup>

### **3.3.6.5. Lesson Drawn from Yemen's WTO Accession and Banking Sector Liberalization Experience**

Since building new mechanisms and finding sufficiently trained individuals were required to begin dealing with the membership negotiations, WTO members worked with and trained Yemeni government officials and also committed to provide technical assistance in its post-accession process as well as the EU supporting Yemen's accession and Trade Related Assistance for Yemen which support banking sector and relevant institutions in implementing the commitments accession was potential lesson drawn by acceding countries and countries seeking WTO accession from Opportunity side of Yemen's the WTO Accession and Banking Liberalization Experience.

On the other hand, Yemen's WTO accession process become forced to offer further stringent commitments, even compared to other acceding LDCs. Yemen's WTO Accession and Commitments challenges were WTO members obvious violation of the 2012 Special and differential treatment arrangements accession guidelines adopted by the WTO General Council, lack of access to basic services, technological underdevelopment, economic and social injustices and the rising inequities that have for long dominated the country, the increasing security imbalances and political turbulences. With all problem existing in Yemen, the extra demands from WTO to open up specific commitments in all 11 core services sectors especially in banking sector regardless of Yemen's development level cause harm and further violations for Yemeni citizen. Therefore, since Yemen experience is recent experience Ethiopia and other LDC on accession process and seeking accession should design their own strategy to mitigate such kind of harsh commitments not to happen. The roles of other stake holders in the side of Yemen, what those countries must be think on it.

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<sup>272</sup> Yemen's WTO Accession Commitments: A Stalemate to Development, Arab NGO Network for Development 2013, (available at <http://www.ip-watch.org/2013/12/04/yemen-accedes-to-wto-outcry-over-tough-trips-deadline/> (Accessed on, 13 November 2014).

### **3.4. Conclusion of the six Countries WTO Accession and Banking Liberalization Experience**

The main summary arising from recently acceded Countries experiences is that there is no specific recipe can be prescribed for negotiating the liberalization of trade in services,” but that, whatever negotiating modality was chosen, it takes into account the speed with which the economies of participating countries were able to open their markets to international trade and the degree to which the agreement is capable of conveying credibility.<sup>273</sup> The six Countries WTO accession and banking sector liberalization experience summarized in order to draw lesson for Ethiopia and other LDCs on process of accession or seek the WTO membership. The lesson drawn needs to be ensured at pre, during and post WTO Accession Negotiation.

#### **Before WTO Accession**

The decision to join the WTO accession in the country will be made with adequate preparation and evolution of the processes; analysis of its advantage and disadvantage of joining the WTO ; Set upping the National WTO Working Committee comprised of key stake holders prior to the submission of WTO application, and at large extent accessions negotiating relied ding on positions of model accessions of other LDCs similar economic and vulnerable characteristics foundations which will set the direction, commitment and dedication to the process of accessions to conclude.<sup>274</sup> Furthermore, conducting many different discussions among key stalk holders participation such as academician, researchers, public and private banking sectors, business and civil society organizations, policy circles and others in formalized and continuous manner in the country regarding the possible impacts of WTO accession on the country economy in general and in banking sector in particular is mandatory<sup>275</sup>.

Furthermore, conducting different WTO accession impact assessments in country’s economy in general and banking sector in particular before opening up the banking sector is important. Country’s authorities taking a number of steps to strengthen the law,

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<sup>273</sup>Tilahun Esmael ,supra note 49,p.209

<sup>274</sup>LDCs supra note 11, p.4.

<sup>275</sup>Justin Yifu Lin, supra note 43, p.6.

regulations and institution of domestic banking sector to ensure that the all banking sector will be able to support continued rapid rates of growth and to be able to compete with foreign financial institutions. The Central (National) bank also better to relax the more control over banking sector. In preparation to the WTO and as an experimental basis, acceding country's allowing foreign banks to conduct foreign currency business in selected cities, to conduct domestic currency business in only in selected country's cities and the banking sectors themselves continually improve country's banking sector (human, institutional, technical know-how and financial resources) capacities constraints are key issues.<sup>276</sup>

On the other hand, country's banking sectors doing to fill the major problem of the extremely gap in scale between domestic and global financial institution in terms of asset, international network, innovation capability, productivity and quality services is important. Because like what happened in Eastern Europe, Latin America, South Korea ,other East Asian country and the six country the author has taken the lesson, foreign banks are coming in to country with unprecedented power, advantage and ambitions. The challenges posed by global giants are discouraging and harsh. Foreign giants which are extremely aggressive, accelerated, and strengthen their influence day by day .They are hungry to penetrate the Country's market and take the 'cream' of the banking sector.

### **During Accession Negotiation**

The Government continues consultation with the all stalk holders on WTO accession and on meeting their obligations following accession.<sup>277</sup>The country's negotiating team will be also supported by in-depth studies and scientific or objective position papers on various topics and the banking sector is necessary.<sup>278</sup>Moreover, the Country's negotiating team better to take care of mistaken by accepting some commitments incompatible with its national long term development goal. In addition, the country take care of a lack of timely communication for policy decisions and a lack of clear guidelines from the government desire for policy space and regulatory capacity which forced to

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<sup>276</sup>United States Trade Representative, 2013, *USTR Report to Congress on China's WTO Compliance*, December 2013

<sup>277</sup>Samoa Sixteenth Plenary Session of the Committee for Development Policy, *supra* note 161.

<sup>278</sup>Fuzhi Cheng,*Cambodias supra note 141*.

make commitments considered as excessive relative to their LDC Member status like Cambodia<sup>279</sup>, Nepal,<sup>280</sup> Samoa,<sup>281</sup> Lao PDR<sup>282</sup> and Yemen<sup>283</sup> due to the costs associated with WTO accession could be very high. In the Services Offer, minimize the challenges lie in its understanding on the policy and economic implications arising from the various services sector as well as commitments banking sector.<sup>284</sup>

During the WTO accession process, the acceding country has to negotiate even for securing S&DT, to which all LDCs members are automatically entitled. Rejecting WTO members' obvious violation of the 2012 Accession Guidelines adopted by the WTO General Council that recognized the entitlement of acceding countries to Special and Differential Treatment provisions.<sup>285</sup> Because, even though the WTO accession guidelines, recently acceding LDCs have long complained that WTO members routinely ask them to take on commitments beyond their capacities during the bidding process.<sup>286</sup> The country has to received an important technical assistance from UNDP, the International Trade Centre <sup>287</sup> the WTO members WTO accession commute, including support in the preparation of negotiating documents, building negotiating capacity and promoting public awareness of WTO membership, but it not enough and organized. The country's accession package will entail, among other things, coordination across government agencies, mobilization of external support and diplomatic capital, and wide consultations with a range of stakeholders, including the public and private sectors, business communities and civil society organizations and farmers' groups, academician's, policy makers and research institutions in a formal and institutionalized mechanism of stakeholders involvement, to reduce the majority of stakeholders feel that they are left out from the accession process, to reduce lack of coordination among the different donors. This all, of course, will necessitate an increasingly transparent and

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<sup>279</sup> *Hussein Ahmed Tura*, supra note 81, pp.12-13.

<sup>280</sup> David Legge1, Deborah Gleeson1, Wendy Snowdon2 and Anne Marie Thow3, supra note 80.

<sup>281</sup> United state America, supra note 174.

<sup>282</sup> WTO, supra note 237

<sup>283</sup> LDC watch Arab NGO Net work for Development, supra note 251 p.1.

<sup>284</sup> Fuzhi Cheng, *Cambodiassupra note 197*.

<sup>285</sup> LDC watch Arab NGO Net work for Development, supra note 251, p.1

<sup>286</sup> An Analysis of the WTO Accession Guidelines for LDCs International Center for Trade and Sustainable Development supra note 25.

<sup>287</sup> LDCs Roundtable on WTO Accession supra note 11, p.6.

robust set of communication channels and are key instrument to mitigate WTO plus obligation and minus right burden comes from WTO accession and banking sector liberalization and also need to grasp the for forging a productive relationship between them.

Generally, the lessons drawn from recently accessed countries indicate that, the WTO accession process is quit complex and demands thorough preparation to allow well informed decisions on banking sector policy, regulation and market situation reforms to meet the requirement of accession.<sup>288</sup>

### **Post WTO Accession**

WTO members providing technical assistance for enhancing their negotiation capacity and implementing their commitments at pre and post the WTO accession is important.<sup>289</sup> It is also helpful in building the capacity for stalk holders on WTO issues, for promoting general awareness in the country regarding the WTO is fundamental.<sup>290</sup>

Acceding country's economic integration among regional and international economic organizations like the United Nations, the IMF, and the World Bank is vital.<sup>291</sup> Coordinating different national and international stake holders during and post-accession phase are determining factor in the WTO accession that, the best lesson for acceding countries and countries seeking accession to draw .<sup>292</sup> Acceding country be required to know that, the WTO accession would do more harm than good to the country's economy in the short run, but benefit the whole economy in the long run,<sup>293</sup> Lastly, the acceding country has to continuously implement the country's the WTO accession commitment in to practice .

Generally, WTO membership will undoubtedly enable whole sectors and the country's economy to become more integrated with the world economy, facilitating a better access

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<sup>288</sup> UNDP, supra note 8.

<sup>289</sup> David Legge<sup>1</sup>, Deborah Gleeson<sup>1</sup>, Wendy Snowdon<sup>2</sup> and Anne Marie Thow<sup>3</sup>, supra note 80.

<sup>290</sup> Ibid.

<sup>291</sup> WTO, supra note 237, p.14.

<sup>292</sup> WTO supra note 113.

<sup>293</sup> Justin Yifu Lin ,supra note 43, p.13.

to foreign technology, capital, and the global market. Even if the country has led to some reforms measures in banking sector in pre and post WTO accession and allow foreign bank participations in banking sector, overall capacity within the governance structure of banking sector comes gradually. Banking sector is among the most common service sectors that require most concern in the course of the WTO accession process.

Ethiopia and those LDCs currently on accession negotiation and seeking accession to the WTO, it is logical to expect that it may face challenges that recent LDCs accessed already confronted because they are not far from the existing above reality. They will be more expected to be asked to liberalize its services sectors including the one that the government currently considers as the key sectors such as financial especially the banking sector for foreigners' involvement and competition.

Thus, the experiences of those countries could assist Ethiopia and these LDCs not to repeat avoidable mistakes which would be committed in the course of its accession process, its implementation and to negotiate in well planned manner with deep studies on potential areas of liberalization commitment and draw lesson on their accession process, commitments, opportunity and challenges.

## CHAPTER FOUR

### THE POTENTIAL EFFECTS OF ETHIOPIA'S ACCESSION TO THE WTO ON ITS BANKING SECTOR LIBERALIZATION

#### 4.1. The General Overview of Ethiopia's WTO Accession Negotiation

As we discuss under unit 3 above, accession to the WTO is a prolonged, multi-stage and complex process. Essentially, the way to become a WTO member is through accession "on terms to be agreed" between the acceding country or customs territory and other WTO members.<sup>1</sup> Accession to the WTO is not an end by itself but it's a key element for speed up national development objectives directly or indirectly.<sup>2</sup> These days, the WTO accession process initiate with the filing of an application by the acceding country and the establishment of a working party.<sup>3</sup>

On behave of Ethiopia, before the country has applied for WTO membership, between the years 1997-2003, Ethiopia has been undertaken an impact assessment study by a committee composed of relevant government organizations, the private sector, academia and other relevant stakeholders to identify the cost benefit analysis of joining the WTO on Ethiopia's economic policies, strategies, laws and regulations. The outcome of the study indicated that the benefits of joining the WTO outweigh the cost. The government of Ethiopia while discussing about the rationale for accession to the WTO<sup>4</sup>, proposed four interrelated objectives. These objectives are: to accelerate economic growth; attract foreign investment; secure predictable and transparent market access and to influence the

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<sup>1</sup>Tilahun Esmael, Ethiopia's, 20012, WTO Accession and Financial Services Liberalization: Striking the Balance between Trade Liberalization and Domestic Policy Space *Mizan Law Review*, Vol. 6 No.2, December 2012, P.207

<sup>2</sup>UNDP, 2012, *Trade Policy Studies on Implications of Ethiopia's Integration into Regional and Global Trading Systems*, Summary of Commission Studies UNDP, No2/2012(2012), p.2. Available at <http://www.google.com/m?q=Trade%20policy%20studies%20on%20implications%20of%20ethiopia&client+ms-opera-mini&channel=new>. (accessed on 14 November, 2014).

<sup>3</sup> Melaku Geboye, 2008, Ethiopians Reluctant Move to Join the WTO: A Preliminary Look at Legal and Institutional Implications of Accession, *Journal of Ethiopian law*, 2008, p. 33.

<sup>4</sup>See Tilahun Esmael, supra note 1, p.208.

Ethiopia has been applied for the accession to the WTO in January 2003 and the WTO's General Council has established a Working Party to which the Government of Ethiopia submitted a Memorandum of Foreign Trade Regime of the country for the consideration of WTO members. Until December 2012 the working party has met three times and Ethiopia is in the process of responding to its fourth set of questions from WTO members about the workings of its economy and trade regime.

nature and direction of globalization are the major reasons that promote and strengthen trade by joining the multilateral trading system<sup>5</sup>.

Since 2003 Ethiopia apply for implementing the WTO accession negotiation agreements.<sup>6</sup> The country's accession process held the third working party meeting in March 2012. Even though there were a number of challenges commonly encounter in its accession process,<sup>7</sup> the Ethiopian WTO Accession negotiation Working Party was replied the fourth round WTO members answer to additional questions.<sup>8</sup> As the GTP I (2010-2015) "an ambitious five-years development plan launched in 2010 to assist the country in reaching "middle income" status, the country may accede to the WTO by 2015.<sup>9</sup> WTO member countries also raised different questions in relation to clarify country's timetable for privatizing the (telecom, banking and power industry)"sooner than it plans to open to international competition.<sup>10</sup>

From Ethiopia's WTO accession negotiations view, four key challenges have been emphasized. The *first* refers to knowing the WTO and knowing the System; the *second* refers to lack of capacity; the *third* involves complexity of the accession process and the *fourth* emanates from lack of clear rules or a systematic approach to the accession process.<sup>11</sup>

On the other hand, according to author's interview with Geremew Ayalew, director general trade relation and directorate general of Ethiopian Ministry of Trade, since the start of its accession process, Ethiopia has made many partners that are providing technical assistance. Among these the World Bank, the UNDP, the EU, the USAID, and

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<sup>5</sup> Briefing on the WTO Accession, Status of Ethiopia's the WTO accession process, (not dated), p.1.

<sup>6</sup> Briefing on the WTO Accession, *supra note 5*.

<sup>7</sup> Statement By H.E. Mr. Mekonnen Manyazewal, 2012, "Beijing 2012 Round Table on WTO Accession Best Practices" for the Least Developed Countries, LDCs Accession: Challenges of LDCs on Accessions China, 29 May 2012, p.2.

<sup>8</sup> Working Party on the Accession of Ethiopia,,<sup>4</sup>Round Additional Questions and Replies, Wt/Acc/Eth/Xx [Xx] May 2012, p.12

<sup>9</sup> Geremew Ayalew , Director General Trade Relation and Directorate general of Ethiopian Ministry of Trade, Interview with, 28 January 2015.

<sup>10</sup> Alemayehu Bacha, 2014, Ethiopia may delay WTO accession, Reporter Latest Business Alerts, 29 May 2014, p.1. according to Latest Business Alerts Reuters reported on May 28/2014 Kebede Chane, Minister of Trade, said Ethiopia might delay its plan to join the World Trade Organizations (WTO) by 2015, if the nation is asked to liberalize its telecom, banking and power industry sooner than the time.

<sup>11</sup> Statement By H.E. Mr. Mekonnen Manyazewal. *supra note 7*.

the WTO itself were the main bodies that have been providing different project that help the country accessed to the WTO. The core shortcoming of WTO technical assistance scheme were the insufficiency of budget allocated for the technical assistance, lack of capacity of the WTO secretariat to meet the growing demand, the non-obligatory nature of technical assistance provision of the WTO, and absence of the WTO technical assistance provisions that address issues of capacity building at domestic level.<sup>12</sup> According to Geremew Ayalew, regarding Ethiopia, there was no limitation on behalf of the WTO as well as other partner, so far. However the main problem rather, Ethiopia's lack of capacity to manage effectively use them and the inability of ministry of Trade WTO reference office hold on trained professionals who often leave the office for other jobs. This make it difficult to the office to have trained work force needed in the course of negotiation.<sup>13</sup>

More over according to Interview, due to WTO members' multilateral questions and replies to the question didn't end still, the country didn't accede to the WTO by 2015. Currently. The Ethiopia WTO accession working party led by Ethiopian Ministry of Trade founded on preparation of fourth round multilateral negotiation party meeting. The country didn't start bilateral trade negotiation; however, for Canada questions the working party gave replies. It could be initial stage for the country to start bilateral negotiation. The country yet, can't start trade negotiation in Goods and in service. Trade in service negotiation conducted during bilateral negotiation stage, side the Director General.<sup>14</sup>

## **4.2. Ethiopia's Banking Sector Current State Overview**

### **4.2.1. Ethiopia's Banking Sector Policy Overview**

Ethiopia had market led economic policy in the 1950s and 60s. The private sector and business organizations of the time were considered as crucial elements for economic growth. The government was acting as development agent and market regulator. The policy and regulation of the financial sector in the country was also guided by objectives

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<sup>12</sup> Geremew Ayalew , supra note 9.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

similar to those in the free market economies. The banking sector of the time consisted of government and private banks. It was dominated by bank finance.<sup>15</sup>

The Ethiopian government, however, shifted from being market regulator into being owner and planner of the economy by a socialist revolution from 1974 -1991. The policy change was followed by nationalization of private sector entities and prohibition of formation of private business organizations.<sup>16</sup>The post 1991 government of the country has re-introduced market led economic policy and implemented reform measures that have encouraged the creation of private companies in both the financial and the non-financial sectors of the country. It has enabled the birth and growth of private banking institutions.<sup>17</sup>

More over based on market led economic policy, the government of Ethiopia implemented several other financial reform measures like<sup>18</sup> strengthening domestic banking sector competitive capacity before full liberalization, strengthening NBE's regulatory and supervisory capacities, giving the banks autonomy,<sup>19</sup> and gradually liberalizing its banking sector.<sup>20</sup>

The Ethiopian banking sector policy prohibits foreign nationals or organizations fully or partially to open banks or branch offices or subsidiaries of foreign banks in Ethiopia or acquire the shares of Ethiopian banks in any form.<sup>21</sup> It results in the closed nature of Ethiopia's banking system in which there is no foreign banks participation, a non-competitive market structure, and strong capital controls by NBE.<sup>22</sup>

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<sup>15</sup> Solomon Abay, 2011, Financial market development, policy and regulation: the international experience and Ethiopia's need for further reform, Dissertation Submitted to Faculty Law of University of Amsterdam, February 2011, p.1.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Alemayehu Geda, 2008, The Structure and Performance of Ethiopia's Financial Sector in the Pre and Post Reform Period: With Special Focus on Banking, 2008, p.1.

<sup>19</sup> Alemayehu Geda and Jacqueline Irving, 2010, Markets In Africa, *Ethiopia*, 2010, p.117.

<sup>20</sup> Alemayehu Geda, supra note 18, p.13.

<sup>21</sup> NBE, 2008, Banking Business Proclamation No. 592/2008, Federal Negart Gazeta, 2008, Art. 2(5) and Art. 9.

<sup>22</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern, 2007, 'The Case for Financial Sector Liberalization in Ethiopia', Gerald R. Ford School of Public Policy The University of Michigan, Ann Arbor, Michigan, *Discussion Paper*, No. 565, p. 19; Solomon Abay supra note 15 , p.356.

#### 4.2.2. Ethiopia's Banking Sector Regulation Overview

According to the international experience, the banking sector regulations in the developed market countries have been used to pursue the objectives<sup>23</sup> of achieving monetary policy objectives. The governments and central banks in the countries have often formulated monetary policy as one of their major economic policies and transmitted it through the instruments of financial regulation.<sup>24</sup>The banking sector has been the heart of the economic system that if not managed properly, has the potential to generate financial system and macroeconomic instability to the general public and the government.<sup>25</sup> The international economic organizations, including the World Bank, the IMF and the WTO, have also appreciated the need for strengthening competition in the banking sector and reducing regulations that weaken this. They have also advocated for the consideration of competition as one of the major aims of financial regulation and recognized the need for restraining it when it fails to achieve its aims.<sup>26</sup>They have been used to protect investors, consumers, the public and the economy from the dangers of market failure.<sup>27</sup>

In the Case of Ethiopia, post-1991 period the country has conducted financial and economic policy reforms in the Which has focused on the functions of restructuring and increasing autonomy of the government owned financial institutions, expanding the credit and savings facilities to the private banking sector, enhancing the prudence of the money supply and the exchange rate of the Ethiopian birr, and balancing the state budget by its transitional period economic policy.<sup>28</sup>It has also authorized the NBE to promote the objectives of maintaining price and exchange rate stability, fostering healthy financial system, and creating the conditions for rapid economic development by its establishing laws.<sup>29</sup>It has re-established the NBE as central bank and financial sector regulator and

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<sup>23</sup>Solomon Abay , supra note15, p.16.

<sup>24</sup>Ibid.

<sup>25</sup> Id, p.17.

<sup>26</sup>Ibid.

<sup>27</sup>Id,p.18.

<sup>28</sup>Id, p. 21.

<sup>29</sup>Id, p.22.

opened the banking sectors for domestic private investment by enacting monetary and banking, licensing and supervision of banking business proclamations in 1994.<sup>30</sup>

Whereas, Banks play an important role in economic development through mobilization of funds from within and outside the country and channeling such funds to various sectors of the economy by occupy a central place in the payment and settlement system of the country's economy.<sup>31</sup> The banking sectors are still under strict regulations of the government.<sup>32</sup> The business of banking has a number of attributes which, if not managed properly, has the potential to generate financial system and macroeconomic instability to the general public and the government. So, it is essential to ensure safety, soundness and stability of the banking system by having a comprehensive law for the licensing and supervision of the banking business.<sup>33</sup>

Despite improvements in the regulatory framework, the supervisory capacity of the National Bank of Ethiopia remained weak in terms of having qualified banking supervisors, largely due to an acute shortage of qualified banking supervisors. In recent years however, the NBE has made a concerted effort to develop its capabilities over time.<sup>34</sup> The government issued Proclamation No. 591/2008 dated August 11, 2008, in order to increase the autonomy of the NBE. In order to clarify and strengthen its role as the regulator and supervisor of the banking sector the NBE issued different regulation/directive from time to time.

State owned Commercial Bank of Ethiopia and Construction and Business Bank are subjected to Banking Business Proclamation No.562/2008 and all regulations/directives that any private bank is subjected to. There is no banking business regulation or directive that is exclusively applicable to private banks. Of course, Development Bank of Ethiopia,

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<sup>30</sup>FDRE, 1994, Council of Ministers Regulations to legalize domestic private investment in the banking industry Proclamation No. 84/1994, Federal Negarit Gazeta, Addis Ababa,1994.

<sup>31</sup>NBE,supra note 21,p.1.

<sup>32</sup>AACCSA,2012, The Review of the Legal and Institutional Framework for Market Competition in Ethiopia",private sector passion paper,2009,p.112.

<sup>33</sup>Ibid.

<sup>34</sup>Admassu Bezabeh1 and 2Asayehgn Desta, 2014, Banking Sector Reform in Ethiopia, International Journal of Business and Commerce, Vol. 3, No.8: California, Apr 2014 ,p.30. Both are Ph.D. School of Business and Leadership, Dominican University of California San Rafael, California. [www.ijbnet.com](http://www.ijbnet.com).

which is a state owned bank, is subjected to different loan classification and provision regulation as it deals with distinct business model than other commercial banks. Otherwise, all commercial banks, private or public, are equally regulated and supervised by the National Bank of Ethiopia.<sup>35</sup>

On the other hand, Risk-taking is an inherent element of banking and, indeed, profits are in part the reward for successful risk taking. In contrary, excessive, poorly managed risk can lead to distresses and failures of banks. Risks are, therefore, warranted when they are understandable, measurable, controllable and within a bank's capacity to withstand adverse results.<sup>36</sup> Although, underdeveloped, the banking system in Ethiopia has witnessed a significant expansion over the past few years. The NBE believes such growth should be matched to strong risk management practices.<sup>37</sup> As a result, The NBE has also revised the risk management framework it issued in 2003 to all banks so as to incorporate latest developments in the area should be matched to strong risk management practices which it must at least contain: active board and senior management oversight; adequate policies, procedures and limits; adequate risk monitoring and management information system; and adequate internal control. It covers the most common and interrelated risks facing banks in the country, namely, credit, liquidity, market and operational risks. The guidelines are thus expected to assist risk-based supervision and contribute towards safety and soundness of the banking system.<sup>38</sup>

Despite the government's initiative to upgrade the regulatory and supervisory capacity of the NBE, and gains achieved in improving the quality of NBE's staff, the progress achieved to date remains unsatisfactory. As a consequence, the National Bank's supervisory capacity remains weak. In its recent country report on Ethiopia dated November 2010, the International Monetary Fund "urged the Ethiopian Government to enhance the ability of the NBE to recruit and retain qualified staff to ensure the institutional absorption of the technical assistance provided by the Fund and other partners in this area." With a continuing brain drain significant progress in this area is

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<sup>35</sup>WTO, supra note 8,p,12

<sup>36</sup>NBE, 2010,Risk Management Guidelines (Revised),Bank Supervision Directorate, May 2010,p.1

<sup>37</sup>Id,pp.1-2.

<sup>38</sup>Ibid.

unlikely to take place in the near term. However, the threat of a banking crisis may embolden the government to continue with its policy of prohibiting foreign bank entry.<sup>39</sup>

#### 4.2.3. Ethiopia's Banking Sector Market Situation

Today Ethiopia as LDCs has vast and wide free market access opportunity<sup>40</sup> such as US, African Growth and Opportunity Act (AGOA), European Union (EU) Everything But Arms (EBA) market opportunity, the duty-free quota-free market access by General system of preference (GSP) which is the provision of preferential market access for LDCs by major emerging economies such as China, India, and Turkey.<sup>41</sup> This is concerning country's free market access opportunity but concerning banking sector market situation it is analyzed below.

Banking sector is generally considered brain for the economy as it engenders financial innovation and promotes efficiency in the financial system, potentially leading to higher economic growth.<sup>42</sup> Moreover, uncompetitive market does not reflect the true position of the market and hence, banking sector liberalization will allow countries to reach the optimal productive frontier. An important characteristic of the banking liberalization process for most of the developing world is the influx of new foreign banks,<sup>43</sup> which have mostly its own benefit and risk.<sup>44</sup> Hence, banking sector is among the most common service sectors that require most concern in the course of the WTO accession process.

Banks in the Ethiopian case are competing in terms of service quality and efficiency (including use of technological advances), branch network expansions, advertising and

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<sup>39</sup>Id, p.36.

<sup>40</sup>Tamiru Wube, 2015, Ethiopia Chamber of Commerce and Sectorial (ECCSA) Advocacy Division head, Interview with , 21 January 2015, at his office .

<sup>41</sup>V. Ancharaz, P. Ghisu, N. Frank, 2014, *Ethiopia: Deepening Engagement with India through better Market Access, Development and LDCs*, November 2014, p.1.

<sup>42</sup>Jennifer Moyo§; Boaz Nandwa; Jacob Oduor§ And Anthony Simpasa, 2014 ,Financial Sector Reforms, Competition And Banking System Stability In Sub-Sahara Africa, "Macroeconomic Challenged Facing Low-Income Countries" *International Monetary Fund*, Washington DC, January 30 – 31, 2014, p.1.

<sup>43</sup>Samuel Adams1\* and John Agbemade2,2012, Financial liberalization and banking sector performance in Ghana African Journal of Business Management Vol. 6(47) , , 28 November 2012, p.11598. Available online at <http://www.academicjournals.org/AJBM>

<sup>44</sup> Tadele Geremew, 2013 ,The possible Benefit and Risk of Ethiopian making Multilateral Liberalization Commitments in its Financial Services Sector, Joint ,LL.M in Law and Development University of Warwick and Mekelle University , 15 February 2013, p-11

prices, put in the order of their significance.<sup>45</sup> During the fiscal year 2013/14 the number of banks operating in the country reached 19 of which 16 were private, and the remaining 3 state-owned. During the fiscal year 2013/14 these banks opened 480 new branches raising the total branch network in the country to 2,208 from 1,728 last year.<sup>46</sup> Despite the number of banks operating in Ethiopia increase over, the Ethiopian banking sectors has been operating in monopolistic competition environment.<sup>47</sup> The state - owned commercial banks account for nearly two - thirds of the banking sector assets<sup>48</sup> or over 70% total capital and about 60% foreign loan source.<sup>49</sup>

The banking system accounts for about 80% of total assets of the financial sector, and is dominated by state-owned banks, mainly the Commercial Bank of Ethiopia (CBE).<sup>50</sup> The national bank annual report 2013/14 compared to 2012/13 shows, public banks account for total bank branch network 1003 or 45.4 % from 869 or 50.3 last year of bank branches while the private banks total bank branch network 1205 or 54.6 % from 859 or 49.7 last year of bank branches. On the other hand, public bank 44.7% from 51.6% total capital share of last year while private bank 55.3% from 48.4 total capital share of last year (Table 4.5).<sup>51</sup> Banking branch to population ratio coverage declined from 1:49,826 people to 1:39,402 in 2013/14<sup>52</sup> and concentrated mainly in urban areas, making Ethiopia one of the most under-banked countries in sub-Saharan Africa<sup>53</sup> and it is amongst the major under-banked economy in the world.<sup>54</sup>

The significant branch expansion was undertaken by Commercial Bank of Ethiopia (CBE) with 124 branches, followed by Oromia International Bank (44 branches), Awash

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<sup>45</sup> 1Zerayehu Sime Eshete, 2Kagnew Wolde Tesome, 3Teshome Ketama Abebe, 2013, Competition in Ethiopian Banking Industry, Full Length Research Paper, *African journal of Economics vol.1(5)*, December 2013, p.176. Available online , [www.internationalscholarsjournal.org](http://www.internationalscholarsjournal.org)

<sup>46</sup> NBE 2013/2014, Annual Report, p.50.

<sup>47</sup> NBE *supra* note 46, p.52

<sup>48</sup> Admassu Bezabeh and 2Asayehgn Desta, *supra* note 34, p.26.

<sup>49</sup> Andualem Hailu, 2015, Awash International Bank S.C Planning and Business department Manager, *Interview with* , 28 January 2015.

<sup>50</sup> NBE *supra* note 46 , p.52

<sup>51</sup> *Ibid.*

<sup>52</sup> NBE *supra* note 46.

<sup>53</sup> AfDB, 2014, Organization of Economic Cooperation and Development, *UNDP 2014 African Economic Outlook*, p.9, [www.africaneconomicoutlook.org](http://www.africaneconomicoutlook.org).

<sup>54</sup> 1Zerayehu Sime Eshete, 2Kagnew Wolde Tesome, 3Teshome Ketama Abebe *supra* note 45.

International Bank (38 branches), Cooperative Bank of Oromia (31 branches), Dashen Bank and Bunna International Bank (30 branches each), Berhan International Bank (26 branches), and United Bank (24 branches). The share of public banks in total branch network slightly went down to 45.4 percent at the end of 2013/14 from 50.3 percent last year signifying the steady growth in private banks. In 2013, Addis Ababa had 33 percent share in total bank branches.<sup>55</sup>

Similarly, the banking sector market computation situation moreover likes, the NBE over regulated the banking sector ,but this banking sector regulation is its own positive side to save the country from anti–money laundering and countering the financing of terrorism (AML/CFT) vulnerabilities crimes which is disturb some of the international country currently<sup>56</sup> and the recent directive requiring private commercial banks to invest 27% of their loan disbursements in 5-year NBE bonds at an annual interest rate of 3%, while the minimum deposit rate is 5%, would put private banks in uneven ground to compete with the public banks<sup>57</sup> which cause the Public-Private Dialogue Forum (PPD) between members of the private sector and the government regarding the controversial 27 % NBE-Bill imposed on private commercial banks<sup>58</sup> and the situation in which the overall concern of the business community of Ethiopia largely circulated around the availability of finances; specifically bank loans<sup>59</sup>Which the government availing adequate amounts of financial resources exclusively to the private sector in the manufacturing sector or

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<sup>55</sup>NBE supra note 46, pp.50-52.

<sup>56</sup> Ifrem Mesfin, Ethiopian bankers Association senior Researcher and par-time lecturer of AAU,Fiche campus department of Business and Economics, Interview with, 22-01-2015

<sup>57</sup> NBE, 2011, bills purchase Directives, *Directive No.MFA/NBEBILLS/001/2011*, April 2011.

<sup>58</sup> Staff Reporter,2014, The Ethiopian Public-Private Sector Dialogue Forum (PPD),The Reporter,13 September 2014 <http://www.thereporterethiopia.com/index.php/in-depth/>;see, Dawit Taye , Governor roasts banks slammed study sponsored by the Ethiopian Chamber Commerce and Sectoral Association (ECCSA), *the reporter*, 07 June 2014 ,which states, “The study asserting “It is easier to say that currently the private sector in Ethiopia is accessing financial resources from alternative societal financial sources like Equb, a traditional instrument of saving, than it is getting from the formal financial institutions like banks,” which the Governor of the National Bank of Ethiopia (NBE), Teklewold Atnafu , argued that the latest information about the financial sector did not indicate the types of alarms that the study detailed, but currently commercial banks have a combined eight billion birr in excess reserve at NBE.”

<sup>59</sup>ibid.

planning to join the<sup>60</sup> sectors which are the priorities for the government's development strategy.<sup>61</sup>

The country starts gradual liberalization of banking sector to domestic investor since post 1991 but, the banking sector market situation has been still found at infant stage. So, up to what time the sector still found at infant stage? Even though the country were under a lot of progress; however, not achieved desirable level of banking services. All the services are at their beginning stage of development and a substantial size of the Ethiopian population still lives without them. The banks are also weak compared to foreign bankers' giants such as City bank, New York bank, Industrial and Commercial\_Bank\_of\_China, etc in their fixed capitals, service types, governance and competitiveness. The sector is still in generally infant compared to international giants<sup>62</sup> due to banking sector has not fully diversified, modernized, automated and networked their services.<sup>63</sup>

In general, the Ethiopian Banking sector Market Situation shows, even though there were a lot of improvements over time in the sector, the existing country's policy inhibits foreign bank entry in any form, not allow purchase of shares by foreign nationals<sup>64</sup>, a non-competitive market structure, strong capital controls in place, and heavy dominant role of state-owned NBE's regulation. Thus, there is a need to upgrade the level of Ethiopia's banking sector market situation to facilitate more computation in the sector.

#### **4.2.4. Ethiopia's Banking sector current Challenges**

According to a series of interviews, different banking sector reports and studies shows even though government took a lot of reform to strength banking sectors, however Ethiopian banking sectors still have a lot of Challenges that need further

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<sup>60</sup> Ibid.

<sup>61</sup> Kozo Kiyota, Barbara Peitsch and Robert M. Stern supra note 22, p.132.

<sup>62</sup> Ifrem Mesfin, supra note 56.

<sup>63</sup> Solomon Abay, Financial supra note 15, p.16.

<sup>64</sup> Ashenafi Beyene, 2012, Banking reform and SME financing in Ethiopia: Evidence from the manufacturing sector, African Journal of Business Management Vol. 6(19), 16 May 2012, Department of Public Financial Management, Ethiopian Civil Service College, Addis Ababa, Ethiopia.

improvements.<sup>65</sup> Such challenges are capacity constraint in terms of capital adequacy and technological know-how<sup>66</sup>; private banking sectors banking infancy as well as beginners; lack of banking culture<sup>67</sup> and shortage of skilled man power;<sup>68</sup> still a need to strengthen the NBE regulatory and supervisory system based on world bank's bank supervision guidelines and Basel committee of banking supervision, best "risk based supervision practice" model.<sup>69</sup>

The other current Major challenges of banking sector is liquidity mismatch in terms of local and foreign currency resource inflow and out flow, frequent network/connection failure,<sup>70</sup> Ethiopian bankers association's near organized and found at infant stage to represent the banking sector. On the other hand banking sector themselves closely working problem with and the banking sectors didn't create full sense of ownership on their association is the other internal problem of the banking sector.<sup>71</sup> Moreover, the recent directive requiring private commercial banks to invest 27% of their loan disbursements in 5-year NBE bonds at an annual interest rate of 3%<sup>72</sup> and the competition in the Ethiopian banking industry is basically explained by competition between commercial banks. Despite the number of Ethiopian banking sector increase over time, the Ethiopian banking industry has been operating in monopolistic competition environment<sup>73</sup> in which the state - owned commercial banks account for nearly two - thirds of the banking sector assets<sup>74</sup> or over 70% total capital and about 60% foreign loan source.<sup>75</sup>

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<sup>65</sup>“(Confidential), Commercial Bank of Ethiopia, Research and Development Department three Expertise, Interview with, 26 January 2015, at their office.

<sup>66</sup> (Confidential) supra note 65 & Tamiru Wube supra note 40.

<sup>67</sup> Tamiru Wube, supra note 40; Ifrem Mesfin supra note 56 & Chala Lema, Oromia International Bank S.C Planning and Research Division Manager, Interview with, 28/01/2015.

<sup>68</sup> CBE, 2014/15, 1<sup>st</sup> Quarter Corporate performance, December, 2014, pp.1-5; Chala Lema, Oromia International Bank S.C Planning and Research Division Manager, Interview with, 28 January 2015; Andualem Hailu, Awash International Bank, Planning and Business department Manager, Interview with, 28 January 2015.

<sup>69</sup> “Confidential” 2015, National Bank of Ethiopia experts, interview with, 11 February 2015.

<sup>70</sup> CBE Chala Lema, & Andualem Hailu supra note 68.

<sup>71</sup> Ifrem Mesfin supra note 80.

<sup>72</sup> NBE, supra note 69; Yeshiwork Yimer, 2015, Dashen Bank S.C Legal Department Manager, personal view Interview with, 28 January 2015.

<sup>73</sup> NBE supra note 46, p.52.

<sup>74</sup> Admassu Bezabeh and 2Asayehgn Desta, supra note 34, p.26.

<sup>75</sup> Andualem Hailu, supra note 49.

In general, Ethiopia's Banking sector current Challenges are: Ethiopia's banking sector infancy, lack of banking culture, the technological Know-how, and shortage of skilled man power, a non-competitive market structure in which despite the high banking concentrations, the sector's has been operating in monopolistic competition environment, strong capital controls in place, heavy dominant role of state-owned NBE's regulation and weak regulatory and supervisory capacity of the National Bank of Ethiopia current Challenges which need further improvement in Ethiopian banking sector.

#### **4.3.The WTO Accession Rules and Acceding Countries Experience for Ethiopia Banking Sector**

As discussed under unit 3 WTO memberships will have wide-ranging social, cultural, and economic benefit and impacts. <sup>76</sup>That means, only firms that can compete effectively can draw tangible benefits from access to new markets. <sup>77</sup>Consequently, it is imperative that the impact of accession to the WTO is clearly understood and the constraints and external factors that determine successful integration adequately examined.<sup>78</sup>

Making liberalization commitments in banking sector under GATS framework may result in both benefits and risks.<sup>79</sup> However, there is no clear cut formula or universal standards for liberalization of banking sector in GATS framework. Banking services liberalization policies largely depend on country-specific conditions on the basis of which countries could follow different commitment scenarios while they opt for banking liberalization commitments.<sup>80</sup> Therefore, "there shall be flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development and country's unique situation."<sup>81</sup>

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<sup>76</sup>ECCSA, How to Optimize Advantages of Accession to the World Trade Organization and Measures to be Taken to Meet Possible Challenges, A Review of Ethiopian Economy and WTO Accession, (Not Dated), p.3.

<sup>77</sup>[www.ethiopianchamber.com/how-to-optimize-advantage-of-accession-to-wto](http://www.ethiopianchamber.com/how-to-optimize-advantage-of-accession-to-wto)

<sup>78</sup>Ibid.

<sup>79</sup>Ibid.

<sup>80</sup>Tadele Geremew supra note 44, p.38.

<sup>81</sup>Ibid.

<sup>81</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries, *supra note 81*.

Global experience with financial liberalization has been a mix of bewildering array of experiences. “Several countries have suffered serious banking crises following the opening of their financial markets, and banking crises have generally been good predictors of currency crises.”<sup>82</sup> The relationship between liberalization and a banking crisis depends strongly on the strength of capital regulation and supervision. The probability of a banking crisis is high in a country with very weak regulation and lethargic supervision. By contrast, the probability of a banking crisis decreases with liberalization in a country with stricter regulation and vigorous supervision.<sup>83</sup>

Moreover Liberalization of banking sector, whether multilaterally or by other ways, can cause both benefits and risks. Due to the nature of trade in banking services and the importance of banking sector for the economy at large, negotiation on trade in banking sector is one of the key issues in the accession process of the WTO.<sup>84</sup> Liberalizing banking sector is the most important issue that will take the lion’s share of the negotiation.<sup>85</sup> Hence, for successful banking sector liberalization, therefore, it is essential that specific prerequisites are in place. Prudential regulation and supervision of financial systems, adequate macroeconomic policy and reforms of domestic banking sector market situation, appears to be crucial for achieving the potential gains of liberalization of banking sector.<sup>86</sup> In other words, a more liberal trade regime encouraged by the WTO membership may expose infant banking sector to stronger competition from abroad.<sup>87</sup>

Despite the WTO accession guidelines, from practical view those LDC accessed to the WTO until 2014 faced variety of challenges in the course of their accession process<sup>88</sup>, have long complained that WTO members routinely ask them to take on commitments beyond their capacities<sup>89</sup> or exceed those required from LDCs and other developing

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<sup>82</sup>Tilahun Esmael supra note 1, p.219.

<sup>83</sup> Admassu Bezabeh1 and 2Asayehgn Desta, supra note 34, p.35.

<sup>84</sup>Gebrehiwot Ageba &Derk Bienen, 2008, Ethiopia’s Accession to the WTO and the Financial Services Sector, Trade and development discussion paper, October 2008, Munich, P. 1.

<sup>85</sup> Gebrehiwot Ageba and Derk Bien, supra note 84.

<sup>86</sup> Tadele Geremew Tessema ,supra note 44.

<sup>87</sup> AACCESA, Review of the Legal and Institutional Framework for Market Competition in Ethiopia, Private Sector Development, 2009. Email: [psdhub@addischamber.com](mailto:psdhub@addischamber.com)

<sup>88</sup> Ratnakar Adhikari and Navin Dahal, LDCs’ Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu, South Asia Watch on Trade, Economics & Environment (SAWTEE), Kathmandu, Nepal, 2008,, P-3.

<sup>89</sup> An Analysis of the WTO Accession Guidelines for Least Developed, supra note 81, p.3.

countries that joined the organization in its early years or <sup>90</sup> forced to accept more onerous terms of negotiations which go beyond their specific capacities and even beyond WTO requirements<sup>91</sup> mainly due to lack of technical assistance and capacity constraints which comes as the result of weak policy, un strengthened regulatory framework and capacity constraint of banking sector. So, LDCs currently on the accession negotiation or seek to accessed in the future, it is logical to expect that it may face such challenges that those recent LDCs accessed already confronted. Thus, the experiences of those accessed countries could assist these LDCs not to repeat avoidable mistakes which would be committed in the course of its accession process, commitments and during implementation.<sup>92</sup>

The one scenario of commitments for Ethiopia which make the country to stay at the current level of liberalization. First, liberalization commitments have tended to become more serious over time. This becomes evident especially from the situations that recent acceding LDC's countries have been required high liberalization commitments compared to early acceding countries. Nepal and Cambodia, the two LDC's that joined the WTO in April 2004 and October 2004, have committed to liberalize 76 and 93 sub-sectors, respectively in financial services contrast to the 20 sub-sectors that in average LDCs had committed during the Uruguay Round.<sup>93</sup> In the area of services, Vanuatu was asked to make offer in 18 areas, which is more than four times the average for existing LDC members of the WTO. The only two major exceptions in which Vanuatu was not willing to commit itself were telecommunication and distribution services, due to domestic political compulsions. However, towards the end of the negotiations it had to give in to the pressure of the USA and agreed to open the banking sector.<sup>94</sup>

While, Samoa Concerning right to Private Ownership and Establishment different sectors shows that, foreign Investors are permitted 100% ownership in all different sectors of the industry including the banking sector, with the exception of conditions for restricted

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<sup>90</sup>Ibid.

<sup>91</sup>Hussein Ahmed,2013, Making the WTO accession work for Ethiopia: Lessons from Cambodia and Nepal, *Abyssinia Law Review*,2013,p.13.

<sup>92</sup>Ibid.

<sup>93</sup>Id,pp.41-42.

<sup>94</sup>*Ratnakar Adhikari and Navin Dahal, supra note ,P.88.*

activities<sup>95</sup> and in Yemen, the extra demands from WTO to open up specific commitments in all 11 core services sectors especially in banking sector regardless of Yemen's development level would cause harm and further violations for Yemeni citizens.<sup>96</sup>

To achieve the WTO Accession and Banking sectors liberalization objectives for Ethiopia, the representative of Ethiopian government negotiator's having extensive understanding of the WTO accession rule in a concerted manner is very vital. In formal and continuous manner making broader discussion on the WTO accession rule and implication of WTO membership in between all relevant country's stakeholders such as: Government, policy makers, private and public sectors, academicians, researches, business and civil society organizations to put in place at pre and post WTO accession affirmatively.<sup>97</sup>

The Ethiopian WTO accession working party strategically plan the way of getting technical assistance and capacity building concerning the Ethiopia's WTO accession and banking liberalization case from the concerned body before starting bilateral negotiation. That, of course, will necessitate an increasingly transparent and robust set of communication channels and stimulate a forging a productive relationship between them as well as for the country. To mitigate WTO plus obligation and WTO minus right, apart from personal knowledge and skill of negotiator, Creating clarities on the WTO accession rules and building one's own countries capacity are the major lesson drawn from acceding countries for Ethiopia and LDC at accession Negotiation and seeking accession in the future.

Challenges that hinder the furthering of the country's WTO accession can be caused by limitations in banking sector policy analysis, formulation, negotiation, monitoring and implementation. The government and the NBE are capable of developing, reviewing and

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<sup>95</sup>See USA, *Samoa's Investment Climate Statement*, June 2014, p.4.

Foreign Investors are permitted 100% ownership in all different sectors of the industry with the exception of conditions for restricted activities below. The following businesses are reserved for Samoan Citizens only: 1. Bus transport services for the general public, 2. Taxi transport services for the general public, 3. Rental vehicles, 4. Retailing, 5. Saw milling, 6. Traditional lei garment designing and printing. Restricted List – Open to foreign investors upon condition.

<sup>96</sup>LDC watch, *Yemen's WTO Accession Commitments: A Stalemate to Development*, Arab NGO Net work for Development, 4 December 2013, pp.1-2.

<sup>97</sup>Hussein Ahmed supra note 91, p.1

executing banking sector policy, regulation and market situation. Capacity building is utmost priority particularly in enhancing the technical and institutional capacity banking sector with additional staff, training and infrastructure is absolutely important. Furthermore, programs on banking sector policies has to be strengthened at universities.<sup>98</sup>

On the other hand, some WTO members such as the United States, Canada and European Union have expressed concerns over Ethiopia's policy not to allow foreign participation in its financial and telecom sectors. It is not unique for Ethiopia to negotiate for 'transitional period' to open up some sectors.<sup>99</sup> The WTO also, doesn't ask any country to completely open its services sector. What WTO asks is what you give access to third party on terms that have to be negotiated. But for those sectors that you have decided to open your economy, you have to give the same conditions for any foreign providers that you are giving for domestic ones.<sup>100</sup>

The experience of African and Asian countries to some extent comparable with Ethiopia and may be particularly relevant for Ethiopia as their background and/or transition processes shows that countries which strengthened the supervisory and regulatory framework of banking sector prior to the introduction of liberalization fared better than those that liberalized first.<sup>101</sup>

Generally, the lessons to be drawn from the above WTO accession rule and country experiences shows that, a well-designed coordination structure that allows all stakeholders to participate in understanding the WTO accession rule before accessed to the WTO and liberalize its banking sector is significantly important. Accession requires a pro-found consideration and work in the areas of banking sector-related legislation and law enforcement, economic and policies, development of financial, institutional and human resources capacity of banking sector is vital.

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<sup>98</sup>Id,p.16.

<sup>99</sup> WTO, 2010, WTO to Discuss Ethiopia's Membership Bid, Capital News, October 7, 2010.

<sup>100</sup> Arancha Gonzalez, 2014, Executive Director of the International Trade Center (ITC), Ethiopian Reporter, 13 December 2014. <http://www.thereporterethiopia.com/index.php/interview/itemlist/user/66-yohannesanberber>

<sup>101</sup> Gebrehiwot Ageba and Derk Bien, Enethiopia's supra note 84,P.9

#### **4.4. Argument For and/ or Against Ethiopia's Banking Sector Liberalization**

In the liberalization of banking sector, much debate and conflicting evidences has been raised in recent years about the implication of liberalization in banking sectors in GATS context in the world.<sup>102</sup> Liberalization of banking sector has both benefit and risk. The first is, it has been argued that liberalization of the Banking sector would help to bring competitive financial sectors in local economy, increased domestic competition; likewise, by introducing international practices and improving the scale of banking sector; competition would increase the efficiency of domestic financial system. This in turn guarantees financial market to improve their service with lower prices and widens choices for consumers,<sup>103</sup> and competition increase the efficiency of banking system easier and more effective diversification of risk, new skills, new products and technologies may be diffused into the domestic banking system, which assisting its modernization.<sup>104</sup>

Moreover, liberalization of the banking sector creates an opportunity for cross-border flow of capital funds. This ease country's access to international capital and this in turn assists to bring much needed capital for productive investment. Likewise, liberalization of the banking sector may have a lion share contribution to countries long run economic development.<sup>105</sup> There have also been a large body of theory and evidences study confirms that liberalization of banking sector have tended to bring a potential benefits such as improve the competence of domestic service.<sup>106</sup> Study that interrogate the relationship between foreign bank entry and the efficiency of domestic banking sectors of thirty countries during the periods of 1995-2002 also indicates that policy towards allowing foreign bank entry increases the efficiency and diversification of local banks<sup>107</sup> besides increasing the competition in banking sector market situation it can also provide an impetus to an improvement in the banking sector regulatory and institutional system due to mainly liberalization of banking sector invites foreign players which enters the

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<sup>102</sup> Tadele Geremew supra note 44, p.21.

<sup>103</sup> Ibid

<sup>104</sup> Gebrehiwot Ageba, supra note 84, p.1.

<sup>105</sup> Tadele Geremew supra note 44, p.21.

<sup>106</sup> Id, p.22.

<sup>107</sup> Id, pp.22-23.

domestic economy with greater experience, more sophisticated financial instruments and advanced risk management.<sup>108</sup>

On the other hand, liberalization of the banking sector leads to risk. The study conducted on eight Asian countries and a cross-country study on forty-two countries during the period 1973-2002<sup>109</sup> confirms that liberalization of the banking sector would not yield a more stable source of credit for domestic borrowers ; it would try to “cherry pick” the most desirable markets and customers, leaving the domestic banks with higher-risk assets and customers,<sup>110</sup> a theoretical based study on the effects of foreign banks in poor countries also suggest that opening domestic market for foreign banks hurts small business access to credit<sup>111</sup> and thereby likely to increases economic crisis;<sup>112</sup>and it may only service profitable market segments; they may not give priority to issues of poverty alleviation and the access of low-income and rural-based savers and borrowers to financial services and this risk may be exacerbated if, depending on the banking structure and regulatory capacity, foreign financial service providers encourage the development of oligopolistic, rather than competitive, banking structures.<sup>113</sup> Financial liberalization is likely to lead to capital transfer or outflows which, in turn, affects countries balance of payment and is often a cause of financial crisis.<sup>114</sup>This is especially true in developing and least developing countries, where banking sectors are too young to compete with foreign banking institutions backed by huge capital and better experience.<sup>115</sup>

Moreover, the cross country data on commercial bank regulation and ownership from over 60 countries find that state ownership of banks,<sup>116</sup> opinions based on data of government owned banks from 92 countries around the world, and using a comprehensive dataset of bank liberalization in 101 countries during the period 1982-

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<sup>108</sup>Id, p.22.

<sup>109</sup>Id, pp26-27.

<sup>110</sup>Gebrehiwot Ageba, supra note 84, pp.1-3.

<sup>111</sup>Tadele Geremew supra note 44, p.26.

<sup>112</sup>Ibid.

<sup>113</sup>Gebrehiwot Ageba, supra note 84, pp.1-3.

<sup>114</sup>Tadele Geremew supra note 44, p.25.

<sup>115</sup>Ibid.

<sup>116</sup>Umer Khalid, *The Effect of Privatization and Liberalization on Banking Sector Performance in Pakistan*, State Bank of Pakistan (SBP) Research Bulletin Volume 2, Number 2, 2006, p.406.

2000<sup>117</sup> finds that government ownership of banks<sup>118</sup> result in “less competition, greater political intervention and weaker corporate governance were strong theoretical arguments against state ownership of banking sector.<sup>119</sup> Even though the result was that but, their findings indicate that in developing countries, bank’s liberalization was more likely the lower the quality of the country’s banking sector, the more right wing the country’s government is, the more accountable to its people.<sup>120</sup>

Similar to the two complaining sides of baking liberalization in the world, there were arguments for and or against liberalization of the Ethiopian baking sector to the outside world. Proponents argue that opening the Ethiopian banking sector to foreign investors has the benefits of improvements in the overall efficiency of the sector,<sup>121</sup> increased employment opportunity and increased access to the poor,<sup>122</sup> the transfer of skills for employers and regulators, and greater financial stability by reducing the need for cross-border flows.<sup>123</sup> Similarly, the importance of greater openness and foreign participation in enhancing financial intermediation and economic growth.<sup>124</sup>

On the other hand, opponents fear liberalization for its risks of financial instability, weakening the domestic financial institutions and unless, legitimate concerns have been expressed about allowing domestic banking expansion and the increased entry of foreign capital into Ethiopia, Such measures could result in,<sup>125</sup>the possibility of leaving out the poorest section of the society from accessing the financial institutions,<sup>126</sup>,destabilizing disruption caused by “hot money” flows and skewed allocation of credit toward more-attractive borrowers, such as larger industrial companies that already have access to bank lending, rather than smaller-scale enterprises. As demonstrated by the 2008 global

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<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Id, pp.405-407.

<sup>121</sup> Tom Keatinge, 2014, “The Role of Public and Private Sector Banking in Ethiopia’s Future Economic Growth,” Global Center on Cooperative Security, September 2014, p.2.

<sup>122</sup> Mehreteab Ghebremeskel, 2013(1) ‘Integration of the Ethiopian Financial Service Sector through Regional Financial Arrangements: A Step before WTO Accession?’ Law Social Justice & Global Development Journal, 2013 p.1.

<sup>123</sup> Tom Keatinge, supra note 121.

<sup>124</sup> Kozo Kiyota , Barbara Peitsch and Robert M. Stern ,supra note 22, p.131.

<sup>125</sup> Tom Keatingesupra note 121.

<sup>126</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern supra note 22, pp.17-18.

financial crisis, uncontrolled banking expansion can be highly damaging for economies, particularly within the current globalized financial system.<sup>127</sup>

However, both rapid reform and long delay of liberalization are not, accordingly, justified for the country as the former can lead to crisis unless followed by strong regulation while the latter will mean unduly postponing the potential benefits of international competition and inflow of finance to the country.<sup>128</sup>

According to authors interview and discussions with some expertise of NBE, Ethiopian chamber of Commerce and Sectorial Association, Ethiopian Ministry of Trade, Ethiopian Banker's Associations, Awash International Bank S.C, Dashen Bank S.C, Oromia International Bank S.C. and Commercial Bank of Ethiopia about argument for and/ or against Ethiopia's banking sector liberalization in view of Ethiopia accession to the WTO, the following are some of the important potential effects that raised by the interviewed parsons.

According to the interview, *first*, banking liberalization may have positive effects on the efficiency of the banking sector in the country's market. This is because domestic banks are forced to compete with more efficient foreign banks with upgrading skills and technological know-how transfers.<sup>129</sup>

Second, the entry of foreign banks through banking liberalization may improve NBE Regulatory and supervision capacity through regulatory spillover<sup>130</sup>, foreign banks may brought new skill and quality services and new capacitate of the banking sector technological know-how,<sup>131</sup> employment opportunity<sup>132</sup> and lastly, the entry of foreign banks may brought access to finance especially loan opportunity.<sup>133</sup>

By the same token, according to the interview, banking liberalization carries certain economic risks. These are; *first*, banking liberalization may cause financial fragility

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<sup>127</sup>Tom Keatinge supra note 121.

<sup>128</sup>Solomon Abay, supra note 15, p.29.

<sup>129</sup>Tamiru Wube, supra note 40; "Confidential", CBE, supra note 65; Yeshiwork Yimer, supra note 72; Chala Lema, supra note 68.

<sup>130</sup>(Confidential) CBE, supra note 65 and (Confidential), NBE, supra note 69.

<sup>131</sup>(Confidential) CBE, supra note 65 and Geremew Ayalew, supra note 9.

<sup>132</sup>(Confidential), CBE, supra note 65.

<sup>133</sup>Chala Lema, supra note 68 and (Confidential) NBE, supra note 69.

rather than financial stability through capital flight due to the NBE's inability to regulate and supervise the sophisticated foreign giant Banks, in terms of capital adequacy, more advanced technological know-how, qualified human resource capacity and quality service.<sup>134</sup>

*Second*, Foreign banks may not address directly issues of poverty alleviation and the access of low-income and rural-based savers and borrowers to financial services.<sup>135</sup>

*Third*, banking liberalization may cause to Ethiopian infant banking sector competition problem with foreign giant banking sector with more advanced and diversified in terms of Capital adequacy, technological know-how, qualified human resource, and service quality which lead Ethiopian banking sector capital flight which cause financial instability and crises.<sup>136</sup> Especially on behalf of Ethiopia infant and beginners private banking sector's liberalization causes the competition problem with international giant banking sector as stated under third point above.<sup>137</sup>

*Fourthly*, although, Ethiopian banking sector have undertaken a lot of progress in terms of deposit mobilization, banking branch outreach, human resource development, banking culture, but country's infant banking sector still need a lot of improvement due to deep-rooted capital adequacy problem and lack of banking culture<sup>138</sup> in order to compete with foreign giant banking sectors realize best stake holders needs world-class banks by winning the public confidence.<sup>139</sup>

The summary of the interview shows that banking sector is generally considered as the brain for the economy among the most common service sectors that require most concern in the course of the WTO accession that will allow countries to reach at mostly its own benefit and risk.

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<sup>134</sup> Chala Lema, supra note 68; (Confidential), CBE, supra note 65; (Confidential NBE, supra note 69 and Andualem Hailu, supra note 49.

<sup>135</sup> (Confidential) CBE, supra note 65.

<sup>136</sup> All the interviewed private and public banks of Ethiopia as well as, Ethiopiabankers Association and Ethiopian chamber of commerce and Sartorial Association raised such risk as their current concerns, Addis Ababa, January, 2015.

<sup>137</sup> Ibid.

<sup>138</sup> Tamiru Wube, supra note 40.

<sup>139</sup> Yeshiwork Yimer, supra note 72.

To sum up, concerning the debate of argument for and/or against Ethiopia's Banking Sector Liberalization in recent years, it can at least be possible to come to an intermediate position that banking liberalization can contribute to potential gains in the form of competency, efficiency and providing efficient capital reallocation for productive investment based on the level of the banking institutions, the household, and the whole economy priority of the country. The available evidence also, however, the argument for and/or against liberalization of banking sector is associated with the Ethiopia's government launching prudential regulatory and macro-economic policies and sound banking sector market computation situation environment. In the absence of effective regulatory, supervisory regimes, sound competitive domestic banking sector market situation and appropriate macroeconomic policies, commitment towards banking sector liberalization may not have positive impacts. Even worse, liberalization potentially leads into serious financial crisis. Thus, it is argued that liberalization does not pose a dangerous threat by itself, rather the absence of appropriate policy, legal and regulatory institutions, and uncompetitive banking sector market situation poses a dangerous threat by itself.

#### **4.5. Potential Effect of Ethiopia's Banking Sector Liberalization commitments**

Despite heavy pressure from the United States Government,<sup>140</sup> the Ethiopian government continues prohibiting the entry of foreign banks to the country by law<sup>141</sup>. This section is devoted to consider the issue of Potential effect of Ethiopia's banking sector Liberalization commitment in terms of the GATS distinguishes between four modes of trade supplying services listed in Article I:2( cross-border trade supply, consumption abroad, commercial presence, and presence of natural persons). These modes are essentially defined on the basis of the origin of the service supplier and consumer, and the degree and type of territorial presence they have at the time of service delivery.

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<sup>140</sup> Admassu Bezabeh 1 and 2 Asayehgn Desta, supra note 34, pp.32-36.

<sup>141</sup> NBE supra note 21.

#### 4.5.1. Mode 1 Cross-border supply of banking services to Ethiopia

**Cross-border supply** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail).<sup>142</sup> Consumers can buy banking services through "long-distance" purchase while physically remaining in their home country known as "cross-border supply" or Mode 1. Today, technological advancement mainly in information and telecommunication has greatly facilitated cross-border supply of banking services, with Internet-banking. The supply of a service through telecommunication or mail is an example of cross-border supply since the service supplier is not present within the territory of the member where the service is delivered or consumed.<sup>143</sup>

In mode 1 the numbers of alternatives to liberalize financial services trade are limited. These are the status quo; conditional liberalization and the removal of all restrictions of cross border supply of financial services.<sup>144</sup> The status quo is the scenario in which it carries the possibility of rejecting the cross border supply of financial services in Ethiopia from a financial service supplier located abroad.<sup>145</sup> conditional liberalization is the scenario in which the opening of cross-border supply of financial services with limitations like phasing out of barriers over a transition period; or restricting the type of sectors, the amount of capital or the group of persons or institutions allowed to engage in this mode; or allowing the use of cross-border supply of financial services only in explicitly listed exceptional cases.<sup>146</sup> The removal of all restrictions of cross border supply of financial services is the scenario in which to fully open the cross border supply of financial services.<sup>147</sup>

International money transfer using foreign banks is common in Ethiopia despite limited use of cross-border supply of banking services due to legal, technological and

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<sup>142</sup> WTO,2015, GATS: objectives, coverage and disciplines,WTO 2015

Disclaimer, <http://www.wto.org/>

<sup>143</sup> The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *LL.M thesis* Faculty of Law University of Oslo, December.2014,p.24.

<sup>144</sup>Id, ,p.30.

<sup>145</sup>Ibid.

<sup>146</sup>The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *LL.M thesis* Faculty of Law University of Oslo, December.2014,p.32.

<sup>147</sup>Id,p.33.

communication barriers.<sup>148</sup> Ethiopian laws in principle do not allow cross border supply of banking services except in few cases. Cross-border banking services in Ethiopia are limited to borrowing from abroad by the government, some state-owned enterprises (e.g., Ethiopian Airlines), and exporters (without a government guarantee of foreign exchange availability).<sup>149</sup>

The economic impacts of allowing Cross-border banking services in Ethiopia are, exposure to foreign exchange risks and spillover effects of foreign capital market developments and technology transfer are vital considerations. Acceding countries so far have chosen cautious approaches to Mode 1 liberalization, but there might be pressure from WTO Members for the liberalization of cross-border trade at least in certain sub sectors. It should be noted that cross-border trade in banking services is a mode of supply that is most dependent on international capital transfers. Liberalization of this mode is therefore difficult unless accompanied by liberalization of the capital account. Ethiopia, with major drawback in the supply side of services, a huge gap between imports and exports and chronic shortage of foreign currency, cannot afford to undertake capital account liberalization. As both past and current financial crises have shown, cross-border supply of financial services exposes a country to a spillover effects from external crises.<sup>150</sup>

Therefore, maintaining capital controls (staying unbound) is the best option for Ethiopia. Hence, a careful approach in opening the banking services sectors appears to be advisable.

#### **4.5.2. Mode 2 Consumption of banking services by Ethiopians abroad**

**Consumption abroad** refers to situations where a service consumer (e.g. tourist, student or patient) moves into another Member's territory to obtain a service.<sup>151</sup> Consumption abroad of banking services, i.e. an Ethiopian person opening a bank account while being abroad is virtually impossible to observe or monitor. The whole transaction takes place outside of Ethiopia and also typically involves no or very limited transnational capital

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<sup>148</sup>Id, p.24.

<sup>149</sup>Id, p.18.

<sup>150</sup>Id, pp.30-34.

<sup>151</sup>WTO, Supra note 142.

flows which would allow indirect monitoring. Likewise, the importance of mode 2 trade in banking services, and hence its potential impact on the Ethiopian Banking services sector or the economy in general, is limited.<sup>152</sup> There is no prohibition on ‘consumption abroad’ of banking services in Ethiopia, as long as such purchase of services complies with foreign exchange regulations of Ethiopia. The same is true for Mode 2 sale of banking services, i.e., there is no prohibition on consumption of banking services by foreigners while they are in Ethiopia.<sup>153</sup> The opening up of this mode will only require few legislative changes as Ethiopia currently does not prohibit Ethiopians from going abroad and consuming financial services other than obliging the disclosure of foreign currency at the time of entry and exit<sup>154</sup> The experience of recently acceded countries with the exception of Nepal also shows that this mode has been fully liberalized in all cases. Therefore, offering full liberalization of this mode, which bears no cost, is a risk-free decision for Ethiopia.<sup>155</sup>

#### **4.5.3. Mode 3 Commercial presence of foreign banking sectors in Ethiopia**

**Commercial presence** implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains).<sup>156</sup> Regarding commercial presence in Ethiopia, banking services are exclusively reserved for Ethiopian nationals (natural and juridical persons). Foreigners are prohibited from operating banking services in Ethiopia fully or partially.<sup>157</sup> Furthermore, Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012, under Article 3(1)(a), 3(2) and 4, provides that banking sector is exclusively reserved for Ethiopian Nationals. Similarly Article 2(15) of the same legislation defines “Company” to mean a share company in

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<sup>152</sup> Geberahiwot Ageba & Derk Bienen, *supra* note, p.14.

<sup>153</sup> The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *supra* note 143.p. 18.

<sup>154</sup> *Id.*, p.35.

<sup>155</sup> *Id.*, p .36.

<sup>156</sup> WTO, *Supra* note 142.

<sup>157</sup> NBE, 2008, Banking Business Proclamation No. 592/2008, *Federal Negarit Gazeta*, 2008, . Art. 2(5) and Art. 9; 2. FDRE, 2002, Investment Proclamation No 280/2002, *Federal Negarit Gazeta*, Year 8, No 27, Addis Ababa, 2nd July 2002; FDRE, 2003, Council of Ministers Regulations on Investment Incentives and Investment Areas Reserved for Domestic Investors No 84/2003, *Federal Negarit Gazeta*, Year 9, No. 34, Addis Ababa, 7 February 2003 on areas of investment listed in the schedule attached to these regulations 2(1).

which the whole shares are owned by Ethiopian nationals and registered under Ethiopian laws having its head office in Ethiopia.

**Potential Benefit Associated with Mode 3 Commercial presence of foreign banking sectors in Ethiopia** will bring a number of benefits.<sup>158</sup> *First*, Mode 3 Commercial presence of foreign banking sectors in Ethiopia may improve National bank of Ethiopia regulation and supervision capacity<sup>159</sup> by allowing regulatory spill over.<sup>160</sup> The experiences of countries that liberalize their banking sector show that strengthening regulatory and supervisory framework before liberalization cope up the effects better than those that liberalized first.<sup>161</sup> Because if there is no strong capacity to control such foreign banks, financial liberalization could lead to potentially high disruptive financial crisis<sup>162</sup> which the technological advancement and new payment systems may be used to some evil acts like money laundering.<sup>163</sup>

*Second*, Mode 3 Commercial presence of foreign banking sectors in Ethiopia benefits financial efficiency due to high competition<sup>164</sup> of foreign banks will promote competitiveness and efficiency in the banking sector.<sup>165</sup> Competition demands the domestic banks continuously upgrade their skill and increasing technological know-how in the banking services<sup>166</sup> to stay in business.<sup>167</sup> Similarly, Competition of Foreign banks have an advantages compared to domestic banks. By servicing client's active in more than one country, they can achieve benefits from spreading best-practice policies and procedures.<sup>168</sup>

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<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Gebrehiwot Ageba and Derk Bienen, supra note 84, P. 16.

<sup>161</sup> Id, P. 16.

<sup>162</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern supra note 22, p. 17.

<sup>163</sup> Biniam Shiferaw, 2011, Money Laundering and Countermeasures: A Critical Analysis Of Ethiopian Law With Specific Reference to the Banking Sector, A Thesis Submitted to The Law Faculty of Addis Ababa University, March, 2011, pp.72-73.

<sup>164</sup> Kozo Kiyota, Barbara Peitsch and Robert M. Stern, supra note 22, p.131; Tadele Geremew supra note 44, p.37.

<sup>165</sup> Admassu Bezabeh and Asayehgn Desta, supra note 34, p.34.

<sup>166</sup> Jonse Bane, 2013, Proceedings of the First International Conference on the Ethiopian Economy: Banks and banking, Foreign, Ethiopian Economic Association Publication, Volume: I, Addis Ababa, 2013-05-27, Ethiopia. <http://www.eaecon.org/taxonomy/term/5191>

<sup>167</sup> Admassu Bezabeh and Asayehgn Desta, supra note 34, p.35.

<sup>168</sup> Ibid.

*Third*, Mode 3 Commercial presence of foreign banking sectors in Ethiopia benefits employment opportunity and increase access to credit for the poor.<sup>169</sup> In Ethiopia, where a large part of the population does not yet have access to banking services, it is easier for foreign banks to gain market share and therefore likely easier to make a higher profit.

*Fourth*, foreign banks have advantages in the form of more access to finance, including having access to external liquidity from their parent banks, which may lower their funding costs,<sup>170</sup> which cause currently the Public-Private Dialogue Forum (PPD) one of the main concern of the business community largely circulated around the availability of finances; specifically bank loans.<sup>171</sup>

*Finally*, by being larger they may achieve other scale advantages such as utilizing more advanced and sophisticated risk assessment models to give them a competitive edge over fragile Ethiopian banks.<sup>172</sup>

In general Potential benefit associated with Mode 3 Commercial presence of foreign banking sectors in Ethiopia will seek to improve National bank of Ethiopia regulation and supervision capacity by allowing regulatory spill over, will promote competitiveness and efficiency in the banking sector by continuously upgrading their skill and technological know-how to provide quality services in the banking sector.

The preceding discussion has highlighted the fact that Mode 3 Commercial presence of foreign banking sectors in Ethiopia have a significant benefit not only for banking sector but also for the whole economy.<sup>173</sup> However, studies have proven that Mode 3 Commercial presence of foreign banking sectors in Ethiopia entails potential risks.<sup>174</sup>

*First*, Most of the concerns relate to the effects which the entry of foreign banks with more capital and more experience may take over the domestic financial sector, which is

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<sup>169</sup>Kozo Kiyota , Barbara Peitsch and Robert M. Stern ,supra note 22, p.131; Tadele Geremew supra note 44, p.37.

<sup>170</sup> Ibid.

<sup>171</sup>Staff Reporter, 2014, Shortage of Finance and The Public-Private Debacle, *published in Business and Economy*, 13September 2014,P.1.

<sup>172</sup>Admassu Bezabeh1 and 2Asayehgn Desta, supra note 22,p.33.

<sup>173</sup> Tadele Geremew supra note 44,p.24.

<sup>174</sup>Id,pp.24-25.

too young and inexperienced to compete.<sup>175</sup> These potential effects limiting competition may lead to skewed credit allocation at the expense of poor local creditors<sup>176</sup> towards large scale industrial, real estate and service enterprises (including trade), i.e. into the most profitable products—the so-called "cherry picking" argument – and away from agriculture,<sup>177</sup> less credit to small and medium-sized enterprises,<sup>178</sup> and rural areas, which are sectors of high priority in the government's development strategy.<sup>179</sup> These all, may cause financial fragility,<sup>180</sup> distress, financial instability<sup>181</sup> rather than financial stability in country banking sector.<sup>182</sup>

*Second*, Mode 3 Commercial presence of foreign banking sectors in Ethiopia causes, foreign banks may not be interested in mobilizing domestic savings. They may concentrate on lending mainly for trade purposes in capital city and other urban centers using foreign funds, contributing little towards the development of rural banking. Thus, the fear that outreach of the banking system may actually decline rather than expand as a result of foreign bank entry.<sup>183</sup>

*Third*, Mode 3 Commercial presence of foreign banking sectors in Ethiopia cause dominance in the domestic banking sector, exposure of the country's economy to economic shocks and fluctuations in the countries.<sup>184</sup>

*Fourth*, the effects of Mode 3 Commercial presence of foreign banking sectors in Ethiopia in particular short-term capital flows, foreign banks may serve as conduits for the inward and outward flow of such capital flight<sup>185</sup> may cause foreign exchange and/or liquidity shortages<sup>186</sup> especially during economic crisis.<sup>187</sup> At the same time, foreign banks are likely to incur additional costs and face more obstacles when compared to domestic banks. They may have less information compared to local banks on how to do

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<sup>175</sup> Gebrehiot Ageba & Derk Bienensupra note 84, P.12.

<sup>176</sup> Tadele Geremew supra note 44, p.38.

<sup>177</sup> Gebrehiot Ageba & Derk Bienensupra note 84, P.12.

<sup>178</sup> Jonse Bane supra note 166.

<sup>179</sup> Gebrehiot Ageba & Derk Bienensupra note 84, P.12.

<sup>180</sup> Ibid.

<sup>181</sup> Tadele Geremew supra note 44, p.38.

<sup>182</sup> Kozo Kiyota, Barbara Peitsch and Robert M. Stern, supra note 22, p.132.

<sup>183</sup> Gebrehiot Ageba & Derk Bienensupra note 84, P.12.

<sup>184</sup> Jonse Bane, supra note 166.

<sup>185</sup> Ibid.

<sup>186</sup> Gebrehiot Ageb & Derk Bienensupra note 84, P.12.

<sup>187</sup> Jonse Bane, supra note 166.

business in Ethiopia, putting them at a disadvantage, at least until they have been in the country for some time. Moreover, foreign banks might be exposed to discrimination by individual customers. Additionally, diseconomies might arise because of an institutional environment that is culturally different.<sup>188</sup>

On the other hand, the Ethiopian Government argues that WTO accession would help to facilitate economic growth, attract foreign investment, secure predictable and transparent market access, allow it to have a say on the direction of globalization,<sup>189</sup> enhancing financial intermediation and economic growth, but Ethiopian government remains strongly opposed to banking sector liberalization<sup>190</sup> due to concerned about the potential impact of foreign bank entry on the development of the domestic banking sector, access to and the allocation of credit, domestic savings mobilization, the country's capital account, and currently the inability of the central bank to supervise foreign banks and the new products and services that they introduce into the market<sup>191</sup>

Generally, Mode 3 Commercial presence of foreign banking sectors in Ethiopia currently infant banking sector in the absence of adequate policy, Regulation and market situation environment may, however, lead to risks. Thus, Mode 3 Commercial presence of foreign banking sectors in Ethiopia does not pose a dangerous threat by itself; rather the absence of appropriate policy, prudential regulation and regulatory institutions, and uncompetitive market situation accelerate financial instability and crisis.<sup>192</sup> Given their current state in terms of capital, human resource, technology etc., existing domestic banking sector would be exposed to stronger competition without benefiting from the transfer of know-how and technology in this scenario. This implies little advantage and huge risk of failure

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<sup>188</sup> Admassu Bezabeh1 and 2Asayehgn Desta, *supra* note 34,p.33.

<sup>189</sup>Melaku Geboye *supra* note 3, pp. 339–362.

<sup>190</sup> Kozo Kiyota , *Barbara Peitsch and Robert M. Stern ,supra* note 22, p.131.

<sup>191</sup> *Ibid.*

<sup>192</sup>*Solomon Abay, supra* note15, p.27 andTadele Geremew *supra* note 67,p.38, *stating that*, Achieving the goal of Liberalization of Financial sector depends on adequate prudential policy measures, the appropriate regulatory and supervisory framework, All of which are lacking in Ethiopia. In the absence of effective regulatory, supervisory regimes and appropriate macroeconomic policies, commitment towards financial liberalization may not have positive impacts. Even worse, liberalization potentially leads into serious financial crisis. For instance, the main cause of huge financial crisis for many countries in the past was due to the weak regulation and supervision of financial liberalization.Hence, therefore, in the existing Ethiopia's circumstances; weak regulatory and macro-economic policies; and underdeveloped financial system, it is most probably difficult for Ethiopia to reap the potential benefits and avoids the risks of financial services sector liberalization.

from infant industry argument point of view. The government of Ethiopia negotiate to stay with progressive liberalization of Ethiopian banking sector with particular duration for maintaining the status quo upon which it will build domestic financial service capacity. Such opening requires a number of measures from the government, each banking sectors and stakeholders<sup>193</sup> The best thing, therefore, is the country to negotiate for to stay at the current level of liberalization commitment in Mode 3 Commercial presence of foreign banking sectors in Ethiopia and to leave commitment level behind the current level of liberalization commitment for future consideration. This may serve as a concession not to committing in banking services for the reason that this are more risk prone and difficult to regulate.<sup>194</sup>

#### **4.5.4. Mode 4 Presence of natural persons in Ethiopia to provide banking services**

**Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.<sup>195</sup>

The use of this mode and its impact on the Ethiopian economy is considered to be minimal. There will also be less pressure from the accession negotiations and perhaps less concern from domestic economic considerations towards committing to this mode. Almost none of the recently acceded countries made commitments in this mode and thus, Ethiopia can, similarly, reinforce any strategy that keeps its economic and legal interest. However, liberalization in this mode requires the movement of people and labor asking good labor standards and that will require amendment of the laws of Ethiopia.<sup>196</sup>

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<sup>193</sup>The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *supra note 143*, pp.40-44.

<sup>194</sup>Solomon Abay, *Acceding to the WTO From a Least Developed Country Perspective, the Case of Ethiopia, Studies in International Economic Law*, (not dated), p.193.

<sup>195</sup>WTO, *supra note 142*.

<sup>196</sup>The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *supra note 143*, pp.50-51.

Ethiopian current financial laws and practices allow foreign expertise to provide technical services in exceptional the temporary movement cases.<sup>197</sup> Concerning the temporary movement of natural persons in Ethiopia , the NBE has foreseen the possibility to authorize consultants, actuaries, surveyors, loss assessors and loss adjustors that have already been licensed abroad to give such services in Ethiopia.<sup>198</sup> The temporary presence of these types of natural persons in Ethiopia is recommendable to enable intra-corporate transfer of knowledge.<sup>199</sup>

#### 4.6. Conclusion

Before Ethiopia has applied for WTO membership, between the years 1997-2003, Ethiopia has been undertaken an impact assessment study to identify the cost benefit analysis of joining the WTO on Ethiopia's economic policies, strategies, laws and regulations. The outcome of the study indicated that the benefits of joining the WTO outweigh the cost. Since 2003 Ethiopia apply for implementing the WTO accession negotiation agreements. From Ethiopia's WTO accession negotiations view, four key challenges have been emphasized. The *first* refers to knowing the WTO and knowing the System; the *second* refers to lack of capacity; the *third* involves complexity of the accession process and the *fourth* emanates from lack of clear rules or a systematic approach to the accession process.<sup>200</sup>

The Ethiopian banking sector policy prohibits foreign nationals or organizations fully or partially to open banks or branch offices or subsidiaries of foreign banks in Ethiopia or acquire the shares of Ethiopian banks in any form.<sup>201</sup> It results in the closed nature of Ethiopia's banking system in which there is no foreign banks participation, a non-competitive market structure, and strong capital controls by NBE.<sup>202</sup>

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<sup>197</sup>Id,p.51.

<sup>198</sup>Id, ,p.18.

<sup>199</sup>Id,p.51.

<sup>200</sup>Statement By H.E. MrMekonnen Manyazewal. supra note 7.

<sup>201</sup> NBE,2008, Banking Business Proclamation No. 592/2008,*Federal Negart Gazeta*,2008,.Art. 2(5) and Art. 9.

<sup>202</sup> Kozo Kiyota, Barbara Peitsch, and Robert Stern, supra note 22, p. 19; Solomon Abay supra note 15 , p.356.

More over based on market led economic policy, the government of Ethiopia implemented several other financial reform measures like<sup>203</sup> strengthening domestic banking sector competitive capacity before full liberalization, strengthening NBE's regulatory and supervisory capacities, giving the banks autonomy,<sup>204</sup> and gradually liberalizing its banking sector.<sup>205</sup>

According to a series of interviews, different banking sector reports and studies shows even though government took a lot of reform to strength banking sectors, however Ethiopian banking sectors still have a lot of Challenges that need further improvements.<sup>206</sup>Such challenges areEthiopia's banking sector infancy as well as beginners, lack of banking culture, the technological Know-how ,and shortage of skilled man power, a non-competitive market structure in which despite the banking concentrations, the sector's has been operating in monopolistic competition environment, strong capital controls in place, heavy dominant role of state-owned NBE's regulation and weak regulatory and supervisory capacity of the National Bank of Ethiopia are Challenges which need further improvement in Ethiopian banking sector.

Making liberalization commitments in banking sector under GATS framework may result in both benefits and risks.<sup>207</sup> However, there is no clear cut formula or universal standards for liberalization of banking sector in GATS framework. Banking services liberalization policies largely depend on country-specific conditions on the basis of which countries could follow different commitment scenarios while they opt for banking liberalization commitments.<sup>208</sup> Therefore, "there shall be flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development and country's unique situation."<sup>209</sup>

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<sup>203</sup> Alemayehu Geda <sup>1</sup>,supra note 18, p.1.

<sup>204</sup> Alemayehu Geda and Jacqueline Irving, supra note 19, p.117.

<sup>205</sup> Alemayehu Geda,supra note 18,p.13.

<sup>206</sup>“(Confidential), Commercial Bank of Ethiopia, supra note 65.

<sup>207</sup> Tadele Geremew supra note 44, p.38.

<sup>208</sup> Ibid.

<sup>209</sup> An Analysis of The WTO Accession Guidelines for Least Developed Countries ,supra note 81.

Global experience with financial liberalization has been a mix of bewildering array of experiences. “Several countries have suffered serious banking crises following the opening of their financial markets, and banking crises have generally been good predictors of currency crises.”<sup>210</sup> The relationship between liberalization and a banking crisis depends strongly on the strength of capital regulation and supervision. The probability of a banking crisis is high in a country with very weak regulation and lethargic supervision. By contrast, the probability of a banking crisis decreases with liberalization in a country with stricter regulation and vigorous supervision.<sup>211</sup>

Moreover Liberalization of banking sector, whether multilaterally or by other ways, can cause both benefits and risks. Due to the nature of trade in banking services and the importance of banking sector for the economy at large, negotiation on trade in banking sector is one of the key issues in the accession process of the WTO.<sup>212</sup> Liberalizing banking sector is the most important issue that will take the lion’s share of the negotiation.<sup>213</sup> Hence, for successful banking sector liberalization, therefore, it is essential that specific prerequisites are in place. Prudential regulation and supervision of financial systems, adequate macroeconomic policy and reforms of domestic banking sector market situation, appears to be crucial for achieving the potential gains of liberalization of banking sector.<sup>214</sup> In other words, a more liberal trade regime encouraged by the WTO membership may expose infant banking sector to stronger competition from abroad.<sup>215</sup>

GATS and the analysis of the accession benchmarks for LDCs adopted by the WTO general council at the end of July 2012 with the aim to further strengthen, streamline, and operationalise the 2002 LDC accession guideline<sup>216</sup> are flexible in allowing Sector-specific commitments contains exception or flexible provisions which allow WTO members to depart from their obligations or commitments under the agreement in very specific circumstance which is so called “prudential carve- out” which allow WTO

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<sup>210</sup> Tilahun Esmael supra note 1, p.219.

<sup>211</sup> Admassu Bezabeh1 and 2Asayehgn Desta, supra note 34, p.35.

<sup>212</sup> Gebrehiwot Ageba &Derk Bienen, supra note 84, P. 1.

<sup>213</sup> Gebrehiwot Ageba and Derk Bien, supra note 84.

<sup>214</sup> Tadele Geremew Tessema ,supra note 44.

<sup>215</sup> AACCSA, supra note 87.

<sup>216</sup> An Analysis of The WTO Accession Guidelines for LDCS supra note 81, P.1.

members to take measures for prudential reasons ,including for the protection of investors, depositors, policy holders , and for preserving the integrity and stability of the financial system; and progressive liberalization in line with national policy objectives and level of development of individual members, both overall and individual sectors. The member countries are not only agreed to facilitate and simplify the accession process for LDCs, they have also agreed to look into other issues such as market access and technical assistance.<sup>217</sup> Thus, there shall be flexibility for Ethiopia opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation.<sup>218</sup> Moreover, WTO member also “shall take into account the serious difficulty of Ethiopia as acceding LDCs undertaking commitments, in view of their special economic situation<sup>219</sup>, human resources and technical capabilities<sup>220</sup> and their individual development, financial and trade needs.”<sup>221</sup>

Despite the WTO accession guidelines, from practical view those LDC accessed to the WTO until 2014 faced variety of challenges in the course of their accession process<sup>222</sup>, have long complained that WTO members routinely ask them to take on commitments beyond their capacities<sup>223</sup> or exceed those required from LDCs and other developing countries that joined the organization in its early years or <sup>224</sup> forced to accept more onerous terms of negotiations which go beyond their specific capacities and even beyond WTO requirements<sup>225</sup> mainly due to lack of technical assistance and capacity constraints which comes as the result of weak policy, un strengthen regulatory framework and capacity constraint of banking sector. So, LDCs currently on the accession negotiation or seek to accessed in the future, it is logical to expect that it may face such challenges that those recent LDCs accessed already confronted. Thus, the experiences of those accessed countries could assist these LDCs not to repeat avoidable mistakes which would

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<sup>217</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 88, p.1.

<sup>218</sup> An Analysis of The WTO Accession Guidelines for LDCS *supra* note 81.

<sup>219</sup> *Ibid*

<sup>220</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 88.

<sup>221</sup> An Analysis of The WTO Accession Guidelines for LDCS *supra* note 81.

<sup>222</sup> Ratnakar Adhikari and Navin Dahal, *supra* note 88, P.10.

<sup>223</sup> An Analysis of the WTO Accession Guidelines for Least Developed, *supra* note 81, p.3.

<sup>224</sup> *Ibid*.

<sup>225</sup> Hussein Ahmed, 2013, *supra* note 91, p.13.

be committed in the course of its accession process, commitments and during implementation.<sup>226</sup>

Generally, the lessons to be drawn from the above WTO accession rule and country experiences shows that, a well-designed coordination structure that allows all stakeholders to participate in understanding the WTO accession rule before accessed to the WTO and liberalize its banking sector is significantly important. Accession requires a pro-found consideration and work in the areas of banking sector-related legislation and law enforcement, economic and policies, development of financial, institutional and human resources capacity of banking sector is vital.

Potential effect of Ethiopia's banking sector Liberalization commitment in terms of the GATS distinguishes between four modes of trade supplying services openness varies based on the mode of supply. It is closed from commercial presence of foreign banking sectors in Ethiopia (Mode 3). Cross-border supply of banking services (Mode 1) is permitted for selected services in banking sectors. Cross-border purchase of financial services is not explicitly regulated. There is no prohibition of consumption-abroad of banking services (Mode 2) as long as foreign exchange requirements are met. The same is true for Mode 2 export of banking services. Finally, with regard to the presence of natural persons in Ethiopia to supply banking services (Mode 4), the NBE allows certain kinds of service providers to deliver their service in Ethiopia.<sup>227</sup>

Therefore, maintaining capital controls in mode 1 (staying unbound) is the best option for Ethiopia. Hence, a careful approach in opening the banking services sectors in mode 1 appears to be advisable. The offering full liberalization of mode 2, which bears no cost, is a risk-free decision for Ethiopia. Mode 3 Commercial presence of foreign banking sectors in Ethiopia infant banking sector, in the absence of adequate policy, Regulation and market situation environment may, however, lead to risks. The best thing, therefore, is the country to negotiate for to stay at the current level of liberalization commitment (gradually liberalization of Ethiopian banking sector until it builds domestic financial service capacity) in Mode 3 and to leave commitment level behind the current level of

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<sup>226</sup>Ibid.

<sup>227</sup>The Impact of Ethiopian Accession to the WTO on its Financial Service Sector, *supra note 143*, p.23.

liberalization commitment for future consideration. This may serve as a concession not to committing in banking services for the reason risk ought weight the benefit and difficult to regulate. <sup>228</sup>Concerning the temporary movement of natural persons in Ethiopia mode 4, the temporary presence of these types of natural persons in Ethiopia is recommendable to enable intra-corporate transfer of knowledge.<sup>229</sup>

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATION**

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<sup>228</sup>Solomon Abay, *supra* note 194, p.193.

<sup>229</sup>The Impact of Ethiopian Accession to the WTO on its Financial Service Sector *supra* note 143, p.51.

## **5.1. Conclusion**

Similar to the two complaining sides of banking liberalization in the world, there are arguments for and/ or against liberalization of the Ethiopian banking sector to the outside world. Proponents argue that opening the Ethiopian banking sector to foreign investors has the benefits of efficiency, increased employment opportunity, improve NBE Regulatory and supervision capacity, foreign banks may brought new skill, quality services and new technological know-how. On the other hand, opponents fear liberalization for its risks of financial instability, weakening the domestic financial institutions and the possibility of leaving out the poorest section of the society from accessing the financial institutions.

The WTO, which comes into being on January 1995, is the most important international organization that governs world trade. The purpose of the WTO is to ensure that global trade functions smoothly, freely and predictably. The WTO provides the institutional and legal foundation for the new multilateral trading system under the GATS.

Securing unlimited liberalization for financial service is the aim of GATS framework. Quite in the contrary, GATS framework is targeted in order to eliminate adverse discriminatory measures against financial market access. GATS Sector-specific commitment allow acceding LDCs to adopt framework for Liberalization of Banking Sector commitments that fit with its particular economic circumstances maintaining adequate domestic regulatory controls and provides states wide discretion to depart from its specific market access and national treatment commitments if that country is doing so for a prudential reason. Acceding LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of GATS. But, commitments from acceding LDCs may vary depending on each country's particular circumstances. Therefore, each acceding LDC shall identify its priority service sectors and sub-sectors and make reasonable offers commensurate with its specific situation and capacities.

Ethiopia and those LDCs currently on accession negotiation and seeking accession to the WTO, it is logical to expect that it may face challenges that recent LDCs accessed already confronted because they are not far from the existing reality. They are more

expected to be asked to liberalize its services sectors including the banking sector for foreigners' involvement and competition. Thus, the lesson drawn from the WTO Accession and Banking Liberalization Experience of the countries such as: Nepal, Cambodia, Samoa, Vanuatu Lao PDR and Yemen have gone through this process after 1995 underline that a well-designed formalized institutional coordination structure that allows all national and international stakeholder's participation as well as the WTO members technical support in pre and post the WTO accession negotiations is crucially important. Accession requires a profound consideration and work in the areas of banking sector policy, regulation and market situation along with development of banking sector institutional framework and human resource capacity.

Moreover, the lesson drawn from those six countries shows that, to accomplish the WTO accession successfully, extensive preparation in a concerted manner especially country's conducting WTO accession impact assessment study in country's economy in general and in specific sectors in particular, adoption of best accession Model practice from LDCS having similar economic and vulnerability characteristics, Accession negotiation is relied on government position of best accession practice apart from negotiator's personal knowledge and skill. The country's active integration of regional and international economic membership such as IMF and World Bank is Vital.

The result of a series of interviews and studies in Ethiopian banking sector also shows that, Ethiopian's banking sector liberalization may have positive effects on the efficiency of the banking sector; improve NBE Regulatory and supervision capacity; may have employment and wages opportunity; efficient quality services and technological know-how; access to finance. However, currently Ethiopia's banking sector liberalization has risks and uncertainties the banking sectors. Such concerns are: the NBE's inability to regulate and supervise the sophisticated foreign giant Banks; Ethiopia's banking sector infancy; Foreign banks may not address directly issues of poverty alleviation and the access of low-income and rural-based savers and borrowers to financial services; domestic banking sector still lack of Capital adequacy, technological know-how, qualified human resource, banking culture and service quality. These all risks need further improvement in the sector

Since 2003 the Ethiopian accession process held the third working party meeting in March 2012. The Working Party on the Accession of Ethiopia was replied the fourth round WTO members answer to additional questions even though there were a number of challenges commonly encounter in its accession process. Among a number of challenges commonly encounter in its accession process, knowing the WTO and knowing the System; lack of capacity, complexity of the accession process and lack of clear rules or a systematic approach to the accession process were identified challenges.

The WTO members are also asking Ethiopia to clarify country's timetable for privatizing the banking sector sooner than the time. According to the Ethiopian Growth and Transformational plan I (GTP I 2010/11-2014/15) "an ambitious five-year development plan launched in 2010 to assist the country in reaching "middle income" status, the country may accede to the WTO by 2015. But, due to WTO members multilateral question and replies to the question didn't end still now the country didn't accede to the WTO by 2015. Currently, the country found on preparation for fourth round multilateral negotiation party meeting. The country has submitted goods offer but, didn't start bilateral trade negotiation in services offer; however, for Canada questions the country give replies. It could be initial stage for the country to start bilateral negotiation.

Concerning technical assistance of international community to Ethiopia since the country start WTO accession, there was no limitation on behalf of the WTO as well as other partners so far. However the main problem rather, Ethiopia's lack of capacity to managetechanical assistance given to and effectively use them and the inability of ministry of Trade WTO reference office hold on trained professionals who often leave the office for other jobs. This make it difficult to the office to have trained work force needed in the course of negotiation.

Concerning argument for and/or against Ethiopia's Banking Sector Liberalization in recent years, it can at least be possible to come to an intermediate position that banking liberalization commitment can contribute to potential gains in the form of competency, efficiency and providing efficient capital reallocation for productive investment based on the level of the banking institutions, the household, and the whole economy priority of the country. The available evidence also, however, suggests that the commitment on

argument for and/or against liberalization of banking sector is associated with the countries government launching prudential regulatory and macro-economic policies and sound market computation situation environment for banking sectors. Therefore, Liberalization commitment of the banking sector in Ethiopia absent adequate policy,prudential Regulation and uncompetitive market situation environment may, however, lead to risks. It may threaten domestic financial services; will “cherry pick” the huge sectors, capital out flows and cause banking crisis. Thus, it is argued that liberalization does not pose a dangerous threat by itself rather the absence of appropriate policy; absence of prudential regulation and absence of competitive banking sector market situation environment accelerate banking sector instability and crisis.

Thus,to benefit from the WTO accession and Banking sector liberalization commitment , and to save from the risk,Ethiopia’s banking sector commitment in terms of four modes of trade supplying services are : maintaining capital controls (staying unbound) and a careful approach in opening the banking services sectors in mode 1 appears to be advisable and the best option for Ethiopia. The offering full liberalization of mode 2, which bears no cost, is a risk-free decision for Ethiopia. Mode 3 Commercial presences of foreign banking sectors in Ethiopia infant banking sector, in the absence of adequate policy, prudential Regulation and uncompetitive market situation environment may, however, lead to risks.The best thing, therefore, is the country to negotiate to stay at the current level of liberalization commitment(gradually liberalization of Ethiopian banking sector until it builds domestic banking sector capacity)in Mode 3 and to leave commitment levelbehind the current level of liberalization commitment for future consideration.This may serves as a concession not to committing in banking services for the reason risk aught weight the benefit and difficult to regulate.Concerning the temporary movement of natural persons in Ethiopia mode 4, the temporary presence of these types of natural persons in Ethiopia is recommendable to enable intra-corporate transfer of knowledge.

## **5.2.Recommendation**

Ethiopia should reconsider its banking sector policy which inhibits foreign bank entry in any form, a heavy dominant role of state-owned NBE’s regulation and the dominant role of state-owned CBE market situation environment. The country should make

commitment for the liberalization of the sector in gradually and carefully restricted manner, this will provide the government, reasonable time for improving the competency, efficiency, regulation, market situation and capacity of the sector. The reform have to take in to account the country's development strategies and implementing capacities relating to (human resource, financial, technological now-how and institutional) capacity's, economic and social goals, and legislative reforms which all are necessary if Ethiopia is in line with GATS WTO rules and LDCs accession guidelines. An important consideration for any acceding country is drawn lesson of the experience of recently accessing country which has similar economic and vulnerability characteristics.

In the light of the above, the following recommendation measures need to be considered and can help to reap the potential benefits and avoid the risk of banking sector liberalization for Ethiopia in view of accession to the WTO.

1. The accession process requires patience and understanding as well as the technical support of the international community. The ambiguity of the accession process demands the accession process a prolonged, multi-stage and complex process as well as causes to accept onerous commitment. So, the Government, NBE, Ethiopia's Government representatives of WTO accession Working party and all other stake holders before starting bilateral negotiation should: *first* carefully understand the WTO, the WTO System and complexity of the accession process; *second*, invest on capacities building relating to Ethiopian banking sectors (human resource, financial and institutional capacity); *third*, adopt clear rules or a systematic approach to the accession process which in line with the WTO accession rule and country's particular banking sector policy, regulation and market situation that would set the direction, commitment and dedication to the process of accessions to conclude.
2. To accomplish Ethiopia's WTO accession Successfully the country's extensive preparation in a concerted manner especially country's conducting WTO accession impact assessment study in county's economy general and in specific sectors in particular, adoption of best accession practice from acceding LDCs similar Economic and vulnerability characteristic practices and accession negotiation is relied on government position on best accession practice apart from negotiator's personal knowledge and skill. The Government, the private sector, policy makers, researchers,

economic and civil society organizations need to grasp the need for forging a productive relationship between them in well-designed formal and institutional coordination structure that allows all national and international stakeholder's participation in pre and post the WTO accession negotiations to participate, is crucial for successful accession. This all, of course, will necessitate an increasingly transparent and robust set of communication channels and are key instrument to mitigate WTO plus obligation and minus right burden comes from WTO accession and banking sector liberalization.

3. Even though a lot of reforms and improvements overtime in Ethiopian banking sector, banking sector still found at infant; due to weak policy, weak the regulatory and supervisory capacity and the dominant CBE market situation environment. Thus, Ethiopia should upgrade adequate policy (Improving the country's low rate of mobilization and doing on country's luck of saving culture have been one of the policy concerns of adjustment program to all banking sectors), sound regulatory and supervisory capacity frame work and relax heavy dominant role of state -own CBE market computation environment without much delay to reap maximum benefits and avoid the treat associated with it in order to compute with Global banking sector realize best stake holders needs world-class banks by winning the public confidence.
4. To benefit from the WTO accession and Banking sector liberalization commitment , and to save from the risk,Ethiopia's banking sector commitment in terms of four modes of trade supplying servicesopenness should be varies based on the mode of supply:
  - 4.1. Cross-border supply of banking services (Mode 1) is permitted for selected services in Ethiopian banking sectors. Cross-border purchase of financial services is not explicitly regulated. Therefore, Ethiopia should negotiate maintaining capital controls (staying unbound) in mode 1 and a careful approach in opening the banking services sectors in mode 1.
  - 4.2. There is no prohibition of consumption-abroad of banking services (Mode 2) as long as foreign exchange requirements are met. The same is true for Mode 2 export of banking services. Therefore, Ethiopia should offer full liberalization of mode 2, which bears no cost, and a risk-free decision for the country.

- 4.3. Ethiopian banking sector policy inhibits foreign bank entry in any form. It is closed from commercial presence of foreign banking sectors in Ethiopia (Mode 3). Currently the country's banking sector drawbacks are: infant banking sectors, absence of adequate policy, prudential Regulation and uncompetitive market situation environment, with all such problem exist Ethiopia's banking sector commitment to open commercial presence of foreign banking sectors in Ethiopia (Mode 3) leading the country's banking sector to crises. Therefore, the country should negotiate to stay at the current level of liberalization commitment (gradually liberalization of Ethiopian banking sector until it builds domestic banking sector capacity) in Mode 3 and to leave commitment level behind the current level of liberalization commitment for future consideration. This serves as a concession not to committing in banking services in mode 3 for the reason risk outweigh the benefit.
- 4.4. With regard to the presence of natural persons in Ethiopia (Mode 4), to supply banking services, the NBE allows certain kinds of service providers to deliver their service in Ethiopia. The temporary movement of natural persons (mode 4) in Ethiopia is vital to enable intra-corporate transfer of knowledge. Therefore, the country should commit to offer temporary movement of natural persons (Mode 4) to supply banking services in Ethiopia.

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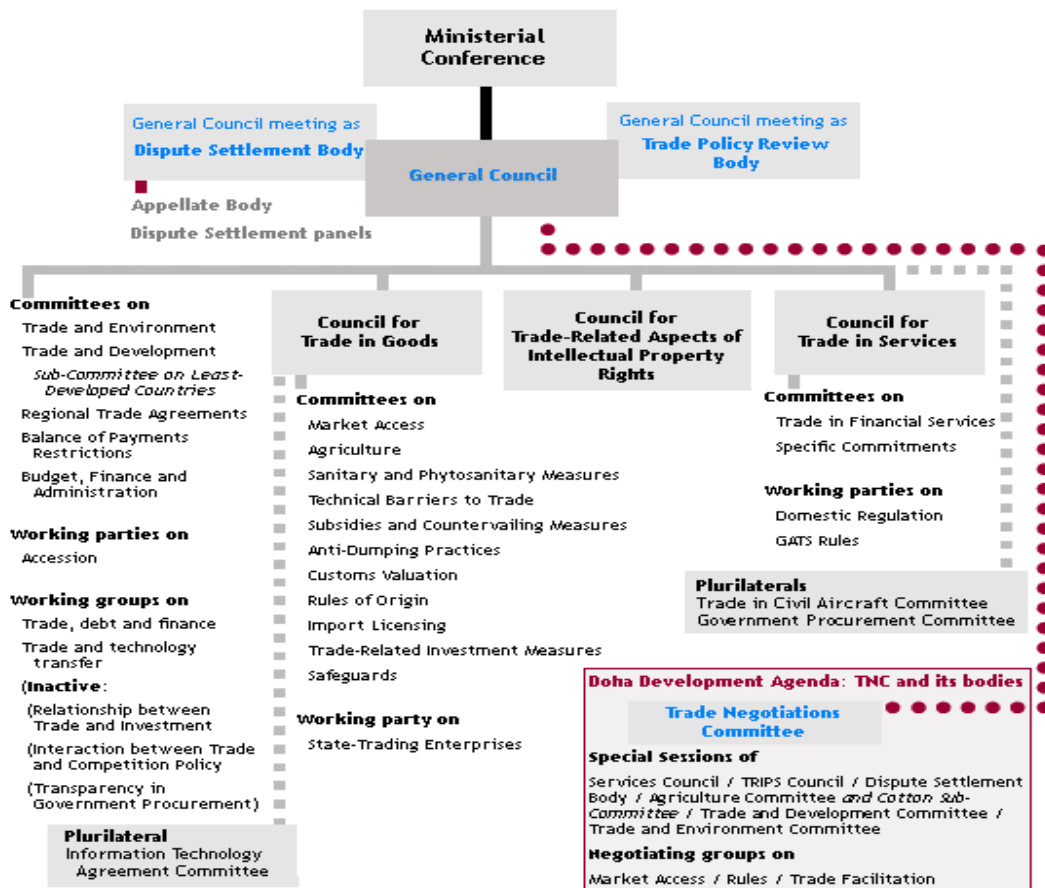
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## **Annexes**

### **Chapter 2 Annex**

Annex-1 UNDERSTANDING THE WTO: THE ORGANIZATION  
WTO organization chart



## Chapter 3 Annexes

### Annex- 1. Countries Completed Accessions to the WTO, as June 2014

Key events in the growing membership of the multilateral trading system

#### WTO period

1996 Bulgaria and Ecuador accede.  
1997 Mongolia and Panama accede.  
1998 Kyrgyz Republic accedes.  
1999 Estonia and Latvia accede.  
2000 Albania, Croatia, Georgia, Jordan and Oman accede.  
2001 China, Lithuania and Republic of Moldova accede.  
2002 Chinese Taipei accedes.  
2003 Armenia and the former Yugoslav Republic of Macedonia accede.  
2004 Cambodia and Nepal accede.  
2005 Kingdom of Saudi Arabia accedes.  
2007 Tonga and Viet Nam accede.  
2008 Cape Verde and Ukraine accede.  
2012 Montenegro, the Russian Federation, Samoa and Vanuatu accede.  
2013 Lao People's Democratic Republic and Tajikistan accede.  
2014 Yemen June 2014.

Source: Craig Van Grassek, 2013, *The History and the Future of the WTO*, *WTO online bookshop publications*, 2013, p.124, (from **Table 4.1A**), and Calculated from WTO, the Organization: Members and Observers, *News*, 2014

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#### **Annex- 2The WTO Observer Governments**

Afghanistan, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina

Comoros, Equatorial Guinea, Ethiopia, Holy See (Vatican) , Iran, Iraq, Kazakhstan,

Lebanese Republic, Liberia, Republic of, Libya, Sao Tomé and Príncipe, Serbia, Seychelles, Sudan, Syrian Arab Republic, and Uzbekistan

**Note:** With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

Source: The WTO, 2014, The Organization Members and Observers, *News*, 2014,

### **Annex- 3. Proven oil reserves and production in selected net oil-exporting countries, 1995 and 2010.**

**Acceded to the WTO:** Saudi Arabia, Kingdom of, Russian Federation, Azerbaijan and Ecuador.

**Countries Acceding to the WTO:** Iran, Iraq, Libya, Kazakhstan and Algeria

Source: Craig Van Grastek, The History and the Future of the WTO, WTO online bookshop publications, 2013, p-136 (**Table 4.4**)

### **Annex-4. Economies in Transition of Independent states and Georgia**

Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan

Source: Country classification, 2014, World Economic Situation and Prospects, 2014, p-145 (Table B Economies in transition)

### **Annex-5. The 23 UN members in various stages of the accession process**

Currently, there are 23 UN members in various stages of the accession process: Afghanistan, Algeria, Andorra, Azerbaijan, Bahamas, Belarus, Bhutan, Bosnia and Herzegovina, Comoros, Equatorial Guinea, Ethiopia, Iran, Iraq, Kazakhstan, Lebanese Republic, Liberia, Republic of Libya, Sao Tome and Principe, Serbia, Seychelles, Sudan, Syrian Arab Republic, and Uzbekistan. These states constitute 12.5 per cent of the UN's total membership. There are a further 14 that are members of the UN (seven per cent of total UN membership) but that have not applied for WTO membership. These are Eritrea, Kiribati, People's Democratic Republic of Korea, Marshall Islands, Micronesia, Monaco, Nauru, Palau, San Marino, Somalia, South Sudan, Timor-Leste, Turkmenistan and Tuvalu.<sup>1</sup>

Take from Lisa Toohey,<sup>\*2013,</sup> Barriers To Universal Membership Of The World Trade Organization, *Australian International Law Journal*.,2013,P.105,With Slight modification of Yemen being the WTO member since June 25,2041.

**Annex-6: LDCs which are non members of the WTO**

No	LDC <sup>1</sup>	Date of Working Party Establishment
1	Afghanistan	Since 2004
2	Bhutan	Since 1999
3	Comoros	Since 2007
4	Equatorial Guinea	Since 2007
5	Eritrea	—
6	Ethiopia	Since 2003
7	Kiribati	—
8	Liberia	Since 2007
9	Sao Tome and Principe	Since 2005
10	Somalia	—
11	Sudan	Since 1994
12	Timor-Leste -	—
13	Tuvalu -	—

Source: [www.wto.org](http://www.wto.org)

**Annex-7: Actual and projected top 20 economies ranked based on GDP in PPP terms**

2011		2030		2050		
PPP rank	Country	GDP at PPP (2011 US\$bn)	Country	Projected GDP at PPP (2011 US\$bn)	Country	Projected GDP at PPP (2011 US\$bn)
1	US	15,094	<b>China</b>	30,634	<b>China</b>	53,856
2	<b>China</b>	11,347	US	23,376	US	37,998
3	India	4,531	India	13,716	India	34,704
4	Japan	4,381	Japan	5,842	<b>Brazil</b>	8,825
5	Germany	3,221	Russia	5,308	Japan	8,065
6	Russia	3,031	<b>Brazil</b>	4,685	Russia	8,013
7	<b>Brazil</b>	2,305	Germany	4,118	<b>Mexico</b>	7,409
8	France	2,303	<b>Mexico</b>	3,662	<b>Indonesia</b>	6,346
9	<b>UK</b>	2,287	<b>UK</b>	3,499	Germany	5,822
10	Italy	1,979	France	3,427	France	5,714
11	<b>Mexico</b>	1,761	<b>Indonesia</b>	2,912	<b>UK</b>	5,598
12	Spain	1,512	Turkey	2,760	Turkey	5,032
13	South Korea	1,504	Italy	2,629	<b>Nigeria</b>	3,964
14	Canada	1,398	Korea	2,454	Italy	3,867
15	Turkey	1,243	Spain	2,327	Spain	3,612
16	<b>Indonesia</b>	1,131	Canada	2,148	Canada	3,549
17	Australia	893	Saudi Arabia	1,582	South Korea	3,545
18	Poland	813	Australia	1,535	Saudi Arabia	3,090
19	Argentina	720	Poland	1,415	<b>Vietnam</b>	2,715
20	Saudi Arabia	686	Argentina	1,407	Argentina	2,620

Source: World Bank estimates for 2011, PwC estimates for 2030 and 2050<sup>1</sup>

## Annex-8:A summary of WTO Accession Procedure

Step	Procedure	
1.	The applicant sends a communication to the Director-General of the WTO, indicating its desire to accede to the WTO under Article XII.	
2.	The Communication is circulated to all WTO members.	
3.	A Working Party is established and a Chairperson is appointed.	
4.	The WTO Secretariat informs the applicant about the procedures to be followed.	
5.	The applicant submits a Memorandum on its foreign-trade regime for circulation to all WTO members.	
6.	The WTO Secretariat checks the consistency of the Memorandum with the outline format (Annex I) and informs the applicant and the members of the Working Party of its views thereon.	
7.	Working Party members submit questions on the Memorandum and the applicant provides answers thereto (Repeat 7 if necessary).	
8.	The Working Party meets.	
9.	Working Party members submit more questions on the Memorandum.	Bilateral negotiations between the applicant and interested Working Party members on concessions and commitments on market access for goods and services (as well as on the other specific terms of accession) are undertaken.
10.	The applicant answers them.	>>>
11.	The Working Party meets again.	>>>
12.	Repeat steps 9 and 10 above, until 12. The examination of the Memorandum is complete.	>>>
13.	Terms and conditions (including commitments to observe WTO rules and disciplines upon accession and the transitional period required to make any legislative or structural changes where necessary to implement these commitments) are agreed.	Concessions and commitments on market access for goods and services (as well as on the other specific terms of accession) are agreed.
14.	A working Party Report is prepared.	The schedule of Concessions and Commitments to GATT 1994 and the Schedule of Specific Commitments to the GATS are prepared.
15.	A draft Decision and a draft Protocol of Accession (containing the commitments listed down in the Working Party Report and the Schedule of Concessions and Commitments to GATT 1994 and Schedule of Specific Commitments to the GATS) are prepared.	
16.	The Working Party adopts the —accession package.	
17.	The General Council/Ministerial Conference approves the —accession package.	
18.	The applicant formally accepts the —accession package.	
19.	The applicant notifies the WTO Secretariat of its formal acceptance.	
20.	Thirty days after step 19 (above) has been taken, the applicant becomes a member of the WTO.	

#### Chapter 4 Table

**Table 4.1: Capital and Branch Network of the Banking System as at the Close of June 30, 2014**

*(Branch in Number and Capital in Millions of Birr)*

No	Name of the Bank	Branch Network								Capital			
		2012/13				2013/14				2012/13		2013/14	
1	<b>Public Banks</b>	Reg ions	A/A	Tot al	% Share	Reg ions	A/A	Total	% Sha re	Total capital	% share	Total capital	% Share
	Commercial Bank of Ethiopia	595	137	723	42.4	700	156	856	38.8	9,027.0	38.7	9,045.0	34.2
	Construction & Business Bank	63	42	105	6.1	68	47	115	5.2	465.0	2.0	642.1	2.4
	Development Bank of Ethiopia	31	1	32	1.9	31	1	32	1.4	2,554.0	10.9	2,134.8	8.1
	<b>Total Public Banks</b>	689	180	869	50.3	799	204	1003	45.4	12,046.0	51.6	11821.9	44.7
	<b>Private Banks</b>	47	67	114	6.6	62	90	152	6.9	1,628.0	7.0	1,979.3	7.5
	Awash International Bank												
	Dashen Bank	59	53	112	6.5	69	73	142	6.4	1,493.0	6.4	1,994.1	7.5
	Abyssinia Bank	41	45	86	5.0	55	54	109	4.9	909.0	3.9	1,326.	5.0
	Wegagen Bank	38	41	79	4.6	51	49	100	4.5	1,570.0	6.7	1,825.8	6.9
	United Bank	30	45	75	4.3	44	55	99	4.5	951.0	4.2	1,334.4	5.0
	Nib International Bank	30	42	72	4.2	39	55	94	4.3	1,453.0	6.2	1,731.3	6.5
	Cooperative Bank of Oromiya	62	12	74	4.3	84	21	105	4.8	549.0	2.4	739.9	2.8
	Lion International Bank	23	22	45	2.6	35	27	62	2.8	415.0	1.8	514.3	1.9
	Oromia International Bank	44	21	65	3.8	80	29	109	4.9	490.0	2.1	594.3	2.2
	Zemen Bank	3	5	8	0.5	3	6	9	0.4	400.0	1.7	529.1	2.0
	Buna International Bank	20	13	33	1.9	41	22	63	2.9	321.0	1.4	446.6	1.7
	Berhan International Bank	11	11	22	1.3	22	26	48	2.2	340.0	1.5	488.7	1.8
	Abay Bank	37	10	47	2.7	54	16	70	3.2	300.0	1.3	395.0	1.5
	Addis International Bank	2	9	11	0.6	5	16	21	1.0	205.0	0.9	277.9	1.1
	Debub Global Bank	10	4	14	0.8	12	7	19	0.9	114.0	0.5	177.3	0.7
	Enat Bank	0	2	2	0.1	0	3	3	0.1	162.0	0.7	261.6	1.0
	<b>Total Private Banks</b>	457	402	859	49.7	656	549	1205	54.6	11,300.0	48.4	14,615.4	55.3
	<b>Grand Total Banks</b>	867	582	1728	100.0	1455	753	2208	100.0	23,346.0	100.0	26,437.3	100.0