Nepal in the WTO

Introduction

On 23 April 2004, Nepal became a member of the WTO through the negotiation process. During its accession, Nepal has made commitments in the agriculture, goods and services sector which are substantial compared to those made by original members at a comparable level of economic development.

Nepal's WTO Commitments

Nepal has bound its tariff on agricultural goods at an average 42 percent and industrial goods at an average of 24 percent. There is no tariff rate quota. The Aggregate Measurement of Support (AMS) is nil in the schedule, implying that Nepal can not provide trade and production distorting subsidies above the *de minimis* level of 10 percent (Pandey, 2004, 6). Nepal is also not allowed to provide export subsidies except as exempted by the provisions of special and differential treatment (S&DT).

In the non-agricultural sector all tariff lines, barring few on cements, petroleum products, arms and ammunition have been bound. The average final bound rate is about 24 percent. Most of the information technology products are bound at zero.

In the services sector, Nepal has made commitments in 11 sectors and 70 sub sectors. Nepal has made horizontal commitment to keep the first three modes of service supply generally unrestricted except for some conditions. The modes 1 and 2 horizontal commitments are limited only by the provision to provide a maximum of $2,000 to Nepali people travelling abroad. It has kept the mode 3 horizontal market access unrestricted and has made a further commitment to make the conditions of ownership, operation and juridical form and scope of activity for foreign suppliers no more restrictive than those prevailing on the date of accession. Likewise, it will accord horizontal national treatment on mode 3 supply except that foreign suppliers will have to obtain permission and approval through well-defined procedures, and that they are not entitled to incentives and subsidies. Nepal has put conditions, largely in the form of limit to foreign equity participation, in the supply of services across the mode 3 in all 53 service sectors, in which it has made some liberalizing commitments.

In addition, Nepal has also made commitments to make its legal regime compatible with the WTO including that related to intellectual property rights. As per the Legislative Action Plan agreed upon by Nepal during its accession to the WTO, Nepal has agreed to amend/ enact 38 legislations to make its legal regime compatible with the WTO. Nepal has made commitments to comply with all WTO trade rules latest by the end of 2006. For instance, Nepal has made commitment to fully implement the provisions of Agreement on Technical Barriers to Trade (TBT) and Agreement on Sanitary and Phytosanitary Measures by 1 January, 2007.

Positions on the issues of the July Package

The 148 Members of the World Trade Organisation (WTO) met in Hong Kong during 13-18 December 2005, in a bid to bridge the gap between them to complete the Doha Round of negotiations by the end of 2006.

The agenda for the present round of WTO negotiations, also known as the Doha Round, was set by the Ministerial declaration in Doha in 2001. This declaration was a major effort by WTO Members to address the interest of the developing members and is also know as the 'Doha Development Agenda'. However, this spirit could not be sustained for long and the fifth Ministerial in Cancun concluded without the adoption of a declaration. The failure of Cancun put a question mark on the Doha Round. This also led to apprehensions that the developed members of the WTO were not serious in accommodating the interests of the developing and least developed country members. Members were able to bring back hope of completing the Doha Round on time when they managed to agree in the July Package (JP) after hectic negotiations in Geneva on the aftermath of Cancun. The JP focuses on five issues namely, agriculture, non agricultural market access (NAMA), services, trade facilitation and development dimension.

Though ambition for the Ministerial was scaled down and it was not expected to decide on major issues such as modalities for tariff reduction in agriculture and non agricultural market access (NAMA), some important decisions were made during the Ministerial. The implications of these on Nepal, which participated in the Sixth Ministerial for the first time as a full fledged member, are described in the following sections.

Agriculture

Agriculture has been the 'make or break' issue in WTO negotiations. Huge domestic and export subsidies in the developed countries have distorted international trade in agriculture. At the time of the establishment of the WTO, Members agreed to discipline the agriculture sector by reducing domestic and export subsidies. In the present round of trade negotiations, Members are negotiating on the new reduction commitments and time period. Of all the different areas requiring Members to make reduction commitments, they were able to agree only on the end date for elimination of export subsidies in the Hong Kong Ministerial. Members have agreed to the parallel elimination of all forms of export subsidies and disciplines on all export measures by the end of 2013.

The end of export subsidies is likely to increase the world prices of agriculture commodities. This could result in higher food bill for a net food importing country like Nepal. However, increased prices may act as an incentive for farmers to grow more.

Nepal, an LDC Member, is not required to make commitments in market access, domestic support and export subsidies in the present round. However, Nepal will have to be cautious that the modalities for tariff reduction ensures enhanced market access in the developing countries and elimination of tariff peaks and tariff escalation in the developed countries (in case these are not addressed by duty-free quota-free access).

Nepalese exports of agriculture products are concentrated in few products and also in few countries. The major market for vegetable fats, wheat, lentils, cardamom, oil seeds is India whereas the major market for sugar is Europe. (Department of Customs 2003) Thus, the focus of Nepal on market access should be on opening markets in developing countries rather than in the developed countries. Similarly, the export of sugar in the EU has been benefited from the preferences provided by EU under the 'Everything But Arms' initiatives. Thus, aggressive tariff reductions may erode existing preferences.

The framework agreement provides that all members may designate an appropriate number of tariff lines to be treated as sensitive products for tariff reduction. Similarly, it also provides developing countries the right to designate special products based on the criteria of food security, livelihood security and rural development needs. Since LDCs are not required to make reduction commitments, Nepal, in alliance with other LDCs, needs to ensure that special and sensitive products do not adversely affect their market access situation.

The issues of market access, particularly in developed countries, and the domestic supports are not Nepal's priority areas, whereas export competition and the peripheral issues for most of the developed and more advanced developing countries such as food aid, preference erosion, special safeguard measures (SSM) bear significant importance for Nepal. In regards to the SSM, it will be in the interest of Nepal to negotiate for simple and automatic price and volume trigger to invoke safeguard measures.

Non Agricultural Market Access (NAMA)

As Nepal has already bound 99.3 percent of its tariff lines and LDCs are not required to make further reduction commitments on market access in this round, the outcome of this round is not going to alter Nepal's import tariffs on industrial goods. Thus, Nepal's interest in this area is market access for its manufactured goods including garments in developing and developed country markets. Decisions in Hong Kong indicate that the present negotiations in this area are likely to result in tariff reductions in developing countries and duty-free and quota-free access to Nepalese exports in the developed countries. The rise in the use of non-tariff barriers (NTBs) by developed and developing countries to protect their markets is of concern to Nepal as its exports are also facing such hurdles in developed and developing country markets. The Hong Kong Ministerial has not addressed the issue of NTBs properly. Nepal, in alliance with other LDCs, needs to ensure that the issue of NTBs is given priority in WTO negotiations and resolved in favour of LDCs.

Services

The LDCs are not required to undertake new commitments in the services sector. Hence, in services negotiations, Nepal will have only an offensive agenda.

The liberalisation of services sector and particularly in ‘mode 4’, cross border movement of natural persons, can have a huge positive impact in the livelihood options for Nepal. Liberalisation in this mode in developed and some developing countries, particularly for ‘low skilled and unskilled’ categories, is important for Nepal. This needs to be accompanied by elimination of employment conditions, economic needs tests, quota restrictions in visa and recognition of qualifications.

The progress in this area is discouraging for Nepal. Annex C of the HK Ministerial declaration mentions that ‘new or improved commitments on the categories of Contractual Services Suppliers and Independent Professionals’. This is a major setback for Nepal and it will be a Herculean task to include low skilled and unskilled labour in this category. It is still not too late as the annex mentions that ‘methods for full and effective implementation of the LDC Modalities including according special priority to sectors and modes of supply of interest to LDCs’. Hence, Nepal, together with other LDCs, should table plurilateral requests on services and modes of its interest.

Trade Facilitation

JP states that trade facilitation negotiations “shall aim to clarify and improve relevant aspects of Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit”. Building on the progress made in the negotiations, the Hong Kong Ministerial has called upon the Negotiating Group on Trade Facilitation to intensify its negotiations on the basis of Members’ proposals.

Nepal being a landlocked country, the negotiation on trade facilitation is crucial for Nepal for securing transit rights. Implementation of trade facilitation measures will also help in enhancing the competitiveness of Nepalese enterprises. The only worry for Nepal is the cost of implementation of the trade facilitation measures. It is, however, encouraging that developing and LDC Members have been provided policy flexibility of not complying with trade facilitation rules in the absence of external support. Nepal will thus have to utilise this provision and seek financial and technical assistance from the WTO members for implementing trade facilitation measures.

Intellectual Property Rights

Access and benefit sharing (ABS) and prior informed consent (PIC) are two important principles of equity recognised and legitimised in the Convention on Biological Diversity (CBD), 1992. However, with its conflicting rules, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the WTO conflicts with CBD and violates the principles of ABS and PIC. It would have been to the advantage of the developing countries to see an explicit negotiating mandate included in the Ministerial Declaration, calling for an amendment to the TRIPS Agreement to require patent applicants to disclose the origin of genetic resources and associated traditional knowledge along with evidence of PIC and benefit-sharing in their application. However this did not happen and developing countries will have to work hard to achieve this in future negotiations.

Duty-free quota-free Access

The most significant point of the Ministerial Declaration is the obligation for the developed country members of the WTO to provide duty and quota-free access for LDC exports from 2008 or the beginning of next round of trade liberalisation.

There is, however, an important caveat with regard to product coverage: developed countries that face difficulties in providing full unrestricted access in 2008 will only be required to do so for 97 percent of tariff lines. This 3 percent of tariff lines may essentially deprive them of market access for all their products.

Trade Related Investment Measures (TRIMs)

The Ministerial Declaration allows LDCs to maintain on a temporary basis (five years, renewable subject to review), measures that deviate from their obligations under the TRIMs Agreement. This means that Nepal now has the flexibility to implement provisions such as local content requirement on foreign investment. Though Nepal's investment regime is liberalised and such provisions have been done away with, this provision allows policy space for future industrial policy changes.

Aid for Trade

The emphasis the Hong Kong Ministerial Declaration has put on aid to build the trading capacities of LDCs can be termed as another major achievement for the LDCs. The acceptance that aid for trade needs to cover hardware such as infrastructure in addition to the software is likely to help the LDCs to improve their infrastructure. Japan has already committed US $ 10 billion in the next three years and the European Union (EU) and the United States (US) have promised to increase their support to Euro 2.7 billion and US $ 2 billion respectively by the 2010.

If the government is able to channel these funds to Nepal and improve trade related infrastructure, this is likely to result in an expansion of trade and the creation of new employment opportunities.

An 'Aid for Trade Task Force' has been formed in the WTO to chalk out the modalities for implementation. The Task Force will have to decide on, among others, the size and management of the fund. It will be in the interest of Nepal to ensure that the final modalities put the recipient countries in the driving seat.

Policy Space

WTO is often criticised for putting the LDCs under pressure by imposing conditions that they have difficulty in fulfilling. The Hong Kong Ministerial made a breakthrough in this area as the declaration mentions that 'LDCs will be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, and their administrative and institutional capabilities. Should a LDC Member find that it is not in a position to comply with a specific obligation or commitment on these grounds, it shall bring the matter to the attention of the General Council for examination and appropriate action'. This will allow Nepal to forfeit the implementation of any obligation or commitment if it is financially and technically beyond its means.

The Hong Kong Ministerial made an attempt to address the issues of interest to Nepal. However, the effectiveness of the measures in its favour will be clear only after the final modalities are agreed upon. It is thus in the interest of Nepal to form an alliance with other LDCs to actively lobby for favourable and effective modalities on the different measures for LDCs agreed upon in Hong Kong.