Department of Economic & Social Affairs

CDP Background Paper No. 23
ST/ESA/2014/CDP/23

2014

Nepal's Accession to the World Trade Organization: Case Study of Issues Relevant to Least Developed Countries

*

ABSTRACT

Nepal was the rst Least Developed Country to negotiate its accession to the World Trade Organization. e negotiation process was demanding, yet it succeeded in securing a relatively well-

aspects of Nepal's approach to the process of accession are highlighted and compared with the situation of some other LDCs.

JE C : F13

: WTO, accession negotiation, least developed countries (LDCs), economic reform, Nepal

*

CONTENTS

Introduction 1

1. The Process of Accession to the WTO . . . 3

[illegible] . . . 3

2. Negotiation Issues in Nepal's . . . . . .

[illegible] 10

[illegible] 12

[illegible] 13

[illegible] 14

[illegible] 1

1

agree to work to facilitate and accelerate negotiations with acceding LDCs" (paragraph 42). ese e orts culminated in the preparation of the Guidelines on the Accession of LDCs by the WTO Sub-Committee on LDCs, which were subsequently approved by the General Council in December 2002. e resulting WTO Decision a rmed that the "negotiations for the accession of LDCs to the WTO be facilitated and accelerated through simpli ed and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible". It provided guidelines focusing on four areas, namely: (a) market access; (b) WTO rules; (c) process; and (d) trade-related technical assistance and capacity building. e Decision also suggested that the guidelines be reviewed regularly and discussed during the General Council meetings, as well as in Ministerial Conferences (WTO 2002).

However, in the three years between the adoption of the Guidelines and the Hong Kong Ministerial Conference in 2005, only two LDCs (Cambodia and Nepal) acceded to the WTO. At the Hong Kong Ministerial Conference, Ministers once again rea rmed their commitment in paragraph 47 of the Declaration: "We agree to facilitate and accelerate negotiations with acceding LDCs based on the accession guidelines adopted by the General Council in December 2002. We commit to continue giving our attention and priority to concluding the ongoing accession proceedings as rapidly as possible" (WTO 2005a). Since the Hong Kong Ministerial Conference, only one LDC (Cape Verde) has acceded to the WTO, while 11 more remain in the process of accession.[1]

Similarly, LDC Trade Ministers' declarations, made in Dhaka (in 2003), Maseru (in 2008) and Dar Es Salam (in 2009), repeat the plea to WTO members to fully and faithfully adhere to the letter and spirit of the Guidelines for LDCs' accession to the WTO adopted by the WTO General Council. Meanwhile, the WTO Secretariat's note on Accession of LDCs to the WTO (2009) has expressed general satisfaction with the way WTO members have attached signi cance to the accession of LDCs and their efforts to comply with the Guidelines. e note pleads ignorance on what transpires during the bilateral negotiations, which are by de nition non-transparent and not open to public scrutiny.[2] However, this is where the most stringent conditions are attached (see, Grynberg and Joy 2000; Jones 2009). Even large countries such as China and Russia, which in theory have signi cant bargaining power, have had little room for maneuver when demands for concessions are imposed on them during bilateral negotiations

1 ese are Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Lao People's Democratic Republic, Samoa, Sao Tome and Principe, Sudan, Vanuatu and Yemen.

For the reasons discussed above, the General Council

It needs to be noted that a long time-frame for accession is not due solely to the lack of well de ned criteria for membership. Michalopoulos (2002: 65-6) lists ve possible reasons for the delays in the WTO accession process. First, there are delays due to weak follow up by the acceding countries in the submission of the MoFTR. In some instances, this has taken up to ve years (as in the case of Uzbekistan). Second, in a few cases, political issues between an applicant and one or more in uential members have caused delays (as in the cases of China and the Former Yugoslav Republic of Macedonia). ird, due to the lack of human or material resources, some acceding countries face particular di culty in preparing the MoFTR, causing delays. Fourth, the accession negotiation itself becomes lengthy because of the unwillingness on the part of applicants to make su ciently liberal commitments and the dissatisfaction of some members with the level of commitments made by the applicant. Finally, the attitude of the incumbent members, notably a desire to extract as many concessions as possible, often exceeding

1.2

Nepal's Accession Timeline

16 May 1989	
21–22 June 1989	
26 February 1990	
5 December 1995	
31 January 1996	
10 August 1998	
17 September 1998	
8 June 1999	
9 July 1999	
12 April 2000	
8-24 May 2000	
22 May 2000	
21-27 Sept 2000	
21 May 2002	
July 2002	
9–13 September 2002	
12 September 2002	
20–23 May 2003	
4–18 July 2003	
11–15 August 2003	
15 August 2003	
11 September 2003	
24 March 2004	
23 April 2004	

Source: *Adhikari et al.* (200) 2

WTO requirements, coupled with their insensitivity regarding the stage of development and the capacity of the applicant country, can cause delay.

Viewed from a di erent perspective, VanGrasstek (2001) proposes a three dimensional framework to answer why WTO accession is becoming more complex, time consuming and demanding on incumbent members: a) height: the degree of protection from imports; b) breadth: the range of issues covered by the multilateral trading system; and c) width: the number of countries (or share of world trade represented in the system). He observes that height and width were the most important considerations in GATT accessions because GATT focused predominantly on border measures. However, the issue of breadth assumed greater salience in the accession negotiations after the establishment of the WTO because WTO covers wide-ranging "behind the border" issues. In addition, the built-in agendas mandated by the Uruguay Round have added new issues to the accession negotiations, including the liberalization of nancial services, telecommunications services and the movement of natural persons.

During the GATT period, the targets of the incumbent members in terms of extracting concessions were not necessarily the smaller developing countries or the LDCs because their markets were insigni - cant. However, this changed in the WTO era. e developed countries started imposing stringent conditions for the accession of smaller countries so that they could set "precedence" for larger economies such as China, Taiwan Province of China, Russian Federation and Saudi Arabia, which collectively represented nearly 8 per cent of global trade in 1999.[5] As VanGrasstek notes, "Even the smallest country is important when countries make fetish of precedence". is is consistent with the analysis of Grynberg and Joy (2000:172) when they argue that the small country of Vanuatu su eredBDC B4n22.2(u)3.3(e t)-21.1T(r)-7.1(a)-5bi.8(e)3.2c844 B901(f)0.6(g)-16.9(l)10.6(oo)

occurred in the country in 1990 and resumption of normal trading relations with India, the process was stalled for ve years. Nepal revived its interest after the WTO was formally established and re-launched its bid in 1998 by submitting the Memorandum on Foreign Trade Regime (MoFTR) to the Working Party (WP).[7] At the time, Nepal's average annual per capita income was one of the lowest in the world at around US$220. e country had launched major economic reforms aimed at creating a dy.5(n)iymm$c oh2e14.6(n)5( )]TJETEMC /Span <</Lang (en-GB)/MCID 912 >>BDC BT

market. People seeking employment abroad, and their remittances, went on to play a signi cant role in the Nepali economy in the 2000s.

share of the agriculture sector in the total budget, from 15.9 per cent in the first part of the 1990s to 11.3 per cent in the second part (MoF 2002). In addition, Nepal was not in a position to assert the right

which must be accepted by members in its entirety. is has the e ect of establishing roughly the same set of obligations for all WTO members and linking all the rights and obligations to trade concessions (Ognivtsev et al. 2001). However, because of the special circumstances and di culties faced by LDCs in implementing the Uruguay Round obligations, the WTO agreements provide special treatment on aspects of the implementation of all agreements. e Ministerial Decision on Measures in Favour of Least Developed Countries permits LDC members to apply only those commitments which are consistent with their development, nancial and trade needs or their administrative and institutional capabilities (paragraph 1). Beyond the Ministerial Decision, speci c provisions within the individual agreements allow LDCs more exibility in implementing certain WTO rules and encourage other members to cooperate when LDC interests are involved. e special measures may be grouped under four headings as: (i) those recognizing the interests of LDCs in a general manner; (ii) those easing the rules or number of obligations to be met; (iii) those providing longer time frames for the implementation of certain obligations; and (iv) those providing for technical assistance.

In the rst WP meeting, the Nepali delegation indicated its desire to utilize the special and di erential treatment provision referred to in Article XI.2 of the Agreement Establishing the WTO (which states that 'the least developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, nancial and trade needs or their administrative and institutional capabilities') and also in Article IV.3 of the GATS (which states that 'particular account shall be taken of the serious di culty of the least developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and nancial needs') (Ministry of Industry, Commerce and Supplies (MoICS) 2000). However, developed country members were of the view that all provisions of special and di erential treatment were not automatic and had to be negotiated.

WTO-minus conditions

(DC)

Article II, para 1(b), of GATT 1994 and the Understanding on the Interpretation of this Article reached during the Uruguay Round require ODCs to be recorded in the schedule of concessions against the bound tari item to which they apply at the level applying on that date. Nevertheless, all acceding countries have been asked either to bind ODCs at zero or to phase them out over a short period of time (Adhikari 2003). e only two countries which have so far been allowed to maintain ODCs with an agreed timeline to phase them out are Bulgaria and Nepal. is is despite the fact that many original WTO members still maintain ODCs that have never been challenged by their trading partners (Adhikari 2003). Nepal made a commitment to phase out all ODCs over a period of 2 to 10 years. Based on this commitment, Nepal has started to reduce ODCs.

e Special Fee has been completely abolished, the agriculture development fee was reduced from 10 per cent to 8 per cent in the scal year 2007/08 and the budget announcement for the scal year 2009/2010 scrapped the local development fee with e ect from 16 July 2009 (MoF 2009).

E b

With regard to industrial subsidies, Article 27.3 of the Agreement on Subsidies and Countervailing Measures provides LDCs a transition period of eight years to abolish subsidies contingent upon local content requirements. Nepal made a commitment to administer its subsidy programme in full conformity with WTO agreements. is commitment ensures the right to provide export subsidies but rescinds the right to maintain subsidies to promote local value added for the maximum of eight years provided in Article 27.3.

With regard to export subsidies in agriculture, WTO agreements do not require their abolition (Article 9 of the Agreement on Agriculture (AoA)) but do require them to be bound and then reduced by prescribed percentages within a given period of time (Langhammer and Lucke 2000: 850). However, Article 15 of the AoA excludes LDCs from all reduction commitments under the Agreement (Grynberg and Joy 2000:167). Despite this, the Cairns Group[9] demanded that applicant countries commit themselves to abolishing agricultural export subsidies (VanGrassetek 2001; Langhammer and Lucke 2000: 850). Nepal, unlike other acceding countries, such as Jordon (paragraph 18), Moldova (paragraph 159) and Cambodia (paragraph 164), among others, did not bind export subsidies at zero but entered a "blank" in the Schedule of Concessions and Commitments on Goods. e schedule of agriculture export subsidies, together with Article 8 of AoA implies, in e ect, that Nepal has withdrawn the right to subsidize agriculture exports.

- (I)

e Agreement on TRIMs prohibits measures that are inconsistent with Article III, which, among others, prohibits members from applying investment measures that have the e ect of discriminating against foreign goods and Article XI, which, among others, prohibits restrictions on imports or exports.

e illustrative list of such prohibited measures contained in the Annex to the TRIMs Agreement includes: (a) local content requirements; (b) trade balancing requirements; (c) foreign exchange balancing requirements; and (d) export restrictions (WTO 1999:146). However, in accession negotiations, some WTO members have requested commitments to eliminate or refrain from introducing export performance requirements even if they are not linked to import volume or value. Such measures restrict the right of acceding countries to use measures which are otherwise WTO-compatible.

WTO agreements, such as GATT 1994 (Article X), GATS (Article VI) and TRIPS (Article 41), require that members establish independent mechanisms to review administrative decisions. ese provisions oblige members to provide the opportunity for objective and impartial review of relevant administrative actions by a judicial, arbitral or administrative tribunal. Such tribunals or procedures must be independent of the agencies entrusted with administrative enforcement to ensure the review is objective and impartial. A member, however, is not obligated to institute a review mechanism if it would be inconsistent with its constitutional structure or the nature of its legal system (Qin 2003).

Paragraph 31 of the Working Party Report of Nepal dealing with judicial review not only con rms but also elaborates the existing provisions of WTO. In the process of elaboration, the report appended an additional requirement for a tribunal or procedures as not having 'any substantial interest in the outcome of the matter' in addition to being 'impartial and independent of the agency entrusted with administrative enforcement'. is may, in e ect, preclude the possibility of constituting administrative tribunals for review of administrative decision, as has been practiced to date in Nepal. In addition, the requirements for 'impartial review' under GATT 1994, GATS and TRIPS and the scope of such tribunals are di erent, but the commitments made by Nepal are clubbed together and made applicable for goods, services and intellectual property.[11]

Article I of GATT 1994obligates WTO members

Agreeing to this could have led Nepali farmers to

Framework (IF) Working Group, consisting of the International Monetary Fund, International Trade Centre (ITC), UNCTAD, UNDP, WTO and the World Bank, to conduct a Diagnostic Trade Integration Study (DTIS). e purpose of the study was to identify policy, infrastructure and technical assistance requirements to make the Nepali economy more competitive, including in a number of areas where Nepal's WTO commitments would require it to make institutional improvements. e resulting DTIS included an Action Matrix outlining the technical assistance requirements of the country in the area of trade. It recommended practical, time-bound policy initiatives for domestic policy reform to be carried out by the government itself and areas for technical assistance to be provided by development partners in four areas: (a) the development of institutional capacity and the regulatory framework and the creation of an improved investment climate; (b) the development of a WTO-compatible legal and institutional framework; (c) initiatives for reducing transaction costs through trade facilitation and transport and transit logistics; and (d) speci c initiatives in key sectors and those with export potential, such as garments and carpets, tea, agriculture, tourism and hydro power (Government of Nepal 2004).

e Government of Nepal approved the DTIS report and its proposals for implementing policy measures and mobilizing investment and technical assistance, as identi ed in its 'Action Matrix'

Post-accession, the technical assistance promised during negotiations has not been forthcoming because of Nepal's internal political problems, as well as donor myopia. In particular, the implementaaia

Nepal liberalized 11 services sectors and 77 sub-sectors which, at face value, appears high for an LDC. However, the objective was to liberalize only those services sectors in which: (a) the Nepali private sector is unlikely to ever get involved, given the huge sunk costs and high gestation period (e.g., pipeline transportation); (b) the Nepali private sector is already competitive and is con dent that it would be able to outperform foreign service suppliers, even if the sector is liberalized (e.g., banking services); and (c) sectors where the employment potential for locals

'Multilateral Trade Integration and Human Development' to continue the remaining tasks of accession. Nepal also regularly engaged with UNCTAD and

and the Governor of the Central Bank, among others.

e Ministry also established a Technical Committee chaired by the Joint Secretary of the WTO Division of the MoICS. Finally, the Ministry established a formal channel of communication between the Ministry and the Geneva Mission of Nepal to the WTO (Pandey 2009). Each trade negotiation team to the Working Party and the bilateral negotiations comprised, besides o cials and experts from the MoICS, representatives from the Ministry of Finance (including the Department of Customs), Ministry of Agriculture, and Ministry of Law and Justice, as well as regulators such as the Central Bank (Nepal Rastra Bank) and the NTC.

MoICS conducted several workshops at the sub-national level with a view to raising the awareness of the local private sector of the potential outcomes of the negotiations (see Bhandari . . 2005). Consultation with the private sector helped the government identify areas requiring protection, as well as gauge their level of con dence in case any pare in case 4T12 4.7(s)r helpeiofnc05ne gh

at zero for Nepal, Cape Verde and Cambodia, respectively. Nepal has bound only 12.4 per cent of tari lines at less than 15 per cent whereas Cambodia has bound 59.7 per cent and Cape Verde 58.6 per cent of tari lines below this level (WTO 2009). None of the countries participated in either of the plurilateral zero-for-zero tari reduction initiatives, namely the ITA and the Chemical Harmonization Agreement. However, they agreed to reduce tari s and sometimes eliminate them in some products covered by these initiatives. Using the ratio of bound to applied tari rates as a measure of the scope that

Transition period

In view of the Guidelines established by the General Council (WTO 2002) and the special and di erential treatment that WTO legislation provides to LDCs, Nepal, Cambodia and Cape Verde made clear their need for transitional periods for the implementation of WTO agreements and provided detailed Action Plans with the status of their institutional infrastructures and the speci c steps needed to bring their countries into full conformity with the agreements for which transition periods were being sought (WTO 2003c, WTO 2003d and WTO 2007b). Nepal and Cambodia sought transitional periods for the implementation of the agreements on Customs Valuation (CV), SPS Measures, TBT and TRIPS. Cape Verde did not ask for a transition period for the implementation of the TBT agreement, but requested a transition period for the other three agreements.

e transition periods granted for the implementation of various agreements for the acceding countries vary depending on the status of the institutional capacity to implement the agreements, the plan to overcome the institutional de cits and the negotiating capacity of the country concerned. Cape Verde got transitional periods of 2 years and 6 months, 1 year and 6 months and 4 years 6 months respectively for the implementation of the agreements on CV, SPS and TRIPS. Cambodia was granted transition periods of 2 years and 3 months for the delayed implementation of agreements on TRIPS and TBT and 3 years and 3 months and 4 years and 3 months respectively for the implementation of the agreements on SPS and CV. Nepal negotiated transition periods of 2 years and 9 months to fully implement agreements on CV, SPS and TRIPS but only 1 year and 9 months for the implementation of TBT.

Cape Verde got an additional transition period for the implementation of sections 5 and 7 of part II of the TRIPS Agreement (relating to patents and the protection of undisclosed information, respectively) until December 2016 in accordance with paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health. Nepal and Cambodia also asserted their right to the exibilities provided in the Doha Declaration on the TRIPS Agreement and Public Health.

During the transition period, these countries made commitments to implement the agreements progressively and also to ensure that any changes made in their laws, regulations and practices would not result in a lesser degree of consistency with the provisions of relevant agreements. For the TRIPS agreement, they pledged to observe the provisions of national treatment and most favoured nation treatment in the protection of intellectual property rights. In ad-

of the lack of ownership of the DTIS and inadequate follow-up by both the Government of Nepal and donors, technical assistance has not been mobilized to the desired extent. In contrast, Cambodia has been able to mobilize substantial technical assistance in support of trade reform, such as through a Sector Wide Approach (SWAp) for Trade.[18]

5 Lessons for LDCs

e discussions in preceding sections suggest that the level of commitments of the newly acceded LDCs to the WTO is broader and deeper than those of the original LDC members. ey mark a considerable deviation from the letter and spirit of the General Council Guidelines on the accession of LDCs. However, despite the fact that there were

internal political problems, as well as donor myopia.

is has had a direct bearing on Nepal's ability to ful l some of the commitments it entered into under the Protocol of Accession. Cambodia, on the other hand, without any implicit pledge of technical assistance during negotiations, has secured signi cant amounts of trade-related technical support since 2004. Acceding countries could learn from Nepal and Cambodia on ways to manage technical assistance both in word and deed.

Institutionalized Mechanisms for Consultations

Inter-ministerial and inter-agency coordination, as well as consultation with a wide range of stakeholders, helped Nepal to achieve two key objectives. First, it ensured that its membership of the WTO would contribute to the country's overall development objectives. Secondly, it enabled the country to secure relatively better terms of accession than other LDCs, particularly when viewed from the overall development perspective. erefore, the merit of such consultation cannot be overemphasized.

However, there was never a formal and institutionalized mechanism for consultation with various stakeholders on trade issues in Nepal, and whatever consultation took place during the accession process was due to the personal preference of trade negotiators at the time (Adhikari et al. 2008; Baumuller et al. 2008).

ese weaknesses have been exposed in the aftermath of WTO accession with a conspicuous slackening of verve on the part of the government to engage civil society organizations CSOs.[21] Nepal's experience shows

21 ree examples show how the consultation process has weakened in Nepal since accession. *F* .., an IF Steering Committee was created in the aftermath of the WTO accession and representation of various government agencies and private sector was ensured, but civil society organiza-

of penalties proposed (which weakens deterrence);

in UNCTAD *A D*. New York and Geneva.

Ojha, Purusottam, Chandra K. Ghimire and Shiv Raj Bhatt. 2010. "Nepal's WTO Compliance and Resulting Economic Gains (A Critical Assessment)." In *29 C B*. Kathmandu: Management Association of Nepal: 13-28.

Pandey, Posh Raj. 2009. "An Outline for Nepal Trade Integration Strategy." Report submitted to 'Enhancing Nepal's Trade Capacity' a project of Government of Nepal /UNDP. Kathmandu, Nepal.

Qin, Julia Ya. 2003. "WTO-plus' Obligations and their