



NEPAL RASTRA BANK

WTO and Nepal



Foreword

A strong need for an international organization on trade was realized at the time when the International Monetary Fund and the World Bank, the twin organizations of the Bretton Woods Conference of 1944, were established. It is therefore, in 1947, the General Agreement on Tariff and Trade (GATT) was signed by 23 countries for the first time in the history of the global trade agreement. Over its four decades of history, the GATT system was challenged by the changing conditions in international economic activities. Increasing interdependence among economies, significant growth in trade in services, rising concern on intellectual property rights, the need of a permanent dispute settlement mechanism and the absence of institutional provisions inherited in GATT, directed the then GATT members to explore a systematic avenue for contributing to the global trade. Amidst these rising concerns, several rounds of negotiations took place among the then GATT members and the World Trade Organization was established on January 1, 1995.

WTO, presently, is an organization of 144 members. Moreover, two and a half dozen countries of the World are having their status of observer in the WTO. Nepal, in her quest of moving along with the global economic development, applied for the membership of the GATT in 1989. With the transformation of GATT into WTO, Nepal had likewise transferred her membership application and became an observer in WTO on December 1995. Nepal is now in the process of obtaining membership of WTO. In this regard, this book has been published for the use of the general readers who would like to be familiar with the concept of WTO as well as the ongoing developments in Nepal's accession process to this global organization. It is also expected that this publication will be a reference material to the research scholars, academicians and other people interested in WTO and Nepal.

At the end of my remarks, I would like to acknowledge the able direction of Mr. Sushil Ram Mathema, Director, Research Department in the completion of this publication. Simultaneously, I would like to admire the untiring and sincere efforts of Dr. Nephil Matangi Maskay, Deputy Director, Mr. Gunakar Bhatta, Assistant Director and Mr. Ram Hari Dahal, Head Assistant, all from the International Finance Division of Research Department, Nepal Rastra Bank. Last but not least, the hard work of Mr. Amar Ratna Bajracharya, Senior Assistant (Computer) in formatting the original draft of this publication is appreciated.

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List of Abbreviations

DOI	Department of Industry
DSM	Dispute Settlement Mechanism
FDI	Foreign Direct Investment
FITTA, 1992	Foreign Investment and Technology Transfer Act, 1992
FSS	Financial Services Sector
GATS	General Agreement on Trade in Service
GATT	General Agreement on Trade and Tariffs
HMG	His Majesty's Government
IEA, 1992	Industrial Enterprises Act, 1992
IP	Intellectual Property
IPRs	Intellectual Property Rights
IT	Information Technology
LDC	Least Developed Country
MFN	Most Favored Nation
MNC	Multinational Corporation
NRB	Nepal Rastra Bank
QR	Quantitative Restriction
SAARC	South Asian Association for Regional Cooperation
SAPTA	South Asian Preferential Trading Arrangement
TPRM	Trade Policy Review Mechanism
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Preface

The World Trade Organization (WTO) is the only international body dealing with the rules of trade between nations. While the link between trade and economic growth is clear, the critical importance of WTO is in providing a transparent rule based trading system. This rule based trading system helps to prevent potentially devastating country actions such as occurred in the mid 1930's when the competitive devaluation initiated by the USA influenced the severity of the Great Depression. The end result of the stable rule based system, embodied in GATT and presently reflected in WTO, is that global economic trade has been on a positive trend since the last half a century. Presently, there are 144 countries that are WTO member and 31 countries which are on the accession process into WTO.

To capture the benefit of a stable trading system, Nepal is presently on the accession process for membership in WTO. While Nepal's membership aspiration dates back from May 1989, the past years have shown large strides in the quest for membership in this international trading organization. Presently, Nepal is at an advanced stage of negotiations where it is highly likely that, in the near future, Nepal will become a WTO member.

The expected entry of Nepal into WTO will have significant repercussions on the domestic economic environment. For example, there will be potentially an increase in trade flows of both goods and services. Given the importance of WTO membership, it is surprising that there has only been limited publications in Nepal introducing the important concept of WTO. This publication attempts to meet this paucity by introducing major concepts of WTO and presenting some perspectives on Nepal's membership in this rule based global trading organization. It is expected that this publication will be a useful reference to students, academicians and policy makers having both special and general interest on this important topic.

The presentation of this publication consists of two parts. The first part presents a brief background of WTO and contains three chapters. The first chapter presents an introduction with a short history of the rule based trading system as well as the organization structure of WTO. The second chapter overviews the major WTO agreements and mechanisms while the third chapter highlights some emerging issues in WTO. The second part of the publication consists of four chapters including three contributory papers on the theme: WTO and Nepal. The fourth chapter imparts a brief history of Nepal's accession process to WTO while the fifth, sixth and seventh chapter contain contributory papers on WTO and Nepal from the perspective of Industry and Trade, Services, and Agriculture respectively. International Finance Division acknowledges the contributions made by individual authors for the second part of this publication. The opinions, however, expressed in these contributions do not necessarily reflect the view of Nepal Rastra Bank.

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CHAPTER

1

BACKGROUND OF WTO

1.A A Short History of the Rules-Based Trading System

The current institutional framework of the global trading system – the WTO – was created on 1 January 1995 replacing the then General Agreement on Trade and Tariffs (GATT). WTO is a global trade organization of 144 member countries (Appendix A). Prior to this, trade rules had been developing under GATT to meet the evolving needs of the participating countries and the global community. GATT was entered into force in January 1948 by 23 founding member countries (officially “contracting parties”) to salvage what was left of the original proposition called the Havana declaration, whose objective was to establish the International Trade Organization. GATT was instrumental in the creation of a strong multilateral trading system that introduced successive rounds of more liberalized, more stable and predictable trading rules.

The general principle of WTO is to have freer and more predictable trade without discrimination and being more beneficial for less developed countries. The most important principles built into the foundation of the multilateral trading system are further discussed:

- *Trade without discrimination*
 - *Most-favored nation (MFN): treating other nations equally* – a tariff reduction granted to one country that has to also be extended to all countries in the GATT; this is a multilateralization of the bilateral liberalization.
 - *National treatment: treating foreigners and locals equally* – countries should not discriminate between its own and foreign products once they have crossed the border and entered the market.
- *Freer trade: gradually through negotiation* – the objective is to gradually reduce trade barriers as one of the most obvious means of encouraging trade.
- *Predictability: binding commitments* – provide stability and predictability which in turn widens business opportunities; a change in binding has high opportunity costs.
- *Promoting fair competition* – a system of rules dedicated to open, fair and undistorted competition.
- *Encouraging development and economic reform*: contributes to development, special assistance and trade concession for developing countries, flexibility in WTO agreements.

The original GATT rules (consisting of 38 articles and nine annexes) have been modified to address new international trade challenges but the basic principles have never changed. One major area of modification occurred with respect to the treatment of developing countries when Part 4 (Trade and Development) was added to the original rules. This ministerial decision was adopted at the end of the Uruguay round, which offers least developed countries extra flexibility in implementing WTO agreements. Another major reform occurred with the last negotiation rounds, the Uruguay Round, when the entire system was revised and updated to meet the challenges of introducing new areas into negotiations. The revised set of rules is now known as GATT 1994 to differentiate it from the original rules (GATT 1947).

During the period of 1948 to 1994, GATT presided over eight multilateral liberalization rounds (see Table 1). Several early rounds were most focused on reducing tariffs and it was not until the Tokyo Round that the non-tariff barriers and other issues were introduced into the negotiations. The results of negotiations on those issues were stipulated in several “codes” which were binding only for the contracting parties who signed a particular code (there were nine codes, including inter alia code on subsidies and countervailing measure, technical barriers to trade, government procurement, customs valuation, anti-dumping and trade in civil aircraft). Finally, the longest round so far, the Uruguay Round, introduced negotiations of 15 subjects including three new areas: agriculture, services and intellectual property.

Table 1: Multilateral Liberalization Rounds

Year	Liberalization Round	Subjects Covered	Average Tariff Reduction for Industrial Goods in %	Number of Countries Taking Part in Negotiations
1947	Geneva Round	Tariffs	19	23
1949	Annecey Round	Tariffs	2	13
1950 – 51	Torquay Round	Tariffs	3	38
1955 – 56	Geneva Round	Tariffs	2	26
1960 – 61	Dillon Round	Tariffs	7	26
1964 – 67	Kennedy Round	Tariffs and anti-dumping measures	35	62
1973 – 79	Tokyo Round	Tariffs, non-tariff measures, “framework” agreements	34	102
1986 – 94	Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO etc.	40	123

Source: WTO (1998) trading into the future, p. 8 – 9

In addition, the Uruguay Round resulted in the establishment of the WTO that replaced GATT as a separate international agency although GATT, as the set of internationally agreed rules on trade in an updated form, continue to be at the center of the WTO system. There are, however, important differences between GATT and WTO (WTO, 1998, p. 14), which are:

- While GATT had a provisional nature, the WTO and its agreements are of permanent nature and WTO has the recognition of international economic organizations.
- While GATT as a legal text had “contracting parties”, WTO as an organization has members.
- While GATT was dealing only with trade in goods, the WTO covers trade in services and intellectual property rights as well.
- While GATT’s Dispute Settlement System was slow and suffered from countries being able to veto the process, the WTO’s system is faster and cannot be blocked.

1.B Organization of WTO

Following Deardorff (1996), WTO is introduced by looking at the main functions of this organization. This will then be followed by the structural organization of WTO.

1.B.1 The Functional Organization

The functional structure of WTO is centered on four main functions the WTO has inherited from the GATT. Many of the components of those functions have been revised and broadened with the establishment of WTO. A summary outline of all the components is given in Table 2 below.

Table 2: Four Main Function of WTO

<i>Main Functions</i>	<i>Components</i>
Communication WTO as a forum for exchange of information, consultation and negotiation	Ministerial Negotiation Rounds Working Groups Trade Policy Review Mechanism (TPRM) Councils and Committees
Constraints WTO as a restraint mechanism for trade-policy actions of member governments	Tariff Bindings Customs Valuations Quantitative Restrictions (QR) Subsidies Trade-Related Investment Measures (TRIMs) Services (GATS) Trade-Related Intellectual Property Rights (TRIPs)
Exceptions Permits exceptions for prescribed reasons and with prescribed means	Anti-Dumping Countervailing Duties Safeguards Balance of Payments Protection Preferential Trade Agreements
Dispute Settlement WTO as a mechanism for settlement of disputes among members	Consultation Panel recommendation Appellate Body Remedy: <ul style="list-style-type: none"> • Implementation • Compensation • Retaliation

Source: Deardorff (1996), Table 1, p.35

These are described in greater details.

Communication: From the previous discussion, communication plays an important function in WTO. WTO (as previously in GATT) provides a forum where member countries can meet to discuss and negotiate coordinated trade policy behavior. There are different channels for communication between countries within the WTO. At the most formal and highest level, there are ministerial conferences (known as Ministerials). They take place every two years providing an opportunity for trade ministers, or their equivalents, to discuss trade policies with the last Ministerial held in Doha, Qatar in 2001. Negotiation rounds have been the main vehicle of multilateral liberalization so far. They are multi-level, multi-directional channels of communication, which enable countries to trade-off losses arising from some commitments, for gains resulting from other commitments. More regular communication than that is possible through rounds which take place with different

working groups (discussed in next section). Working groups are typically formed where the discussion on issues have not yet progressed far enough for an agreement to be foreseeable. The most frequent and day-to-day communication occurs within Councils and Committees. There are three Councils, for trade in goods, in services and for TRIPs which oversee relevant multilateral agreements. The special purpose built committees, such as Trade and Development, Trade and Environment, Balance of Payments Restrictions or Budget each deal with designated areas and report directly to the General Council. It is not possible to detail all other channels of communication here but are shown in the next section.

Constraints: To facilitate coordinated behavior, countries have agreed to define what constitutes cooperation and what does not. These restrictions are embodied in the multilateral agreements, which constitute the constraints on a government's policy actions defining clearly "must dos" and "must not dos". These are more fully described later.

Exceptions: It would be impossible to get governments to commit to international cooperation in the area of trade policy if there were no provisions for situations in which following the constraint strictly would be detrimental to their own country. That is why there is a set of rules that define circumstances in which countries may opt to temporarily not adhere to the constraints. In other words, there are pre-defined exceptions, which permit countries to behave non-cooperatively.

Dispute Settlement: Finally every agreement needs enforcement and when members do not adhere to the constraints there is the need for penalties. WTO deals with these issues through the dispute settlement mechanism.

1.B.2 The Structural Organization

The WTO is run by its member governments. All WTO members may participate in all Councils, Committees, etc, except Appellate Body, Dispute Settlement Panels, Textile Monitoring Body, and Plurilateral Committees. All major decisions in WTO are made by the membership as a whole, either by ministers (who meet every two years) or by officials (who meet regularly in Geneva). Decisions are normally taken by consensus. In this respect, the WTO is not like some other international organizations such as the World Bank and International Monetary Fund. In the WTO, power is not delegated to a board of directors, and the bureaucracy has no influence over individual countries' policies (although some analytical comments are made in the regular trade policy reviews).

When WTO rules impose disciplines on countries' policies, that is the outcome of negotiations among two members. The rules are enforced by the member themselves under agreed procedures that they negotiated. Sometimes enforcement includes the threat of trade sanctions. But those sanctions are imposed by member countries, not by the organization.

The WTO organization structure is as shown in Appendix B whose highlights are discussed as:

Highest Authority (The Ministerial Conference): WTO belongs to its members. The member countries make their decisions through various councils and committees, whose membership consists of all WTO members, topmost is the ministerial conference which has to meet at least once every two years. Ministers of member countries take part in this conference. Ministers met for the first time in Singapore in December 1996, in Switzerland in 1998, in Seattle of USA in December 1999 and in Doha of Qatar in 2001. The ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.

Second Level: General Council: Day to day work in between the Ministerial Conference is handled by three bodies:

- (1) The General Council
- (2) The Dispute Settlement Body
- (3) The Trade Policy Review Body

All three are in fact the same-the Agreement Establishing the WTO states they are all the General Council, although they meet under different terms of reference. Again, all three consist of all WTO members. They report to the ministerial conference. The General Council acts on behalf of the Ministerial Conference on all WTO affairs. It meets as the Dispute Settlement Body and the Trade Policy Review Body to oversee procedures for settling disputes between members and to analyze members' trade policies.

Third Level (Councils for each broad area of trade and more): Three more councils, each handling a different area of trade, report to the General Council:

- The Council for Trade in Goods(Goods council)
- The Council for Trade in Services(Services Council)
- The Council for Trade-Related Aspects of Intellectual Property (TRIPS Council)

As their name indicates, the three are responsible for the workings of the WTO agreements dealing with their respective areas of trade. These three also have subsidiary bodies, which cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues.

Fourth Level (Down to the nitty-gritty): Each of the higher level councils has subsidiary bodies. The Goods Council has 11 committees dealing with specific subjects (such as agriculture, market access, subsidies, anti-dumping measures and so on). Again these consists of all member countries. Also reporting to the Goods Council is the Textiles Monitoring Body, which consists of a chairman and 10

members acting in their personal capacities, and groups dealing with notifications (governments informing the WTO about current and new policies or measures) and state trading enterprises.

The Services Council has seen some changes in its subsidiary bodies. The completion of the basic telecommunications negotiations in February 1997 meant the end of negotiating group, at least until the new services negotiating round starts in 2000. The same could happen to the financial services negotiating group. In theory, the negotiating group in maritime services still exists, but with the talks suspended until 2000, the group is unlikely to be active. Other subsidiaries deal with professional services, GATS rules and specific commitments.

At the General Council level, the Dispute Settlement Body also has two subsidiaries: the dispute settlement “panels” of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

1.B.3 The WTO Secretariat

The WTO Secretariat is based in Geneva and is headed by the Director General who is presently Mike Moore of New Zealand. Since decisions are taken by Members only, the Secretariat has no decision-making power. The main duties of the WTO Secretariat are to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyze development in world trade, to provide information to the public and the media and to organize the ministerial conferences. These duties are effected by the Secretariat professional staff of 552 representing about 60 nationalities. The professional staff are allocated into various divisions/bodies and are represented in the organizational chart in Appendix C.

The WTO Secretariat can be described as being organized into divisions with functional (i.e. Accession division, Agriculture and commodities division, Economic research and analysis division, Intellectual property and investment division, Legal affairs division, Market access division, Ministerial sessions division, Rules division, Statistical division, Secretariat working group on the integrated framework of LDC issues, Technical cooperation division, Textiles division, Trade and environmental division, Trade and finance division, Trade in services division, Trade policies review division and Training division), information and liaison (i.e. Information and media relations division and External relations division) and support roles (i.e. Administrative and general services division, Informatics division, Language, service and documentation division). The divisions are normally headed by a Director who reports to a Deputy Director General or directly to the Director General. Further, there is the WTO appellate body and its secretariat for hearing appeals and to act as arbiters during disputes.

The WTO financial budget is mostly derived from contributions of WTO members. These are established according to a formula based on their share of

international trade. The remainder of the budget is financed through miscellaneous income (i.e. the rental fee and sales of WTO print and electronic publications). The WTO manages a number of trust funds, which have been contributed by Members. These are used in support of special activities for technical cooperation and training meant to enable least-developed and developing countries to make better use of WTO and draw greater benefit from the multilateral trading system.

The total budget for the WTO in 2001 was 134,083,610 Swiss Francs. This can be broken down into 131,305,610 Swiss Francs for the WTO Secretariat budget and 2,778,000 Swiss Francs for the Appellate Body and its Secretariat budget.



CHAPTER

2

AN OVERVIEW OF THE AGREEMENTS AND MECHANISMS IN WTO

At the heart of the WTO, there are a number of multilateral agreements which are negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts; binding governments to keep their trade policies within agreed limits. An overview table of the basic structure of WTO is given below:

Table 1: Basic Structure of WTO

	Goods	Services	Intellectual Property	Disputes	Trade Policy Reviews
<i>Basic Principles</i>	GATT	GATS	TRIPS	Dispute Settlement Mechanism	Trade Policy Review Mechanism
<i>Additional details</i>	Other goods agreements and annexes	Services Annexes			
<i>Market access commitments</i>	Countries schedule of commitments	Countries schedule of commitments (and MFN exceptions)			

Source: WTO (1998, p. 14).

The chapter is divided into three sections which discuss the three major multilateral agreements in WTO dealing with trade in goods, services and intellectual property rights, the major mechanisms of dispute settlement and trade policy review along with other agreements.

2.A Major Agreements in WTO

2.A.1 General Agreement on Trade and Tariffs (GATT)

GATT is a multilateral agreement on trade in goods. Before 1995, *GATT* itself was an international agency containing the main set of rules for international trade. The then *GATT* had contracting parties and it used to deal with goods. Since the establishment of WTO, *GATT* has become one of the agreements dealing with

trade in goods. This agreement is concerned with associate agreements, understandings, and decisions made for the biggest portion of constraints and allow for most of the exclusions in trade policy formulation by members. GATT is led by the principles of WTO under which members must design and implement their trade policies to be non-discriminatory. Members must observe the national treatment principle and when granting protection, use tariffs, which are reasonable and bound.

Under GATT, members deal with:

- Agriculture
- Health regulations for farm products
- Textiles and clothing
- Product standards
- Investment measures
- Antidumping measures
- Customs valuation methods
- Pre-shipment inspection
- Rates of origin
- Import licensing
- Subsidies and counter measures
- Safeguards

The GATT requires governments to make their trade policies transparent. And they share a common three-part structure:

(a) Tariffs: More Bindings and Closer to Zero

The bulkiest results of Uruguay Round are 22,500 pages listing individual countries' commitments on specific categories of goods and services. These include commitments to cut and bind their customs duty rates on imports of goods and in some cases, tariffs are being cut to zero-with zero rates also committed in the 1997 on information technology products. There is also a significant increase in the number of "bound" tariffs-duty rates that are committed in the WTO and are difficult to raise.

The proportion of imports that have bound tariff rates is raised by this agreement to 99 percent for developed countries, while for developing countries it has jumped to 73 percent (from 21 percent before the Uruguay Round). Economies in transition have also increased their bindings to 98 percent of total imports. These high proportions of imports with tariffs that are bound help traders and investors gain more confidence about those markets stability and security.

(b) Agriculture: Fairer Markets for Farmers

The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies, which would not normally have been allowed for industrial products. The Uruguay Round agreement is a significant first step towards order, fair competition and a less distorted sector. It is being implemented over a six-year period (10 years for developing countries) that began in 1995. Participants' have agreed to initiate negotiations for continuing the reform process before end of the implementation period. The negotiations are now underway.

In agriculture trade, member countries should use tariffs, which must be bound. Agreement on Agriculture, Article 4, explicitly prohibits the use of quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints and similar border measures. By the same agreement, countries are required to reduce support granted to the agriculture sector, as well as export subsidies if they have had any.

Additionally, there are New Rules and Commitments relating to the Agriculture Agreement whose objective is to reform trade in the sector and to make policies more market oriented. This would improve predictability and security for importing and exporting countries alike. The new rules and commitments apply to:

Market access: The new rule for market access in agricultural products is "tariffs only". Before the Uruguay Round, some agricultural imports were restricted by quotas and other non-tariff measures. These have been replaced by tariffs that provide more or less equivalent levels of protection. If the previous policy meant domestic prices were 75% higher than world prices, then the new tariff could be around 75% (converting the quotas and other types of measures to tariffs in this way was called "tariffication").

Domestic Support: Some you can, Some you can't: The main complaint about policies, which support domestic prices, or subsidize production in some other way, is that, they encourage over production. This squeezes out imports or leads to export subsidies and low-priced dumping in the world markets. The Agricultural Agreement distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect. Domestic policies that do have a direct effect on production and trade have to be cut back. Developed countries agreed to reduce the tariff rate by 20% over six years in 1995. Developing countries are making 13% cuts over 10 years. Least Developed Countries do not need to make any cuts. Measures

with minimal impact on trade can be used freely. They are in a “green box” (green as in traffic lights). They include government services such as research, disease control, and infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as certain forms of direct income support, assistance to help farmers, restructure agriculture, and directly payments under environmental and regional assistance programmes.

(c) Trade of Manufactures

In trade of manufactures, although members are strongly encouraged to aim for free trade, they are allowed, when necessary, to use protective measures against foreign competition, although only through tariffs. GATT prohibits the use of quantitative restrictions except for specific exceptions. One of those exceptional cases refers to balance of payments difficulties when a country is permitted to restrict imports to safeguard its external financial position. However the ‘understanding on Balance of Payments Provisions’ strongly urges members to try and use price-based measures (such as import surcharges and import deposit requirements) instead of quantitative restrictions.

2.A.2 General Agreement on Trade in Service (GATS)

GATS is the first ever set of multilaterally, legally enforceable rules, covering international trade in services. It was negotiated in the Uruguay Round. Like the agreement on goods, GATS operate on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries specific commitments to provide access to their markets. Unlike in goods, GATS has a fourth special element: lists showing where countries are temporarily not applying the “most-favored-nation” principle of non-discrimination. These commitments, like tariff schedules under GATT, are an integral part of the agreement. So are the temporary withdrawals of the most-favored nation treatment.

Basic Principles of GATS

- All services are covered by GATS
- Most favored nation treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted
- Individual countries’ commitments: negotiated and bound
- Progressive liberalization: through further negotiations

Scope and Coverage of Services under GATS

As per the scope and coverage of GATS, the agreement applies to all trade in services by WTO members. The exception is the services supplied in the exercise of governmental authority such as central banking and social security, which are neither supplied on a commercial basis nor in competition with other service suppliers.

The GATS schedule largely follows a classification based on the United Nations Central Product Classification system, which identifies 11 basic service sectors plus a twelfth category for miscellaneous service. These are:

- Business (including professional and computer) services
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial (insurance and banking) services
- Health-related and social services
- Tourism and travel-related services
- Recreational, cultural and sporting services
- Transport services and
- Other services not included elsewhere

The full list of these sectors, which are subdivided into some 160 sub-sectors or separate service activities, is given in Appendix D.

The agreement defines services in terms of four different modes of supply: cross-border, consumption abroad, commercial presence in the consuming country, and presence of natural persons. These are described as:

- Cross border supply of services, or “Mode 1” in the jargon, corresponds with the normal form of trade in goods. It is the supply of services from one country to another. It covers those cases where service is supplied to the consumer by the service supplier from outside the country i.e. the service supplier is located in another country. Example: supply of legal advice, computer program or engineering design or entertainment product through Internet, international telephone calls etc.
- Consumption abroad or “Mode 2” refers to consumers or firms making use of a service in another country. Typically, this involves the consumer travelling to the supplying country, perhaps for tourism or to attend an educational establishment or for medical check up.
- Commercial presence or “Mode 3” is the supply of a service by a foreign company setting up subsidiaries or branches to provide services in another

country. For example, establishment of branch offices or agencies to deliver such services as banking, legal advice or communication. It provides, implicitly, the rights of establishment to the foreigners.

- Presence of natural persons or “Mode 4” refers to individuals travelling from their own country to supply services in another country. For example, fashion models, consultants, professors, research experts. To make it more clear, a foreign consultant may travel to the country to supply consultant service, or some employees of a firm may travel to the country to provide the service, which the firm is meant to supply. Even if members undertake Mode 4 commitments to allow natural persons to provide services in their territories, they may still regulate the entry and stay of the persons concerned, for instance by requiring visas, as long as they do not prevent the commitments from being fulfilled.

Obligations

The most important general obligations in the Agreement are MFN and the transparency with respect to all measures affecting trade in services.

There is no general obligations to offer national treatment and market access to foreign suppliers; these obligations are confined to the sectors and sub-sectors specifically included in the individual schedule of commitments of each member, subject to any limitations with respect to each mode of supply. The schedule of commitments are the result of bilateral negotiations on market access and national treatment, based on a process of offer on request, which facilitates the achievement of a balanced package of trade liberalization. Once commitments are made they are binding and cannot be modified or withdrawn without compensating trading partners and thus, even where commitments have not gone beyond guaranteeing the status quo, they have long-term implications. This provides exporters of services, as well as foreign investors, with a greater degree of security and predictability than hereto.

Regarding market access, the following six forms of measure affecting free market access that shall not be applied to the foreign service or its supplier unless there use is clearly provided for in the schedule. They are:

- limitations on the number of service suppliers;
- limitations on the total value of services transactions or assets;
- limitations on the total number of service operations or the total quantity of service output;
- limitations on the number of persons that may be employed in a particular sector or by a particular supplier;
- measure that restrict or require supply of the service through specific types of legal entity or joint venture; and

- percentage limitations on the participation of foreign capital, or limitations on the total value of foreign investment

With regard to the national treatment obligation, GATS states that in the sectors covered by its schedule, and subject to any conditions and qualifications set out in the schedule, each member shall give treatment to foreign services and service suppliers treatment, in measures affecting supply of services, no less favorable than it gives to its own services and suppliers. The basic obligation is limited for GATS to service sectors for which commitments have been given in the schedule of the country concerned.

How to Record Commitments

Horizontal Commitments – a horizontal commitment applies to trade in services in all scheduled services sectors unless otherwise specified. It is in effect a binding either of measures which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations.

Sector Specific Commitments – A sector-specific commitment applies to trade in services in a particular sector. It in the context of such a commitment, a measure is maintained which is contrary to Article XVI or XVII, it must be entered as a limitation in the appropriate column (either market access or national treatment for the relevant sector and modes of supply).

Levels of commitment – Since the terms used in a members schedule create legally binding commitments, it is important that these expressions or absence of limitations to market access and national treatment be uniform and precise. Depending on the extent to which a Member has limited market access and national treatment, for each commitment with respect to each mode of supply, four cases can be foreseen:

- *Full commitment* – Members do not seek in any way to limit market access or national treatment in a given sector and mode of supply through measures inconsistent with Article XVI and XVII. In this situation the appropriate column is market with NONE. However, any relevant limitations listed in the horizontal section of the schedule will still apply.
- *Commitment with limitations* – Where market access or treatment limitations are inscribed, the member must describe in the appropriate column the measure maintained which are inconsistent with Articles XVI or XVII. The entry should describe each measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. Further, in some cases, members may choose to partially bind measures affecting a given category of supplier. This may be achieved through an indication in the horizontal section of a schedule with the corresponding sectoral entry under the relevant mode of supply (i.e. it may thus read “Unbound except as indicated in the horizontal section”).

- *No Commitment* – In this case, the Member remains free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment. In this situation, the Member must record in the appropriate column the word: UNBOUND. This case is only relevant where a commitment has been made in a sector with respect to at least one mode of supply. Where all modes of supply are “unbound”, and no additional commitments have been undertaken in the sector, the sector should not appear on the schedule.
- *No commitment technically feasible* – In some situations, a particular mode of supply may not be technically feasible. An example might be the cross-border supply of hair-dressing services. In these cases, the term UNBOUND* should be used. The asterisk should refer to a footnote which states “Unbound due to lack of technical feasibility.”

2.A.3 Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Today’s global trade has largely been influenced by the technological and commercial innovations and inventions. Moreover, ideas and knowledge have become an increasingly important part of the present day trade. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. This observation makes it clear that most of the value of new medicines and other high technology products lies in the amount of inventions, innovations, research, design, and testing involved. Many products that used to be traded as low technology goods or commodities now contain a higher proportion of inventions and design in their value. For example brand-named clothing or new varieties of plants.

Since these inventions, designs or creations can be copied by other unauthorized persons or parties, it becomes essential to protect the exclusive right of the creator. In this concern, creators are given the right to prevent others from using their creations. These rights are known as intellectual property rights. These take a number of forms. For example, books, paintings and films come under copy rights; inventions can be patented; brand names and product logos can be registered etc.

Coverage of TRIPS: The WTO’s Agreement on TRIPS attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. When there are trade disputes over these rights, the WTO dispute settlement mechanism is there. The agreement covers mainly five issues:

- How basic principles of the trading system and other international intellectual property agreements should be applied.
- How to give adequate protection to the intellectual property rights.

- How countries should enforce those rights adequately in their own territories.
- How to settle disputes on intellectual property between members of the WTO.
- Special transitional arrangements during the period when the new system is being introduced.

Objects/Types of TRIPS: The object of this agreement are products of the human mind whose creators are granted protection known as intellectual property (IP) rights. They include:

- Copyright and related rights (protects the authors of books and other artistic creations).
- Trade Marks, including service marks (trade signs or symbols eligible for protection and the minimum rights conferred on their owners)
- Patents (apply to rights of inventors).
- Industrial designs (protects rights to ornamental designs).
- Treatment and other signs used to build customer loyalty and goodwill.
- Layout-designs of integrated circuits (topographies).
- Undisclosed information (trade secrets having commercial value).
- Geographical indication (use of place name to describe a product)

Protection of IP: The IP protection is variable in terms of duration – for trademarks it lasts at least 7 years, for patents it is for 20 years, while for copyright it extends for at least 50 years. Industrial design and integrated circuits must be protected for at least 10 years. The Agreement of TRIPS complements on the protection of intellectual property rights developed by the WIPO (World Intellectual Property Organization). WIPO and other organizations have worked on providing protection to various types of intellectual property and as a result, various conventions have been adopted. The TRIPS agreement builds on those international conventions by incorporating most of their provisions for IP protection. It also provides minimum standards of protection as well as prescriptions of institutional mechanism, procedures and remedies that countries should adopt to enforce the protection.

Enforcement of TRIPS : According to the agreement, governments have to ensure that IP rights can be enforced under their laws and that the penalties are tough enough. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They must not entail unreasonable time limits or unwarranted delays. People should be able to ask a court to review an administrative decision or to appeal to a lower court's ruling. The agreement describes in some detail how enforcement have to be handled, including rules for obtaining evidence, provisional measures, injunctions, damages, and other penalties.

Transition Arrangements: When the WTO agreements took effect on 1 January 1995, developed countries were given one year to ensure that their laws and practices conform with the TRIPS agreement. Developing countries and (under certain conditions) transition economies were given 5 years while Least Developed Countries were given 11 years.

TRIPS and Developing Countries: With respect to trade implications in developing countries, the Agreement brings both opportunities and challenges. The opportunities are: the encouragement of creativity and innovation, North-South transfer of technology, protection of consumers by controlling counterfeit trade. The challenges are: the obligations to change IP rights system, barriers to use reverse engineering (a limitation of technology of production) and exploitation of traditional knowledge.

2.B Major Mechanisms in WTO

2.B.1 Dispute Settlement Mechanism

As Renato Ruggiero remarks, the Dispute Settlement Mechanism (DSM) is the “WTO’s most individual contribution” to the stability of the global economy. Without a means of settling disputes, the rules based system would be worthless because the rules would not be enforced. The WTO’s procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly defined rules, with timetables for completing a case. First rulings are made by a panel where ruling is endorsed (or rejected) by the WTO’s full membership. Appeals based on points of law are also possible.

This point is made explicit by WTO (1998, p. 42) which states that “The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedures. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year – 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), then the case should take three months or less.” The panel process which disputes go through is presented in Appendix E. As stated in WTO (1996, p. 97) “At all stages, countries in disputes are encouraged to consult each other in order to settle “out of court.” This changed procedure made it impossible for the country losing a case to block the adoption of the ruling (under the old system, ruling had to be adopted by consensus which meant that a single objection could block the ruling permanently). In this case, rulings are automatically adopted unless there is a consensus to reject a ruling. In such cases a country wanting to block a ruling has to persuade other WTO members (including the adversary in the case) to share its position.

Disputes are settled by the Dispute Settlement Body (DSB) which has the sole authority to establish so-called “panels” of experts to consider the merits of each case, and to accept or reject the panel’s finding or the result of an appeal. The DSB also monitors the implementation of the rulings and recommendations and has the power to authorize retaliation when a country does not comply with a ruling.

2.B.2 Trade Policy Review Mechanism (TPRM)

Individuals and companies involved in trade have to know as much as possible about the conditions of trade. It is therefore important that regulations and policies are transparent. In the WTO, this is achieved in two ways: governments have to inform the WTO and fellow members of specific measures, policies or laws through regular negotiations; and the WTO conducts regular reviews of individual countries trade policies – the trade policy reviews.

These reviews are part of the Uruguay Round Agreement. It was agreed to set up the reviews at the December 1988 Ministerial meetings. The first review took place the following year. Initially, they operated under GATT and, like GATT, they focused on goods trade. With the creation of the WTO, their scope was extended to include services and intellectual property. The objective of this agreement, therefore, is to increase the transparency and understanding of countries trade policies and practices, through regular monitoring. The reviews focus on members own trade policies and practices. But, they also take into account the countries wider economic and development needs, their policies and objectives and external economic environment that they face.

Over the period of time, all WTO members are to come under scrutiny. The frequency of the reports is variable across countries. Technically, there are three review cycles depending on the type of country (i.e. the four largest trading entities of US, EU, Japan and Canada are examined approximately once every two years, the next sixteen countries in terms of their share of world trade, are reviewed every four years while for all other members, a review is due every six years). For each review, two documents are prepared: a policy statement by the government under review, and a detailed report written independently by the WTO Secretariat. These two reports, together with the proceedings of the Trade Policy Review Body’s meetings are published shortly afterwards.

WTO requires that regulations be transparent. To attain this objective, governments must inform WTO through notifications as well as WTO conducting regular policy review. The trade policy reviews, which is done through the Trade Policy Review Mechanism (TPRM), was first introduced in 1989 on an interim basis, and, with the creation of the WTO it has become a permanent feature of the trading system. With this change in status, TPRM also gained in coverage as it now extends to goods and services trade and to intellectual property rights. The objective of this permanent feature in the system are (WTO, 1998):

- To increase transparency and understanding of countries trade policies and practices through regular monitoring.

- To improve the quality of public inter-governmental debate on the issues; and
- To enable a multilateral assessment of the effects of policies on the world trading system.

It should be noted that LDC's, and in the case of smaller trading entities, reviews are prepared only when requested by countries themselves. Further, the approach for producing TPRM reports are different from that of the IMF or WB due to resource constraints where the relevant WTO division writes its reports on the basis of the replies reviewed members send to a questionnaire, discussions with officials during the mission visit and information collected from other sources.

2.C Miscellaneous Agreements and Mechanisms

Besides the agreements and mechanisms discussed above, there are two other agreements: Plurilateral Agreements and Information Technology Agreement.

2.C.1 Plurilateral Agreements

Initially there were four plurilateral agreements which were not signed by all members: civil aircraft, government procurement, dairy products, and beef. But the last two agreements (dairy and beef) were terminated at the end of 1997.

For the most part, all WTO members subscribe to all WTO agreements. There remain, however, two agreements originally negotiated in the Tokyo Round, which have a narrower group of signatories, and are known as "plurilateral Agreements". All other Tokyo Round agreements became multilateral obligations (i.e. obligations for all WTO members) when the WTO was established in 1995. The two are : Trade in Civil Aircraft and Government Procurement.

Trade in Civil Aircraft Agreement: The Agreement of Trade in Civil Aircraft entered into force on 1 January 1980. It now has 21 signatories. It eliminates import duties on all aircraft, other than military aircraft as well as, on all other products covered by the agreement – civil aircraft, engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components. It contains disciplines on government-directed procurement of civil aircraft and inducements of purchase as well as on government financial support for the civil aircraft sector.

Agreement on Government Procurement: In most countries, the government is the biggest purchaser. At the same time, the political pressure to favor domestic supplies over their foreign competitors can be very strong. This agreement was first negotiated during the Tokyo Round and entered into force on 1 January 1984. It is designed to make laws, regulations, proceedings and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers. It has two elements – general rules and obligations and schedules of national entities in each member country whose procurement is subject to the agreement. It now has 23 members participating.

The present agreement and commitments were negotiated in the Uruguay Round. The new agreement also extends coverage to services (including construction services), procurement at the sub-central level and procurement by public utilities. This new agreement took effect on 1 January 1996. It also reinforces rules guaranteeing fair and non-discriminatory conditions of international competition. The agreement applies to contracts worth more than specified threshold values. For central government purchases of goods and services, the threshold is SDR 130,000. For government entities, the threshold varies but is generally in the region of SDR 200,000. For utilities, thresholds are generally in the area of SDR 400,000 and for construction contracts, in general the threshold value is SDR 5,000,000.

2.C.2 Information Technology Agreement

The “Ministerial Declaration on Trade in Information Technology (IT) Products” (generally referred to as Information Technology Agreement) was signed by 25 leading IT countries in 1996. These countries account for more than 95 percent of international trade in IT products. The Agreement is open for signatories by other countries. Accordingly, some countries (e.g. Poland, Philippines, Panama) have joined the Agreement.

Parties to the Agreement have agreed to slash tariffs for 225 products which are limited to computer hardware only (these products include computer, calculators, fax machines, ATMs, telephone sets, diskettes, paging machines, antennas, adapters, repeaters and monitors). They have met their obligations by the end of 2000. The “late comers” are also required to do this. They should approach the “Committee of Participation” under the Agreement with a “Notification of Interest” to joining the Agreement.



CHAPTER

3

EMERGING ISSUES IN THE WTO

In spite of the significant role played by the WTO through the means of its various agreements, there are some issues which sometimes compel a student of WTO to make some critical comments on it. The usual comment is that WTO is not working in a transparent manner and the benefits of globalization have not reached all countries. Therefore, WTO is said to be 'a rich man's club'. It was also reiterated at the time of the Seattle Ministerial Conference by the developing countries that the Uruguay Round (UR) agreements were imbalanced as they impose significant obligations on the south without providing either sufficient rights or effective access to the markets in the north. The new issues that were suggested in the Singapore, Geneva and Doha Ministerial Conference to include in the work programme of WTO are:

- (a) Trade and Environment
- (b) Trade and Investment
- (c) Trade and Competition Policy
- (d) Trade Facilitation
- (e) Transparency in Government Procurement and
- (f) Electronic Commerce

Details of these issues are:

Trade and Environment: Much concern has been given to the environment along with the increasing liberalization in the world trade. Environmentalists and NGOs have come with a view that environmental degradation has become inevitable consequence of rapid trade liberalization and will thus unhesitatingly sacrifice public good. Governments in developed countries have opined that trade issues and environment protection are intrinsically linked and that we are collectively and morally obliged to save the planet. The other view also comes that placing trade issues and environmental concerns in the same basket would be counter productive, as it would harm both trade and environment.

The Fourth Ministerial Conference 9-14 November 2001 at Doha, Qatar has taken into account the issue of enhancing the mutual supportiveness of trade and environment. In this concern, the Doha Conference has agreed to negotiations on the relationship between existing WTO rules and specific trade obligations set out in Multilateral Environmental Agreements (MEA). The negotiations also took into account the procedures for regular information exchange between MEA

secretariats and the relevant WTO committees, and the criteria for granting of observer status; the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. This Ministerial Conference has also instructed the Committee on Trade and Environment, in pursuing work out on all items on its agenda within its current terms of reference, to give particular attention to the effect of environmental measures on market access specially in relation to developing countries and in particular to the least developed among them; the relevant provisions of the Agreement on TRIPS; and labeling requirements for environmental purposes. The Conference also recognized the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least developed among them.

Trade and Investment: Foreign Direct Investment (FDI) has been accepted as a critical variable for stimulating growth and an integral input in a globalizing world economy. It is agreed that FDI contributes to economic development and that it is complementary to trade. The Fourth Ministerial Conference has recognized the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross border investment, particularly FDI, that will contribute to the expansion of trade and the need for enhanced technical assistance and capacity building in this area. The Fourth Ministerial Conference has further agreed that negotiations in this regard will take place after the Fifth Session of the Ministerial Conference. The Doha Ministerial Conference also recognized the needs of developing and least developed countries specially for enhancing the support for technical assistance and capacity building. Additionally, the Fourth Ministerial Conference made the Working Group responsible for further work in the Relationship Between Trade and Investment that will focus on the clarification of: scope and definition, transparency, non-discrimination, modalities for pre-establishment commitments based on GATS-type, positive list approach, development provisions, exceptions and balance of payments safeguards, consultation and the settlement of disputes between members.

Trade and Competition Policy: It is not unusual to say that a viable multilateral investment policy can not exist without a multilateral competition policy. In other words, discussions on the relationship between trade and investment can not be divorced from a discussion on the relationship between trade and competition policy. There are several issues, related with trade and competition policy specially concerned with the developing countries, such as the size of the country, competition laws, impact of state monopolies on competition, mergers and acquisitions etc. The Ministerial Conference at Doha has agreed that negotiations on this case will take place after the Fifth Session of the Ministerial Conference. The Doha conference has outlined the issues, to be clarified in the Working Group, which are: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary

cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building.

Trade Facilitation: Trade facilitation is the process of addressing ‘invisible barriers’ to trade. Issues such as quantitative restrictions or high tariffs are visible trade barriers. While these need to be dismantled, there may be a series of other barriers, which may be administrative or procedural and which are trade restrictive. Some issues raised with regard to trade facilitation are harmonization of trading rules and procedures as this issue is being addressed by the World Customs Organization (WCO). There may be the duplication if these matters are brought within the purview of WTO. Accepting the trade facilitation through the simplification of procedures, alignment of documents, harmonization of requirements is beneficial to trade, the issue of high start up costs is a matter of concern. Developing and the least developed countries have argued that they can not bear these high start up costs. The another issue is that several WTO agreements that deal with trade facilitation issues such as the agreements on Customs Valuation, The Agreement on Rules of Origin, The Agreement on Pre-shipment Inspection, The Agreement on Import Licensing Procedures, the Agreement on Technical barriers to trade and on the Application of Sanitary and Photo-sanitary Standards. The implication of these agreements is needed to be strengthened. Last one is the issue which provokes that the Council for Trade in Goods was already examining the issue of trade facilitation and now at this stage the issues related to the costs of ‘switch over’ as also linkage with other WTO agreements needed to be addressed.

Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, the Doha Conference has agreed that negotiations will take place after the Fifth Session of the Ministerial Conference. This conference has made the Council for Trade in Goods responsible for reviewing necessary articles and identify the trade facilitation needs and priorities of Members, particularly of developing and least developed countries.

Transparency in Government Procurement: This is a plurilateral agreement negotiated in the Uruguay Round. Most developed countries are the members of this agreement and only three developing countries (Hong Kong, The Republic of Korea and Singapore) have acceded to it. Most developing countries are therefore not bound by the substantive and procedural obligations the Agreement imposes.

Developing countries have been reluctant to accede to the plurilateral Agreement on Government procurement for several reasons. First, there will be only marginal export gains to the developing countries and the major gain will accrue by the developed countries through improved access to developing country markets. Second, regional trade among developing countries especially in the

procurement sector may be brought about through regional arrangements and agreements and there is no need to be members of the plurilateral agreement. Third, developing countries believe that there is logic to giving a price preference to domestic suppliers, which they would no longer in a position to give after joining the plurilateral agreement. Fourth, the agreement applies not only to trade in goods but also in services. Its compatibility with GATS has not yet been considered.

Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, the Doha Conference has agreed that negotiations will take after the Fifth Session of the ministerial conference. The negotiations will take into account participants development priorities especially of least developed country participants.

Electronic Commerce: E-commerce is expected to grow at a rapid pace. Because of the increasing use of the Internet and other electronic means in international trade in goods and services, the Geneva Ministerial Conference (1998) adopted a declaration on Global Electronic Commerce and directed the General Council to “establish a comprehensive programme to examine all trade related issues relating to global electronic commerce”.

All countries have recognized the importance of e-commerce. However, there are a number of areas in which clarifications are required and those in which serious difficulties are felt. For instance, developing countries lag far behind in terms of the technical requirements of conducting e-commerce. This relates not only to the telecommunications infrastructure and the availability of hardware at an affordable price, but also the price of internet charges. Second, it is not yet agreed as to whether e-commerce is to be classified under trade in goods or in services. If all transmissions on the Internet are characterized as goods, the GATT discipline applies to them and is automatically accompanied by a ban on customs duties on the transmission. And if it is classified under services, GATS discipline would apply and the importing country may choose to levy higher duties or taxes. It is important therefore to decide whether e-commerce is to be classified as goods or services. Third, a series of legal issues are involved, such as: what is the origin of electronically traded products? When is an electronically delivered product ‘domestic’ and when it is ‘imported’? where written agreements or original signatures are required, how will a trader, who uses electronic means, deal with it? How is message authenticity ensured? Since e-commerce is essentially anonymous, what legal safeguards or remedies are available to ensure that ‘orders’ are not placed by those who are to do so (minors)? Fourth, the issue of intellectual property rights is to be watched carefully. Existence of ‘similar trade marks’ in different countries may be a major problem in e-commerce.

It is said that Ministerial conference in the WTO, specially the Seattle conference, could not address the issues particularly related with the developing and the least developed countries. However, the Doha Conference took note of the work done in the General Council and other relevant bodies of WTO. The Doha Conference instructed the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference.

Miscellaneous Issues: There are also other issues in WTO which have been taken into consideration in the Doha Ministerial Conference as well, which are: the trade of Small Economies, Trade Debt and Finance, Trade and Transfer of Technology, Technical Cooperation and Capacity Building, Least Developed Countries and Special and Differential Treatment.



Part II : Perspective on Nepal and WTO

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By: Bijendra Man Shakya

CHAPTER

4

**NEPAL'S ACCESSION TO WTO: A BRIEF
DISCUSSION OF PAST AND PRESENT**

The global economy is becoming ever integrated with World Trade Volumes of goods and services increasing by 12.4% in 2000/2001 (IMF, 2001). With growing global integration, there are benefits and advantages to the domestic economy reflected in greater competition, with lower cost and higher quality goods, as well as the opportunity for reaching the potential inherent in the country's comparative advantage (WTO, 2001). To capture these mentioned benefits and advantages of global trade, Nepal has commenced the accession process for membership into the World Trade Organization (WTO) which is likely in the near future. This chapter gives a brief description of Nepal's accession process.

His Majesty's Government (HMG)/Nepal had formally applied for GATT membership on May 1989 following a trade dispute with India which had resulted in the establishment of the Working Party for Nepal's membership in GATT. However, the trade dispute with India lasted for 15 months and concluded with new treaties being signed. Hence, the urgency for Nepal to become a WTO member, so as to be protected under GATT Article V on transit rights, weakened. Thus, Nepal's accession under GATT 1947 was suspended and only resumed in 1995 as WTO accession under Article XII.¹ It was in December 1995 that Nepal became an observer² to the WTO.

In 1997 that Nepal converted the application for membership in GATT to membership in WTO, with the working party established for Nepal's accession to the GATT likewise transformed into a Working Party on Accession to the WTO. Subsequently in July 1998, Nepal, in accordance with WTO procedures for accession, had submitted to the Working Party a Memorandum of Foreign Trade Regime. The WTO Secretariat circulated Nepal's Memorandum on Foreign Trade Regime to the WTO member countries in August 1998 and invited any queries and comments from members. The WTO Secretariat compiled all the queries and

¹ This is with the terms of reference "to examine the application of the Government of Nepal to accede to the World Trade Organization under Article XII, and submit to the General Council recommendation which may include a draft Protocol of Accession."

² It must be noted that WTO provides for observer status for governments to allow them to familiarize themselves with the organization and to prepare for accession negotiations.

comments on the Memorandum of Foreign Trade Regime, which were forwarded by the member countries, and passed them to HMG/Nepal in January 1999. There were altogether 364 questions (based on Nepalese laws) – 24 on economy, economic policies and foreign trade, 178 on the framework for making and enforcing policies affecting foreign trade in goods and services, 114 on trade-related intellectual property rights regime and 48 on trade-related service regime. HMG/Nepal responded to the queries/questions raised on the Memorandum by WTO members in 1999 and 2000. It was also on July 1999 that the project, “Nepal’s Accession to the World Trade Organization (WTO)”, was formed.³

The first meeting of the Working Party was held on 22 May 2000 at the WTO Secretariat, Geneva. For this meeting, the Nepalese negotiating team was led by Mr. Ram Krishna Tamrakar, Minister of Commerce. After the first Working Party meeting, the WTO Secretariat transmitted additional questions which had been both raised during the first Working Party Meeting and submitted in writing by member countries. In response to the development of the First Working Party Meeting, Nepal had submitted a schedule of tariff concessions and schedule of initial commitments on services sector in July 2000 which again resulted in additional questions from the Working Party. Subsequently, the team led by Mr. Mohan Dev Pant, Secretary of the Ministry, participated for second round of negotiations⁴ in Geneva on September 2000. The second Working Party Meeting is scheduled to be held in the second half of 2002. In this regard, there have been consultation with different stakeholders (such as for accountancy services, legal services etc.) for obtaining feedback to form necessary strategies of HMG in the ensuing WTO negotiations. It must be noted that if the Working Party is satisfied with Nepal’s tariff binding commitments and the services sector liberalization offers, it will then develop a Draft Decision and Protocol of Accession for presentation at the General Council of the WTO. For the accession a two-third clear majority vote of the General Council is needed.

The different milestones in the accession process for Nepal’s membership in WTO are given in the table below:

³ It should be noted that prior to this, there had been some preparatory assistance by UNDP as far back as 1997.

⁴ While this is the second round of negotiations, it is the first round of bilateral negotiations with interested member countries on the market access based on Nepal’s schedule of tariff concessions and schedule of initial commitments in services sector.

<i>Process</i>	<i>Date</i>
Application for accession	May 1989
Working Party Establishment	1989 GATT Working Party converted into WTO Working Party on December 1995
Submission of Memorandum on Foreign Trade Regime	July 1998
Clarification on Memorandum on Foreign Trade Regime	June 1999 June 2000
First Meeting of Working Party	May 2000
Tariff Offers	July 2000
Service Offers	July 2000
Negotiation Process – bilateral negotiation	September 2000 Continue
Second Meeting of Working Party	Second half of 2002
Draft Decision and Protocol of Accession	To be decided
Two-third positive votes in General Council	To be decided



CHAPTER

5

NEPAL AND WTO: INDUSTRY AND TRADE

By:

*Dr. Bhubanesh Pant**

Introduction

Members of the WTO agree to comply with rules and disciplines of the multilateral agreements, which have a direct impact on their industrial and trade policies. The accession process is a unilateral method implying that all requests and demands are made by WTO members to the acceding country. The acceding country should conform to the rules of the Uruguay round agreements and it is not entitled to request additional benefits or concessions in excess of those stipulated in the agreements.

Nepal did not take initiative to become the member of then global trading regime, GATT, predecessor of WTO, until 1989 following a trade dispute with India. However, the dispute lasted for 15 months, and new treaties were signed in 1990. Hence the urgency for Nepal to become a WTO member so as to be protected under GATT Article V on transit rights, weakened. It chose for the Observer status, and did not convert that into an application to join the WTO until 1997. Since then, the Government has been undertaking steps gradually as per the accession process.

A host of factors appear to have contributed to the significance attached by the Nepalese policymakers on WTO accession. In the past, long and open border with India restricted the country's flexibility in framing and implementing independent economic policies. Consequently Nepal had been subjected to negative spillover effects of inward looking and inefficient industrial system in India. But this gradually changed in the early 1990s when India undertook bold trade liberalization programs, including the drastic lowering of barriers to imports of capital goods and other inputs into production. Nepal followed this path and started to capitalize on the opportunity to open up as carried out by India.

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Against this background, this article attempts to (a) pinpoint the areas of contradiction and compatibility of related WTO agreements with the trade and industrial policies of Nepal and (b) highlight some prominent issues and challenges in the area of industry and trade that should be considered by the policymakers of Nepal in the light of the country's accession to the WTO in the future.

WTO Agreements and Nepal's Industrial and Trade Policies: A Comparison

Technical Barriers to Trade and Customs Valuation

Nepal depends more on standards than on technical regulations. There exists a limited number of technical regulations that are applicable to raw wool, cement, iron bards, mineral water, and LPG cylinders.

Nepal's standards (Certification Mark) Act, 1980, sets up the Nepal Standard Council and Nepal Bureau of Standards and gives authority to them to settle and identify measures stipulated by indigenous and expatriate organizations and issue license. Where there exists commodities or methods other than pharmaceuticals and foodstuffs included by the pertinent Acts, the Government has the authority beneath this Act to lay down criteria taking into account the importance of public health and security.

In all cases, international standards have been followed. The Bureau of Standards represents the Enquiry Point; hence it should be provided this status through an improvement in the Act. Furthermore, Nepal should officially subscribe to ISO in order to make the criteria and rules more transparent. This way, the country would be able to carry out in good faith her responsibility under the Agreement on Technical Barriers to Trade.

The Agreement on Customs Valuation is significant as sometimes, it is apprehended that the exporter and the importers may collude to show a lower value of the imported product with the objective of having a lower liability for customs duty on the importer. In order to prohibit such a trend, the customs officials in the importing country should be able to probe extensively into the value of the good.

As stated in Article 1 of this Agreement, the "transaction value" is the principal basis for customs value. This value is the price actually paid for, or if no actual payment has been made, the price which is payable and is normally depicted in the invoice of the product.

Nepal's Custom Act, 1962 as amended in 1997 furnishes for this valuation of custom duties on this basis. Hence, Nepal's principles and administrative procedures are in conformity with the clauses of the Agreement in terms of Article 22. Hence, no significant amendment is needed in the Customs Act.

Currently, however, the Custom's Rules do not provide detailed guidelines for executing the transaction value. The Customs Department as such is left with insufficient supervision. Hence, these issues need to be taken care of soon.

Import Licensing, Subsidies and Antidumping

In Nepal, there is only one licensing system that is applicable to goods originating in and coming from all countries. The licensing system is automatic and meets the obligations of Article 2 of the Agreement on Import Licensing Procedures.⁵

As per the Treaties of Trade and Transit with India, licenses are required for products mentioned in the Treaty. Currently, for trade with other country, licenses are not needed. But letters of credit need to be opened for the imports and exports of goods and copies of them are utilized for customs purposes.

Presently, all items excluding a few under prohibition or Quantitative Restrictions (QR), are free for export or import and there exists no quotas.⁶ The objective of this exclusion is to protect public health, consumer and environment welfare and national security. The licensing system is not used to restrict either the quantity or the value of imported goods.

The Export Import Control Act, 1957 gives the authority to the government to introduce import controls when BOP difficulties arise and in exceptional cases of governmental assistance to economic development. This is in line with Article XVIII B of GATT 1994.

Presently, the automatic licensing system has been relaxed and the submission of application for obtaining a license is not required. Still, the letters of credit opened for imports and exports must be represented at the customs office during the time of export and import.

Since subsidies could in practice distort conditions of competition in international trade, the basic aim of GATT rules, which have been further explained in detail by the Agreement on subsidies and Countervailing Measures, is to restrict the use of subsidies that have trade distorting effects.

Subsidies provided by government in the industrial sector are classified into prohibited and permissible subsidies. Permissible subsidies are of two types: (a) subsidies which are of a general nature; and (b) subsidies which, though specific, are meant for (i) research or (ii) development of disadvantage regions or (iii) environment purposes.

⁵ Article 2 of the Agreement on Import Licensing Procedures states that: a) automatic licensing methods shall be applied in such a way as not to have restricting impact on imports conditional to automatic licensing; and b) members notice that automatic import licensing may be indispensable whenever other suitable modes are not ready. This type of licensing may continue as long as the circumstances, which gave rise to its introduction, continue and as long as its major administrative purposes cannot be realized in a more suitable manner.

⁶ For a list of products banned for exports and imports, refer to NIDC (1998).

Permissible subsidies are further classified into two groups: actionable and non-actionable. When imports of products receiving actionable subsidies lead to adverse trade effects, that is, bring about injury to domestic industry, the affected importing countries can impose countervailing duties. But, importing countries cannot levy these duties on products that have benefited from the limited number of subsidies that are non-actionable.

Prohibited subsidies, on the other hand, include export subsidies and subsidies that aim at encouraging the use of domestic rather than imported goods. Developing countries with a per capita GNP of less than US\$ 1,000 which have been listed in the Agreement and LDCs are exempted from the rule prohibiting export subsidies.

The Industrial Enterprises Act (IEA) 1992 amended in 1997 deals with subsidies. Most of these subsidies provided are permissible ones that are either of a general nature, or meant for development of remote, undeveloped and underdeveloped areas, or for environment purposes. Again, there are some prohibited export subsidies as per the Agreement on Countervailing Measures of the WTO (such as income tax exemption on profit earned through exports) of which Nepal and other countries with a per capita GNP of less than US\$ 1,000 are exempted from this rule. Yet, there appear to exist subsidies that promote the use of domestic goods over imported goods and which is not allowed by the WTO. An example is the reimbursement of customs duties, sales tax, and premium levied on such product, and customs duty, excise duty and sales tax levied on raw materials, etc. utilized in such product if industry sells its product within the Kingdom. These issues need to be addressed properly.

The Anti-dumping Agreement (Article VI of GATT, 1994) authorizes countries to levy anti-dumping duties on products that are being dumped. An enterprise is said to dump a product if it exports the product at a price lower than the price of the like product in the exporting country.

In the light of its accession to the WTO, Nepal is not required to frame domestic laws on these measures. But, after completion of accession process, if Nepal wishes to utilize these measures it could devise separate antidumping, countervailing, and safeguard rules.

TRIMS

The Agreement on Trade-Related Investment Measures (TRIMS) examines GATT articles connected to the trade restrictive and distorting effects of investment measures so as to avoid adverse effect on trade. The Agreement restricts countries from utilizing five TRIMS that are considered to be inconsistent with the GAPP rule of national treatment and the rule that prohibits the application

of Ors to imported products.³ It is mandatory for members to inform TRIMS which are not in conformity with clauses of this Agreement.

All TRIMS are to be routinely informed under Article XI of GATT 1994. Nepal does not possess any TRIMS, which need notification.

The country's foreign investment rules are governed primarily by the Foreign Investment and Technology Transfer Act, 1992. The Act stipulates that industries set up with foreign investment are also entitled to enjoy all facilities and incentives.

The Act, amended in 1996, has made 100 percent foreign equity participation possible in all industrial enterprises except for cottage and some specific types of industries particularly reserved for domestic investment only. Moreover, transfer of technology is possible even in case of cottage industries. The Government requires that a business enterprise set up with foreign investment or technology acquire a prior approval of the Department of Industry (DOI).

The DOI can give permission for foreign investment in an enterprise with up to Rs 500 million in fixed assets. In case of an enterprise with fixed assets greater than Rs 500 million, an approval from the Industrial Promotion Board is required for such permission. In this case, the question of national treatment could emerge here.

The Act, prohibits foreign investment in a few areas including cottage industries, real estate business, travel and trekking agency, poultry farming, fisheries, bee-keeping, and consultancy services such a management, accounting, engineering and legal services. Hence, this Act, to some extent, attempts to restrict potential competition for existing Nepalese entrepreneurs from foreign competition. Furthermore, in sectors where foreign investment is not prohibited, the Act calls for a review of foreign investment proposals and, negotiations on conditions before final approval. This could transmit a negative signal to foreign investors.

Moreover, according to Clause 22 of the IEA, 1992 if any industry cannot function without expatriate manpower, foreign nationals may be appointed in such a case with the prior permission of the Department of Labor for a maximum period of five years. If the appointed person happens to be a technician of a special category but not available within Nepal, such person could, with the approval of Department of Labor, be appointed for up to an additional period of five years. The

³ These are 2 TRIMs that extend more favorable treatment to domestic products than imports (local content requirements and trade-balancing requirements) and 3 TRIMs inconsistent against the use of QRs on imports and exports (trade-balancing requirements constituting restrictions on imports, exchange restrictions resulting in restrictions on imports, and domestic sales requirements involving restrictions on exports).

foregoing rules on employing foreign personnel give the sole authority to the Department of Labor to make the decision.

In aggregate, the Foreign Investment and Technology Transfer Act, 1992 amended in 1996, would be better off with some changes as issues relating to national treatment could emerge.

TRIPS

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is based on the existing international conventions that deal with intellectual property rights (IPRs). Its provisions are applicable to the following IPRs: (a) patents; (b) copyright and related rights; (c) trademarks; (d) industrial designs; (e) layout-designs of integrated circuits; (f) undisclosed information; and (g) geographical indications. The time to comply with this Agreement has been extended to 2016.

In Nepal there are laws that deal with procedures for acquisition and protection of patents, designs, trademarks, and copyrights. The Copyright Act, 1965 and Copyright Rules, 1989 take care of the copyrights. The Copyright Act, 1965 had one amendment in 1997 to incorporate computer software within its purview. Patent, Design, and Trademarks Act, 1965 take care of the remaining IPRs. This Act covers trans-border reputation of reputed trademarks. Two amendments were carried out in this Act in 1987 and 1991. There are no laws relating to topographies, computer programs and geographical indications.

In terms of the Patent, Designs and Trademark Act of Nepal, the minimum protection period of patent is 7 years, whereas the Agreement on TRIPS stipulates that the minimum protection to be provided to the patent holder is 20 years from the date of filing of application. It could be contended that Nepal's law prescribes patent protection for a period of 21 years, if the renewal of patent is undertaken every 7 years. Nevertheless, the Agreement on TRIPS demands for a straight 20 years protection without any need to renew that patent.⁴

Article 23 (1) of Patent, Design, and Trademark Act demands a double fee for registration and renewal for foreigners. This contradicts the requirements of national treatment provided for in Article 3 of TRIPS. This provision could connote that Nepal does not provide MFN and national treatment in protection of intellectual property rights.

Thus, new legislation is needed in many areas such as patent protection of pharmaceutical and chemical products, among others. The present Acts on patent, design, trademark, and copyright demands an amendment and the prevailing terms of protection and enforcement needs to be extended. Furthermore, provision should

⁴ The differences between Nepalese laws and the Agreement on TRIPS are clearly provided in Pro Public (2001).

be made in the legislation to deal with other aspect of agreement, that is, acquisition and maintenance of IPR, dispute prevention and settlement and institutional arrangement. As Nepal is a member of World Intellectual Property Organization (WIPO), the amendments should be undertaken in this perspective.

The implementation of the TRIPS could make the transfer of technology to Nepal more expensive. Moreover, as Nepal does not possess comparative advantage in innovation, attempts to develop certain sectors within the WTO imply that it will have to depend largely on the transfer and diffusion of technology from foreign countries.

The foregoing issues should be seriously considered by the policymakers and the transition period provided by the Agreement should be exploited to the maximum. It should be noted here that the time to comply with this Agreement has been extended to 2016.

Rules of Origin

The agreement on Rules of Origin requires countries to use a uniform set of harmonized rules for determining the origin of goods imported on a most-favored nation (MFN) basis.

In Nepal, the application for import requires the importer to state the country of origin of the goods to be imported. The country is applying the rules of origin under the South Asian Preferential Trading Arrangement (SAPTA) agreement in order to establish whether preference should be applicable to imported goods. With regard to exports, document certifying the origin of goods, export declaration form, invoice, letter of credit, and packing list, among others, have to be submitted together with the application form. Members of the Federation of Nepalese Chambers of Commerce and Industry are the only authorized agencies to issue a Certificate of Origin for certifying the export of Nepalese origin goods. Thus, as the Rules of Origin comprise of simple certificate of origin for both MFN and preferential trade, there is no discrimination involved.

Related Acts of Nepal

The Export-Import Control Act, 1957 was introduced with the objective of controlling or prohibiting the export or import of restricted items and those announced by the government from time to time. The aim of the Act does not seem to be compatible with the WTO provisions. Moreover, this Act, in the present context, seems to have lost its significance as hardly anything has been mentioned about the process of registration of export-import agencies or houses, export promotion, finance, export incentives, institutional arrangements, and dispute settlement, among others. Hence, this Act should be amended and also be in conformity with the WTO provisions.

Under the Company Act, 1997, any individual, including any foreigner, wishing to set up a company must register with the Office of the Company

Registrar. The Act mentions that the only basis for refusing a registration are: (a) use of a name of an existing company; (b) inappropriate name; (c) illegal motives; and (d) failure to satisfy necessary conditions for establishment. According to Clause 3, sub-section (2) of the Company Act, any foreigner having obtained an approval under the prevailing law to carry out any enterprise with a motive of making profit by making investment within the Kingdom of Nepal may also incorporate a Company pursuant to subsection (1). Thus, the Company Act seems to be compatible with the WTO provision.

Some Policy Issues

Marginalization and Competition Policy

The intensification of competition is likely to marginalize the country and increase market concentration. In order to overcome the threat of marginalization in the global economy, Nepal should undertake this task from three perspectives. One, the country should evaluate its productive potential as well as its comparative advantages, on the basis of which it should be able to pinpoint which of its existing activities need to be retained and improved, and to identify new export products in order to expand the productive base, diversify exports and build up a more secure and stable source of income. Two, Nepal should participate more effectively in regional trade groupings such as the South Asian Association of Regional Cooperation (SAARC). And three, there is a need to develop a trade strategy which links strategically positioned firms in Nepal, its neighboring countries and other developing countries.

WTO plays a paramount role in promoting competition. One of the most significant determinants of competition in markets is the free movement of goods across borders and, particularly in the service industries, the free movement of foreign direct investment (FDI). These are subject to WTO rules and discipline. One plus point of the WTO rules in this regard is that they are neutral between foreign and domestic producers. This helps to ensure that domestic and foreign producers are able to compete on equal terms.

Especially, after being a WTO member, Nepal could be concerned about the restrictive business practices of the multinational corporations (MNCs), which set up affiliates in its economy – for instance, price fixing and market allocation. Foreign investors are subject to the laws of the host economy. Hence, when the anti-competitive practices takes place in the host economy, the appropriate answer is the development and application of national competition laws. Therefore, the policymakers in Nepal should consider formulating some kind of competition laws as these address the source of the problem directly.

Import Protection and Export Promotion

Domestic firms under WTO could be protected from import competition through tariffs, non-tariff measures and subsidies. However, the scope for import

protection continues to fall. Tariffs are declining and local content protection is on the verge of being prohibited. The scope for continued import protection under the WTO depends on the ability of LDCs and developing countries to negotiate a provision that permits greater discretion for protection. Import protection can be achieved by challenging the fairness of competition by utilizing anti-dumping and safeguard measures.

Nepal should employ selective, performance-related and time-bound protection of infant industries. Such protection should be utilized strictly as a transitional provision to address market failures and promote learning and capacity building for future competitiveness.

In terms of export promotion, direct intervention by Governments to boost exports is being increasingly restricted by the WTO rules. This gives Nepal little space for maneuver in the area of export subsidies for industrial products. However, there is a wide range of alternatives that are and could be undertaken. These include export credit and insurance schemes below market rates, concessional tax and duty provisions, and export processing zones. While some of them remain WTO-consistent, Nepal needs to reassess the degree to which other policies, which discriminate in favor of particular producers, are in their national interest. The focus should be on reducing fiscal and procedural constraints on exports, trade facilitation, and an appropriate exchange rate policy. Human capital formation, innovation policies, joint venture agreements and infrastructure are important for determining export competitiveness, and are allowed within the framework of the WTO.

It should be reiterated that Nepal's exports prospects could be diminished if it continues to rely on limited products and limited markets. Export concentration is considered undesirable as a) it renders an economy vulnerable to external shocks related with the products on which is concentrates; b) it restricts opportunities for earning adequate foreign exchange; and c) it does not foster intersectoral linkages, and thus, militates against the emergence of a nationally integrated economy.

Conclusions

Nepal is currently fulfilling required procedures of its accession to WTO, which could bring both opportunities and challenges. One of the core opportunities open to Nepal is the possibility of significant trade diversification, both in terms of market and products, which she has not successfully achieved yet. Due to the dominance of a few exportable commodities, there is a need to identify commodities with export potentialities by providing technical and material support. It is equally important to locate more prospective markets for the products in view of the limited existing markets.

The tools of industrial policy must be employed very carefully, or else they could generate large costs of their own. A major pressing policy problem in Nepal is less the establishment of new industries than of enhancing the competitiveness of

existing inefficient and technologically stagnant industries. Industrial reform and restructuring need, thus to address various determinants of capability development: the incentive framework, the supply of human capital, the supporting technology infrastructure, finance for technological activity, and access to foreign technologies.

Coping with increased global market competitiveness also presents a great policy challenge to the country, and how it responds to it will be crucial in its success in regional and global integration strategies. Concrete action by the country itself, and its development partners, will thus be needed in order to resolve these constraints and transform trade into a powerful engine for growth and poverty eradication, as well as an effective tool for drawing benefits from globalization and trade liberalization.

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CHAPTER

6

WTO AND NEPAL: SERVICES WITH SPECIAL REFERENCE TO THE FINANCIAL SERVICES SECTOR

By:

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I. Introduction

The global economy is being integrated at an ever-faster pace. The growing volume of global trade and the increasing number of the World Trade Organization (WTO) members have strongly signaled this integration. This global interconnection, however, has a negative side seen in the contagion from one country to another. These effects in the new global trading environment thus offer both challenges and opportunities to all nations.

Acknowledging the net economic benefits of being integrated with the global economic environment, Nepal has commenced the accession process for membership into WTO. In this process, Nepal is presently negotiating commitments under multilateral agreements such as General Agreement on Trade and Tariffs, General Agreement on Trade in Services (GATS) and Trade Related Aspects of Intellectual Property Rights. This paper focuses on trade in services under GATS. In Nepal, the services sector is the most important contributor to gross domestic product (GDP) which has been approximately half of national income since 1995/1996 and ended at 53.0% in 1999/2000.⁷ Further, the growth

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⁷ The contribution of the services sector to GDP along with its various components is presented in the following table.

Fiscal Year/Contribution to overall GDP	1995/96	1996/97	1997/98	1998/99	1999/00
Services sector total	50.0%	51.0%	50.0%	51.0%	53.0%
Electricity	2.0%	1.5%	1.0%	1.6%	2.0%
Construction	10.86%	10.5%	10.0%	9.88%	10.0%
Trade, Restaurant and Hotel	11.33%	11.62%	11.91%	11.79%	11.68%
Transportation	7.16%	7.79%	7.46%	8.0%	8.48%
Financial Sector and real estate	10.0%	10.27%	10.06%	10.1%	10.31%
Community and social services	8.8%	9.6%	9.26%	9.3%	10.36%

Source: Economic Survey, HMG/MoF, Nepal 2000/2001.

vis-à-vis other sectors is relatively greater which can be seen in its long term annual growth rate of 5.9 percent for the period of 1974/1975 to 1995/1996 versus 4.4 percent for other sectors. Because of the increasing contribution of the service sector to the national income of the country, this paper attempts to (i) present an overview of the services sector in Nepal (ii) examine and analyze the Nepalese financial services sector with special reference of Nepal's accession process into WTO, and (iii) put forward some relevant and appropriate recommendations particularly for financial services sector.

II. Nepal's Services Policy: An Overview

As stated above, the services sector in Nepal is a major contributor to the national income. However, a comprehensive and integrated services policy for guiding this sector is lacking.⁸ In this regard, it is essential that His Majesty's Government (HMG) introduce various sectoral policies particularly for major services. This is critical since Nepal, in its accession process to the WTO, needs to satisfy the negotiating WTO members that its services trade regime meets the fairly limited set of *general obligations* embodied in the General Agreement on Trade in Services. Additionally, it needs to negotiate with WTO members on a *Schedule of Commitments* containing minimum terms of entry to Nepal's services market for foreign services providers. The lack of an integrated service policy as such, will pose a handicap for Nepal's integration of the service sector with the external market. It is also of high importance given that the *appropriate* commitments in the services sector should be made since commitments in WTO under GATS are legally binding.

Presently, Nepalese service sector is bound by various domestic regulations such as: Foreign Exchange (Regulations) Act 1962, Foreign Investment and Technology Transfer Act 1992 (FITTA, 1992), Company Act 1997, and others. To make a short presentation of the services sector regulations, some observations on Nepal's commitment in services sector are discussed below:

#	Service Sector
1	<p>Business services</p> <ul style="list-style-type: none"> • Legal: FITTA, 1992 does not allow any foreign investment in legal services. However, the authority may grant permission for the foreign technology transfer on such area under the restrictive clause of subsection (4) of Section 3 of the said Act. • Accountancy: The Company Act requires for both private and public limited companies to have an external audit annually and would not seem to preclude the use of foreign auditors. However, FITTA, 1992 does not allow foreign investment on accounting, auditing and book keeping. • Medical: The Ministry of Health licenses foreign doctors to work in government run hospitals. Similarly, health professionals can obtain licenses from the Medical Council whether in private practice or as employees in a hospital. NRB seeks the advice of the Medical Council on request for importation of medical services and acts on the

⁸ While disappointing, this situation in Nepal is not surprising since most countries also lack an overall services policy.

	<p>recommendation of Council in disbursing convertible currency.</p> <ul style="list-style-type: none"> • Computer services: Despite the bright prospect of computer services, Nepal does not have any specific Act in this regard.
2	<p>Communications</p> <ul style="list-style-type: none"> • Postal: It is the exclusive monopoly of the government. • Courier: Private companies deliver courier services. Foreign companies may deliver international courier services cross-border or through commercial presence. • Telecommunications: Nepal issued the national telecommunication policy in 1999 which envisages the privatization of the existing publicly owned monopoly: NTC, the entry of a second “fixed line” competitor for NTC, the entry of two mobile telephony operators that would not be entitled to have direct access to international traffic; and liberalization of commercial presence for an unlimited number of “value added” providers. These policies are targeted to be implemented by the year 2004. • Audio-visual: FITTA, 1992 prohibits foreigners from producing films in the national language of Nepal.
3	<p>Construction and related engineering: NRB normally does not allocate foreign exchange for the importation of construction services. Though the practice of establishing joint ventures has been made in this perspective.</p>
4	<p>Distribution: Foreign investment in retail services is not allowed by the FITTA, 1992.</p>
5	<p>Education: Nepal has followed open policy with regard to education. An institution that wishes to establish a business presence in Nepal is required to submit a proposal to the Ministry of Education in a prescribed format. If the Ministry feels it appropriate, it provides a letter of intent.</p>
6	<p>Environment: The Ministry of Environment assists the establishment of foreign owned corporations to provide environmental services.</p>
7	<p>Financial: Financial entities are established as per the concerned acts, along with the relevant rules and regulations, and is discussed in detail in the next section.</p>
8	<p>Health related and social services: Importation of health services (cross border or consumption abroad) is to be approved by the Medical Board that certifies that service is not available in Nepal. After this recommendation of the Medical Board only the Central Bank releases the exchange of currency. So far the policy of the establishment of foreign hospitals is concerned, the Ministry of Health approves it.</p>
9	<p>Tourism and travel related: There is no restriction other than the convertible currency allocation limits on Nepalese traveling abroad. The government has a liberal policy with respect to foreign investment in the hotel sub-sector. It can be established with 100% foreign equity participation after review by the Department of Industry, although some sectors are prohibited as per the provision of FITTA, 1992 which include travel agency, trekking service, pony-trekking, horse riding and rafting.</p>
10	<p>Recreational, cultural and sporting: Though this sector may be a matter of less interest to the developed countries, it remains largely unregulated.</p>
11	<p>Transport: Foreign transportation companies can not operate in Nepal.</p>
12	<p>Others: These include personal services which can not be imported and where small-scale establishments predominate (hair-dressers, beauty parlors etc). Except in the area of labor movement, the sector seems largely unregulated.</p>

Source: Halliday and Adhikari (2000).

All these sectoral policies for the service sector in Nepal contain a number of common elements, which are:

- Nepal Rastra Bank (NRB), the Central Bank of Nepal, administers the foreign exchange controls which rigorously regulates the external service transactions.⁹
- In financial services sector including both insurance and banking, the predominant government owned institutions are facing competition from foreign owned joint ventures. For the entry of new institutions, regulators exercise is necessary on the basis of economic need and prudential grounds.
- In some sectors such as insurance, education and medicine, the exchange control regime is moderated as NRB works on the recommendation of regulating ministries or professional associations.
- Beyond the financial services sector, all foreign investments are regulated by FITTA, 1992.
- Foreign owned corporations, once established in Nepal, generally enjoy national treatment. Foreign companies (but not individuals) are allowed to buy land.

III. Nepal's Potential Commitment in GATS

Nepal, along with the process of its entry into WTO, has already made commitment in the first working party meeting in three sectors of GATS which are: telecommunication services, hotel services and hospital services. The exact status of these commitments in these sectors have not come out yet, but the negotiating WTO members have requested Nepal to include additional sectors/sub-sectors in the schedule of commitments. In this regard, the project “Nepal’s Accession to the World Trade Organization (WTO)” has been in consultation with different stakeholders (such as accountancy services, legal services etc.) for obtaining feedback to formulate necessary strategies for HMG/Nepal in the ensuing WTO negotiations. It should be mentioned that Nepal has accepted the Article VIII¹⁰ of the Articles of Association of the International Monetary Fund on 30 April 1994. This prohibits, except with the approval of the IMF, imposition of restrictions “on the making of payments and transfers for current international transactions from engaging in multiple currency practices or discriminatory currency arrangement.”¹¹

⁹ The rationale for maintaining foreign exchange control is to prevent capital flight and a decline of convertible currency reserves. Besides this, it also protects domestic services providers.

¹⁰ Specifically Article VIII Section 2(a) and 3.

¹¹ Moreover, Article VIII, Section 4, requires IMF member, subject to certain conditions, to “purchase balances of their currency from other Fund members, which represent that the balances have been recently acquired as a result of current international transactions or that the conversion is necessary for the purpose of making payments for current transactions.”

Because of this, liberalization of the services sector is in line with Nepal's Article VIII commitment.

However, one sector of keen interest shown by some WTO members in negotiation is the financial sector. This sector is highly sensitive since it has implications not only limited to transfer and payments but also to the financial stability in the country. This is because inappropriate liberalization may have implications for the capital account (Maskay, 2002). Given the increasing importance of the financial services sector, the next section is focused on this.

IV. Financial Services: A Potential Service Sector for Commitment

Financial services are important since they provide an important vehicle for efficient allocation of financial assets and promotion of economic competitiveness. Liberalization of trade in financial services has many positive aspects, including (i) increased economic growth through the introduction of foreign capital, (ii) adoption of advanced financial practices and know how, and (iii) greater financial market efficiency through increased competition. However, in the current international financial environment characterized by rapid and massive involvement of private capital, an imprudent financial services liberalization could have negative effects on the development of financial system as well as on the stability of developing and emerging market economies. The 1997 Asian financial crisis, along with other recent examples of financial crisis, has proved this. Liberalization of financial services lacking sound financial infrastructure and strong supervisory system actually weakened the financial system and eventually resulted financial crises in these economies. Thus a comprehensive analysis of the possible challenges and opportunities is necessary in the process of FSS negotiation for accession to WTO. In this regard, the first section embodies a brief overview of the historical development of Nepal's FSS; the second section discusses the potential impact of FSS liberalization; and the last section presents some recommendations for Nepal with special reference to her accession process into WTO.

IV.A Financial Sector Development and Reform Process in Nepal – An Overview

FSS in Nepal is a fairly recent phenomenon which commenced with the establishment of Nepal Bank Ltd. in 1937.¹² Since then, there have been a constant entry of financial institutions which include, as of February 2001, 15 commercial banks, 15 development banks, 5 rural development banks, 50 finance companies, 34 co-operatives, 15 NGOs performing financial activities as per the instructions and guidelines of NRB. Besides these, there are 17 insurance companies working in the financial sector of the country. All these institutions are guided by the

¹² The *Tejarath Adda* had been established in 1880 however, as it had been only a credit institution, it did not play the essential role of financial intermediation.

Commercial Bank Act 1974, Development Bank Act 1996, Finance Company Act 1986 and Insurance Act 1992 along with the Foreign Exchange (Regulation) Act 1962 etc.¹³ It is also important to mention here that some of these Acts are under the process of amendment.

The history of Nepal's financial sector reform is very recent and started when Nepal initiated the process of financial sector reform in the mid eighties to increase the competition of the financial markets and facilitate efficient financial intermediation. Since then, a number of programs have been launched to strengthen the capability of banks and financial institutions with an aim to support the liberalization process.¹⁴ Presently, the Nepalese financial system is in the midst of great changes along with Nepal's preparation for her entry into WTO. Given the importance of FSS, the commitments at the time of the negotiation should be based on both the present realities of this sector and the reform policies and plans set forth by HMG. These reforms are expected to result in:

- strengthened capabilities of the central bank to enforce prudential rules and regulations
- adequate and up-to-date legal framework for the smooth operation of financial system,
- increased share of financial system owned and operated by the private sector players,
- availability of new and innovative financial products and services at competitive prices,
- availability of adequate professionals and financial experts within the nation to run the financial institutions,
- timely and adequate availability of information on bank and non-bank financial institutions and financial system to regulators, investors, stakeholders and researchers,
- development of a stable financial system and drastically reduced NPA level,
- increased financialization of the resources and improved efficiency in the financial intermediation, and improved monetary policy capability of the central bank.

¹³ There also exists the International Financial Transactions Act, 1998 however the goal of offshore banking has not actualized.

¹⁴ Various regulatory and prudential consolidation measures for commercial banks and finance companies, such as deregulation of interest rate and removal of credit ceilings and Statutory Liquidity Ratio, have been unrestrained since 1986. An important reform initiated in the financial sector was easing of entry restrictions to commercial banks which led to the establishment of Nepal Arab Bank Limited in 1984 as the first joint venture bank of the country. Subsequently, three new commercial banks were established and the Agricultural Development Bank started its commercial banking transactions in the decade of 1980s.

It is thus worth mentioning here that the process of consolidating and strengthening the regulatory and supervisory aspect to develop the soundness in the financial system of the country has been continuing. Nepal Rastra Bank Act 2002, formulation of Financial Institutions Act, Financial Intermediary Act, Debt Recovery Act; management transfer of the two largest commercial banks: Rastriya Banijya Bank (RBB) and Nepal Bank Limited (NBL), proposals for restructuring the Agricultural Development Bank and Nepal Industrial Development Corporation are important initiatives undertaken with regard to the financial sector reform. Furthermore, Nepal Rastra Bank has given high priority to financial sector reform by developing and updating necessary policies and guidelines for further consolidation of the financial system. In the light of these regular reform programs initiated in the financial sector, commitments in FSS in WTO, if any, should be coordinated accordingly.

IV.B Impact on FSS with Nepal's Entry into WTO

Potential commitments in the financial services sector by Nepal for entering into the WTO will pose serious challenges. This is especially true since one cannot revert back from the commitments once they are made. Because of this, FSS commitments are to be made taking into account the influencing factors which may contain external shocks in the economy, current and future prospect of the macro economic conditions of the country, limitations in the supervisory and legal framework for financial system, existing state of internal governance and others. All these facts are limited to the financial sector. Besides these, the pertinent issues that also emerge, while talking about financial sector liberalization are the prospect of capital account liberalization, foreign currency reserve management, balance of payment crisis, internal financial sector stability, possible threat of capital flight and increasing influence of the fast growing technology in the financial system as a whole.

While the magnitude of impact is difficult to ascertain since the commitments in FSS have not been finalized, it may be educational to consider a scenario of full commitments. Among others, the full commitment in FSS by Nepal may necessarily require the capital account liberalization resulting an increased capital flow. This will have two effects given the existing exchange rate and monetary situation in Nepal. First, there will be higher probability of financial crisis given the inflow of funds and booming asset prices (Bhatta, 2002). Second, the increasing capital mobility will magnify the probability of exchange rate crisis due to approaching the criteria of the impossible trinity (Maskay, 1999).

IV.C Recommendations for FSS Commitments¹⁵

In reference of the possible impacts of Nepal's entry into WTO and in the due course of her negotiation with other WTO members, the following recommendations are made in particular for financial services sector commitments:

- For the "Insurance" sub-sector of FSS, it is suggested that Nepal make no commitments with regard to both market access and national treatment in all modes of supply, except for commercial presence (i.e. joint ventures) in market access.
- For the "Banking and Other Financial Services" sub-sector of FSS as well, it is suggested that Nepal make no commitment in all modes of supply with regard to market access, except for commercial presence where permission has already been given to joint venture banks with a maximum foreign equity participation of 67 percent. Further, the foreign financial institutions who enter should be limited to those of eminent reputation and sound financial health.¹⁶ Also, it is suggested that no commitments be made for all modes of supply with regard to national treatment except in commercial presence.
- For "other" sub-sector of FSS, there are no special recommendations as such.

V. Summary and Conclusion

Services sector liberalization in Nepal necessitates a comprehensive analysis of the possible outcomes. A review of the services sector in Nepal suggests that there is no integrated service policy that can significantly guide this sector. In addition, the present stage of financial sector development in Nepal indicates that full liberalization of the financial services sector is not possible in the near future. This is specially true since the inappropriate liberalization of financial services sector affects the existing policy on capital account. Therefore, the country needs a comprehensive plan for liberalization, whose absence may result in unbearable commitments.

Not only being confined to the narrow target for a liberalization strategy, it is important to provide an integrated plan for the introduction of new and appropriate technology, infusion of human capital through education and training and development of appropriate organizational structure. Besides these, necessary rules and regulations for the financial services sector must be put forward. It is therefore recommended that necessary infrastructure, both of legal and capital nature, has to be put in place before adopting the higher degree of liberalization in the services sector. As has been often repeated, the responsibility for obtaining the maximum

¹⁵ Based on International Finance Division, Research Department, Nepal Rastra Bank (2002).

¹⁶ This necessitates the development of a ranking strategy for foreign financial institutions which may be similar to that of Moody's etc.

benefit in the process of negotiation rests with Nepal. Thus, the country should be proactive in this regard.

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CHAPTER

7

**WTO AND NEPAL: WTO'S AGREEMENT
ON AGRICULTURE (VICE OR VIRTUE OF
NEPAL)**

By:

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The Uruguay Round of trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) has been hailed mainly for two reasons. First, it brought the much-restrained textiles and clothing trade under the grip of the multilateral trading system. Second, the disrupted agriculture trade, which was under the GATT rules but contained loopholes, was directed towards more discipline. For developing countries both sectors had been their fields of export interest. In textiles trade, the true implications from the negotiation to them will be seen only after 2004, when the sector will be fully liberalized. The fruits from disciplined agriculture trade, however, are supposed to be borne by them by this time as the first-phase market opening commitment made by the developed countries during the negotiation has already been completed. And the second phase on further liberalization of agriculture trade is underway to achieve substantive progressive reductions in trade barriers.

A quicker look at the reaction of the developing countries over the recent development indicates that the Agreement on Agriculture (AoA), under the GATT agreement of the World Trade Organization (WTO), has done little to reduce market distorting import barriers and subsidization in the developed countries. At the same time, it restricted considerably the scope of measures that developing countries can take to pursue their economic development and food security policies. The poor countries, therefore, proposed a level playing field through major reductions of trade barriers by the rich nations and increase flexibility with regard to protection of agriculture by them. Departing from the euphoria of the Uruguay Round achievement, the poor countries are now totally pessimistic.

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The AoA and the changes brought about by this in international farm trade is no less concerning to Nepal that is trying to become a member of the WTO since the last twelve years. As quoted unofficially, Nepal's accession to the WTO has also been lingering due to inability to reach an agreement on Nepal's agriculture tariff rates with the negotiating countries, which wanted the existing rates to be considered as bound tariffs.¹⁷ This clearly revealed that even a least developed country (LDC) like Nepal has not been spared from tougher obligations with respect to agriculture negotiation. Since Nepal is in the process of WTO accession it will not benefit from higher ceiling bindings which is available to other LDC members who are already WTO members. The AoA seeks various other commitments from the WTO members for opening up the global farm market. There are other WTO agreements that have special bearing on agriculture trade. Since agriculture is both a politically and economically sensitive issue to all nations, irrespective of the development levels, Nepal should ponder about the implications of the AoA with particular interest to protect and enhance agriculture, which is of important to over 80% of the country's population and contributes to almost thirty seven percent of the country's gross domestic product (Economic Survey, 2000/2001).

Agreement on Agriculture (AoA): Liberalism or Protectionism?

It is claimed that the AoA would liberalize international farm trade by improving 'predictability and security' to agriculture exporting and importing countries as it assures fair competition and less distorted trade besides developing a mechanism for further negotiations in this field. For liberalizing the trade, the agreement seeks member countries to open up their markets by abolishing non-tariff barriers and reducing tariff rates. They were also required to make commitments for fairer trade by cutting down on both domestic support and export subsidies, which were considered 'distortion' to international agriculture trade. Before the AoA, most developed countries disrupted agriculture trade by forming policies inconsistent with the GATT rules. They protected their costly and inefficient production of agriculture through imposition of tariff and non-tariff barriers. The sector was protected through government support and subsidies to be disposed in the international market at artificially competitive prices. That resulted in unfair competition to farmers in poor countries as they had to face 'higher trade barriers and depressed international prices' and lose their legitimate market share in the global farm trade. Hoping for opportunities in the farm trade, the poor countries applauded the agriculture agreement under the WTO rules.

As a significant step, the new rule allowed only tariffs and abolished the non-tariff barriers (for example quota, discretionary licensing and variable levies) through the process called 'tariffication'. In other words, the existing non-tariff

¹⁷ The current tariff rates for most of the imported farm products range from 0 to 10% in Nepal and Nepal desired to raise these rates.

barriers were to be replaced by imposing tariffs so that it provides substantially equivalent levels of protection by maintaining access opportunities. Accordingly, the newly committed tariffs, covering all agriculture products, should be reduced by an average of 36% by developed countries in six years and 24% for developing countries in 10 years. The minimum rate of reduction per product was 15% for developed countries and 10% for developing countries. The LDCs were not obliged to do this.

For fairer agriculture trade, another important aspect of the agreement was to cut domestic support, mainly practiced by the rich nations. It distinguished domestic 'support between programmes that stimulate production directly, and those that are considered to have no direct effect.' The support having 'minimal impact' on production and trade, such as government services to research, disease control, infrastructure and food security, etc., were permitted with no reduction in commitment required. But the measure, which have direct effect on production and trade, had to be reduced under the criteria called 'total aggregate measurement of support' or AMS². Developed countries were required to slash the AMS by 20% in six years and developing countries by 13% in ten years. The LDCs were not required to do that.

In another milestone to reducing distortions, the agreement did not allow member countries to export subsidies unless the subsidies are specified in a member country's list of commitments. The listed subsidies should be reduced both in terms of the amount of money spent on export subsidies and the quantity of exports that receives subsidies. The developed countries were required to cut the value of export subsidy expenditure to a level of 36% below the 1986-90 base period over the six-year period starting in 1995 (for developing countries it was 24% over a 10-year period). They also agreed to reduce the quantity of subsidized export by 21% over six years (developing countries agreed to do that by 14% over 10 years). The LDCs were not required to follow this obligation.

The first rule assured liberalization commitment whereas the latter two rules were concerned mainly to reducing distortions in international farm trade. The expected benefits from both the provisions would seem to be trivial to the Nepalese agriculture sector. There are mainly two reasons why Nepal would not benefit from market liberalization to the desired level. Although the rich nations had agreed to open up their markets by slashing agriculture tariffs, the advantage to Nepal would be meaningless due to the erosion in the preferential margin it has been enjoying under the GSP scheme. Because the margin of preference enjoyed by Nepal will be reduced as the most favored nation (MFN) tariffs fall. That means it would actually result in the same degree of competition to Nepalese farm exports. If not, it will be

² AMS is calculated on a product-by-product basis by using the difference between the average external reference price for a product and its applied administered price multiplied by the quantity of production.

facing a greater degree of competition with increased number of farm suppliers from both developing and developed countries as the new provisions open up the world market without discrimination.

Secondly, even if the world tariff rates have come down and the GSP treatment is available in many industrialized nations, Nepal will not benefit until it can promote its farm products in the international market. Clearly it indicates that the crux of the problem at this juncture is not of market opportunities, but of product development and product diversification. The share of agriculture in Nepal's export basket has come down to barely one-fifth of the total size owing to the structural change in the export trade from primary to manufacturing goods with India having absorbed almost 80% of the country's total farm exports. It should be mentioned that Nepal's trade with India takes place under a bilateral arrangement that favors farm trade between the two partners. The advantage to Nepalese farms from the changes brought about by the agriculture agreement can be realized only if it can diversify the markets expeditiously. If this happens, the immediate markets could be Bangladesh where a handful of Nepalese farm products are already gaining popularity. Still Nepal would not be in a position to grab the international market opportunities.

Another aspect of the agriculture agreement is the commitment to reduce trade-distorting measures as said earlier. The impact on Nepal from this provision can be assessed in two ways. First, in terms of the obligations it must make and, second, the impact of the provisions on its export trade. Regarding the obligation, Nepalese traders need not bother since they are not facilitated by domestic support, which is against WTO norms. With regard to export opportunities, there is little hope that the situation will favor Nepalese farm exports because the agriculture markets in the rich countries are still highly protected. One of the glaring examples is that a farmer in the OECD nations enjoys a subsidy equivalent to an average of US \$ 29,000 a year.⁴ Interestingly the OECD nations spend more than US \$ 300 billion in distorting agriculture subsidies.⁵ Just because the OECD countries heavily protect their farm sector through domestic support and subsidies, the LDCs like Nepal will not enjoy easy access and will not be efficient enough to compete in markets of the rich countries despite the provision of duty preferences.

On the contrary, Nepal could face increasing imports due to cheaper farm products. The existing tariffs on imported agriculture goods in Nepal is one of the lowest as they range from 0 – 10% at the most. Without negotiations for ceiling bindings with its partners, Nepalese agriculture cannot be assured of protection. Already the sectors, such as oilseeds, edible oils and even some food crops have had to face setbacks from rapid import growth. However, Nepalese traders can enjoy market opportunities and fetch good prices under the changed situation

⁴ Economists (magazine)

⁵ World Trade Net bulletin ITC, Geneva

provided they can add more value to its products by processing agriculture products here by grinding, blending and good packaging. It would, however, require more scientific post-harvest and processing technology and practices to take advantage of the increased market access opportunities. The areas with most potential are ginger, orthodox tea, large cardamom and pepper. One possible difficulty in promoting export of such products could be commitment in complying with international standards regarding agriculture products.

Sanitary and Phytosanitary Certificates: Fairer or Barrier?

Despite the commitment of the member countries of the WTO to open up the international farm trade by cutting down tariffs that distort trade, the developing countries are bound to face non-tariff barriers. One possibility is that the rich countries would increasingly use strict health and safety regulations applicable to import of foods as an excuse for protecting the domestic farm sector. Under the WTO system, member countries have the right to protect their people's health by imposing sanitary standards. But one cannot be certain whether such practices have been used as barriers to trade. To ensure that such a practice does not impede international farm trade, the WTO has a separate agreement on food safety and protection of animal and plant health standards which is applicable to all members. The basic rules on these issues are incorporated in the Agreement on Sanitary and Phytosanitary (SPS) measures.

The SPS measures require export of agriculture products to prove that they are disease-free and contain allowable levels of pesticide residues as well as to determine permissible levels of certain additives in foods. That means the SPS encourages members to set their own standards, but should be based on international standards, wherever available, such as the FAO/WHO Codex Alimentarius Commission, the International Office of Epizootics (IOE), and the FAO's International Plant Protection Convention (IPPC). The WTO wants the member countries to follow the rules developed by these international organizations which are responsible for formulating internationally acceptable norms with respect to protecting human, animal, and plant health respectively. However, they should not impose such regulations arbitrarily or discriminately between the trading partners according to the SPS agreement.

To surmount any impediment to export promotion, Nepalese exporters should be acquainted with international standards and different border rules applicable in the importing countries before exporting their commodities. They have to demonstrate that the measures applied in Nepal are in conformity with the rules applicable in the importing countries to gain market access. But Nepalese farmers and exporters had to encounter difficulties in complying with the SPS measures mainly due to lack of proper institutional arrangement, human resource development and information dissemination.

Nepal has, however, some rules relating to human and animal health and plant life, but have yet to be harmonized with the SPS agreement. By actively participating in relevant organizations dealing with the SPS techniques, particularly the ISO, Codex Alimentarius, IOE, and the FAO's IPPC, Nepal can achieve that. Information on such requirements should be disseminated at the grassroots and efforts should be made to establish or upgrade institutional arrangement with respect to technical information, standardization, testing, certification and accreditation.

Priority should be given by Nepal in identifying its need on such issues regarding potential agriculture commodities for export. Nepal being an LDC can be granted, upon request, technical or financial assistance by international organizations and WTO committee on the SPS and member countries. The government and the private sector should side by side take the initiative for such assistance and use it for developing human resources, information dissemination, and institutional development in the country. The SPS agreement also calls for a provision of establishing a national enquiry point to provide SPS information by all members. Nepalese exporters can have access to such enquiry points in the importing countries to avoid any sort of barriers to their export. In return, Nepal is also required to establish a national SPS enquiry point as an obligation.

Respecting IPRs: Cost or Benefit?

The WTO has a separate agreement called the Trade Related Aspect of Intellectual Property Rights (TRIPS). It lays down the minimum standards of protection of intellectual property rights (IPR) with respect to trade. Under the agreement, the sector, such as protection of patents, copyrights, trade-marks, industrial designs, geographical indications, etc. are covered under the existing conventions on the IPRs of the World Intellectual Property Organization (WIPO). The prime objective of this agreement is to ensure that the rights available to patent holders are not abused and to discourage trade in counterfeit and pirated goods internationally.

Although the scope under the TRIPS is broader, the major sectors relevant to agriculture trade are patents and geographical indications. Patents provide property rights to inventions and should be registered as a patent if it is new, both in products and processes used to manufacture goods. Similarly, geographical indications inform consumers that the goods concerned have the quality, reputation or other characteristics which are essentially attributable to their geographical origins. The TRIPS Agreement seeks member countries to harmonize the national legislations with the WIPO system and respect the rules to avoid any dispute regarding the violation of the use of the IPRs.

Regarding the TRIPS, agriculture trade would have both positive and negative effects. There will be costs for farmers in poor countries like Nepal where increasing pressure to grow crops for export, particularly high-yielding varieties, is

growing. Nepalese farmers are increasingly dependent upon imported seeds and chemical fertilizers produced in the developed countries. Their dependency on patented seeds and plant varieties, which are relatively expensive, have resulted in higher investment for farm production.⁵ Since Nepal has to depend upon import of agriculture inputs, insecticides and pesticides, Nepalese farmers will have to pay greater prices for such inputs due to increased prices of such goods as a result of higher royalties for the patent holders. With a relatively inefficient production base and geographical disadvantage, Nepalese agriculture trade and industry will not bear fruits from a liberalized global market unless it aims to enhance productivity.

Owing to wide variation in its geography, Nepal is well endowed with plant varieties. It will find identifying these resources extremely difficult and beyond its current capacity. It should establish a seed genes bank to protect their germ plasm and to make seeds available for bio-technical research by its national scientists. High expertise at the government and the private sector for research and development is required in this regard to benefit the farmers. It should evolve sustainable methods of agriculture that are less dependent on imported inputs.

Nepal can, however, expect the benefit of foreign investment in agriculture from the provision of the TRIPS if it guarantees national rules and regulations to protect the IPRs. Nepal is already a member of the WIPO and it has been working to amend the national legislations relating to the protection of the IPRs. Besides this, Nepal should promise a congenial atmosphere to attract foreign investment in potential agriculture sectors for export.

Conclusion

The international agriculture trade under the WTO regime has been liberalized, but at the same time has also become more competitive. Although the rich countries have promised to open up their market by cutting tariffs and non-tariff barrier, mainly the trade 'distorting supports', it will be difficult for less developing countries to be truly benefited. In case of Nepal the opportunities from the WTO provision would be futile unless it adds more farm products to its export basket. Despite Nepal being an agrarian economy, its share in export is minuscule. The foremost challenge to the Nepalese economy is, therefore, not about what would be the impact of the AoA, but about how to boost the farm output and institutionalize the sector in order to cash-in-on the opportunities of the market liberalization. Without such endeavor there would be no opportunities but only challenges as Nepal is vulnerable to import surge of food crops, threatening domestic farmers and the future food security. The WTO provision not only gives opportunities, but also obligations. If Nepal wants to exploit the opportunities in the global farm trade it has to be obliged to meet the international health and food

⁵ This can be seen where currently ten large seed companies share about 40% of the world market for the products and about 80% of the patents registered by the MNCs in the developed countries.

standards under the sanitary and phytosanitary (SPS) rules. Without such assurances there would be little hope for easier market access to Nepalese farm products in the rich country markets. One should not forget that the chances of using the non-tariff barriers, as back-door policy, under the WTO system are still prevalent. And the non-tariff barriers are more injurious than the tariff barriers, which are supposed to be relatively transparent, to international trade.

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APPENDIX

Appendix A : Members of WTO

Appendix B : GATS Service Categories

Appendix C : WTO Organizational Structure

Appendix D : WTO Secretariat Organizational Structure

Appendix E : The Panel Process

Appendix : A

Members of WTO

There are 144 members on 1 January 2002. The list of members along with their dates of membership is as follows:

Albania 8 September 2000	Dominica 1 January 1995
Angola 23 November 1996	Dominican Republic 9 March 1995
Antigua and Barbuda 1 January 1995	Ecuador 21 January 1996
Argentina 1 January 1995	Egypt 30 June 1995
Australia 1 January 1995	El Salvador 7 May 1995
Austria 1 January 1995	Estonia 13 November 1999
Bahrain 1 January 1995	European Communities 1 January 1995
Bangladesh 1 January 1995	Fiji 14 January 1996
Barbode 1 January 1995	Finland 1 January 1995
Belgium 1 January 1995	France 1 January 1995
Belize 1 January 1995	Gabon 1 January 1995
Benin 22 February 1996	The Gambia 23 October 1996
Bolivia 12 September 1995	Georgia 14 June 2000
Botswana 31 May 1995	Germany 1 January 1995
Brazil 1 January 1995	Ghana 1 January 1995
Brunei Darusaalam 1 January 1995	Greece 1 January 1995
Bulgaria 1 December 1996	Grenada 22 February 1996
Burkina Faso 3 June 1995	Guatemala 21 July 1995
Burundi 23 July 1995	Guinea Bissau 31 May 1995
Cameroon 13 December 1995	Guinea 25 October 1995
Canada 1 January 1995	Guyana 1 January 1995
Central African Republic 31 May 1995	Haiti 30 January 1996
Chad 19 October 1996	Honduras 1 January 1995
Chile 1 January 1995	Hong Kong, China 1 January 1995
China 11 December 2001	Hungary 1 January 1995
Colombia 30 April 1995	Iceland 1 January 1995
Congo 27 March 1997	India 1 January 1995
Costa Rica 1 January 1995	Indonesia 1 January 1995
Cote d Ivory 1 January 1995	Ireland 1 January 1995
Croatia 30 November 2000	Israel 21 April 1995
Cuba 20 April 1995	Italy 1 January 1995
Cyprus 30 July 1995	Jamaica 9 March 1995
Czech Republic 1 January 1995	Jordan 11 April 2000
Democratic Republic of the Congo 1 January 1997	Japan 1 January 1995
Denmark 1 January 1995	Kenya 1 January 1995
Djibouti 31 May 1995	Korea, Republic of 1 January 1995
	Kuwait 1 January 1995

The Kyrgyz republic 20 December 1998
 Latvia 10 February 1999
 Lesotho 31 May 1995
 Liechtenstein 1 September 1995
 Lithuania 31 May 2001
 Luxembourg 1 January 1995
 Macau, China 1 January 1995
 Madagascar 17 November 1995
 Malawi 31 May 1995
 Malaysia 1 January 1995
 Maldives 31 May 1995
 Mali 31 May 1995
 Malta 1 January 1995
 Mauritania 31 May 1995
 Mexico 1 January 1995
 Moldova 26 July 2001
 Mongolia 29 January 1997
 Morocco 1 January 1995
 Mozambique 26 August 1995
 Namibia 1 January 1995
 Netherlands - For the Kingdom in
 Europe and for the Netherlands
 Antilles
 1 January 1995
 New Zealand 1 January 1995
 Nicaragua 3 September 1995
 Niger 13 December 1996
 Nigeria 1 January 1995
 Norway 1 January 1995
 Oman, Sultanate of 9 November 2000
 Pakistan 1 January 1995
 Panama 6 September 1997
 Papua New Guinea 9 June 1996
 Paraguay 1 January 1995
 Peru 1 January 1995
 Philippines 1 January 1995
 Poland 1 July 1995
 Portugal 1 January 1995
 Qatar 13 January 1996
 Romania 1 January 1995
 Rwanda 22 May 1996
 Saint Kitts and Nevis 21 February 1996
 Saint Lucia 1 January 1995
 Saint Vincent & the Grenadines 1
 January 1995
 Senegal 1 January 1995
 Separate Customs Territory of Taiwan,
 Penghu, Kinmen and Matsu 1
 January 2002
 Sierra Leone 23 July 1995
 Singapore 1 January 1995
 Slovak Republic 1 January 1995
 Slovenia 30 July 1995
 Solomon Islands 26 July 1996
 South Africa 1 January 1995
 Spain 1 January 1995
 Sri Lanka 1 January 1995
 Suriname 1 January 1995
 Swaziland 1 January 1995
 Sweden 1 January 1995
 Switzerland 1 July 1995
 Tanzania 1 January 1995
 Thailand 1 January 1995
 Togo 31 May 1995
 Trinidad and Tobago 1 March 1995
 Tunisia 29 March 1995
 Turkey 26 March 1995
 Uganda 1 January 1995
 United Arab Emirates 10 April 1996
 United Kingdom 1 January 1995
 United States 1 January 1995
 Uruguay 1 January 1995
 Venezuela 1 January 1995
 Zambia 1 January 1995
 Zimbabwe 5 March 1995

Observer Governments

Algeria	Lebanon
Andorra	Nepal
Armenia	Russian Federation
Azerbaijan	Samoa
Bahamas	Sao Tome and Principe
Belarus	Saudi Arabia
Bhutan	Seychelles
Bosnia and Herzegovina	Sudan
Cambodia	Tajikistan
Cape Verde	Tonga
Ethiopia	Ukraine
Former Yugoslav Republic of Macedonia	Uzbekistan
Holy See (Vatican)	Vanuatu
Kazakstan	Vietnam
Lao	Yemen
People's Democratic Republic	Yugoslavia, Fed. Rep. Of

Note: With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

International Organization Observers to General Council:

(observers in other councils and committees differ)

United Nations (UN)

United Nations Conference on Trade and Development (UNCTAD)

International Monetary Fund (IMF)

World Bank (WB)

Food and Agriculture Organization (FAO)

World Intellectual Property Organization (WIPO)

Organization for Economic Co-operation and Development (OECD)

Appendix : B
GATS service categories

Service Sectoral Classification List

(Annex 7 of WT/ACC/1)

1. BUSINESS SERVICES

A. Professional Services:

- a. Legal services;
- b. Accounting services;
- c. Taxation services;
- d. Architectural services;
- e. Engineering services;
- f. Integrated engineering services;
- g. Urban planning and landscape architectural services;
- h. Medical and dental services;
- i. Veterinary services;
- j. Services provided by midwives, nurses, physiotherapists and para-medical personnel;
- k. Other.

B. Computer and Related Services:

- a. Consultancy services related to the installation of computer hardware;
- b. Software implementation services;
- c. Data processing services;
- d. Data base services;
- e. Other.

C. Research and Development Services:

- a. R&D services on natural sciences;
- b. R&D services on social sciences and humanities;
- c. Interdisciplinary R&D services.

D. Real Estate Services:

- a. Involving own or leased property;
- b. On a fee or contract basis.

E. Rental/Leasing Services without Operators:

- a. Relating to ships;
- b. Relating to aircraft;
- c. Relating to other transport equipment;
- d. Relating to other machinery and equipment;
- e. Other.

F. Other Business Services:

- a. Advertising services;
- b. Market research and public opinion polling services;
- c. Management consulting service;
- d. Services related to management consulting;
- e. Technical testing and analysis service;
- f. Services incidental to agriculture, hunting and forestry;
- g. Services incidental to fishing;
- h. Services incidental to mining;
- i. Services incidental to manufacturing;
- j. Services incidental to energy distribution;
- k. Placement and supply services of Personnel;
- l. Investigation and security;
- m. Related scientific and technical consulting services;
- n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment);
- o. Building-cleaning services;
- p. Photographic services;
- q. Packaging services;
- r. Printing, publishing;
- s. Convention services;
- t. Other.

2. COMMUNICATION SERVICES**A. Postal services.****B. Courier services.****C. Telecommunication services:**

- a. Voice telephone services;
- b. Packet-switched data transmission services;
- c. Circuit-switched data transmission services;
- d. Telex services;
- e. Telegraph services
- f. Facsimile services
- g. Private leased circuit services;

- h. Electronic mail;
- i. Voice mail;
- j. On-line information and data base retrieval;
- k. Electronic data interchange (EDI);
- l. Enhanced/value-added facsimile services, including store and forward, store and retrieve;
- m. Code and protocol conversion;
- n. On-line information and/or data processing (including transaction processing);
- o. Other.

D. *Audiovisual services*

- a. Motion picture and video tape production and distribution services;
- b. Motion picture projection service;
- c. Radio and television services;
- d. Radio and television transmission services;
- e. Sound recording;
- f. Other.

E. *Other*

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

- A. *General construction work for buildings.***
- B. *General construction work for civil engineering.***
- C. *Installation and assembly work.***
- D. *Building completion and finishing work.***
- E. *Other.***

4. DISTRIBUTION SERVICES

- A. *Commission agents' services.***
- B. *Wholesale trade services.***
- C. *Retailing services.***
- D. *Franchising.***
- E. *Other.***

5. EDUCATIONAL SERVICES

- A. *Primary educational services.***
- B. *Secondary education services.***
- C. *Higher education services.***
- D. *Adult education.***
- E. *Other educational services.***

6. ENVIRONMENTAL SERVICES

- A. Sewage services.**
- B. Refuse disposal services.**
- C. Sanitation and similar services.**
- D. Other.**

7. FINANCIAL SERVICES

- A. All insurance and insurance-related services:**
 - a. Life, accident and health insurance services;
 - b. Non-life insurance services;
 - c. Reinsurance and retrocession;
 - d. Services auxiliary to insurance (including broking and agency services).
- B. Banking and other financial services (excluding insurance):**
 - a. Acceptance of deposits and other repayable funds from the public;
 - b. Lending of all types, including, *inter alia*, consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - c. Financial leasing;
 - d. All payment and money transmission services;
 - e. Guarantees and commitments;
 - f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - money market instruments (cheques, bills, certificate of deposit, etc.);
 - foreign exchange;
 - derivative products including, but not limited to, futures and options;
 - exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc.;
 - transferable securities;
 - other negotiable instruments and financial assets, including bullion.
 - g. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of service related to such issues;
 - h. Money broking;
 - i. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services;

- j. Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- k. Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.

Other

8. HEALTH RELATED AND SOCIAL SERVICES

(Other than those listed under 1.A.h-j)

- A. Hospital services.*
- B. Other Human Health Services.*
- C. Social Services.*
- D. Other.*

9. TOURISM AND TRAVEL RELATED SERVICES

- A. Hotel and restaurant (including catering).*
- B. Travel agencies and tour operators services.*
- C. Tourists guide services.*
- D. Other*

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

(Other than audiovisual services)

- A. Entertainment services (including theatre, live bands and circus services).*
- B. New agency services.*
- C. Libraries, archives, museums and other cultural services.*
- D. Sporting and other recreational services.*
- E. Other.*

11. TRANSPORT SERVICES

- A. Maritime Transport Services*
 - a. Passenger transportation;
 - b. Freight transportation;
 - c. Rental of vessels with crew;
 - d. Maintenance and repair of vessels;
 - e. Pushing and towing services;
 - f. Supporting services for maritime transports.

B. Internal Waterways Transport

- a. Passenger transportation;
- b. Freight transportation;
- c. Rental of vessels with crew;
- d. Maintenance and repair of vessels;
- e. Pushing and towing services;
- f. Supporting services for internal waterway transport.

C. Air Transport Services:

- a. Passenger transportation;
- b. Freight transportation;
- c. Rental of aircraft with crew;
- d. Maintenance and repair of aircraft;
- e. Supporting services for air transport.

D. Space Transport.**E. Rail Transport Services:**

- a. Passenger transportation;
- b. Freight transportation;
- c. Pushing and towing services;
- d. Maintenance and repair of rail transport equipment;
- e. Supporting services for road transport services.
- f. Passenger transportation;
- g. Freight transportation;
- h. Pushing and towing services;
- i. Maintenance and repair of rail transport equipment;
- j. Supporting services for road transport services.

G. Pipeline Transport:

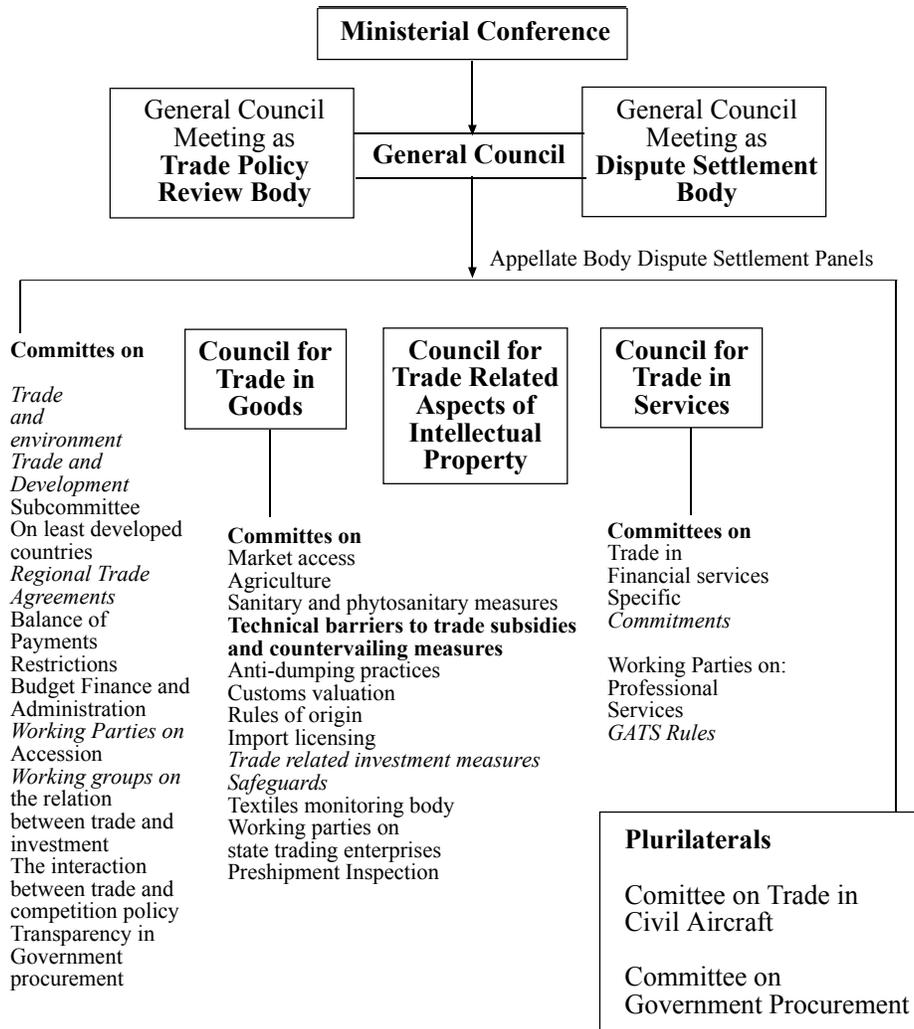
- a. Transportation of fuels;
- b. Transportation of other goods.

H. Services auxiliary to all modes of transport:

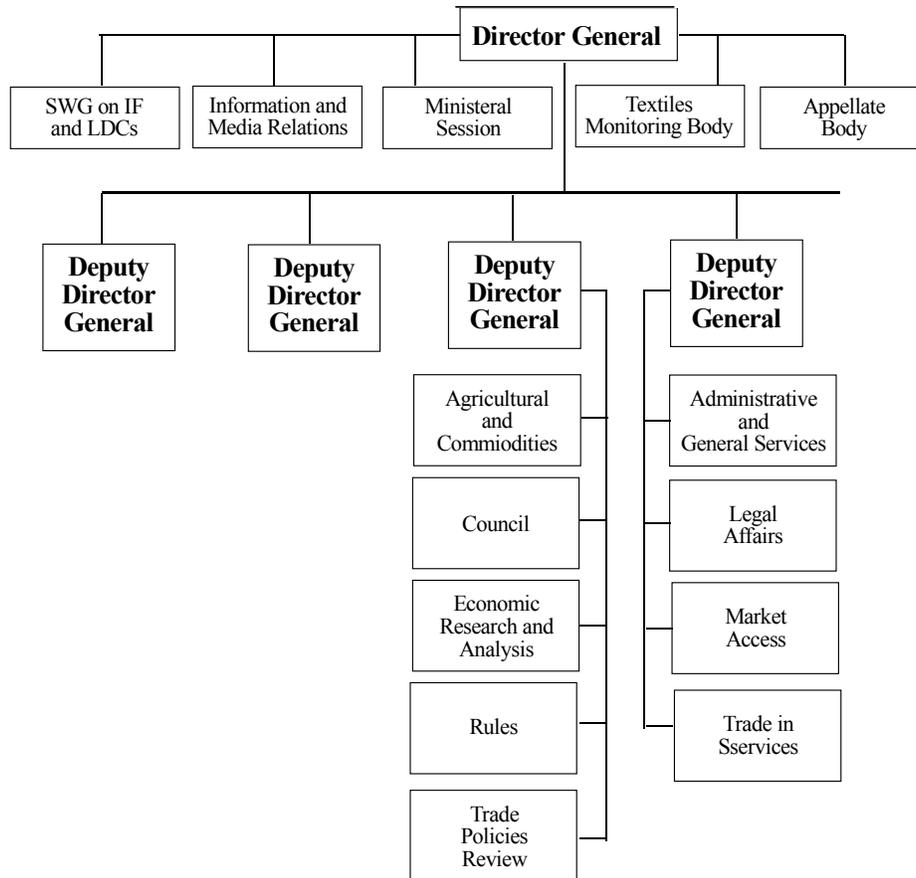
- a. Cargo-handling services;
- b. Storage and warehouse services;
- c. Freight transport agency services;
- d. Other.

I. Other Transport Services.**12. OTHER SERVICES NOT INCLUDED ELSEWHERE**

Appendix : C

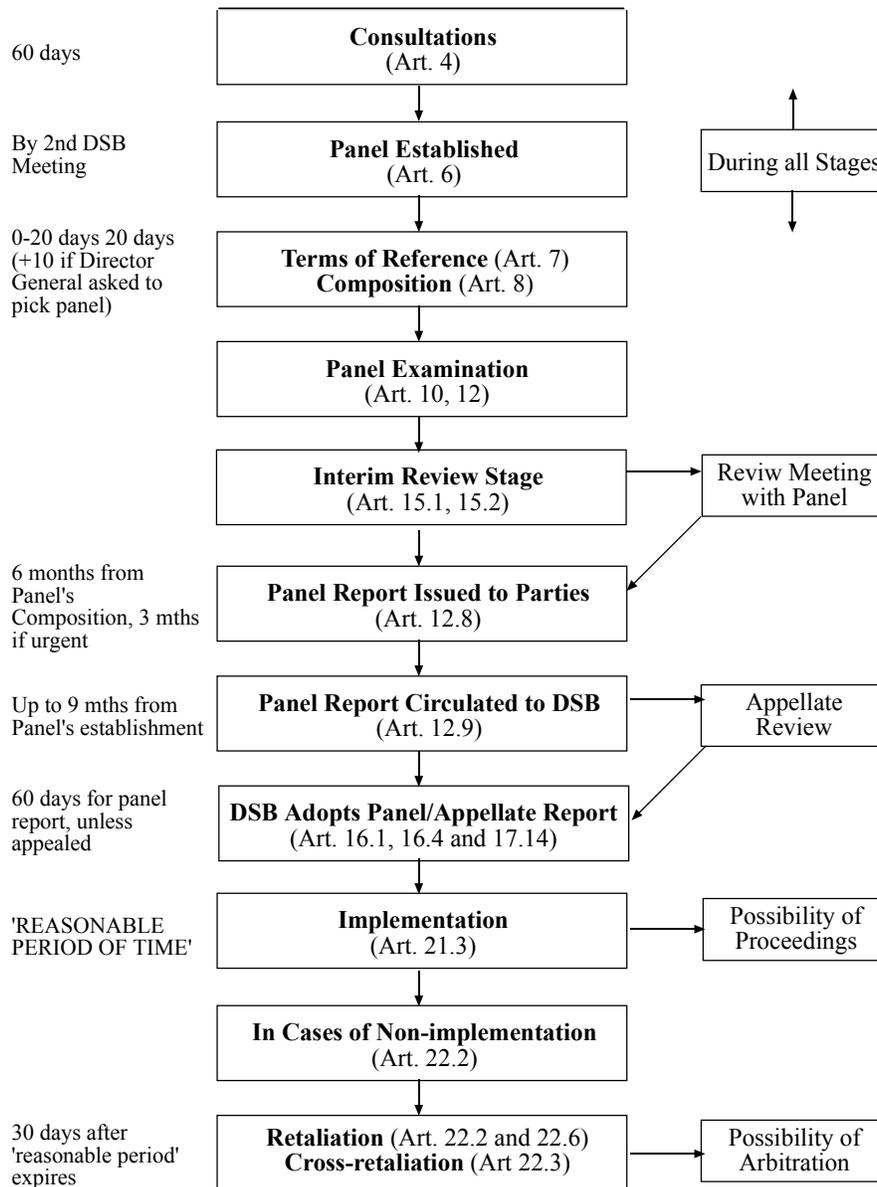
WTO Organizational Structure

Appendix : D

WTO Secretariat Organizational Structure

Appendix : E

The Panel Process



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