

Enhancing capacity of WTO focal points on compliance issues-I

4-5 April 2011

Chautari Paradise Inn, Nagarkot

BACKGROUND NOTE

Nepal has made a number of commitments during its accession to the World Trade Organization (WTO). While the deadlines to comply with many of the commitments have already passed, deadlines for the others are arriving soon. Nepal has complied with many of the commitments it has made, but is yet to comply with a number of others. For example, designation of inquiry point for some of the WTO Agreements (such as Agreement on Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, General Agreement on Trade in Services), which could be done through a stroke of a pen, have been completed. Similarly, task of amending some legislation, in line with the commitment made by Nepal in the process of its accession to the WTO have been completed, although enacting new legislation has proven difficult, with only a few of the legislation (such as those related to competition, bankruptcy/insolvency and bank and financial institutions have been enacted). A number of legislation such as those relating to anti-dumping, industrial property, plant variety protection and access to genetic resources and benefits sharing have not been enacted so far despite the fact that draft of these legislation were ready by 2005.

Even where the laws have been enacted, there are concerns that in many of the legislation the substantive part have not been taken care of very well. Moreover, the enforcement aspect of the enacted legislation has not been satisfactory. In case of legislation which are in draft forms, their contents are being debated, some widely and others on a limited scale. Also, few legislation are yet to be drafted. To fulfill Nepal's commitments at the WTO, especially regarding enacting/amending legislation, putting in place the required legislation alone is not sufficient. Ensuring the quality of the legislation and its implementation is essential. Although it is not possible to pinpoint any reason for limited value addition of the legislation, if we look at the way competition legislation, for instance, was enacted, the lacunae in the system becomes apparent. The Competition and Market Protection Act was enacted in late 2006, but it took more than two years to prepare the regulations. Even after the regulations have been put in place, the cartel in distribution and financial services and syndicate system in the transport services are widely prevalent. The legislation has failed to live up to the expectation of the stakeholders who were vocal in demanding its enactment, and to make any contribution towards enhancing the competitiveness of our enterprises, which was ostensibly one of the objectives of enacting the legislation.

Although the Legislative Action Plan (LAP) submitted by Nepal at the time of its accession to the WTO provides a brief guide on the various compliance related issues, there are also other aspects that are equally vital for Nepal to fulfill its commitments at the WTO. For example, at the time of accession, temporary entry and stay of natural persons considered to be intra-corporate transferees was limited to 15 percent of local employees, and was committed that it would be further liberalized after five years from the date of accession. The five-year period after the accession has already been over and it is uncertain whether this commitment has been fulfilled. If fulfilled, what was the due process followed? If not, what needs to be done to comply with this commitment? Similarly, the Working Party Report on Nepal's Accession to the WTO envisaged the training of customs officials in the areas of clearance, verification, audit and the method to combat valuation fraud prior to 1 January 2005. However, it is not possible for outside observers to ascertain whether or not such training has been conducted so far.

The role of WTO focal points is extremely important in understanding these various commitments and in complying with them. They should be taking the lead in complying with the WTO commitments that fall under their jurisdiction. More importantly, they should ensure that complying with the commitments will balance the country's international obligations with the rights and welfare of its citizens.

In this context, South Asia Watch on Trade, Economics and Environment (SAWTEE), in cooperation with the German International Cooperation (GIZ) and the Ministry of Commerce of Supplies (MoCS), Government of Nepal, is organizing the first capacity enhancement workshop for WTO focal points in Kathmandu on 4-5 April 2011. The first workshop will be a more general one with the participation of all the focal points. Other workshops that would follow would be organized by dividing the focal points into several clusters to discuss the compliance requirements in greater detail.

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