

Enhancing capacity of WTO focal points on compliance issues-I

4-5 April 2011

Chautari Paradise Inn, Nagarkot

Brief Report

South Asia Watch on Trade, Economics and Environment (SAWTEE), in association with the German International Cooperation (GIZ) and the Ministry of Commerce and Supplies (MoCS), Government of Nepal, organized a two day workshop on “Enhancing capacity of WTO focal points on compliance issues” on 4-5 April 2011 in Nagarkot, Bhaktapur, Nepal. 24 representatives of different ministries and departments working as WTO focal points participated in the workshop.

In the first session of the first day of the workshop, Dr. Posh Raj Pandey, Executive Chairman, SAWTEE presented a general overview of the multilateral trading system and shared his experiences on Nepal’s accession to the World Trade Organization (WTO). He highlighted that the rationale behind Nepal’s application for membership in the General Agreement on Tariffs and Trade (GATT) in 1989 was to secure the right of transit; however, it did not materialize. It became a member of the WTO on 23 April 2004, which, besides other things, has created a fallback should problems arise in the country’s bilateral and regional trade agreements. Dr. Pandey discussed the various commitments that Nepal has made at the WTO and stressed that lack of inter-ministerial and inter-departmental coordination, supply side constraints, and inefficiency of the private sector, among others, are the major challenges that have held back Nepal from implementing its commitments. He suggested that development of institutions, and human and financial resources are essential to overcome these challenges and to ensure Nepal’s full compliance with its WTO commitments.

Mr. Purushottam Ojha, Secretary, MoCS, Government of Nepal, presented the current status of compliance with Nepal’s WTO commitments. He informed that Nepal has fulfilled few of the commitments and is in the process of fulfilling the rest. He also stressed on the need of mainstreaming trade into national development plans; development of infrastructure and human resources; enhancing competitiveness of the private sector; giving importance to ‘trade diplomacy’ through diplomatic missions abroad; reforming the legislative regime, among others, to fulfill Nepal’s commitments at the WTO and to acquire benefits from the membership.

Participants agreed that there is lack of coordination among the different WTO focal points and that shifting of responsibilities among the ministries is common. Therefore, there were suggestions that the Ministry of Law and Justice (MoLJ) take the coordinating role on legal matters, to which the representative of MoLJ responded that it is not possible for a single ministry to take up such a huge role and so every concerned ministry should play its part. It was also observed that some of the participants were not fully aware of some of the WTO parlances.

After a broad and general discussion in the first session, agreement-specific discussions commenced with Dr. Posh Raj Pandey’s presentation on GATT 1994, which covers trade in goods. He discussed the salient features of the agreement and the fundamental principles on which it is based. Regarding the status of compliance of Nepal’s commitments related to GATT 1994, he stated that although Nepal has, to a great extent, adhered to its commitments, there are still a few legislation that need to be enacted and implemented. He stressed on the need of stronger coordination among government agencies and capacity building of concerned officials in order to fully comply with the commitments.

Dr. Pushkar Bajracharya, Former Member, National Planning Commission, made the presentation on General Agreement on Trade in Services (GATS). He provided an overview of GATS, its basic principles, and Nepal’s commitments in the services sector. Dr. Bajracharya also stressed on the need to amend/enact legislations, and develop institutions and human resources. For example, he pointed out that Nepal’s Foreign Investment and Technology Transfer Act (FITTA) 1992, Labour Act, etc. are not in conformity with Nepal’s commitments under

GATS, and therefore, they need to be amended. He emphasized that monitoring of services trade transactions is much more difficult than that of goods trade, and therefore, enhancing monitoring capacity is essential. Also, since services negotiations are still in progress, there are opportunities for Nepal to set the terms and conditions that best suit its interests. He stated that Nepal has often ignored or failed to take advantage of the extended period for compliance that the country has received by virtue of being a least-developed country (LDC). He also stressed on identifying new market opportunities and prospects such as in Mode 1 of GATS. He was of the view that proper legal instruments, adequate hardware and software, and trained human resources only can help Nepal comply with its WTO commitments under GATS, and enhance Nepal's export potential in services.

In the last session of the first day, Mr. Bharat Thapa, Former Secretary, Government of Nepal, presented on the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). He presented an overview of intellectual property and the present scenario in Nepal regarding the subject. Mr. Thapa highlighted the lack of human resources to deal with the complexities of TRIPS and IPR issues in Nepal and stressed on the need for separate institution with trained human resource to deal with it. Regarding compliance on the issue, Nepal should make best use of the extended time period that it has got to confirm with its commitments at the WTO.

The second day of the workshop commenced with the presentation on Agreement on Agriculture (AoA) by Dr. Dev Bhakta Shakya, Business Enabling Environment Manager, NEAT Activity, Chemonics. He stated that some of the basic requirements regarding Nepal's commitments under AoA were lacking. For example, the need to notify to the WTO any changes in legislation, tariffs and/or issues related to international trade has not been seriously complied by Nepal. Similarly, he pointed to the lackluster performance of concerned agencies in updating their websites. At the same time, he also highlighted the challenges of implementing the commitments due to various problems such as informal trade through the open border with India; higher subsidies that India provides to its farmers, which makes Nepal's agricultural products uncompetitive; lack of legislation to deal with trade remedy measures, among others. He suggested the need for coordination among focal points, regularly updating websites of the ministries and proper and timely notification to the WTO in order to comply with Nepal's WTO commitments.

Mr. Ram Chandra Man Singh, Former Secretary, Government of Nepal, made the presentation on Agreement on Customs Valuation. He highlighted that Nepal has so far made gradual progress in terms of bringing the custom tariffs in line with the country's commitments. Some of the required institutions have also been set-up already. However, there are still other tasks that need to be completed to fully comply with the commitments. Some of the major ones among those tasks include modernizing customs administration through streamlining and computerizing operational procedures, creating modern clearance strategies, putting in place tools for proper risk management and post clearance review; strengthening the organization and infrastructure for valuation; developing right legal framework; and, among others, reforming the tariff and trade regimes by strengthening the indirect tax regime and ensuring post clearance audit. He pointed to the need of good governance of customs and corporate governance of business to comply with Nepal's WTO commitments.

Mr. Poorna Prasad Manandhar, Former Secretary, Government of Nepal, presented on standards-related agreements: Agreement on Sanitary and Phytosanitary (SPS) Measures and Agreement on Technical Barriers to Trade (TBT). He highlighted a number of challenges that Nepal is facing in complying with its commitments under these agreements. Some of the major challenges include lack of capacity to test conformity with required standards, lack of orientation to higher level bureaucrats, and lack of financial and dedicated human resources. He also highlighted the lack of modern testing facilities and lack of accreditation of the existing facilities as challenges in the area of standards. Therefore, he stressed on the development of human capacity and infrastructure apart from legislative reforms for Nepal to comply with its commitments.

The final agreement-specific presentation on trade remedy measures (TRMs) was made by Mr. Ratnakar Adhikari, General Secretary, SAWTEE. He focused on anti-dumping, countervailing, and safeguard and balance of

payment measures highlighting their rationale, key features, Nepal's commitments at the WTO, status of compliance and the way forward. He pointed out that although the deadline to amend/enact legislation related to TRMs had already passed, Nepal has not yet put them in place. Since these legislation are required more to safeguard domestic interests rather than essential for exporting nations, there has not been any push from other WTO members to amend/enact these legislation soon. Therefore, Mr Adhikari stressed on the following as the way forward:

- Enacting/amending related legislation should be a priority of the government because
 - Competition law, which has already been enacted, and the laws related to TRMs should move in tandem
 - These laws are necessary to impose TRMs under regional and bilateral trading arrangements as well
- Institutional strengthening of Department of Commerce, including:
 - Developing human resources capable to conduct investigation and necessary calculations in a WTO compatible manner
 - Budgetary support for
 - Training and capacity building
 - Creation of commercial intelligence system – e.g., War Room in India
- Training and capacity building of lawyers, who could defend the interest of the country should disputes arise

In the final session moderated by Mr. Chandra Ghimire, Joint Secretary, MoCS, participants provided the following suggestions and feedback in order for Nepal to effectively comply with its WTO commitments:

- Having regular meetings of WTO focal points under the coordination of MoCS.
- WTO issues to be prioritized by every ministry.
- Higher level authorities to be convinced to speed up the legislative process.
- Drafting of required legislation with the participation of all concerned stakeholders.
- Carrying out needs assessment exercise to build the capacity of implementing government agencies and the private sector.
- Enhancing inter-ministerial and inter-departmental coordination.
- Developing information kit on WTO issues for focal points.
- All ministries to take the lead in complying WTO commitments and not to depend only on MoCS.

Accepting the suggestions and feedback from the participants positively, Mr. Ghimire informed that sensitization of secretaries on WTO issues will be in the priority agenda in the next EIF meeting. He highlighted the need to build the capacity of not only government officials but also the private sector and civil society at large. Likewise, he informed that MoCS is in the process of establishing a trade analytical wing and improving coordination between Kathmandu and the Geneva Mission to provide solid inputs to the Mission. He stressed on the importance of retention of focal points and requested the same personnel to participate in future programmes for a positive outcome of the current exercise being undertaken. He also requested the participants to make concrete plans of actions for WTO compliance and bring them up in the meeting with MoCS. He also tried to assure them of the possibilities of having access to more financial resources if there would be concrete plans and commitments to implement to those plans.