Nepal’s Accession to WTO: Nepal’s Experiences

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An Interaction Programme with the Delegation of Government of Afghanistan to Share Experiences

8 January 2012
Kathmandu
Presentation outline

- Accession process
- Nepal’s preparations
- Overview of Nepal’s commitments
- Some suggestions and tips
Accession process

‘Any State of separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, \textit{on terms to be agreed} between it and the WTO. Such accession shall apply to \textit{this Agreement and the Multilateral Trade Agreements annexed thereto}.’

Article XII, Marakesh Agreement

- For rule-based system, there is no established rules for membership
- Single undertaking
- \textit{Status quo} for members
Submission of the Application [21 November 2004]
Submission of a Memorandum outlining the features of the trade regime [31 March 2009]
Follow-up questions on the trade regime [26, July 2010; 28 October 2011]
Meetings of the Working Party
Multilateral Negotiations on Rules
Bilateral negotiations on market access (and sometimes on rules)
Approval of the Application
# Nepal’s Accession Timeline

<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>16 May 1989</td>
<td>Applied for membership under GATT</td>
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<td>21–22 June 1989</td>
<td>Established a Working Party under GATT</td>
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<td>26 February 1990</td>
<td>Submitted the MoFTR</td>
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<td>5 December 1995</td>
<td>Submitted written request showing Nepal’s interest to join the WTO</td>
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<td>31 January 1996</td>
<td>Decided to continue the GATT Working Party for the accession of Nepal to the WTO; Nepal given observer status.</td>
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<td>10 August 1998</td>
<td>Submitted the MoFTR</td>
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<td>17 September 1998</td>
<td>Submitted supplementary documents on agriculture</td>
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<td>8 June 1999</td>
<td>Submitted replies to the questions on the MoFTR</td>
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<td>9 July 1999</td>
<td>Submitted documents on services</td>
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<td>12 April 2000</td>
<td>Submitted documents on SPS measures, TBT and TRIPS</td>
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<tr>
<td>8–24 May 2000</td>
<td>Held first round of bilateral negotiations with 10 WTO members</td>
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<td>22 May 2000</td>
<td>Held the first formal meeting of the Working Party</td>
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<td>21–27 Sept 2000</td>
<td>Held second round of bilateral negotiations with 10 WTO members</td>
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<tr>
<td>21 May 2002</td>
<td>Submitted the Legislative Action Plan</td>
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<td>July 2002</td>
<td>Submitted schedules on goods and services</td>
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<tr>
<td>9–13 September 2002</td>
<td>Held third round of bilateral negotiations with seven WTO members</td>
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<tr>
<td>12 September 2002</td>
<td>Held the second formal meeting of the Working Party</td>
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<td>20–23 May 2003</td>
<td>Held fourth round of bilateral negotiations with seven WTO members</td>
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<td>4–18 July 2003</td>
<td>Held fifth round of bilateral negotiations with three WTO members</td>
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<tr>
<td>11–15 August 2003</td>
<td>Held sixth round of bilateral negotiations with five WTO members</td>
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<td>15 August 2003</td>
<td>Concluded Nepal’s accession protocol by the third meeting of the Working Party</td>
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<tr>
<td>11 September 2003</td>
<td>Accession Package approved by the Fifth Ministerial Conference in Cancun, Mexico</td>
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<td>24 March 2004</td>
<td>Nepal ratified the WTO treaty and its agreements</td>
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<tr>
<td>23 April 2004</td>
<td>Nepal became the 147th Member of the WTO</td>
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Source: Adhikari et al. (2008): 27
Areas to be negotiated

- Negotiation on rules: economic policies, framework for making and enforcing policies, policies affecting trade in goods, trade-related intellectual property regime, policies affecting trade in services, transparency etc.
- Negotiation on tariff concessions: offer and request, preparation of single consolidated draft Goods Schedule,
- Discussion on agricultural support and export subsidies: WT/ACC/4, discussion generally plurilateral level
- Negotiation on specific commitments on services: WT/ACC/5
How commitments are made?

- Statements of fact
- Obligations to abide by existing rules
- Obligations to abide by rules created by accession commitments (WTO-Plus): UPOV, transparency, national treatment to foreign investor, government procurement, privatization
- Obligations not to have recourse to WTO provisions (WTO-Minus): abolition of ODCs, not to introduce TRIMs in future, not to provide export subsidies etc.
- Transitional periods for bringing policies into compliance
- Authorizations to depart temporarily from rules or commitments
Nepal’s accession: criteria for the identification of negotiation positions

Nepal recognized that WTO membership is not an end in itself but it could be means for overall development

- Democratic accountability: national consensus
- Development needs: protection of domestic industry, protection of farmers, attraction of FDI, and employment generation
- Policy flexibility: no WTO plus/minus commitments
- Institutional capacity: transition period
Nepal’s accession: internal preparations

- Establishment of formal committees:
  - High Level Committee chaired by the Secretary Ministry of Commerce comprising of Secretaries of Ministry of Finance, Agriculture, Health, National Planning Commission, Governor, Central Bank, among others.: better coordination at policy level
  - Technical Committee chaired by Joint Secretary, WTO Division, Ministry of Commerce: reflection of ground reality in negotiation
  - Strong negotiation team: ceiling binding, conditional service binding, transition period and technical assistance, rejection of data protection etc
  - Communication between capital and Mission

- Technical supports from inter-governmental organizations, UNCTAD, UNDP
Nepal’s accession: internal preparations (contd..)

- Channelization of diplomatic resources: bilateral, regional, WTO groups- LDC, G77
- Consultation with stockholders- (UPOV), service commitments, smooth ratification
  - Business organizations / professional associations
  - Farmer’s organizations
  - Politician (Members of Parliament)
  - Civil society / academics/Experts
Nepal’s commitments

- **Systemic issues:** accepted all mandatory provisions but with transition period, few examples:
  - Pricing policies: no government intervention except in essential goods and services
  - Prompt review of administrative decisions- establish or designate tribunal
  - Charges commensurate with cost of service rendered: import license fee, export service fee
  - Elimination of other duties and charges
  - Anti-dumping, countervailing and safeguard measures applicable only after notification of the legislation
  - No Trade Related Investment Measures (TRIMs)
  - Non-enforcement of laws, regulations prior to publication
  - Notification of FTA
Nepal’s commitments (contd…)

- **Goods Sector:**
  phasing out of ODCs in 10 years

  **Non-agriculture sectors**
  - 99 per cent plus binding tariff
  - phasing out of custom duties on IT: 5 years
  - maximum bound tariff: 80 percent
  - unweighted average bound rate: 39-23: 10 years

**Agriculture sectors**
- 100 per cent tariff binding and no reduction commitments
- unweighted average bound rate: 51-42: 3 years, with maximum of 200 percent
Nepal’s commitments (contd…)

- **Services**
  - *conditional commitments*
    - incorporation: be incorporated in as per Nepalese law
    - equity participation: minimum of 20 per cent reserved for Nepalese investors
    - foreign employee: unskilled job reserved for Nepalese
    - subsidies: government not obliged to provide subsidies to service providers owned by foreigners

*commitments on about 70 sub-sectors*
Some suggestions and tips

- Coordination among government agencies is must,
- Consultation with stakeholders pays off,
- Prior identification of negotiation position helps: negotiable and non-negotiable issues,
- Channelization of diplomatic capital is crucial: mobilize SAARC, LDC group, G77,
- Seek technical assistance, whenever needed,
- Never accept WTO plus and WTO minus commitments: risks of labour and environmental standards, privatization progress and conditions; invoke Decisions in Favour of LDCs, General Council Guidelines for LDC Accession, risk
- Never accede to plurilateral agreements or sectoral initiatives
Always look for policy space to:
- exploit mineral resources, including natural gas, petroleum, coal, copper, chromate, talc, barites, sulphur, lead, zinc, iron ore, salt, silver, precious and semi-precious stones and marble (investment measures, subsidies)
- promote and protect traditional handicrafts sector producing carpets, rugs, flooring and karakul (ceiling binding, subsidies)
- protect rural livelihood, including production of wheat, corn, barley, rice, cotton, fresh and dry fruits, nuts, wool and mutton
- ensure food security and environment protection
- generate employment (reserve for own nationals)

Try to carve out commitments in services sector: avoid full commitments

Seek transition period for the implementation of WTO agreements and use it for the development of institutions
Some suggestions and tips (contd…)

- Seek technical assistance/aid for trade for implementation of commitments,
- Defer actual negotiation, both bilateral and multilateral, until July 2012- Eighth Ministerial Meeting, Geneva Decision on
Thank you