Trade Negotiation Strategy for Nepal

Introduction

Since the initiation of trade liberalisation in the mid-1980s, Nepal has sought to integrate with the world economy through various multilateral, regional and bilateral trade agreements. It became the 147th member of the World Trade Organisation (WTO) in April 2004, and recently signed two regional trade agreements, namely, Agreement on South Asian Free Trade Area (SAFTA) and Bay of Bengal Initiative for Multi-Sectoral Trade and Economic Cooperation (BIMSTEC) Free Trade Area Framework Agreement. Nepal also has bilateral trade agreement with its largest trading partner, India, since 1950. It is believed that Nepal's membership to these trading regimes will expand market access, facilitate competition and create opportunities for growth and development. However, potential benefits of trade liberalisation depend not only on Nepal's ability to overcome supply side constraints but also on its capacity to negotiate in these multilateral, regional and bilateral trade forums.

This Research Brief attempts to formulate a negotiation strategy for Nepal for the different multilateral, regional and bilateral trade agreements in which it is a member. The second part of the policy brief will explore Nepal's negotiation strategy in specific sectors, previously identified as having export potential.

WTO Negotiations

The agenda for the present round of WTO negotiations, also known as the Doha Round, was set by the Ministerial Declaration in Doha in 2001. This declaration is also known as the 'Doha Development Agenda' as it intends to address interests of developing countries. The Sixth Ministerial Conference held in Hong Kong in December 2005 reaffirmed the Declarations and Decisions adopted at Doha, and the General Council on 1 August 2004 (commonly known as the *July Framework*). The July Package focuses on five issues, namely- agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension.

Agriculture

It is argued that developing countries have comparative advantage in agriculture products and are potential exporters. Therefore, agriculture trade liberalisation is a priority for developing countries. Huge domestic and export subsidies in developed countries has been an important source of dispute at WTO negotiations in agriculture. The end of export subsidies in agriculture is likely to increase world prices of agriculture commodities, and provide incentive for farmers in developing countries to grow more. However, for a net food importing country like Nepal, high food prices will also lead to a higher food bill.

Another important issue concerning agriculture trade is that of market access. Nepali agriculture exports are concentrated in a few products and destinations. The major market for pulses, vegetable fat, wheat, cardamom, ginger, oil seed and herbs is India; whereas the major market for tea and sugar is Europe. Hence, Nepal's negotiation strategy should focus on enhanced market access to both developed and developing countries through the elimination of tariff peaks and tariff escalation.

Non-Agricultural Market Access (NAMA)

Substantial increase in binding commitments in non-agriculture goods are expected from LDCs in the current round of WTO negotiations. However, since Nepal has already bound 99.3 percent of its tariff lines in manufactured goods, tariff reductions in this round of negotiations is not required. Nepal should thus focus on negotiating enhanced market access for its manufactured goods, both in developing and developed countries. Decisions in Hong Kong indicate that the present round of negotiations are likely to result in tariff reductions and duty-free and quota-free access to LDC exports to developed countries. However, the rise in the use of non-tariff barriers (NTBs), to protect domestic markets, is of great concern for LDCs and developing countries. Some members even claim that NTBs constitute a greater barrier to exports than tariffs.

Nepali manufactured exports face various forms of NTBs in developed and developing country markets. Therefore, Nepal in alliance with other LDC members needs to ensure that the issue of NTBs is given priority in WTO negotiations and resolved in favour of LDCs.

Services

Available data on services trade shows that Nepal has potential in various services sector, particularly in tourism and Mode 4 services (cross border movement of natural persons). Similarly, Information and Communication Technology (ICT) and other commercial services are emerging as dynamic sectors globally and in South Asia. In this context, negotiations on tourism, ICT and Mode 4 services are important for Nepal.

Liberalisation in Mode 4 services can have a huge positive impact for Nepal. The Hong Kong Ministerial declaration mentioned 'new or improved commitments' on the categories of Contractual Services Supplies and Independent Professionals. However, low skilled and unskilled labour has not been included in this category, which is a major setback for LDCs, including Nepal. To make services trade liberalisation an effective instrument for development, Nepal together with other LDCs, should put forward plurilateral requests on sectors and modes of their interest.

Trade Facilitation

One of the most important proposals related to trade facilitation for Nepal is Article V related to transit rights of landlocked developing countries with national treatment. Other important issues related to trade facilitation are; introduction of bonded transport regime, adoption of international standards for transit formalities and documentation requirements etc.

However, the cost of implementation of trade facilitation measures is a major issue for LDCs like Nepal. Recognising this difficulty, the Hong Kong Ministerial has provided developing and LDC members with policy flexibility of not complying with trade facilitation rules in the absence of external support. While developed country members will continue to intensify their support in a comprehensive manner and on a long-term and sustainable basis, backed by secure funding. Nepal will thus have to utilise this provision and seek financial and technical assistance from WTO members for implementing trade facilitation measures.

In addition to these five issues of the July-package, negotiations related to Duty Free and Quota Free (DFQF) Market Access and Intellectual Property Rights (IPRs) are also important components of the current WTO negotiations.

Duty Free and Quota Free (DFQF) Access

The Hong Kong Decision has a provision for duty free quota free access to LDC products to developed countries. However, exports of most LDCs are concentrated in a few products. Thus, the flexibility provided to developed countries to exclude 3 percent of tariff lines under DFQF initiative, may exclude virtually all exportable products and not provide LDCs with any additional and effective market access. To make the decision of DFQF access favourable, Nepal together with other LDCs needs to negotiate to interpret the flexibility as 3 percent of existing non-zero tariff lines and cap it by the volume of imports; for developing countries to provide DFQF market access for at least half of the tariff lines comprising of half of the export value; to incorporate the stage of development of LDCs for rules of origin and harmonise it for all preference-granting countries.

Intellectual Property Rights (IPRs)

Under the WTO, IPRs are dealt under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIMS). For Nepal, the most important issue in terms of IPRs, is that of Access and Benefit Sharing (ABS) and Prior Informed Consent (PIC). ABS and PIC are two important principles of equity recognised and legitimised in the Convention on Biological Diversity (CBD), 1992. However, TRIPS is in conflict with the CBD and violates the principles of ABS and PIC, which is against the interest of bio-diversity rich countries like

Nepal. In this context, it would be to the advantage of developing countries to see an explicit negotiating mandate included in the Ministerial Declaration, calling for an amendment of TRIPS. The amendment should require patent applicants to disclose the origin of genetic resources and associated traditional knowledge along with evidence of PIC and benefit-sharing in their application.

Regional Trade Agreements

Nepal is a member of two regional trade agreements- the Agreement on South Asian Free Trade Area (SAFTA)[1] which came into force on 1 January, 2006 and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Free Trade Area Framework Agreement,[2] which was scheduled to be effective from 1 July, 2006.

Trade within South Asian countries is likely to grow in the future, but not solely due to SAFTA. Bilateral trading arrangements such as those between Nepal and India, and India and Sri Lanka accord better preferential access arrangements than envisaged by SAFTA. Given the fact that most of the highly traded items and items with trade potential are in the sensitive lists of the members, SAFTA is unlikely to play a significant role in the expansion of trade among members. The negotiating position of Nepal should thus be to reduce the number of goods in the sensitive lists of members.

The contribution of services in the GDP of South Asian countries is about 40 percent on average. Services are bound to become bigger parts of South Asian economies as economic growth advances. Coupled with liberalisation in investment, services are likely to attract intra-regional investment. Tourism, health, education and business services are potential areas for such investments.

An important issue for regional trade in South Asia is that of trade facilitation. Poor transportation facilities, differing custom procedures and requirements and inability to use more economical transit routes hinder trade. The contiguous nature of the Indian sub-continent calls for joint efforts for improving surface and sea transport facilities. In addition, initiatives to develop a regional electricity grid and gas pipelines will benefit the energy deficit region. The geographical proximity also makes cross-country supply of telecommunications services feasible.

Therefore, to be of any relevance, regional economic integration efforts in South Asia has to include measures to liberalise trade in services, remove barriers to intra-regional investments, improve trade facilitation and enhance cooperation in infrastructure, such as energy and telecommunications.

Bilateral Trade: Indo-Nepal Trade Agreement

India is the largest trading partner of Nepal. In 2004/05 India contributed to over 66 percent of Nepal's total exports and about 60 percent of Nepal's total imports.

Trade relations between the two countries are governed by bilateral trade treaties. Nepal signed its first trade and transit treaty with India in 1950. The treaty has been subsequently renewed over the years. On 4 March 2007, the Indo-Nepal bilateral trade treaty was renewed for another five years. The treaty allows Nepali manufactures goods (excluding three items on the negative list and five items with quantitative restrictions) unlimited duty-free access to India. Nepali agriculture exports also enjoy duty-free market access to India.

However, the renewal of the treaty did not address some key issues, such as that of non-tariff barriers that Nepal faces. It will be beneficial for Nepal to revise

some restrictions of the treaty such as stringent ROOs, quotas, and specification of safeguard clauses.
In addition, new areas of cooperation between the two countries should be explored. India's steady and high level of GDP growth is already creating huge demand for energy. Since, Nepal has vast amount of untapped hydroelectricity, trade in energy is likely to benefit both the countries. India has also made a lot of progress in trade in services, especially in ICT and tourism. Therefore, for both the countries to benefit from trade, new opportunities in the field of energy and services, including information technology, tourism, education, and healthcare should be explored.

Trade Barriers and Negotiation Issues in Select Sectors

SAWTEE and ActionAid Nepal recently conducted a research study to identify goods and services in which Nepal has comparative advantage. The study selected three items (tea, herbs, and leather) from the goods sector and two sub-sectors from the services sector (tourism and information and communication technology-ICT). The next section of the research brief will explore trade barriers and negotiation issues in the sectors selected.

Trade barriers in the goods sector comprise of tariffs, and non-tariff barriers. Under the WTO, the use of tariff barriers has declined while the use of NTBs has sharply increased, especially in developed countries. Most common examples of NTBs include anti-dumping measures, state subsidies, regulations on health and safety, quotas etc.

It is observed that export of tea and herbs face tariff barriers in developing countries and NTBs in both developed and developing countries. Except in the EU, Canada, USA and Australia, tea faces high tariffs in all other markets ranging from 17 percent in Japan to 200 percent in Bangladesh. Similarly the incidence of non-tariff barriers in tea is high in India, Pakistan, Canada, Australia and Korea. Herbs faces high tariffs in South Asian markets such as India and Bangladesh and low tariffs in the EU, Canada, Australia and USA.

In the case of leather, tariffs seem to be a greater barrier to trade than NTBs. Available data shows that applied tariff rates on major raw leather products range between 0 to 30 percent, while processed leather items face tariffs in the range of 5 to 20 percent in the major market destinations. Trade in leather products is relatively unhindered by NTBs.

Market barriers to services trade exist mainly in the form of immigration and labour market regulations, recognition and licensing provisions, limits on foreign equity participation, and discriminatory treatment with respect to taxes, subsidies and other policies.

In the past round of General Agreement on Trade in Services (GATS) negotiations, tourism sector attracted more member commitments than any other services sector. However, significant restrictions still remain. Commitments under Mode 2 tourism services (consumption abroad) are important for Nepal. Therefore, Nepal should support proposals that intend to liberalise Mode 2 related tourism services.

In the past round of GATS negotiations, most countries have made liberal commitments in ICT related services. However, commitments in this sector are largely concentrated in Mode 1 (cross border supply) and Mode 3 (commercial presence). In the case of Mode 4 (movement of natural persons), sectoral commitments are unbound and subject to many horizontal limitations. From an LDC perspective, improved commitments in Mode 1 and Mode 4 are necessary. Greater transparency in the administration and criteria governing immigration and labour market policies in potential market destinations are also in the interest of Nepal. ■

Footnotes

1 The other members of SAFTA are Afghanistan, Bangladesh, Bhutan, India, Maldives, Pakistan and Sri Lanka.

2 The other members of BIMSTEC are Bangladesh, Bhutan, Burma, India, Sri Lanka and Thailand.

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Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. Registered in Kathmandu in 1999, the overall objective of SAWTEE is to build the capacity of concerned stakeholders in South Asia in the context of liberalisation and globalisation.

SAWTEE
SOUTH ASIA WATCH ON TRADE, ECONOMICS & ENVIRONMENT

P.O. Box: 19366, 254 Lamtangeen Marg, Baluwatar, Kathmandu, Nepal
Tel: 977-1-4415824/4444438, Fax: 977-1-4444570, Email: sawtee@sawtee.org, Web: www.sawtee.org

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