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Ensuring Development-supportive Accession of Least-developed Countries to the WTO

Learning from Nepal

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South Asia Watch on Trade, Economics & Environment
(SAWTEE)

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Goal

Enabling South Asian communities to benefit from and minimize the harms of changing regional and global economic paradigms.

Objectives

SAWTEE aims to build the capacity of concerned stakeholders in South Asia by equipping them with knowledge, information and skills to voice their concerns in the context of globalization and liberalization. To this end, it aims to:

- analyze the impacts of multilateral and regional trade agreements and their functioning;
- conduct programs that enhance the participation of developing countries, in particular least-developed countries (LDCs) and land-locked countries, in the global trading system;
- contribute towards the process of regional integration within South Asia;
- establish linkages and promote cooperation with other organizations/agencies having similar objectives; and
- conduct research and advocacy programs on trade, regional cooperation and sustainable development issues affecting South Asia.

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Table of Contents

List of tables and boxes

Executive Summary

Nepal, a land-locked country nestled between India and China, is one of the poorest countries in the world. Poverty reduction is the main policy objective of the government. Broad-based economic growth has been identified as a prerequisite for poverty reduction, and increasing trade—particularly through export diversification—has been identified as one of the strategies for achieving broad-based economic growth. Membership in multilateral, regional and bilateral trade agreements is seen as an important instrument for increasing trade.

Nepal was the first least-developed country (LDC) to become a Member of the World Trade Organization (WTO) through the accession process in April 2004. Apart from achieving broad-based growth, Nepal envisaged using WTO membership for disciplining its trading partners, achieving enhanced market access, benefiting from the special and differential treatment (S&DT) within the WTO system for LDCs and securing transit rights to the sea.

Nepal's negotiation process for WTO membership was strenuous and time-consuming. The technical assistance Nepal received during its accession process proved vital. The technical assistance was used for preparing technical papers such as the Memorandum of Foreign Trade Regime (MoFTR) in the WTO-prescribed formats, background papers, legal documents and draft laws. It was also helpful in building the capacity for the private sector and government officials on WTO issues, and for promoting general awareness in the country regarding the WTO.

During its WTO accession process, Nepal had to negotiate even for securing S&DT, to which all LDC Members are automatically entitled. It also had a difficult time avoiding signing up to the International Union for the Protection of New Varieties of Plants (UPOV), which promotes the rights of breeders at the expense of farmers' rights on new plant varieties. Nepal faced difficulty, especially in bilateral negotiations, as Members usually made stringent demands during these negotiations.

Nepal made 25 systemic commitments in its Protocol of Accession to the WTO. Nepal's binding average tariffs on agricultural and non-agricultural products are 42 and 24 per cent respectively. Nepal has bound tariffs in all agricultural tariff lines and 99.4 per cent of non-agricultural tariff lines except for a few tariff lines such as petroleum products, cement, arms and ammunitions. In the services sector, Nepal has made commitments in 11 sectors and 70 sub-sectors. Nepal has also made commitments to implement the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) with limited transitional periods.

Compared to the commitments made by Cambodia, another recent LDC Member of the WTO, Nepal has been able to negotiate better terms of accession. This is mainly because of the availability of technical assistance, in-country expertise and a relatively open consultation process with the stakeholders. Nepal's commitments in the WTO are, however, more stringent than incumbent LDC Members and even many developing country Members.

Nepal has been through a very difficult phase in the last decade that has been marred by political and social turmoil. This makes it difficult to assess the impact of Nepal's WTO membership on its trade performance. Notwithstanding this, Nepal's WTO membership has not helped Nepal to achieve its policy objectives related to trade, i.e., trade diversification and narrowing the trade deficit. It has also been observed that the technical assistance that the country received after WTO membership has been inadequate. In particular, assistance has been lacking to help the country address supply-side constraints that inhibit it from benefiting from WTO membership.

Given that a number of LDCs are at various stages of the WTO accession process, learning from Nepal's experience can prove vital for ensuring that they gain maximum benefit from their WTO membership. Nepal's experience shows that the following matters, in particular, need to be addressed to ensure this: simplifying the WTO accession process for LDCs; lowering the level of commitments for LDCs; and providing technical assistance for enhancing their negotiation capacity and implementing their commitments. There is also a need to strengthen the S&DT provisions of the WTO. Finally, Nepal's case clearly illustrates that wide stakeholder participation is crucial if the country is to benefit from WTO membership. Hence, the international community should assist LDCs to put in place institutional mechanisms to ensure this.

Acronyms

AEC	Agro-Enterprises Centre
ATC	Agreement on Textiles and Clothing
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
CIAA	Commission for the Investigation of Abuse of Authority
CNI	Confederation of Nepalese Industries
CSO	civil society organization
DFQF	duty-free quota-free
EBA	Everything but Arms
EFTA	European Free Trade Association
FNCCI	Federation of Nepalese Chambers of Commerce and Industry
FY	fiscal year
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GSP	Generalized System of Preferences
ICT	information and communication technology
IMF	International Monetary Fund
LAP	Legislative Action Plan
LDCs	least-developed countries
MFN	most-favoured nation
MoFTR	memorandum on the foreign trade regime
MoIC	Ministry of Information and Communications
MOICS	Ministry of Industry, Commerce and Supplies
NAFTA	North American Free Trade Agreement
NBSM	Nepal Bureau of Standards and Metrology
NCC	Nepal Chamber of Commerce
NCM	National Certification Mark
NGO	non-governmental organization
NPC	National Planning Commission
NRB	Nepal Rastra Bank
NTA	Nepal Telecommunications Authority
NTB	non-tariff barrier
NTC	Nepal Telecommunication Corporation
ODCs	other duties and charges
OECD	Organisation for Economic Co-operation and Development
PRSP	Poverty Reduction Strategy Paper
R&D	research and development
RMG	readymade garment

ROO	rules of origin
SAFTA	South Asia Free Trade Area
S&DT	special and differential treatment
SMEs	small- and medium-sized enterprises
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TPC	Trade Promotion Centre
TRIPS	trade-related aspects of intellectual property rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UPOV	International Union for the Protection of New Varieties of Plants
WHO	World Health Organization
WTO	World Trade Organization

1. Introduction

1.1 Background

The World Trade Organization (WTO) is a rules-based multilateral trading system that seeks to provide transparency, stability and predictability in international trade in terms of market access and other trading issues. Countries view WTO membership as a means to integrate themselves into the global economy and maximize the benefits of international trade. The WTO has two types of Members: the original Members who were Members of the General Agreement on Tariffs and Trade (GATT) by virtue of which they are founding Members of the WTO; and the new Members who joined the WTO through accession negotiations. Among the 152 Members of the WTO, 123 are original Members, while 29 countries joined through the accession process. Among the 50 least-developed countries (LDCs) on the United Nations list, 33 are WTO Members. However, only three—Nepal, Cambodia and Cape Verde—joined the WTO through the accession process. All other LDCs are founding Members of the WTO. Nine additional LDCs are in the process of accession to the WTO.

Nepal applied for GATT membership in 1989, but could not provide continuity to the effort. This was primarily due to the political change in 1990 which was preceded by a popular people's movement against the establishment of the day. The country reapplied for the WTO membership in 1995, completed the accession process in September 2003 and eventually became the first LDC to become a Member of the WTO through the accession process in April 2004.

This study analyzes Nepal's policy objectives and assesses whether WTO membership has contributed in achieving these objectives. It highlights the various aspects of the process and analyzes Nepal's WTO commitments. It also looks at the role of various stakeholders during the accession process. Finally, it provides recommendations for making the WTO accession process development friendly for acceding LDCs.

1.2 Rationale of the study

As the first LDC to become a Member of the WTO through accession, Nepal went through a painful process of negotiation with its trading partners at the multilateral and bilateral levels. It had to negotiate minute details of the agreement as tactfully as possible, enabled by the availability of technical assistance, in-country expertise and a relatively open consultation process with stakeholders. Since there are a number of LDCs still outside the WTO system and some of them are in the process of accession, it would be useful to document and share Nepal's experience so that other acceding LDCs can replicate the successful strategies and avoid some of the mistakes.

However, developments since Nepal's WTO membership have not been very encouraging. There has been apparent apathy in the country in terms of utilizing the benefits of WTO membership. There are three major reasons for this. First, due to the ongoing peace process in the country, politics has taken centre-stage and economic issues have been relegated to the back seat. Second, a considerable number of market access barriers still exist in the international market, impeding export growth and diversification. Third, due to several supply-side constraints, Nepal has not been able to take advantage of the incremental market access opportunities provided by WTO membership. While the first issue highlighted above is Nepal-specific and transitory in nature, market access barriers and supply-side constraints are also faced or likely to be faced by all the acceding LDCs.

1.3 Objectives

The objectives of this study are to:

- evaluate to what extent the accession process, agreement and implementation have contributed and/or are likely to contribute in achieving the country's public policy objectives;
- highlight specific interests and constraints of LDCs that should be taken into account in ongoing and future accession negotiations; and
- identify options for adapting the accession process to facilitate LDC accession that is supportive of their public policy objectives.

1.4 Methodology and scope

The study is largely based on secondary information available from various governmental, non-governmental, intra-governmental, private sector and academic sources. It is also supplemented by interviews with key stakeholders representing various segments of society.

The study covers the period after Nepal's accession to the WTO. In-depth analysis has been conducted only for the sectors that were identified by an earlier study conducted by SAWTEE and ActionAid Nepal (2007a) as having export potential.

The study has been conducted in the context of Nepal's accession to the WTO and potential benefits and challenges; the analysis, therefore, only focuses on the multilateral framework.

Nepal has a free trade agreement with India, which, among other provisions, allows Nepal to export primary as well as manufactured products without duty to the Indian market.[1] However, the bilateral treaty does not guarantee predictability in market access as the Indo-Nepal Trade Treaty is not a permanent agreement, but is reviewed and renewed every five years. When the Treaty was renewed in 2002, new restrictions were imposed on the export of Nepalese products to the Indian market. The Treaty was renewed again in 2007 without any amendments to the 2002 Treaty.

Similarly, Nepal is a party to two regional trading arrangements, namely the Agreement on South Asian Free Trade Area (SAFTA) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) FTA. However, most of the products of export interest to Nepal have been put under sensitive lists by all the major importing countries within SAFTA and the complete liberalization of tariffs (i.e., reducing tariffs to zero to five per cent) will take place only in 2016. As far as the BIMSTEC FTA is concerned, the implementation of the Agreement has not yet started. When it does, it will be fully implemented only in 2017.

1 This agreement excludes a few items on the negative list.

2. Nepal's trade interests and constraints

2.1 Public policy objectives

Poverty reduction has been one of the major objectives of both the Ninth Plan (1997–2002), which guided Nepal's reapplication to WTO membership and the Tenth Plan (2002–2007) of the government of Nepal during which Nepal was granted WTO membership. The Tenth Plan's poverty reduction strategy is based on four pillars: achieving broad-based growth; social sector development, including human development and development of rural infrastructure; implementing targeted programs including social inclusion; and ensuring good governance (NPC, 2003).

One of the strategies to attain broad-based economic growth was through the adoption of policies to increase trade. Some of the means proposed for achieving this objective were as follows:

- lowering of transport costs by developing Inland Container Depots;
- developing strategic roads and implementing the multi-model transport strategy;
- improving customs administration;
- developing power for potential exports; and
- carefully negotiating accession to the WTO to link Nepal to the global community in an advantageous manner.

The Tenth Plan also aimed at undertaking reforms, including foreign trade and labour reform to improve the competitiveness of the private sector. It sought to promote the private sector, especially export-oriented industries, by removing impediments to development through strong promotional packages and incentives for investment.

It is assumed that broad-based growth will take care of poverty and that trade would enhance growth (Khatiwada, 2006), even though the link between trade, economic growth and poverty is not well established (Rodriguez and Rodrik, 1999; Rodrik, 2002). The Tenth Plan did not only focus on increasing trade, but also on several policies that are necessary to ensure that trade contributes to economic growth and poverty alleviation. However, due to its poor implementation, which is mainly ascribed to the unstable political situation in Nepal during the plan period and lack of resources, the Plan was not able to achieve its intended objectives.

The current plan document, the Three-Year Interim Plan Document (2007–2010), also focuses on poverty alleviation as a major objective. The Interim Plan places emphasis on achieving poverty alleviation by exploiting the potential offered, among others, by the services sectors.[2]

2 To this end, the Ministry of Industry, Commerce and Supplies (MOICS) has already initiated a study on harnessing the potential of three major services sectors with export potential, namely: health; education; and high-end retail.

The document also envisages a major focus, *inter alia*, on: a) providing continuity to policy reforms in internal as well as external trade; b) utilizing opportunities offered by the booming economies of two giant neighbours—China and India; c) encouraging institutional reforms, skills development of workers and capacity building on trade; d) developing physical infrastructure and basic amenities; e) identifying products and market destination for export diversification; f) creating linkages of trade with the rest of the economy; and g) trade facilitation measures.

It needs to be emphasized that Nepal's membership in the WTO and other reform measures are part of a broader economic liberalization program that was initiated in the mid-1980s. The process was accelerated after the restoration of multi-party democracy in 1990. Among the many new policies implemented for this purpose the Trade Policy of 1992 guided Nepal's trade liberalization process. It has the following objectives:

- to enhance the contributions of the trade sector to the national economy by promoting internal and international trade with increased participation of the private sector through the creation of an open and liberal atmosphere;
- to diversify trade by identifying, developing and producing new exportable products through the promotion of backward linkages for making export trade competitive and sustainable;
- to expand trade on a sustained basis through gradual reduction in trade imbalances; and
- to coordinate trade with other sectors by expanding employment-oriented trade.

2.2 Motivation for WTO membership

The motivation for Nepal's accession to WTO was more or less the same as those for other developing countries and LDCs. Based on the discussions that took place in the aftermath of the formal submission of application for WTO membership and the review of relevant literature, it can be observed that the government was keen to join the WTO due to the following potential benefits offered by WTO membership:[3]

Discipline on trading partners: Nepalese goods and services would receive the same treatment as the goods and services of the importing Member countries as non-discrimination is one of the fundamental principles of the multilateral trading system. The membership also provides access to WTO's dispute-settlement procedures and legal recourse to contest capricious trade policies imposed on exporters.

Market access: Nepal's excessive reliance on three exports markets—India, Germany and the United States—has made the country's foreign trade extremely vulnerable. It was therefore expected that WTO membership would provide Nepal the possibility to explore other destinations for exports. During the time of Nepal's WTO membership, Nepal had agreements of most-favoured nation (MFN) treatment with 17 countries (WTO, 2003, 48). It also enjoyed MFN treatment from major generalized system of preferences (GSP) granting countries. Nepal's WTO membership expanded the number of countries where Nepal enjoyed MFN treatment to 146 at the time of accession. The facilities that Nepal enjoyed also became binding once Nepal became a WTO Member.

3 See Adhikari (2003); Shrestha (2003); Pandey (2003) for a general discussion on the motives of WTO accession and cost and benefit of Nepal's membership to the WTO.

S&D Treatment: The WTO offers special and differential treatment for LDCs like Nepal. These include longer transition periods for the implementation of the agreements, technical support, due restraint on disputes involving LDCs, and special treatment while liberalizing the services sector.

Discipline on policy-makers: WTO membership provides a means to ensure policy lock-in. Nepal undertook unilateral reform measures throughout the 1990s, but future governments can reverse liberal policies at the behest of pressure groups. Policy reversal is an acute problem in Nepal's governance system as frequent changes in government result in virtual "U-turn" in policies. WTO membership was expected to serve as a potent tool to tie the hands of successive governments from reversing earlier policies. Once a commitment is made at the WTO, it would be difficult for the government to renege on its commitments. Thus, WTO membership can help to lock in liberalization[4] policies and would increase Nepal's credibility with traders and investors.

Transit rights: One of the reasons why Nepal sought membership to the GATT was due to the transit problem it had encountered during the Indo-Nepal transit stalemate in 1989. It was expected that under the GATT/WTO, Nepal will be granted access to the sea as a right per Article V of the GATT.

In theory, as a WTO Member, Nepal should benefit from access to international markets without discrimination. However, in practice, various factors have prevented Nepal from taking full advantage of the WTO membership. These are discussed in the following sections.

2.3 Market access barriers

The first set of constraints Nepal faces in terms of integrating the country into the global economy are market access barriers in the form of tariff and non-tariff barriers.

As noted above, one of the motivations for obtaining WTO membership was to avoid dependence on limited markets for the exports of manufactured and agricultural goods. However, recent data suggest that Nepal's dependence on India as a major trading partner has been increasing (**Table 1**). This is not only due to increased trade with India, but also due to Nepal's stagnant trade with overseas countries and Tibet. Nepal's trade deficit with India is increasing at an alarming rate and was NRs. 44 billion in the first eight months of FY 2006/07.

The export gains achieved in the 1990s in overseas markets, in particular the U.S. and Germany, to diversify exports was considered a major success. This was mainly due to the export of readymade garments (RMGs) to the U.S. market and carpets to the German market. At present, the exports of both these products have witnessed a considerable decline. Efforts to diversify exports to other destination have shown encouraging results, but they are hampered by different kinds of market access barriers.

4 In addition to this, Nepal's WTO membership will also result in the government undertaking additional liberalization measures.

Table 1: Direction of international trade (NRs. in millions)

Description	1991/92	1995/96	1999/2000	2003/04	2004/05	2005/06	2005/06	2006/07*
Export F.O.B	**13,707**	**19,881**	**49,823**	**53,911**	**58,706**	**60,234**	**42,796**	**39,986**
India	1450	3,682	21,221	30,777	38,917	40,715	29,660	27,763
Other countries	12,257	16,199	28,602	23,134	19,789	19,519	13,137	12,223
Import C.I.F	**31,940**	**74,455**	**108,505**	**136,277**	**149,474**	**173,780**	**116,013**	**114,691**
India	11,246	24,399	39,660	78,740	88,676	107,143	70,514	72,125
Other countries	20,695	50,056	68,845	57,538	60,798	66,637	45,499	42,566
Trade Balance	**-18,233**	**-54,573**	**-5,8682**	**-82,366**	**-90,767**	**-113,546**	**-73,216**	**-74,705**
India	-9,796	-20,716	-18,439	-47,962	-49,759	-66,428	-40,855	-44,362
Other countries	-8,438	-33,857	-40,243	-34,404	-41,009	-47,118	-32,362	-30,344

*First eight months

Source: MOF 2007

Market access barriers are product-specific and depend to a large extent on the prevailing political economy in importing countries. Nepalese exports face market access barriers not only in the developed country markets but also in developing country markets. Some of the market access barriers for selected product categories that have export potential are discussed below.

Tariff barriers

Tariff barriers serve the legitimate interest of the importing countries to protect their domestic industrial or agricultural sectors from foreign competition. However, this can also be a tool to advance the protectionist agenda perpetuated by vested interests in importing countries. In order to provide predictability to market access, WTO Members are required to bind their tariffs. A majority of the founding Members of the WTO have set tariffs at a relatively higher level to protect their domestic sectors, and some have even kept their tariffs unbound,[5] while countries that acceded to the WTO did not have much leverage not to bind their tariffs. For example, Cambodia and Nepal have bound 100 per cent and 99.4 per cent of their industrial tariffs respectively.

Nepal had continues to face tariff barriers on products of its export interest. Readymade garments (RMGs) is still a promising sector for the Nepalese economy despite the decline in its exports after the phasing out of quotas on textiles and clothing as per the Agreement on Textile and Clothing (ATC) of the WTO. Besides, a recent study by SAWTEE and ActionAid Nepal (2007a) has identified three commodities with high potential for export diversification in the context of the phasing out of textiles and clothing quotas after the expiry of the ATC on 1 January 2005. Tea, leather and herbs are the products identified, based on these four criteria: a) revealed comparative advantage; b) export prospects and sustainability of exports; c) employment potential particularly for women and backward communities; and d) use of domestic inputs. Market access barriers on these products are discussed in the sections below.

5 For example, Bangladesh has bound only 15.8 per cent of tariff lines, while Tanzania has bound only 13.3 per cent of tariff lines. See Adhikari (2005).

Tariff barriers on readymade garments

For RMG exports, tariff peaks are the single largest market access barrier in the U.S. market. Due to of the low competitiveness of Nepalese RMG products, Nepal is unable to compete with low-cost producers such as China and Vietnam. Moreover, countries or regions that benefit from preferential market access in the U.S., have posed significant challenges to Nepalese RMG exports. For example, the U.S. provides preferential market access through free trade agreements or generalized systems of preferences (GSP) to several countries in Africa, Middle East, South and Central American and Caribbean countries. While Nepalese exports are subject to a tariff rate of 11.3 per cent, on average, in the U.S. market (SAWTEE and ActionAid, 2007b), an analysis of the discriminatory tariff imposed by the U.S. prepared by Adhikari and Yamamoto (2007, p 224) suggests that calculated duties as a percentage of U.S. customs value for woven RMGs in 2006 were 0.16 per cent, 1.9 per cent, 0.07 and 0.41 per cent for Canada, Lesotho, Honduras and Jordan respectively.

A study conducted by SAWTEE and ActionAid (2007b), which makes an attempt to gauge the possible impact of duty free market access to the U.S., predicts that Nepalese RMG exports to the U.S. would increase by 11.5 per cent if they could enter duty free.

Tariff barriers on tea

Tea is a sector with tremendous export potential for Nepal as can be seen from the growing exports of Nepalese tea to the international market. For example, Nepal exported only about 72,000 kg of tea in 1994/95, which increased to 4.3 million kg in 2004/05. Supply response has been commensurate with the increased demand for Nepalese tea in the international market. For example, during 1994/95, total amount of tea produced in Nepal stood at 1.9 million kg, the amount rose to 13.6 million kg by 2005/06 (NTCDB, 2006). Although tea exports have been growing significantly, the potential has not been fully realized due to tariff barriers prevalent in major export markets.

A commodity-wise analysis conducted by Adhikari and Adhikari (2005) shows that Nepalese black tea faces between 50 and 200 per cent bound tariffs in its neighbouring country markets, with Bangladesh binding its tariffs on tea at 200 per cent (**Table 2**). Although the applied rates are much lower in Bangladesh, Pakistan and Sri Lanka (32.5 per cent, 30 per cent and 25 per cent respectively), they are still formidable. Moreover, they can be raised to the bound level when these countries decide to. Therefore, there is a very limited element of predictability of market access to these markets.

Table 2: Applied and bound tariffs on black tea

Neighbouring Markets	Black Tea (HS Code 090230)		Black Tea (HS Code 090240)	
	Applied	Bound	Applied	Bound
Bangladesh	32.50%	50% (implementation 2004)	32.50%	200%
India	76.80%	150%	76.80%	150%
Pakistan	30%	150%	30%	150%
Sri Lanka	25%	50%	25%	50%
China	18%	15% (implementation 2004)*	18%	15% (implementation 2004)*

* Protocol on the Accession of China to the WTO, 10 November 2001

Source: Adhikari and Adhikari (2005)

However, the study finds that tariff barriers do not exist in OECD countries' markets in general, except for Japan and Korea. While the applied as well as bound tariffs on black tea in the U.S., EU, Canada and Australia are zero, Japan and Korea impose tariff peaks on the import of black tea. Japan's bound as well as applied tariffs on black tea (HS code 090230 and 090240) are in the range of 12–17 per cent while Korea's bound and applied tariffs are 60.7 and 40 per cent respectively (Adhikari and Adhikari, 2005).

Tariff barriers on herbs

Due to the medicinal property of some of Nepal's herbs, demand has been increasing in the international as well as neighbouring country markets. With the increase in demand for medicinal plants, trade in medicinal and aromatic plants (MAPs) is expected to grow at an estimated rate of 10 to 15 per cent per annum (Karki, 2003). Since a majority of the herbs exported to India are sent through informal channels, it is difficult to quantify total exports. Therefore, the official figures from TPC (2006) show an erratic trend of herb exports to India, ranging from as low as NRs. 84 million in the fiscal year (FY) 2001/02 to as high as 132 million in FY 2004/05. The figure for FY 2005/06 shows that the export has again declined to 126 million.

These products face formidable tariff barriers, particularly in neighbouring countries. **Table 3** shows that medicinal plants (HS code 1211), face high bound tariffs in South Asian markets, ranging from 50 per cent in Sri Lanka to 200 per cent in Bangladesh. Similarly, applied tariffs are high for Bangladesh and India at 22.5 per cent and 40 per cent respectively. However, applied tariffs in Pakistan and Sri Lanka are slightly lower at 10 and five per cent respectively. China, another neighbouring country, has maintained a bound tariff between six and 20 per cent with applied tariff ranging from 6.2 to 10.7 per cent.

Table 3: Applied and bound tariffs on medicinal plants

Neighbouring Markets	Medicinal Plants (HS Code 1211)	
	Applied	Bound
Bangladesh (2003) *	22.5% (except for 12119021 and 12119022 [7.5%])	200%
India (2001–2002)	40.40%	100%
Pakistan (2001)	10%	100%
Sri Lanka (2003)	5%	50%
China (2003)	6.2–10.7%	6–20%

* ODC at 0.3 per cent as referred in http://www.amad.org

Source: Adhikari and Adhikari (2005)

Tariff barriers on leather

Leather is not only a sector with export potential, but also a sector that provides employment opportunities to the relatively under-privileged communities within the Nepalese society. The growth of this sector will contribute to the national objective of ensuring inclusive economic growth. India is the major market for the export of hides and skins, where exports have been growing steadily over the past five years. While Nepal exported hides and skins worth NRs. 158 million to India in FY 2001/02, this figure reached 339 million in FY 2004/05 (TPC, 2006).

Compared to tariff barriers in other sectors discussed above, the market for raw leather seems rather liberal. As shown in **Table 4**, India imposes no duty on leather at the moment, although its bound rate is 25 per cent. Thailand, another potential market for Nepalese raw leather, imposes tariff barriers in the range of 15 to 30 per cent. However, market access is not as predictable as it should be given the fact that some trading partners, such as Bangladesh and Hong Kong, have kept tariffs on all categories of leather unbound and most of the potential markets for raw leather have kept tariffs on bovine skin leather unbound. This means that they can impose any tariff on these products.

Table 4: Tariffs on raw leather

Destination	Hides and skins of bovine animals (HS Code 4101.29)		Raw hides and skins (crushed or salted, dried, etc.) (HS Code 4103.10)		Raw hides and skins, whether or not dehaired (HS Code 4103.9)		Whole bovine skin leather (HS Code 4104.10)	
	Applied Rate	Bound Rate	Applied Rate	Bound Rate	Applied Rate	Bound Rate	Applied Rate	Bound Rate
India	0%	25%	0%	25%	0%	25%	0%	25%
Bangladesh	NA	unbound	NA	unbound	NA	unbound	NA	Unbound
China P.R	NA	5%	NA	9%	NA	9%	NA	Unbound
Hong Kong	NA	unbound	NA	unbound	NA	unbound	NA	Unbound
Thailand	30%	27%	30%	27%	30%	15%	NA	Unbound

Source: SAWTEE and ActionAid (2007c)

Non-tariff barriers

The term "non-tariff" is a residual one that covers all measures that restrict imports other than tariffs. Since governments are ingenious in devising various ways to inhibit imports to protect domestic producers in sensitive industries where domestic pressures for protection persists, the list of possible non-tariff barriers could be infinite (Pandey, 2000). Due to their very nature, non-tariff barriers (NTBs) can be disguised restrictions on trade and are less transparent compared to tariff barriers. Of the several NTBs that restrict trade (see Annex 1), the two important types of barriers faced by Nepalese exports, namely rules of origin and regulatory barriers, are discussed in this subsection.

Rules of origin

Started with the objective of preventing trade deflection and promoting the creation of a vertically integrated sector in beneficiary countries, rules of origin have become a protectionist tool in the hands of the donor countries to prevent imports from the countries that have been offered preferential market access (Adhikari and Yamamoto, 2005).

Rules of origin may distort the choices of producers from beneficiary countries, leading them to use inputs of less efficient producers or constrain their methods of production through technical requirements or both. Beyond administrative costs, producers who wish to satisfy rules of origin requirements thus may incur the cost of using a sub-optimal mix of inputs. Furthermore, there is no evidence to suggest that rules of origin have helped beneficiary countries in creating vertical integration (WTO, 2005).

The major fallout of rules of origin is that this requirement is very cumbersome, inefficient and resource-demanding. For example, the administrative costs of certifying origin in the European Free Trade Association (EFTA) range between three and five per cent of the value of export transactions.[6] Similarly, the administrative costs of providing documentary evidence to support the certificate of origin under the North American Free Trade Agreement (NAFTA) are about 1.8 per cent of the value of exports. The distorted impact of the rules, resulting from the need to use local and higher-cost inputs to qualify, may be equivalent to an average duty of around 4.3 per cent (World Bank, 2004).

Developed countries tend to provide preferential market access, but at the same time impose rigid rules of origin requirements and take away the benefits (Adhikari and Yamamoto, 2005). A classic example is the "Everything but Arms" (EBA) initiative of the EU, which contains stringent rules of origin requirements. Although Nepal, as an LDC, is beneficiary of the EBA initiative and is allowed to export to the EU duty free, the EU rules of origin mean that apparel exports to the EU cannot fully benefit from this facility. For example, in 2003, the preference utilization rate for women's/girls' cotton blouses and shirts was 68.7 per cent; and women's/girls' trousers and breeches was 69.4 per cent (SAWTEE and ActionAid, 2007b). Other products of export interest to Nepal, however, do not face major problems in terms of fulfilling these requirements because they mainly make use of domestic inputs.

Regulatory barriers

It is a sovereign right of every country to impose regulatory or standards-related barriers such as testing, certification and labelling to achieve certain policy objectives including protection of plant, animal and human health, the physical environment and national security as well as the prevention of fraud and deceptive practices. However, some of these barriers are not only arbitrary or unjustifiably discriminatory but also disguised restrictions on international trade. In other words, these barriers can be easily captured by protectionist interests, and there have been instances of this in a number of countries. Some even argue that as tariffs and other traditional barriers to trade have fallen over the past five decades, the use of non-tariff measures, including standard and regulatory barriers have been on the rise, gradually replacing the traditional barriers (Maskus and Wilson, 2000).

Baldwin (2000, 242) succinctly explains the political economy of regulatory and technical barriers:

> Most are highly technical, and a large fraction covers intermediate inputs—products unknown to most voters. Owing to their technical complexity and political invisibility, product norms are often written, directly or indirectly, by domestic firms to which they apply. Quite naturally, these firms write the norms in a way that favours their varieties or at least disfavours foreign varieties.

6 Inter-American Development Bank (IADB). Report cited in Adhikari (2005).

Regulatory measures comprise a major form of NTBs for several export items from developing countries, including textiles and clothing and agriculture. As documented by ITCB (2003), these may include customs and other documentation formalities, non-uniform classification practices with respect to the same product, health and other sanitary and phytosanitary (SPS) prescriptions, technical barriers to trade (TBT), competition and social-conditions-related requirements.[7] In the aftermath of the 9/11 terrorist attacks in the U.S., security-related NTBs have been on the rise. The problems of compliance with these barriers are compounded by the lack of consultation with exporting countries while determining the standards and the arbitrariness with which they are applied. Some of the standards imposed, whether by the importing country government or by importers themselves, go well beyond the internationally agreed norms and practices. Therefore, the element of predictability is missing in the standard-setting process, which is not only detrimental to export interests, but also creates a disincentive for making long-term investments.

An example of regulatory barrier faced by Nepal in the EU (German) market is the ban of woollen carpets using azo-dyes in the mid-1990s which forced Nepalese carpet exporters to switch to another dye which apparently did not pose a threat to the health of European consumers. This is despite the fact that certain types of azo-dyes are still sold in Germany as well as in the EU and exported world-wide to the leather industry. Since the non-azo dyes for the carpet industry were not available in Nepal, the ban on azo-dyes resulted in higher costs of production (RIS, 2003).

Similarly, Nepal's honey was banned from the Norwegian market after the Department of Food Technology and Quality Control failed to submit the Pesticide Residue Control Plan that EU regulations require (Aryal, 2006). Since Nepal does not have a control system on the use of drugs in bees, as well as inspection and certification systems for honey by official veterinary services, Nepalese exporters could not export honey to Norway.[8]

Nepalese agricultural exports have often been subjected to NTBs in India. For example, exports of Nepalese agricultural products from the eastern hilly district of Ilam to India ceased in July 2007 after the latter made quarantine checks compulsory for the export of these products. This is due to the lack of a quarantine check post on the Indian border. Another alternative for the farmers and traders is to export their goods from a check post located in Kakarbhitta, which is roughly 110 km away from Ilam. Farmers and traders feel that it is not feasible to export from that route due to the transportation costs involved. Consequently, exports of tea, ginger and other agricultural products from Ilam have stopped (Kantipur, 2007).

The analysis presented above shows that NTBs pose a significant threat to Nepalese exporters for two main reasons. First, these barriers increase the cost of exports, thus making them uncompetitive in export markets. Second, due to the lack of capacity in Nepal to regulate, monitor and certify standards of Nepalese products, importing countries have a tendency to block the import of Nepalese products.

7 ITCB document "New Non-Tariff Requirements" CR/37/EGY/7, 7 April 2003, cited in Hayashi (2005).

8 See Mahato, Gongal and Chaulagain (2004). See also ADB and ICIMOD (2006) for a discussion on the standards-related barriers faced by Nepalese products in the international market.

2.4 Barriers to services trade

The services sector[9] plays an important role in the Nepalese economy and in 2005, the services sector accounted for 38 per cent of Nepal's Gross Domestic Product (GDP) (World Bank, 2006). The sector grew at an average rate of around five per cent in the 1990s, but slowed down after 2003 and grew only by two per cent in 2005 (**Table 5**).

Table 5: Contribution to GDP by sectors (in percentage)

Description	1999/00	2000/01	2001/02	2002/03	2003/04
Agriculture, fisheries and forestry	39.63	38.38	39.48	39.11	38.67
Mining and quarrying	0.50	0.49	0.51	0.50	0.50
Manufacturing	9.16	9.02	8.09	7.85	7.73
Services	50.72	52.11	51.93	52.56	53.08
– Electricity, gas and water	1.62	1.78	2.04	2.49	2.39
– Construction	10.21	10.06	10.43	10.30	10.40
– Trade, restaurant and hotel	11.71	11.33	10.05	10.06	10.32
– Transport, communication and storage	8.01	8.46	8.54	8.75	9.21
– Finance and real estate	10.08	10.58	10.82	10.91	10.84
– Community and social Services	9.09	9.91	10.05	10.05	9.91

Source: Nepal's WTO Service Sector Commitments and Its Impact on Balance of Payments Situation, Nepal Rastra Bank, 2005

Services sector has also featured prominently in Nepal's external trade with this sector accounting for 38 per cent of exports and 17 per cent of imports in the year 2004 (**Table 6**).

Table 6: Services share in trade (rounded to nearest percentage)

	Services export (% of total exports)	Services imports (% of total imports)	Trade (% of GDP)	Services exports (% of GDP)	Services imports (% of GDP)	Trade in services (% of GDP)
1990	48	20	32	6	5	10
1991	47	20	35	6	5	11
1992	42	23	42	8	7	15
1993	46	23	47	9	7	16
1994	61	20	50	14	7	22
1995	66	19	59	15	7	23
1996	66	14	58	17	5	22
1997	68	12	64	18	5	22
1998	54	14	57	12	4	16
1999	52	12	53	13	4	17
2000	39	11	56	9	4	13
2001	36	13	54	7	4	11
2002	33	14	48	6	4	10
2003	35	14	46	6	5	11
2004	38	17	48	7	6	12

Source: World Development Indicators Online, 2007

9 The focus of this section is the services sector as defined by Government of Nepal, Central Bureau of Statistics according to the International Industrial Classification (ISIC) and includes trade, restaurant and hotel; transport, communications and storage; finance and real estate; and community and social services.

The services sector is also important from an employment perspective with the share of the services sector in total employment averaging 17.12 per cent during 1990–95 (WDI, 2007).

Many policy-related, infrastructural and market access constraints affect international trade in services. Nepal's export potential in services trade is adversely affected by many domestic constraints such as weak infrastructure and regulatory capacity, poor quality and standards, and policy-related disincentives. External constraints that adversely affect international trade in services 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 (Chanda, 2002).

Though most market access barriers are common to all services sectors, there are also barriers that are more applicable to specific sectors. In the case of tourism, services commitments under consumption abroad (Mode 2) are important for Nepal, because if a country has imposed foreign currency restriction on travelling aboard, the tourists from those countries may not be able to spend much in Nepal. Since tourists mainly come from OECD countries and no such restrictions have been imposed on their Schedule of Commitments, it may not pose a serious market access barrier for Nepal.

Under the General Agreement on Trade in Services (GATS) negotiations, most countries have made liberal commitments in information and communication (ICT)-related services which have been identified as having export potential by SAWTEE and ActionAid Nepal (2007a) as having export potential. However, commitments in this sector are largely concentrated in Mode 1 and Mode 3.[10] Hence, from Nepal's perspective, improved commitments in Mode 1 are necessary (SAWTEE and ActionAid Nepal, 2007a). Mode 4 (movement of natural persons) is the most restrictive category within the services sector. Immigration regulations such as barriers related to visa and work permit procedures are one of the major restrictions under Mode 4. No distinction is made between temporary and permanent movement of workers, and the process is complicated, obscure and costly.

2.5 Supply-side constraints

Despite the market access barriers mentioned above, Nepal's WTO membership offers predictable market access in a range of products of export interest to Nepal. However, several supply-side constraints reduce the competitiveness of Nepalese exports.

Human capital

Nepal generally has a low level of human capital due to limited educational attainment and opportunity for skill formation and development. This is further compounded by the lack of opportunities to participate in vocational and technical education or skill development training. Barring a few sectors such as information technology, banking and finance, workers' productivity in general is very low. Low productivity, even in sectors like agriculture and technologically less demanding sectors like textiles and clothing, can also be ascribed to the low level of capital invested in these sectors. Low capital intensity means that productive sectors cannot mechanize their production, make investment in research or develop the skills of their workers.

10 The WTO GATS has defined four types of services: from the territory of one Member into the territory of any other Member (Mode 1); in the territory of one Member to the service consumer of any other Member (Mode 2); by a service supplier of one Member, through commercial presence in the in the territory of any other Member (Mode 3) and by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (Mode 4).

Another reason for the low productivity of workers in the formal sector is due to rigid labour market regulation in Nepal. The Labour Act 1992 makes it difficult, barring criminal behaviour by the workers, to dismiss workers with permanent status and any closure of firms require permission from Department of Labour (MOICS, 2004, 55). These regulations lower labour productivity by creating disincentives for labour to be efficient and for firms to invest in training, restrict growth of firms, encourage more capital-intensive production, and generally discourage investment and employment in the formal sector. In extreme cases, firms have an incentive to employ Indian labour in highly skilled positions rather than train Nepalese workers (MOICS, 2004).

While the commercialization of agriculture is yet to start, even in the industrial sector entrepreneurs are reluctant to commit to long-term investments due to the domestic and international situation. Political uncertainty engulfing the country is the major reason for entrepreneurs to hold back on making long-term investments. Similarly, international developments such as the phasing out of textiles and clothing quotas have deterred most entrepreneurs in the garment sector to make long-terms investments, option instead to follow a “wait and see” policy. The result is that Nepal, which has one of the lowest labour costs in South Asia, has not been able to take advantage of the opportunities offered even in the highly labour intensive categories of RMG.

Lack of skilled workers is a major disadvantage not only because additional workers have to be hired for a similar task, but because overtime wages (which are higher than normal wages) must be paid to workers at times in order to meet tight deadlines. Both of these put additional burden on resource-strapped firms, which contributes to reduced competitiveness in the export market (Adhikari and Yamamoto, 2006). While a more skilled worker can contribute to the process of manufacturing high-value added products, firms or countries with only unskilled workers are locked into manufacturing the least skill-intensive items—precisely those in which competition tends to be high (Adhikari, 2006).

Infrastructure

Poor infrastructure, a common feature in most LDCs, significantly inflates the cost of doing business in Nepal. Nepal also faces the disadvantage of being land-locked. **Table 7** compares some important infrastructure-related indicators. Nepal clearly lags behind most other South Asian countries in terms of infrastructure. Quality of infrastructure in the context of trade, particularly export trade, of Nepal should be analyzed from the perspective of four critical areas—transport, power, communication and warehousing.

Table 7: Comparative infrastructure indicators

Indicator	Year	Nepal	Bangladesh	India	Pakistan	Sri Lanka
Paved roads (% of total)	1999	30.8	9.5	45.7	43	95
Internet users ('000)	2000	50	100	5000	133.9	121.5
Electricity consumption (kWh per capita)	1999	47.1	89	379.2	321.2	255.3
Telephone mainlines (per employee)*	1997	37.2	14.7	33.7	48.3	30.4
Radios (per 1,000 people)	1997	39.2	49.4	120.5	105.1	207.5
Road density (km/sq km of land)	1999	0.1	1.4	1.0	0.3	1.5
GDP per unit energy use (PPP US$ kg oil equivalent)	1999	3.5	10.8	4.7	4.2	8.1

* Data for Bangladesh and India are for 1995 and 1996 respectively

Source: MOICS 2004

Transportation: Nepal suffers from two naturally occurring disadvantages in the transportation sector. First, Nepal is land-locked and therefore requires infrastructure supplied by another country (India) in order to reach the sea. Second, the nature of Nepal's terrain encourages localized self-sufficiency, with little or no attention given to specialization and comparative advantage.

For many centuries, the principal means of transporting goods in the hilly and mountainous regions was with porters and ropeways (MOICS, 2004). Despite the efforts made in the past to construct roads to connect rural areas to urban markets, the ratio of the total length of all roadways to area in Nepal is abysmally low at 0.11 km per sq km. The problem is further compounded by the fact that more than 20 per cent of Nepal's roads are in poor condition (MOICS, 2004). The progress in this area is disappointing as only 174 km of road were upgraded to black top and 165 km of road were newly constructed in the first eight months of FY 2006/07 (MOF, 2007).

Besides poor road conditions, the distance from the sea, the relatively small volumes of cargo and the intermediate handling costs raise the transportation cost of Nepalese exports. A survey found that Nepalese firms pay, on average, over 50 per cent more for export than firms in other developing countries. In addition, the low frequency of air cargo flights, the inadequacy of container trucks, time delays, loading and unloading expenses along the road at checkpoints, and theft and pilferage further aggravate the transportation problem (MOICS, 2004).

Power: Despite possessing among the greatest potential for generating hydro-electricity in the world, the power sector in Nepal is one of the poorest in the entire South Asian region. Theoretically, Nepal has a potential to generate 43,000 megawatts (MW) of electricity (MOICS, 2004), of which only 556.4 MW had been utilized at the end of FY 2005/06 (MOF, 2007). Electricity costs much more in Nepal than in most other Asian countries. Inefficiencies of the centralized Nepal Electricity Authority, piecemeal expansion of the distribution grid and high prices agreed to under power purchase agreements have all raised the electricity cost in the country (MOICS, 2004).

Due to lack of access to this source of power and frequent power outages, most of the export-oriented enterprises rely on more expensive options, such as generators for ensuring regular power supply. According to a World Bank/FNCCI study,[11] power fluctuations and power outages add substantially to production costs.

Communication: Communication facilities have improved over the years due to the availability of wireless communication systems and increased use of the internet for communication (**Table 8**). This was made possible by the entry of private players. Of particular note is the increase in pre-paid mobile services and wireless in local loop services, which increased by 1,321 per cent and 1,149 per cent respectively between July 2004 and October 2007. The overall tele-density[12] reached 8.84 in 2007 (NTA, 2007), which is considered reasonably good for an LDC.

Despite encouraging growth in telecom services, a vast majority of rural areas still remain disconnected from the communication network, which further accentuates the digital divide in the country. Moreover, Internet connectivity has not been increasing at a desired pace, which means business enterprises are still not accustomed to making use of the internet to promote their businesses.

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11 World Bank and FNCCI. 2000. *The Business Environment and Manufacturing Performance.* Kathmandu: World Bank and FNCCI.

12 Number of phones per 100 people.

Table 8: Subscribers of telecom services

Type of subscribers	July 2004	July 2005	July 2006	June 2007	October 2007	% change*
Fixed line telephone subscribers	400,217	448,639	485,997	507,571	513,352	28%
Post-paid mobile subscribers	68,548	75,645	104,789	123,621	121,977	78%
Pre-paid mobile subscribers	110,578	173,175	647,872	1,237,769	1,571,021	1,321%
WLL subscribers	20,100	31,000	90,244	199,347	251,011	1,149%
GMPCS subscribers	412	687	888	1,049	1,162	182%
Limited mobility (UTL)			16,500	49,136	152,819	826%
Total subscribers of telephone services	**599,855**	**729,146**	**1,346,290**	**2,118,493**	**2,611,342**	**335%**
Internet subscribers (with e-mail)	35,000	45,000	44,569	51,034	62,586	79%

Source: Nepal Telecommunication Authority (2004, 2005, 2006, 2007a, 2007b)

Warehousing: Warehouses in general and cold storage in particular are critical for facilitating trade in agricultural products. Due to a lack of proper cold storage facilities, farmers who are mainly dependent on agriculture for their livelihood, sell their produce at low prices soon after harvesting, while having to pay double the price for their own consumption during off-season and even higher prices for the seeds (Embassy of India, 2007).[13] Although a number of cold storage facilities have been set up through external assistance or private sector initiatives and the government has also made available subsidized loans for the same, these are insufficient to meet the growing demand for the storage of agricultural products.

Trade facilitation measures

Trade facilitation measures broadly cover all the steps that are taken including trade procedures and formalities to facilitate the flow of trade. The more complex these procedures and formalities, the longer is the time taken for import and export and the cost of production. According to the World Bank (2006a), the average time taken for the export of a consignment from Nepal is 44 days, the longest in South Asia. As a consequence, the cost of exports is highest in Nepal (Table 9). Importing seems to be considerably easier in Nepal, at least in comparison to other countries in the region, with the number of days taken for import being fewer than in Bangladesh, Bhutan and India. However, on import costs are still higher than in Bangladesh and India, although lower than in Bhutan. While the number of documents required for export and import is lower than the regional average, there is room for further improvement.

Countries that facilitate trade through an efficient customs regime that has fewer documents, lower associated costs and streamlined procedures have significant advantages over those that do not (FIAS and SEDF, 2007). Nepal clearly falls into the latter category. Moreover, the Department of Customs has come under sharp criticism recently for excessive paperwork and a one-dimensional focus on revenue generation rather than on facilitating trade. A lack of trained staff capable of handling increasing volume of goods and often complex trade formalities; limited tools, equipment and physical facilities including laboratories and computers; and the absence of transparent procedures for customs valuation have been the major sources of friction between traders and custom officials. Besides the excessive documentation requirements, the above mentioned factors have contributed to delays in clearance of goods from customs (Ibid).

13 Indian Assistance of NRs. 25.1 million for Construction of Cold Storage in District Morang, Press Release, 7 June 2007, Kathmandu. Downloaded from http://www.south-asia.com/embassy-india/press_release_2007/249-press-release.htm, accessed 10 December 2007.

Table 9: Trading across border: Procedural hurdles in select regions/countries

Region /Economy	Documents for export (number)	Time for export (days)	Cost to export (US$ per container)	Documents for import (number)	Time for import (days)	Cost to import (US$ per container)
East Asia & Pacific	6.9	23.9	884.8	9.3	25.9	1037.1
Europe & Central Asia	7.4	29.2	1450.2	10.0	37.1	1589.3
Latin America & Caribbean	7.3	22.2	1067.5	9.5	27.9	1225.5
Middle East & North Africa	7.1	27.1	923.9	10.3	35.4	1182.8
OECD	4.8	10.5	811.0	5.9	12.2	882.6
South Asia	8.1	34.4	1236.0	12.5	41.5	1494.9
Sub-Saharan Africa	8.2	40.0	1561.1	12.2	51.5	1946.9
Denmark	3	5	540	3	5	540
Hong Kong, China	2	6	425	2	5	425
Bangladesh	7	35	902	16	57	1287
Bhutan	10	39	1230	14	42	1950
India	10	27	864	15	41	1244
Maldives	8	15	1000	9	21	1784
Nepal	**7**	**44**	**1599**	**10**	**37**	**1800**
Pakistan	8	24	996	12	19	1005

Source: Adhikari and Weeratunge (2007) based on World Bank (2006, 2007).

Some reform measures have been initiated to overcome the aforementioned problems. For example, a three-year customs reform and modernization action plan is underway, customs clearance computerization has started, a bonded warehouse scheme is used by more than 300 companies and the customs service is improving. However, the private sector has identified several deficiencies that have still not been addressed, including air cargo facilities, customs documentation, valuation and duty drawback.[14]

Quality assurance and certification

Regulatory barriers are not always imposed with protectionist interests; some of them are put in place to achieve legitimate policy objectives of the importing countries. For example, agricultural products containing pesticides residue or aflatoxin in excess of globally accepted standards such as those prescribed by Codex Alimentarius Commission (Codex) could cause significant health hazards to the consumers. It is, therefore, perfectly justified to impose sanitary and phytosanitary (SPS) requirements to protect the health of consumers as long as such requirements are in line with internationally agreed standards. Nepal, at least in theory, had a say in designing these standards because it is also a member of Codex.

However, it becomes incumbent on the exporting country (government or the private sector) to ensure that the products exported from their countries meet these internationally agreed minimum standards. In the context of Nepal such institutions are not functioning as required. Two standards related institutions in Nepal, function as government departments: the Nepal Bureau of Standards and Metrology (NBSM) and the Department of Food Technology and Quality Control (DFTQC).

14 See FIAS and SEDF (2007) for further details.

NBSM is the authorized body to grant the National Certification Mark (NCM). NBSM conducts inspections, testing and imposes other requirements before granting the NCM. So far, the quality certification marks have been approved for 111 companies covering 22 products. Currently, Nepal does not accept, as equivalent, certificates from third-country certification bodies. In terms of technical regulations, only a limited number of technical regulations have been devised and applied to wool, cement, iron bars, mineral water, CGI sheets, dry cell batteries, GI wire and LPG cylinders. So far, 596 products and testing methods have been approved by NDSM and about 200 are in the process of drafting.

With accession to the WTO, Nepal needs to adopt standards compatible with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). However, the country lacks institutional capacity and technical expertise to carry out conformity assessments for product standards and production processes. The existing laboratories are not considered capable of testing and verifying products that involve complex and lengthy procedures due to lack of necessary information, equipments and trained human resources (SAWTEE, 2006).

Lack of technological capacity

LDCs in general have limited technological capacity and Nepal is no exception. This is due to the reluctance of enterprises to invest in research and development (R&D). Policy-makers as well as the private sector are not aware of the fact that the "knowledge-based economy," including information technology, bio-technology, pharmaceutical and agro-chemical industry, is globally increasing more rapidly than others (Adhikari, 2005b). Moreover, the application of technology to enhance productivity has become commonplace even in technologically humble sectors such as agriculture, food processing, and textiles and clothing.

One of the measures of innovation is the number of patent applications filed in a country. Due to the inability of LDCs to innovate, there are very little, if any, patent applications filed in LDCs. For example, even after 42 years of enactment of the legislation protecting patents, designs and trademarks (Patent Design and Trademark Act 1965), only 63 patents have been registered in Nepal of which 35 are of foreign origin.[15]

This shows that developing countries and LDCs, including Nepal, continue to be overwhelming net importers of technology and new products. This puts them in an extremely disadvantageous position in the global economy where the issue of technology transfer has not moved beyond political rhetoric.[16]

Access to finance

Business enterprises need finance to establish and expand their operations as well as to meet their working capital requirements. However, not all business enterprises are on equal footing in terms of being able to mobilize resources to achieve these objectives. The problem is particularly severe for small and medium-sized enterprises (SMEs) for a number of reasons.

15 Source: Department of Industry, Government of Nepal.

16 For example, as per Article 66:2 of TRIPS Agreement "Developed country Members *shall* provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base" (emphasis added). Despite the use of word "shall" as opposed to "may" in this Article, so far little is known about the extent to which this provision has been implemented. See also Pangestu, Mari (2002), "Industrial Policy and Developing Countries" in Bernard Hoekman, Aaditya Mattoo and Philip English (eds.) *Development Trade and the WTO*, Washington, D.C.: World Bank: 157.

First, since the capital market is under developed in Nepal, SMEs cannot collect capital from the open market. Second, the banking system in Nepal has an extremely discriminatory and biased lending policy against SMEs. This is not only because they consider SMEs as risky ventures, but also demand that credit facilities be backed by fixed assets (preferably land and/or buildings). The inability of many SMEs to provide such collateral is a major reason for their limited access to credit. Such responses by banks and financial institutions, which reflect their perception of risk, may be coloured by their inability to analyze credit-worthiness as much as by the country's overall business environment (Adhikari and Weeratunge, 2007). At present, banks in Nepal prefer to lend consumer loans, with relatively safe returns and limited risk rather than lend to SMEs.

A recent study by the World Bank (2007a) found that most small businesses meet their financing needs through internal sources and supplier credit. During the survey, 77 per cent of small businesses reported they had no outstanding loans, while 72 per cent stated that they regularly bought on credit for lack of cash at the time of purchase. While the peculiarities of small businesses and their requirements are constraints on expanding the loan portfolio of the commercial banks dedicated to these enterprises, the banks' policies are equally responsible. According to the study, the main obstacles to increasing bank loans for small businesses are complex lending procedures, inappropriate products and pricing policies, little use of movable properties and lack of mechanisms to measure the small businesses' performance (Ibid).

The complexity of documentation requirements, including feasibility studies, business plans, financial statements, collateral valuation and registration, and the lengthy process add to the cost of obtaining credit. For example, meeting these documentation requirements for a NRs. 500,000 loan costs about NRs. 15,000, or three per cent of the amount of the loan (Ibid).

It is, however, equally important to understand that the legal system in most LDCs is often too weak to guarantee a credible enforcement mechanism to recover money in case of defaults (WTO, 2005). In a similar vein World Bank (2007b) argues that lack of stronger legal rights and information on credit histories are two major disincentives for the lenders to provide credit to small borrowers. In the context of Nepal, due to the absence of movable property registry for the purpose of bank financing that delineates the rights of various creditors on movable assets, banks have made it a policy to obtain fixed assets as collateral (World Bank, 2007a).

In a World Bank (2007b) survey, credit information coverage is found to be extremely limited in Nepal. It scored much lower than other countries in the South Asian region in terms of credit coverage of credit information (**Table 10**). When the region as a whole scored only 2 out of a 0–6 scale, second worst in the world behind Africa, Nepal's performance is even more dismal compared to other countries in the region.

Table 10: Coverage of credit information in South Asia (% of adults)

Country	Public registry coverage	Private bureau coverage
Afghanistan	0	0
Bangladesh	0.6	0
Bhutan	0	0
India	0	6.1
Maldives	0	0
Nepal	0	0.1
Pakistan	0.3	1.1
Sri Lanka	0	3.1

Source: World Bank (2007b)

The credit products that have an in-built system of monitoring the performance of borrowers are more suited while lending to small businesses. However, Nepalese banks hardly make distinction between small and large borrowers in terms of selecting the products. Since small borrowers' ability to repay is not tested by providing loans with agreed schedules of repayment and they are provided with revolving overdraft, it becomes extremely difficult for the banks to monitor the repayment ability of their clients (World Bank, 2007a). Banks' complacency is bolstered by the fixed assets security obtained to secure loans.

Political and governance problems

For a country that has recently emerged from a 12-year insurgency problem, pains of transition are somewhat inevitable. Several groups, which were suppressed by the past regime, are coming out in public and are demanding their share of power in the political process. This has led to virtual anarchy with several strikes and disruptions in the production, service delivery and transportation systems taking place on a routine basis, all of which further contribute to increased cost of doing business and reduced competitiveness of business enterprises in Nepal. According to a recent estimate by Shrestha (2007), one day of general strike in the country costs the economy NRs. 1.56 billion. Exports of agricultural products, which are perishable in nature, suffer the most due to such strikes.

Besides, corruption, which has engulfed the Nepalese political and bureaucratic system, has created insurmountable problems for business enterprises. The corruption watchdog organization of the country, the Commission for the Investigation of Abuse of Authority (CIAA), has not been effective in curbing corruption.[17] The problem is further compounded by the absence of leadership in the organization for the past several months. According to Freedom House (2004): "While ordinary Nepalese widely suspect elites of amassing wealth beyond their means, their more direct experience is often with street-level bureaucrats who supplement their meagre incomes by extracting bribes for routine services. Nepal is 'deeply bureaucratic' according to the ICG's April 2003 report, and this red tape undoubtedly increases opportunities for corruption."

17 See for example Freedom House (2004) "Country Report – Nepal" in Countries at the Crossroads. Available at http://www.freedomhouse.org/template.cfm?page=140&edition=1&ccrcountry=57&section=48&ccrpage=5 (accessed 26 December 2007).

3. Nepal's accession to the WTO

3.1 WTO accession process

The WTO does not provide any set membership criteria or procedures for negotiation. It only states that the accession procedure requires a membership aspirant to acquire membership "on terms to be agreed between it and the WTO" (Article XII of the Marrakesh Agreement Establishing the WTO). Since the WTO is an inter-governmental organization which does not have any power to negotiate accession agreements with the aspirants, it is the Member countries that dictate the terms and conditions for such entry (Adhikari, 2002).

Box 1: Procedure for accession to the WTO

First stage

- Submission of formal written request for accession by the applicant government.
- Establishment of a Working Party by the WTO General Council.
- Submission of a memorandum on the foreign trade regime by the applicant.

Second stage

- Exchange of questions and answers regarding the memorandum between the government and WTO Members.

Third stage

- Bilateral negotiations on concessions and commitments on market access for goods and services.
- Approval of the "accession package" by the General Council and the WTO Ministerial Conference.
- Ratification of the "accession package" by the applicant government's national parliament.

All countries acceding to the WTO face substantial difficulties. The accession process is long, complicated and requires negotiations on three different tracks. The process is especially challenging for LDCs that have extremely weak human and institutional capacities and limited technical know-how and financial resources. In principle, the Members are supposed to exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members. However, in practice acceding LDCs are asked to make concessions that are not only way beyond their capacities and state of development but also beyond WTO requirements.

3.2 Nepal's accession process[18]

As part of Nepal's liberalization process that began in the mid-1980s, the country decided to join the multilateral trading system to also benefit from the rules-based system of the WTO. The process of Nepal's accession to the WTO started during the Uruguay Round when Nepal first applied for membership of the GATT, the predecessor of the WTO, on 16 May 1989. A Working Party was established on 21–22 June 1989 and the Government of Nepal submitted the Memorandum on the Foreign Trade Regime (MoFTR) to the Working Party on 26 February 1990. However, due to political change in the country, the process was halted for five years.

In 1995 the WTO came into being and on 5 December 1995 Nepal submitted a written request showing its interest to join. The existing Working Party on the accession of Nepal to the GATT was continued as the WTO Accession Working Party for Nepal, and Nepal was given the status of an observer in the General Council.

On 10 August 1998, Nepal submitted the MoFTR to the Working Party. The Memorandum gathered a total of 364 questions from WTO Members: 24 on economic policies and foreign trade; 178 on the framework for making and enforcing policies affecting foreign trade in goods and services; 114 on the trade-related intellectual property rights regime; and 48 on the trade-related services regime. The government of Nepal prepared replies to all the questions and submitted them to the Working Party on 8 June 1999.

Three rounds of negotiations followed consisting of bilateral negotiations and Working Party meetings (see Box 2), culminating in the final Working Party meeting on 15 August 2003 where the terms and conditions of Nepal's accession to the WTO were finalized. The Cancun Ministerial Conference approved the Working Party's decision by consensus on 11 September 2003. The Government of Nepal ratified the accession agreement on 24 March 2004 and 30 days after ratification became the 147th Member of the WTO.

Technical assistance

Technical assistance received during the accession process

Nepal received significant technical assistance from the United Nations Development Programme (UNDP)[19] during its accession process, starting in 1997 and still continuing today. The assistance received during the accession process can be broadly categorized into four types:

1. **Preparation of technical papers**
   Preparing technical documents for submission to the WTO, including the Memorandum of Foreign Trade Regime (MoFTR), answers to questions on the MoFTR, the Legislative Action Plan, tariff binding commitments, Nepal's commitments in the services sectors and numerous other documents in the prescribed WTO format.

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18 This section is primarily based on information provided in the following book: Bhandari, Surendra, Shrestha, Suresh Man; Upreti, Yamuna Ghale. 2005. *Nepal's Accession to the WTO:* Challenges and Opportunities for Nepal, ActionAid Nepal and Law Associates Nepal, January 2005.

19 The initial funding was provided by UNCTAD. Continued funding came from UNDP.

Box 2: Nepal's accession time line

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

2. **Preparation of background papers and research**
   Commissioning background papers, including reports assessing the conformity of Nepal's laws to WTO obligations, evaluating the effects on bilateral and regional trade agreements and reviewing options for Nepal's service sector offer.

3. **Capacity building of the government and the private sector**
   Conducting seminars/training for related government officials including those from the Ministry of Industry, Commerce and Supplies (MOICS) on WTO-related issues.

4. **Promoting public awareness about WTO membership**
   Organizing awareness programs for various stakeholders including the private sector

Technical assistance received after Nepal's WTO membership

UNDP support in this area was continued even after Nepal's accession. Nepal Window II Trade-related Capacity Building program was designed to support the government to address structural weaknesses and inadequate levels of resources—financial, human and technological—to enhance competitiveness for effective integration into the global trading regime. This program intended to: a) strengthen the government's capacity to coordinate the integration of trade priorities and measures for successful WTO negotiations; b) strengthen institutional and technical capacities of WTO-related agencies on implementation of WTO commitments and; c) develop a mechanism to foster competitiveness of Nepalese products and entrepreneurs, especially in the export sector.

It can be observed that the technical assistance Nepal received during its accession process helped Nepal not only to negotiate fairly balanced WTO membership commitments in a reasonable time but also to create awareness on WTO-related matters in Nepal and help to enhance the government's capacity to deal with WTO-related issues. However, the technical assistance it has received after its WTO membership has not been adequate to help Nepal implement its WTO commitments.

Main issues during the negotiations

The negotiation process was strenuous and time-consuming especially given that Nepal is an LDC with weak human and institutional capacities as well as limited technical know-how and financial resources. The negotiating team found that Member countries came to the negotiating table with the view that Nepal was equally competent and the negotiations were taking place on an even playing field. In fact, the negotiation process was a one-way street where Member countries put forth conditions and the acceding country had to either accept all the conditions to become a Member or give up on WTO membership (MOICS, 2004).

Nepal's negotiating team was not supported by in-depth studies and scientific or objective position papers on various topics. The negotiations were mostly carried out based on personal efforts, knowledge and information of the negotiators. Economic intelligence and expert groups would have provided justification for concessions Nepal sought during the negotiations. In addition, a lack of prompt communication for policy decisions and a lack of clear guidelines from the government also hindered the team during the negotiations (MOICS, 2004b, and Bhandari, Shrestha and Upreti, 2005).

Given below are some of the key negotiating issues during Nepal's accession process:

Special and differential treatment (S&DT): The Nepalese negotiating team found that most of the developed countries interpreted the provision of Marrekesh Agreement that permits LDCs to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, only applicable to founding Members of the WTO and not to acceding countries. This became apparent when in the second round of bilateral negotiations some developed country Members argued that S&DT for LDCs were only for current Members and not for acceding countries.

Tariffs: Several countries expressed concerns over the difference between Nepal's high bound tariff rates and lower applied rates. Most developed and developing countries wanted Nepal to bind tariffs at the level of applied ones. They asked Nepal for satisfactory justification and clarification for binding tariffs higher than applied rates. In the first round of negotiations developed countries said, they can consider supporting higher tariff bindings (30–35 per cent) on some specific products only. The EU, accepting

Nepal's LDC and land-locked position, was ready to consider binding at 30 per cent for industrial products and 40 per cent for agro-products (Bhandari, Shrestha and Upreti, 2005).

Nepal's negotiating team stressed that Nepal had been reducing its tariff for the previous 12 years and that its tariff rates were one of the lowest in the region. Nepal clarified that it did not intend to increase tariff rates and that it was only a protective measure for emergency situations, as it lacked other protective measures such as anti-dumping duties, subsidies, countervailing measures, and other safeguards. Nepal argued that due to its land-locked position, its transportation costs were higher than those for coastal countries, thus it required higher bound rates to protect the industry. In terms of agricultural goods, Nepal argued that because its neighbours have higher tariffs, the suggested 15–20 per cent was too difficult to accept (Bhandari, Shrestha and Upreti, 2005).

Other duties and charges (ODCs): During the time Nepal was negotiating for WTO membership, Nepal applied five per cent agriculture development fee; 2.5 per cent local development duty; and one per cent import licence fees and had proposed other duties and charges (ODCs) at 14 per cent. Most developed countries said that they did not encourage LDCs like Nepal to apply ODCs; some strongly rejected ODCs while some asked for clarification on why Nepal applied ODCs. Nepalese negotiators argued that since Nepal imposed ODCs under five different headings, phasing them out would have a devastating effect on the economy.[20] Nepal tried to argue during its accession process that the GATT Article II: 1(b) only required Member countries to bind ODCs at the exiting level and did not mention anything about reducing them. However, all the countries that acceded to the WTO prior to Nepal made commitments to bind them at zero, thus setting a highly unfavourable precedence for Nepal. Ultimately, Nepal was forced to bind ODCs at zero and make a commitment to phase them out over a 2–10 year period (Bhandari, 2005).

International Union for the Protection of New Varieties of Plants (UPOV): One of the most controversial issues that arose during Nepal's accession process was that it was asked to join UPOV. However, due to pressure from Nepalese non-governmental organizations (NGOs), mainly SAWTEE and ActionAid Nepal, the U.S. finally had to agree to a minimalist text. The NGOs had expressed serious concerns that UPOV did not provide sufficient flexibility to ensure protection of the rights of farmers to freely save, re-use and exchange seeds. As per the text of the approved Accession Treaty, Nepal will have to only explore the possibility of joining various World Intellectual Property Organization (WIPO) conventions including UPOV at a future date, taking into account its national interests (Rajkarnikar, 2005).

Besides these issues, the following are some other observations from Nepal's accession process:

- some Members showed readiness to grant flexibility in terms of transitional periods as long as Nepal had a rational justification;
- some developed countries, for example EU Members, were more eager to grant easy and "fast track" accession to LDCs; and
- the bilateral negotiations were daunting as Members made difficult proposals, while during formal gatherings the same Members were very supportive.

20 They include: a) Agriculture Development Fees (ADF) ; b) LDF; c) Special Duty (SD); d) Cigarette and Alcohol Fee (CAF); and e) Cigarette and Alcohol Control Fee (CACF). See Adhikari, Ratnakar (2003), *Impact of Withdrawing Local Development Fees on Decentralisation Process in Nepal*, Report submitted to United Nations Development Programme (UNDP) – Asia Trade Initiatives, Hanoi.

3.3 Nepal's commitments in the WTO

Nepal undertook 25 systemic commitments in its Protocol of Accession. It was granted a transition period until 1 January 2007 for implementing four WTO agreements: The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Customs Valuation, TBT and SPS (**Table 11**). Some important commitments of Nepal under the WTO include:

Agricultural products: Nepal faced major problems in the area of tariff binding, in particular on agricultural commodities. During the time of negotiation, Nepal's applied tariffs were very low on agricultural products (0–10 per cent). Nepal wanted to create a policy space for protecting the agricultural sector, should the need arise, by binding tariffs on agricultural products at an average of 60 per cent (Adhikari, 2003a). However, developed Member countries were opposed to such a proposal. Finally, Nepal was able to bind its average tariff on agricultural products at 42 per cent.

Non-Agricultural products: Nepal bound 99.4 per cent of its tariff lines, except for a few tariff lines such as petroleum products, cement, arms and ammunition. Nepal bound its industrial tariff on an average of 24 per cent. This figure is considered low for an LDC compared to the tariff level of the existing WTO Members, including incumbent LDC Members (see Annex 7).

Services: In the services sector, Nepal has opened up 11 services sectors and 70 sub-sectors. The 11 service sectors are: business services; communication services; construction and related engineering services; distribution services; educational services; environment services; financial services; health and related social services; tourism and travel-related services; recreational, cultural and sporting services; and transport services.

Nepal has made horizontal commitments to keep the first three Modes of services supply generally unrestricted except for some conditions. Modes 1 and 2 horizontal commitments are limited only by the provision to provide a maximum of US$2,000 to Nepalese travelling abroad. Nepal has kept Mode 3 horizontal market access unrestricted and has made a further commitment to make the conditions of ownership, operation and juridical form and scope of activity for foreign suppliers no more restrictive than those prevailing on the date of accession. Likewise, it has made a commitment to accord horizontal national treatment on Mode 3 supply except that foreign suppliers will have to obtain permission and approval through well-defined procedures, and that they are not entitled to incentives and subsidies (Rijal, 2005). In respect to commercial presence (Mode 3), no limitation on national treatment has been placed on foreign investments and reinvestments except that both of these require approval of the Department of Industry (DOI). Similarly, incentives and subsidies provided, if any, will be available to wholly owned Nepalese enterprises only. The maximum foreign equity is also limited in most services and firms wanting to sell their services have to be incorporated in Nepal. Nepal was asked to open all services sectors in which Nepal has made commitments for up to 100 per cent equity participation by foreigners within a period of five years. However, Nepal stood firm on its position, and convinced WTO Members to allow Nepal to cap equity participation at 51 per cent for most sectors and 80 per cent only in two sectors; telecommunications and computer services (Adhikari, 2005a). The overall market, regulatory structure and WTO commitments of the various services sectors[21] in Nepal are discussed in Annex 5.

21 GATS Services Categories have been used to define the services sectors in this section.

However, the commitment of Nepal under Mode 4 (movement of natural person) is restrictive except in the categories of services sales persons, persons responsible for setting up a commercial presence, and intra-corporate transferees that too for a limited time and not exceeding 15 per cent of local employees.

Table 11: Major commitments made by Nepal during the accession

Sn.	Measures	Initial offer	Final offer	Deadline
1	Agricultural tariffs	Average 51%	Average 42%	31 December 2006
2	Industrial tariffs	Average 39%	Average 24% *	31 December 2013
3	Full implementation of TRIPS Agreement			31 December 2006
4	Full implementation of SPS Agreement			31 December 2006
5	Full implementation of TBT Agreement			31 December 2006
6	Full implementation of Customs Valuation Agreement			31 December 2006
7	Not to introduce export subsidy on agriculture			Accession date
8	Not to impose new Trade Related Investment Measures (TRIMS)			Accession date
9	Zero tariff on information technology products			31 December 2008
10	Complete phasing out of Other duties and charges (ODCs)			31 December 2013

* Includes categorical commitment to reduce tariff peak on motor vehicles from 130 per cent at present to 40 per cent at the end of implementation period, implying an annual reduction of nine per cent.

Source: WTO (2003) Report of the Working Party on the Accession of the Kingdom of Nepal to the World Trade Organization, WT/ACC/NPL/16, 28 August, WTO, Geneva.

Trade-related Aspects of Intellectual Property Rights (TRIPS): The TRIPS Agreement has a provision for a transition period up to 1 January 2007 for the implementation of the agreement for LDCs.[22] However, Nepal was asked to implement the non-discrimination provisions (MFN and national treatment) contained in the TRIPS Agreement right from the day of accession.[23] Moreover, developed countries did not make any reference to the Declaration on TRIPS and Public Health adopted by the trade ministers in Doha in November 2001 in the Working Party Report.

Regulatory Reforms: As per the Legislative Action Plan (LAP) attached to the Working Party Report, Nepal is required to introduce or amend 37 different policies, legislations and rules in order to fulfil Nepal's commitment on goods, services or intellectual property regime as a Member of the WTO (see Annex 4 for progress made so far). Some important regulatory requirements are:

Customs: According to the LAP legislation on the valuation of imports for customs and taxation purposes conforming to the requirements of the Agreement on Customs Valuation was to be enacted by 1 July 2004. Nepal was required to progressively implement the Agreement on Customs Valuation in accordance with the action plan with full implementation from 1 January 2007.

Sanitary and Phytosanitary Measures: Nepal has committed to fully implement the provisions of the Agreement on SPS measures by 1 January 2007. According to the LAP, Nepal has to adopt the Food Act, implement the Codex Alimentarius and establish a single enquiry point.

Technical Barriers to Trade: According to the LAP, Nepal was expected to progressively implement the TBT and fully implement it by 1 January 2007.

22 This has been since extended to 1 July 2013 due to the decision made by the WTO TRIPS Council on 29 November 2005.

23 This applied to TRIPS-related legislation already in place.

3.4 Stakeholder consultation

A limited number of international and national NGOs, farmers' associations and business communities were involved from the late 1990s in Nepal's accession process. The engagement grew stronger after 1995. However, the notion that power holders need to be approached by various stakeholders if they wanted to be heard prevented effective consultation and bypassed the majority of stakeholders who were working with the poor and marginalized communities (Bhandari, Shrestha and Upreti, 2005). Nonetheless, as noted above, the government's efforts to consult various stakeholders during the accession process did bear fruit. The role of various stakeholders in the process of Nepal's accession to WTO is discussed below.

Civil society organizations (CSOs): Some CSOs that were committed and involved during the process are: ActionAid Nepal (AAN); South Asia Watch on Trade, Economics & Environment (SAWTEE); Sewa Nepal; Pro-Public; Martin Chautari; USC Nepal; Nepal Forum for Environmental Journalists (NEFEJ); Law Associates Nepal (LAN); National Alliance for Food Security Nepal (NAFOS); LI-BIRD; CARITAS Nepal; UTTHAN; FES-Nepal; Himawonti; and FEDO. Most INGOs/NGOs involved in WTO issues focused on specific areas including: intellectual property rights, especially farmers' rights to genetic resources for food and agriculture; food security and livelihood issues. There are no systematic provisions for the inclusion of CSOs in policy debates.

Some CSOs such as AAN, SAWTEE, Law Associates Nepal and NAFOS were engaged in creating public awareness and advocated for policy space to protect the rights of the poor and marginalized communities, small farmers and consumers. The All Nepal Peasants Association (ANPA) sought to advocate for a better deal on behalf of peasants with specific position on "WTO out of agriculture." Most of the CSOs were involved in awareness-raising programs and policy advocacy. They conducted research in specific issues and shared the findings with grassroots organizations, government agencies and the private sector. The outcomes of these public consultations carried out by the CSOs were shared with the government on a timely manner and some key recommendations were helpful to the government to formulate its negotiating position. Realizing the importance of CSOs, the government included several representatives in its WTO delegation during the fourth and fifth Ministerial Conferences (Bhandari, Shrestha and Upreti, 2005). Some CSO initiatives during Nepal's accession process WTO are listed in **Table 12.**

Table 12: Select CSO activities related to Nepal's accession to the WTO

Type of activities	Organizations/institutions	Date and venue
Consultative Meeting on Intellectual Property Rights and Farmers' Rights	Nepal Agricultural Research Council and AAN	7–8 May 2002, Kathmandu
Press meet on WTO and Nepal: An Effort to Fend off the U.S. Pressure to Join UPOV	NAFOS	13 August 2003, Kathmandu
International Panel Discussion on "The TRIPS Review: A Roadmap for Protecting Farmers' Rights"	SAWTEE, AAN, Gene Campaign, Consumer International	11 September 2003, Cancun, Mexico
International Panel Discussion on "Symposium of Post Doha Marginalisation of LDC Concerns"	SAWTEE	12 September 2003, Cancun, Mexico
National Seminar on "WTO Membership: Impact of SMEs"	FNCCI, SMEDP, FNCSI, SAWTEE	21–22 December 2003, Kathmandu
Research on "Seed and Monopoly: Impacts of TRIPS on Nepal"	AAN, Pro-Public	2000
Briefing paper on "The Challenges of the WTO: Rethinking Strategies"	SAWTEE	2002
Policy Brief on "UPOV: Faulty Agreement and Coercive Practices"	SAWTEE	2003
Study on "Gender Implications of Nepal's Accession to the WTO"	SAWTEE	2002–2003
Training of Economic Journalists on WTO	AAN, SAWTEE, Society for Economic Journalists of Nepal	2004

Source: Bhandari, Shrestha and Upreti (2005)

Private sector: Though the business community was involved in WTO-related discussions from the beginning, their involvement got serious only after China's accession to the WTO. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) and Nepal Chamber of Commerce (NCC), Agro-Enterprises Centre (AEC)/FNCCI, Nepal Chamber of Commerce and Confederation of Nepalese Industries (CNI) were the major business sector bodies that were engaged in the discussions. The business community was mostly concerned with market access, market entry and competitiveness. As the apex body of the business community, the government consulted with the FNCCI on almost all policy issues. Some business sector initiatives during Nepal's accession process are listen in **Table 13**.

Table 13: Select private sector activities related to Nepal's accession to the WTO

Type of activities	Organization/institutions	Date
Seminar on WTO	FNCCI	September 1999; 29 October 1999; 14 November 1999; 26 July 2000; August 2000
Implications on Nepalese Business Sector in the Post-WTO Accession Environment	FNCCI	31 May – 1 June 2002; 15–16 August 2002; 9–10 February 2003; 12–13 February 2003; 11 May 2003.
WTO Membership: Impact on Nepalese SMEs	FNCCI	21–22 December 2003.
Opinion of the private sector to MOICS on the Competition Act	FNCCI	December 2003; January 2004
Policy Feedback on Parallel Import	FNCCI	April 2004
SPS and TBT Agreements	AEC/FNCCI	18 March 2004
Private sector interaction on the paper "WTO's implication on vegetable seed sub-sector in Nepal"	AEC/FNCCI	9 January 2004
Private sector interaction on the paper "Nepal Tea: Competitiveness and exports"	AEC/FNCCI	12 January 2004
Workshop on Quality Assurance of Spices	NCC, UNCTAD and WTO	14 August 2001
Accession to the WTO and SMEs	NCC and MOICS	29 May 2002

Source: Bhandari, Shrestha and Upreti (2005)

However, a majority of stakeholders felt that they were left out from the accession process. Some thought that though the government was a good listener but it was not responsive. In addition, the CSOs' desire to influence the government through an institutionalized and formal approach of consultation did not materialize. Most of the cooperation were based on the judgment of the government personnel at the policy-making position. Notwithstanding the shortcomings, stakeholder participation during Nepal's accession process helped negotiators to avoid joining UPOV, maintain higher bound tariffs on agricultural commodities, develop conditions for opening up services sectors and build public opinion (Rajkarnikar, 2005).

3.5 Nepal's commitments compared to other least-developed WTO Members

LDCs that joined the WTO through the accession process such as Nepal and Cambodia have made stronger commitments with respect to market access than many other least-developed and developing country Members and in some cases even developed countries.

Tariffs

Nepal has agreed to bind 99.4 per cent of its tariff lines, while other least-developed WTO Members including Tanzania (13.4 per cent), Chad (13.5 per cent), Mozambique (13.6 per cent) and Bangladesh (15.8 per cent) have binding coverage of less than 20 per cent (WTO, 2007; Annex 7). Nepal's binding coverage is higher even compared to developing countries of the region; India has bound 73.8 per cent of its tariffs lines while Pakistan has bound only 44.3 per cent of its tariff lines (Adhikari, 2005b).

In terms of average tariff rates too, Nepal's commitments in agricultural goods are much lower than those of other least-developed WTO Members. Nepal's average tariff rate is at 26 per cent, while average tariff rates for other least-developed WTO Members such as Bangladesh (163.6 per cent), Tanzania (120 per cent) and Zambia (106.4 per cent) have average tariff rates at more than 100 per cent (WTO, 2007). Even developing countries of the region, India (34.3 per cent) and Pakistan (35.3 per cent), have average tariff rates higher than that of Nepal (Adhikari, 2005b).

In terms of tariff peaks, Nepal maximum duty is at 200 per cent. While some least-developed WTO Members like Solomon Islands (684 per cent) and Myanmar (550 per cent) (WTO, 2007). In the agriculture sector, even some developed countries have higher tariff peaks than Nepal. For example, maximum tariff bindings in the agriculture sector are at 350 per cent for the U.S. and 238.4 per cent for Canada (UNCTAD, 2004). (For more information see Annex 7)

Services

In addition to liberal commitments in the goods sectors, Nepal's commitments in the services sector also go beyond the commitments of other least-developed WTO Members and even beyond those of other developing countries in the region. In the services sector, Nepal has committed to liberalize 11 sectors and 70 sub-sectors. By comparison, Bangladesh, also a least-developed WTO Member, has only liberalized two sectors and 11 sub-sectors. Developing countries in the region, India and Pakistan have only committed to liberalize six sectors and 37 sub-sectors and five sectors and 47 sub-sectors respectively (Adhikari, 2005b).

Comparison with recently acceded least-developed country WTO Members

Compared to Cambodia and Vanuatu (proposed), Nepal was able to stand its ground and bargain with WTO Members to lower its commitments. This can be attributed to Nepal's better negotiation which was supported by sound analysis.

For example, Cambodia has committed to 100 per cent tariff bindings, bound rates at 19 per cent and tariff peak at 60 per cent. In terms of services too Cambodia has committed to liberalize 11 sectors and 74 sub-sectors. In addition, some of Cambodia's commitments go beyond WTO obligations of LDCs and those of other WTO Members. For example, Cambodia has forgone its rights to use export subsidies in the agriculture sector, committed to joining the UPOV and also committed to liberalize the audio-visual services sector (Adhikari and Dahal, 2004).

Similarly, Vanuatu had also proposed to bind 100 per cent of its tariff at an average rate of 49 per cent. The U.S. has argued that the simple average rate of 49 per cent was too high and has demanded it to be reduced to 25 per cent. In terms of services, Vanuatu had proposed to liberalize 46 sub-sectors. In addition, giving in to the U.S. pressure, Vanuatu has agreed to open up the retail and wholesale services for foreign investment. In addition, Vanuatu has also forgone its rights to use export subsidies in the agriculture sector and has also agreed to a plurilateral Agreement on Government Procurement (Adhikari and Dahal, 2004).

3.6 Nepal's trade performance after WTO membership

The following sections highlight the trend in Nepal's trade openness, exports and imports in recent years and attempt to identify the effect of WTO membership on these variables.

Trade openness: Trade/GDP is one of the variables used to measure trade openness of an economy. As **Table 14** indicates, Nepal's trade/GDP ratio had reached over 41 per cent in 2000, which declined to 38.8 per cent in 2004 and further to 36 per cent in 2005. This decline in trade was due to the decline in exports/GDP, exports decline from 13 per cent of GDP in 2000 to around 11 per cent in 2005. In 2006, the trade/GDP ratio witnessed an increase from 36 per cent to 56 per cent. However, this was mostly due to a rapid increase in imports; import/GDP rose from 25 per cent of GDP to 37.7 per cent of GDP in 2006.

Table 14: External sector indicators (as percentage of GDP)

	1986	1990	1995	2000	2004	2005	2006
Trade	22.2	22.7	37.1	41.7	38.8	36.0	56.3
Export	5.5	5.0	8.0	13.1	10.7	11.0	18.6
Import	16.7	17.7	29.1	28.6	28.1	25.0	37.7

Source: Economic Survey and NRB Quarterly Economic Bulletin (various issues)

Exports: Nepal has witnessed a slow increase in the absolute value of exports in recent years. As **Table 15** indicates, Nepal's exports increased from NRs. 47 billion in 2001/02 to NRs. 60 billion in 2005/06.

Table 15: Trend in Nepal's trade (in '000 NRs.)

Year	Exports	Imports	Trade deficit
1985/86	3,099,351	9,371,461	6,272,110
1990/91	7,343,914	22,377,173	15,033,259
1995/96	19,758,388	75,896,306	56,137,918
2001/02	47,386,788	108,634,801	61,248,013
2002/03	50,011,122	128,228,134	78,217,012
2003/04	53,949,414	135,840,335	81,890,921
2004/05	58,443,821	148,294,229	89,850,408
2005/06	60,074,774	162,840,724	102,765,950

Source: Trade Promotion Centre, http://www.tepc.gov.np

Among Nepal's major trading partners, India holds a disproportionate share in Nepal's trade. In terms of exports, India accounted for over 68 per cent of Nepal's total exports in 2005/06, an increase from about 53 per cent in 2002/03. Nepal's trade with India is guided by the bilateral preferential trade agreement between the two countries; thus the increase in exports should be attributed to the bilateral trade treaty and not to WTO membership.

The shares of Nepal's other export partners seem to have decreased during the years. The export share of the U.S. in Nepal's total exports decreased from over 25 per cent in 2002/03 to 11.6 per cent in 2005/06. Similarly, the share of Germany decreased from 8.5 per cent in 2001/02 to 4.7 per cent in 2005/06. Other export partners such as the U.K., Italy, France and Canada have a very small (about two per cent) share in Nepal's exports.

In terms of commodities, Nepal's top exports to India consist of ghee, polyester yarn and jute goods (**Table 16**). While, Nepal's top overseas exports consist of readymade garments (RMGs), carpets and Pashmina (**Table 17**). As mentioned earlier exports of RMG have witnessed a tremendous decline due to the liberalization of this sector. **Table 17** reveals that the share of RMG in overseas exports declined from over 50 per cent in 2002/03 to 30 per cent in 2005/06. Due to the decline in the share of RMGs, the share of top 10 overseas exports in Nepal's total overseas exports also declined from over 84 per cent to 74 per cent between 2002/03 and 2005/06.

Table 16: Share of top 10 commodities in exports to India (by percentage)

Commodities	2002/03	2003/04	2004/05	2005/06+
Ghee (vegetable)	14.42	9.61	11.91	9.98
Polyester yarn	2.49	3.62	4.87	8.24
Jute goods	7.19	6.12	6.92	6.54
Zinc sheet	3.67	9.05	4.27	5.92
Textiles	3.32	5.79	7.70	5.08
Thread	4.67	5.32	5.69	4.53
Wire	0.57	2.31	3.14	3.71
Readymade garments	1.51	2.04	0.94	2.84
Juice	2.27	2.56	2.80	2.66
Chemicals	0.56	1.98	3.62	2.63
Total share of above items	40.68	48.39	51.87	52.13

Note: + First 11 months only

Source: Nepal Rastra Bank (Various Years)

Table 17: Share of top 10 commodities in overseas export (by percentage)

Commodities	2002/03	2003/04	2004/05	2005/06+
Readymade garments	50.59	41.28	30.95	29.94
Woollen carpet	22.64	24.54	29.66	28.91
Pashmina	4.93	4.60	5.31	8.22
Handicrafts (metal and wooden)	1.50	2.71	3.26	1.67
Silverware and jewellery	1.48	1.59	1.84	1.51
Nepali paper and paper products	1.11	1.21	1.21	1.22
Tanned skin	0.97	1.34	1.19	1.51
Pulses	0.91	1.21	0.54	1.00
Tea	0.19	0.49	0.54	0.55
Herbs	0.14	0.21	0.28	0.07
Total share of above items	84.46	79.18	74.76	74.61

Note: + First 11 months only.

Source: Nepal Rastra Bank (Various Years)

In terms of imports, Nepal's imports over the years have been higher than exports. During 2000–2005, imports as a per cent of GDP hovered around 25–28 per cent, which increased rapidly to 37.7 per cent in 2006 (**Table 15**). This has further increased Nepal's trade deficit in 10 years. Nepal's fiscal deficit doubled from NRs. 56 billion in 1995/96 to NRs. 102 billion in 2005/06.

4. Implementation of Nepal's accession commitments

Nepal has not been able to implement a number of reform measures that it had committed to during the process of its accession mainly due to capacity constraint and unfavourable political situation in the country in the past few years. This is because the government seems to have categorized the reform measures as "mandatory" and "voluntary."[24] While reform measures such as tariff reductions, which have been considered mandatory, have been initiated from the date of accession itself, the Legislative Action Plan, which forms a major part of the reform agenda, has not been fully complied with. Interaction between the government and the stakeholders, which was one of the reasons for Nepal's relatively generous accession package, has not continued after its WTO membership. This has prevented a coordinated action among the different stakeholders, which is vital if Nepal is to benefit from its WTO membership.

4.1 Implementation of the Legislative Action Plan

According to the Legislative Action Plan (LAP), Nepal was to enact 10 new laws/regulations, amend 25 existing laws/regulations, ratify three international Conventions and establish two enquiry points.

Until December 2007, Nepal had enacted three new laws/regulations: the Bankruptcy/ Insolvency Act; the Cyber Act; and the Bank and Finance Institution Act, while seven laws/regulations still needed to be enacted according to the LAP.[25] Similarly, of the 25 amendments, eight laws have already been enacted: the Foreign Exchange Act 2002; the Export Import Act 1957; the Plant Protection Act 1972; the Patent, Design and Trademark Law; the Copyright Act; the Company Act 1997; the Nepal Chartered Accountants Act 2002; and the Income Tax Act 2002. Meanwhile 17 Acts still need to be amended.[26]

Nepal has ratified/endorsed two international agreements: the International Plant Protection Convention (IPPC) and the Bern Convention for the Protection of Literary and Artistic Work 1971. Nepal still needs to ratify the United Nations Convention on Contracts for the International Sale of Goods 1980. In addition, Nepal has also established two inquiry points for the TBT and GATS Agreements.

During the first two years after Nepal's accession to the WTO, it was not possible to enact a number of legislations (relating, for example, to competition, anti-dumping and countervailing measures) as outlined in the LAP, due to absence of a parliament. However, even after the parliament had been reinstated, no other legislation, except for the competition law, has been enacted so far. This is mainly because of the parliament's preoccupation to resolve the political issues, which has relegated the legislative reforms required to foster economic growth to the back burner. Some key required regulatory reforms include:

Food and Plant Sanitation: As mentioned above, Nepal was required to implement the SPS Agreement by 1 January 2007. Importing countries' SPS measures usually require exporters to guarantee that their products are free of pests, disease and pesticide residues. These measures are more stringent for agricultural products.

24 The government officials usually gave an impression that there was no need for Nepal to strictly adhere to the deadlines for implementing non binding commitments made during its WTO membership.

25 The seven new laws/regulations that still need to be enacted are: the Law on Anti-dumping Measures (draft form); Industrial Property Act; Plant Resources Act; Access to Genetic Resources Act; Foreign Investment and Technology Transfer Regulations; Industrial Enterprises Regulations; and the Health Institutions Operating Act.

26 The 25 amendments are required in the following laws: Export Import Regulations 1978 (draft); Customs Act 1962 (draft); Customs Regulations 1969; Nepal Standards Act 1980; Nepal Standards Regulations 1982; Plant Protection Regulation 1975; Seed Act 1998; Environment Act 1997; Pharmaceutical Act 1978; Foreign Investment and Technology Transfer Act 1992; Industrial Enterprises Act 1992; Industrial Policy 1992; Foreign Investment and One Window Policy 1992; Labour Act 1991; Nepal Bar Council Act 1992; Insurance Act; and Securities Exchange Act 1982.

The government's Action Plan to improve SPS measures (see Annex 2) identifies the financial and technical assistance needed to meet each of the provisions of the SPS Agreement, the time frame for implementation and the key government agency responsible for implementation. Implementation of the SPS Agreement will require extensive harmonization with international standards, general upgrading of laboratory facilities and expansion of staff capable of conducting risk analysis. The action plan estimates at least a budget of US$12.5 million for implementation of the SPS Agreement. However, this estimate may be low, given the fact that World Bank projects devoted to improving food, plant and animal sanitation standards often involved much larger sums of money (MOICS, 2004).

Government agencies have received some technical assistance to improve domestic SPS measures such as a FAO/WHO project to introduce international standards in the dairy industry; FAO support for food control systems, and regional training workshops on the SPS Agreement (MOICS, 2004). However, their effectiveness has so far been extremely limited as can be seen from the example of stalled export of honey to Norway.

Industrial Product Standards: The LAP required amending the Nepal Standards (Certification Mark) Act of 1980 and related regulations by December 2005, contingent on receiving technical assistance.

The MOICS produced a brief description of the assistance required to comply with the TBT Agreement. The government estimated that a financial assistance of US$12 million over a five-year period is required for procuring equipment (including US$10 million for calibration equipment), training staff, and purchasing consulting services. Receiving this assistance would help: a) develop the capacity of the Nepal Bureau of Standards and Metrology to provide quality control, testing, and metrology services; b) support the negotiation of mutual recognition agreements; and c) allow NBSM to participate in international standards bodies (MOICS, 2004). Nepal had received assistance from UNIDO to construct existing laboratory facilities during the early 1990s. More recently, the Finnish government funded a US$863,000 program to help Nepalese carpet manufacturers to meet European eco-labelling requirements (MOICS, 2004).

As in the case of compliance with the SPS Agreement, Nepal had submitted an Action Plan to the WTO at the time of its accession (Annex 3). However, due to political problems coupled with a resource crunch, Nepal has not been able to fulfil most of the commitments outlined in the Action Plan.

Intellectual Property Rights: The LAP required Nepal to adopt TRIPS-related laws on copyright and plant protection by the end of 2005, contingent on receiving technical assistance. According to the MOICS, technical assistance is required to:

- fully evaluate existing regime and draft new legislation;
- develop the administrative capacity to review patent, trademark and copyright applications;
- introduce more effective enforcement by police, customs official and the judicial system; and
- establish an IPR information centre to help educate the public on IPR issues.

In addition, financial assistance of US$4–32 million is required to expand current IPR offices (MOICS, 2004). Nepal needs to develop an IPR regime that balances the need to protect intellectual property while also facilitating the rapid adoption of foreign technology. In addition, the IPR regime should protect genetic resources and traditional knowledge, generate economic benefits for the poor and respects cultural sensitivities and minimize environmental harms.

4.2 Nepal's preparedness to undertake commitments in the services sector

Nepal has made major commitments in the WTO in the services sector. The services sector has featured prominently in Nepal's external trade; it accounted for 34 per cent of exports and 17 per cent of imports in 2006/07. Historically, the services sector in Nepal has been highly protected, not only against foreign investment but also in terms of the participation of the private sector. The sector witnessed gradual opening up in the last two decades. Under its accession agreement, Nepal has committed to liberalize 11 services sectors, including legal, accounting, tourism (travel agent) and retail (audio, visual) sectors for foreign investment which were hitherto not open for foreign investment. It has also made commitments to allow fully owned branches of foreign wholesale banks[27] beginning 1 January 2010. Nepal was however able to bind commitments below the level that existed at the time of its WTO membership in terms of foreign equity participation in most services sectors and Mode 4 (movement of natural persons).

Nepal faces various regulatory challenges in liberalizing the services sector. The section below provides illustrative examples of two important services sectors: financial and telecommunications sectors, and the regulatory mechanisms required before Nepal can open up the sectors to greater foreign participation.

Financial services

Under financial services, Nepal has committed to allow foreign wholesale banks and insurance companies to open their branches in Nepal from 1 January 2010. Serious concerns have been raised regarding Nepal's preparedness involving regulatory institutions to support the imminent financial liberalization.

In order to assess the likely impact of services sector commitments, NRB, the Central Bank of Nepal, conducted two studies titled "Foreign Bank Branches and the Health and Stability of Nepal's Financial System" and "Nepal's WTO Service Sector Commitments and its Impact on Balance of Payments Situation."

The studies suggest that major regulatory reforms are needed to make the reforms work for Nepal. These include establishment of a more elaborate licensing and approval procedure, enhanced regulation and supervision of service-related transactions to keep pace with financial innovation, formation of a legal unit to continuously monitor external developments regarding service safeguards and prepare NRB's negotiation position in financial services. The studies have also highlighted the need to establish an institutional mechanism to evaluate the existing monetary and exchange rate policy in light of changing scenario with Nepal's WTO membership.

27 Wholesale banking is defined by Woelfel (1994, p.1203) as providing "banking services, loan securities and loans to large corporate customers of non-profit institutions" or implying that lending for projects and trade finance which does not include retail lending or consumer finance whereas funding for the lending is to be met out of wholesale deposits (limits of which is to be defined) and inter-bank borrowings.

In addition, NRB needs to formulate rules and regulation regarding wholesale banking which should be in line with the general commitments made under the GATS for banking services. They should also be at par with international standards that should include the following: capital adequacy; operational guidelines; loan loss reserve; risk management guidelines; reserve requirements; technology and technical services; single obligor limits; reporting requirements; transparency system; employees regulation; credit policy guidelines; borrowing guidelines; and a supervision system for wholesale banking. The above facts clearly indicate that the regulatory mechanism needs to be substantially strengthened before opening up the financial services sector.

Telecommunications services

By January 2009, there will be no limitation on the number of basic telecommunication, mobile telecommunication and value-added telecommunication suppliers. The liberalization process has to be accompanied by the setting up of regulators to ensure that competition is fair and that consumers are not being exploited through high prices. The 1998 Telecommunications Act led to the privatization of the state-owned Nepal Telecommunication Corporation and the establishment of a regulatory body, the Nepal Telecommunications Authority (NTA). The objective of the NTA is to create a favourable and competitive environment for the development, expansion and operation of telecommunications services with private sector participation. NTA has been performing a number of functions including granting licences, inspecting and monitoring the activities performed by private sector investors, approving and regularizing fees, suggesting plans and policies to the Government, etc. A small section within the MoIC called the “Frequency Management Division” is responsible for spectrum management. In addition, Radio Frequency Policy Determination Committee is solely responsible for spectrum pricing policy (MoIC, 2003). At present, the government lacks a proper spectrum pricing policy. Before the liberalization of the telecommunication sector it is necessary to set an appropriate spectrum pricing policy. There is also a need to enhance the overall regulatory capacity of NTA.

The above two examples illustrate that Nepal lacks proper regulatory mechanisms in most of the services sector, which can prevent it from taking advantage of greater foreign participation.

5. Conclusion and recommendations

Careful analysis of Nepal’s commitments in the WTO reveals that Nepal’s accession package is more stringent than that of other least-developed WTO Members and even many developing countries. However, comparison with LDCs that joined/are joining the WTO through the accession process reveals that Nepal’s commitments are not as harsh. Despite weak institutional capabilities, limited technical know-how and financial resources, Nepal was able to negotiate a fairly respectable accession package. This was possible due to stakeholder participation and the technical assistance Nepal received during the accession process.

It is too early to judge whether or not Nepal has benefited from WTO membership. Besides favourable policies and WTO membership, other factors such as the political and security situation, institutional mechanisms to support trade, adequacy of trade-related infrastructure and the competitiveness of the private sector determine trade performance. Therefore, it is extremely difficult to separate out the effects of WTO membership on Nepal’s trade performance. Notwithstanding the above factors, the immediate impact of Nepal’s WTO membership on its trade performance has been limited at best.

One reason for this could be that Nepal already had a liberal trade regime at the time of its WTO membership. Nepal's average import tariffs on industrial goods was around 14 per cent, and tariffs on agricultural products ranged between zero and 10 per cent. Nepal also allowed duty free access for agricultural products from India, its main trading partner. In terms of market access, Nepal enjoyed preferential market access to OECD markets under various GSP schemes (See Annex 6 for details). It also benefited from the quota system imposed by the WTO Agreement on Textile and Clothing. Most important, India, the main export destination for Nepal, provides duty free access to Nepalese agricultural and industrial products under a bilateral agreement. Thus accession to the WTO did not lead to major changes in Nepal's trade openness and market access opportunities, which could be the reason for the limited significance of WTO membership on Nepal's trade performance.

Nor has WTO membership helped Nepal address its main policy objectives related to trade: narrowing the trade deficit and diversifying exports. The trade deficit has actually increased from NRs. 81 billion in FY 2003/04 to NRs. 102 billion in FY 2005/06, an increase of 25 per cent; while Nepal's export to India has further increased from 57 per cent of total exports in FY 2003/04 to 68 per cent in FY 2005/06. Nepal's WTO membership has also not resulted in enhanced competitiveness of the private sector, which is another important policy objective of the government.

As mentioned earlier, supply-side constraints are one of the main reasons that prevent Nepal from benefiting from its WTO membership. Therefore, addressing supply-side constraints is vital for Nepal. Given the paucity of internal resources and competing demands on the government budget, Nepal will need external support to address these constraints. Effective implementation of the "Aid for Trade" initiative of the WTO is thus important for Nepal. Similarly, tariff and non-tariff barriers in developed and developing country markets and the ineffectiveness of S&DT provisions for LDCs also prevent Nepal from benefiting from WTO membership.

Based on Nepal's experiences with the WTO, the following recommendations need to be seriously pursued at various international forums including but not limited to the WTO if LDCs are to benefit from WTO membership.

1. Simplify the LDC accession process

There is an urgent need to simplify the accession process for LDCs. The difficulties Nepal faced in bilateral negotiations show that various decisions and recommendations to simplify the accession process for LDCs have not been incorporated in the WTO system. The WTO should incorporate a specific provision for the accession of LDCs, where the LDCs seeking accession will not be required to enter into bilateral negotiations on market access.

2. Lower the level of commitments for LDCs

Nepal has made commitments in the WTO which are much stringent that those made by founding least-developed Member countries. This clearly shows that acceding LDCs have been asked to make commitments commensurate with their level of economic development, capacity and their trade and financial needs. Acceding LDCs should not be required to undertake higher level of commitments than those made by the founding least-developed Member countries of the WTO. Moreover, acceding LDCs should not be asked to make commitments on any of the plurilateral agreements of the WTO or to participate in other optional sectoral market access initiatives unless they choose to do so based on their own strategic trade interests.

3. Provide adequate technical assistance

The technical assistance Nepal received during its accession process helped it to negotiate a fairly balanced WTO accession package. However, the international support to Nepal for implementing WTO commitments in the areas of intellectual property rights and sanitary and phytosanitary measures have been inadequate. Developed Member countries of the WTO should not only provide technical assistance to acceding LDCs during their accession but also to implement the commitments they have been asked to make by the existing Member countries at the time of accession. In order to make technical assistance binding, implementation of WTO commitments should be made conditional on the receipt of technical assistance.

There is also a need to build the capacity of trade negotiators of the acceding countries not only to understand the implications of the WTO Agreements, but also to deal with them from the perspective of promoting human development needs of their respective countries.

4. Address LDC-specific concerns

Given the importance of the agricultural sector in the economies of LDCs, particularly its role in human development, food security and rural development, LDCs should not be required to make commitments on tariffs. LDCs should also have access to simplified safeguard mechanisms.

5. Strengthening S&DT

If LDCs are to benefit from WTO membership there is a need to operationalize the "best endeavour" provisions in all forms of S&DT. Many preferential schemes for developing countries affect the process of production in recipient countries by the imposition of sourcing requirements such as rules of origin. LDCs must be given space to align their trade policies with the kind of "graduation" in production they achieve over time as well as formulate a negotiating strategy for requirements such as rules of origin.

S&DT including but not limited to transitional periods/transitional arrangements, as set out in the WTO agreements, Ministerial Decisions and other relevant WTO legal instruments, should be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession.

S&DT must be made mandatory and legally binding and subject to the dispute settlement system of the WTO (including notification requirements and inclusion of these commitments in the country schedules).

6. Ensure stakeholder participation

To enhance the ownership of the WTO accession as well as implementation processes and ensure full representation of all stakeholders, acceding countries should be supported to put in place a formal, institutionalized mechanism for involving all the stakeholders in the process.

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Annex 1: Types of Non-tariff Barriers

(cited in a business survey conducted by OECD)

Type	Sub-categories
Government participation	Export and other subsidies State trading and monopolistic practices Public procurement
Customs and administrative procedures	Customs valuation Customs classification Customs clearance Documentation and formalities Import licensing Rules of origin Pre-shipment inspection
Quantitative restrictions	Prohibitions Quotas Tariff rate quotas Embargoes
Technical Barriers to Trade	Technical regulations and standards Testing and certification Labeling and packaging
Sanitary and Phytosanitary Measures	Testing and certification Quarantine procedures
Charges and fees	Various charges
Trade remedies	Antidumping duties Countervailing duties Safeguards
Other barriers	Import restrictions Unilateral sanctions Registration Intellectual property rights Environmental measures Minimum pricing and price control measures Finance measures Access to final users Extraterritorial application of the law Legal differences Lack of information on foreign markets Competition from other countries Transportation costs and/or regulation Corruption and theft Political, social and economic instability Inadequate infrastructure Low demand in export markets Cultural differences Linguistic barriers

Source: OECD (2005), Analysis of Non-Tariff Barriers of Concern to Developing Countries, Trade Policy Working Papers, No. 16, Paris, Organisation for Economic Co-operation and Development 2005.

Annex 2: Action Plan for Implementation of the SPS Agreement

Action	Implementation Date
Food Act 1966 – Codex Alimentarius	Completed
Establishment and operation of a single Contact Point for information ("enquiry point") (Article 7 and Annex B:2)	Prior to 1 January 2004
Acquisition of equipment and training of SPS enquiry point personnel (Article 7 and Annex B:2)	Prior to 1 January 2005
Approval or Amendments to: • Plant Protection Act 1972 • Seed Act of 1988 • Designation of authority responsible for making notifications to the WTO and ensuring transparency obligations are met on an ongoing basis. • Review of all existing regulations and new amendments to ensure regulations are based on risk assessments and sufficient scientific evidence. • Upgrading of human resources with special emphasis on quarantine management, meat inspection, veterinary investigation and animal disease risk analysis. • Declaration of pest or disease-free areas and areas of low pest or disease prevalence (Article 6 and Annex A:6 and A:7)	Prior to 1 July 2005
Approval or Amendments to: • Plant Protection Regulations 1975 • Membership in the International Plant Protection Convention • Implementation of Publication and Notification procedures including a process to take comments into account without discrimination (Annex B:1,3, 5 and 10) • Initial notification of legislation and regulations to WTO	Prior to 1 January 2006
Development of SPS guidelines and protocols	Prior to 1 July 2006
Upgrading and strengthening of quality control unity, laboratory, quarantine system and field veterinary system Opening new quarantine check post and development of pre and post quarantine facilities Harmonization with international standards, guidelines, and recommendations (Article 3) Control, inspection and approval procedures for all SPS measures Full implementation of the WTO Agreement on Sanitary and Phytosanitary Measures	Prior to 1 January 2007

Source: WTO (2003)

Annex 3: Action Plan for Implementation of the Agreement on Technical Barriers to Trade

Action	Implementation Date
Establishment and operation of a single Contact Point for Information ("enquiry point"): Nepal Bureau of Standards and Metrology (NBSM) P O Box 985, Balaju Kathmandu, Nepal Tel./Fax:: + 977 1 435 0689 Email: nbsm@nbsm.gov.np	Prior to 1 January 2004
Identification • of the authority responsible for notifications and publications and other internal procedures to ensure transparency obligations are met on an ongoing basis (e.g., the Nepal Bureau of Standards and Metrology [NBSM]). • of the publication or website where notices of standards, technical regulations and conformity assessment procedures will appear.	Prior to 1 July 2004
Strengthening of documentation and networking system and training of personnel involved on TBT notification and publications. Approval of Amendments to Nepal Standards Act. Initiation of prior publication for comment of all technical regulations, standards, and conformity assessment procedures in the identified journal or Web site.	Prior to 1 July 2005
Approval of Amendment of Nepal Standards Regulations. Establishment of procedures for the development and application of technical regulations in conformity with WTO and compliance with Code of Good Conduct for establishment of standards. Submission of Statement on Implementation (G/TBT/1).	Prior to 1 January 2006
Upgrading existing testing and calibration facilities. Completion of review and adjustment of technical regulations and procedures in accordance with WTO requirements. Establishment of scheme of registration and certification of products. Establishment of • a system of non-discriminatory procedures for the recognition of conformity assessment; and • a system for mutual recognition or accreditation (Articles 5 and 6) Full implementation of the WTO Agreement on Technical Barriers to Trade.	Prior to 1 January 2007

Source: WTO (2003)

Annex 4: Implementation Status of Revised Legislative Action Plan

No.	Laws/regulations/ administrative decisions	WTO agreement	Status of draft/intended actions	Expected approval date	Status
1.	Instrument of Ratification of WTO Agreement	Marrakech Agreement Establishing WTO 1994	Council of Ministers will consider submitting to the Parliament for ratification/accession of/to the WTO Agreement as soon as WTO approves membership to Nepal		Ratified on 24 March 2004
2.	Income Tax Act 2002	General	Approved by the Parliament, April 2002		In force
3.	Bankruptcy/Insolvency Act	General	Preparation of draft of the new Act by Ministry of Finance by December 2004 Endorsement by Council of Ministers by July 2005	September 2005	Implemented since Nov. 2006
4.	Foreign Exchange (Regulating) Act 2002 (Amendment)	General	Approved by the Parliament, April 2002	In force	
5.	Competition Act	General	Preparation of draft of the new Act by Ministry of Industry, Commerce and Supplies by November 2003 Endorsement by Council of Ministers by February 2004	July 2004	Regulations yet to come into force
6.	Export Import (Control) Act 1957 (Amendment)	General Agreement on Tariffs and Trade 1994 Agreement on Agriculture Agreement on Import Licensing Procedures	Initial draft being prepared by Department of Commerce by August 2003 Submission by Ministry of Industry Commerce and Supplies to Council of Ministers by September 2003 Endorsement by Council of Ministers by October 2003	December 2003	Amendment in Nov. 2006
7.	Export Import (Control) Regulations 1978 (Amendment)	General Agreement on Tariffs and Trade 1994 Agreement on Agriculture Agreement on Import Licensing Procedures	Initial draft prepared by Department of Commerce in December 2002 Submission by Ministry of Industry Commerce and Supplies to Council of Ministers by October 2003 Adoption by Council of Ministers by December 2003	December 2003	Draft
8.	Customs Act, 1962 (Amendment)	Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation) Agreement on Rules of Origin	Initial draft prepared by Department of Customs in December 2002 Submission by Ministry of Finance to the Council of Ministers by June 2003 Endorsement by Council of Ministers by September 2003	December 2003	Draft
9.	Customs Regulation, 1969 (Amendment)	Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation) Agreement on Rules of Origin	Initial draft prepared by Department of Commerce in December 2002 Adoption by Ministry of Finance and submission to Council of Ministers by August 2003 Adoption by Council of Ministers by December 2003	December 2003	Regulations after amendment of the act
10.	Instruments of Ratification For United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)	General	Endorsement by Council of Ministers by March 2004	December 2005	Not a party yet
11.	Law on Anti-dumping Measures	Agreement of Implementation of Article VI of the GATT 1994 (Anti-dumping)	Preparation of draft legislation by December 2003 Endorsement by Council of Ministers by March 2004	July 2004	Draft

No.	Laws/regulations/ administrative decisions	WTO agreement	Status of draft/intended actions	Expected approval date	Status
12.	Nepal Standards (Certification Mark) Act, 1980 (Amendment)	Agreement on Technical Barriers to Trade	Preparation of draft amendment by June 2004 Endorsement by Council of Ministers by January 2005	April 2005	Amendment not done
13.	Nepal Standards (Certification Mark) Regulations, 1982 (Amendment)	Agreement on Technical Barriers to Trade	Preparation of draft amendment by September 2005 Adoption by Council of Ministers by December 2005	December 2005	Regulations after amendment of the act.
14.	Decision on the establishment of Inquiry Points	Agreement on Technical Barriers to Trade	Submission of proposal by WTO Division, Ministry of Industry, Commerce and Supplies by April 2003 Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003	Department of Bureau of Standard and Meteorology is the focal point (1 Jan. 2004)
15.	Plant Protection Act 1972 (Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Preparation of draft amendment by June 2004 Endorsement by Council of Ministers by January 2005	April 2005	New law implemented
16.	Plant Protection Regulation 1975 (Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Preparation of draft amendment by September 2005 Adoption by Council of Ministers by December 2005	December 2005	Amendment not done
17.	Instrument of International Plant Protection Convention (IPPC)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Endorsed by Council of Ministers in August 2002	December 2005	Member since 8 May 2006
18.	Seed Act 1998 (First Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Endorsed by Council of Ministers in August 2002	August 2004	Amendment in progress
19.	Decision on the establishment of Inquiry Points	Agreement on Sanitary and Phyto-Sanitary Measures General Agreement on Tariffs and Trade 1994	Submission of proposal by WTO Division, Ministry of Industry, Commerce and Supplies by April 2003 Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003	Department of Food technology & Quality Control is the focal point (1 Jan. 2004)
20.	Environment Act, 1997 (Amendment)	General	Preparation of draft amendment by Ministry of Population and Environment by December 2004 Endorsement by Council of Ministers by July 2005	September 2005	Amendment not done
21.	Industrial Property (Protection) Act	Agreement on Trade-related Aspects of Intellectual Property	Preparation of new draft legislation by the Department of Industry by December 2003 Adoption by Ministry of Industry, Commerce and Supplies by December 2004 Endorsement by Council of Ministers by July 2005	December 2005	Patent, Design & Trademark law amended. Industrial Property Act not in force
22.	Copyright Act 2002 (Amendment)	Agreement on Trade-related Aspects of Intellectual Property Rights	Approved by the Parliament in August 2002	In force	
23.	Instrument of Ratification of Bern Convention for the Protection of Literary and Artistic Works 1971	Agreement on Trade-related Aspects of Intellectual Property Rights	Endorsement by Council of Ministers by December 2003	December 2005	Ratified on 11 Oct. 2005
24.	Plant Resources Act	Agreement on Trade-related Aspects of Intellectual Property Rights	Endorsed by Council of Ministers in 2002	December 2003	Law not there yet

No.	Laws/regulations/ administrative decisions	WTO agreement	Status of draft/intended actions	Expected approval date	Status
25.	Access to Genetic Resources Act	Agreement on Trade-related Aspects of Intellectual Property Rights	Preparation of draft of the new legislation by Ministry of Forestry and Soil Conservation by June 2003 Endorsement by Council of Ministers by December 2003	April 2004	Law not there yet
26.	Pharmaceutical Act, 1978 (Amendment)	General	Preparation of draft amendment by Ministry of Health by December 2004 Endorsement by Council of Minister by April 2005	September 2005	Not amended
27.	Cyber Act	General	Preparation of draft amendment by Ministry of Science and Technology by December 2004 Endorsement by Council of Ministers by April 2005	September 2005	Enacted in 2006
28.	Foreign Investment and Technology Transfer Act, 1992. (Amendment)	General Agreement on Trade in Services (GATS) Agreement on Trade Related Investment Measures	Preparation of draft bill by Department of Industry by August 2003 Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Not amended
29.	Foreign Investment and Technology Transfer Regulations	General Agreement on Trade in Services (GATS) Agreement on Trade Related Investment Measures	Preparation of draft regulation by Department of Industry by March 2004 Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by April 2004 Endorsement by Council of Ministers by May 2004	May 2004	Regulations yet to come
30.	Industrial Enterprises Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS); Agreement on Trade Related Investment Measures; and Agreement on Subsidies	Preparation of draft bill by Department of Industry by June 2003 Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by October 2003 Endorsement by Council of Ministers December 2003	February 2004	Not amended
31.	Industrial Enterprises Regulations	General Agreement on Trade in Services (GATS) Agreement on Trade Related Investment Measures Agreement on Subsidies	Preparation of draft regulations by Department of Industry by March 2004 Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by April 2004 Adoption by Council of Ministers by May 2004	May 2004	Yet to come
32.	Industrial Policy, 1992 (Amendment)	General Agreement on Trade in Services (GATS) Agreement on Trade Related Investment Measures Agreement on Subsidies	Preparation of draft policy by Department of Industry by August 2003 Adoption by Ministry of Industry Commerce and Supplies by September 2003	September 2003	Amendment not done
34.	Labour Act, 1991 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Department of Labour by August 2003 Submission by Ministry of Labour by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Not done
35.	Company Act, 1997 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by the Office of Company Registrar by August 2003 Adoption by Ministry of Industry, Commerce and Supplies by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Company Act enacted

No.	Laws/regulations/ administrative decisions	WTO agreement	Status of draft/intended actions	Expected approval date	Status
36.	Nepal Bar Council Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Ministry of Law and Justice by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Not done
37.	Nepal Chartered Accountants (First Amendment) Act, 2002	General Agreement on Trade in Services (GATS)	Approved by the Parliament in July 2002	In force	
38.	Insurance Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Ministry of Finance by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Not done
39.	Securities Exchange Act, 1982 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft bill by Ministry of Finance by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Passed from the parliament, but not certified
40.	Bank and Finance Institution Act	General Agreement on Trade in Services (GATS)	Draft already submitted by Central Bank of Nepal to the Ministry of Finance Adoption by Ministry of Finance by October 2003 Endorsement by Council of Ministers by December 2003	February 2004	Enacted since 6 Nov. 2006.
41.	Health Institutions Operating Act	General Agreement on Trade in Services (GATS)	Endorsed by the Council of Ministers in August 2002	September 2003	Law not there yet
42.	Decision on the establishment of Inquiry Points	General Agreement on Trade in Services (GATS)	Submission of proposal by WTO Division, Ministry of Industry Commerce and Supplies by April 2003 Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003	MOICS is the focal point

Annex 5: Nepal's Sector-specific Commitments in Services

1. Business Services

1.1 Professional Services

(a) Legal services

The legal service is still highly protected in Nepal. The Foreign Investment and Technology Act, 1992 (FITT, 1992), did not grant permission for foreign investment in legal services. The provision of legal services (consultancy) in Nepal is governed by the Nepal Bar Council Act, 2050 (1993). According to the act all legal practitioners must be registered with the Bar Council to exercise the profession. The Bar Council grants the licence to practice law in the country. Only Nepalese citizens who have passed the Legal Practitioner Examination can be registered with the Bar.

As per its commitments in the WTO, Nepal allows advisory and representation services for home country law and third country law and international law in the first three modes of supply. In terms of Mode four, the number of foreign nationals cannot exceed 15 per cent of the number of local employees that too at the managers, executives and specialists level. Court appearance in Nepalese court will be allowed with the permission of the Supreme Court and membership of the Nepal Bar Association.

(b) Accounting, auditing and bookkeeping services

Accounting, auditing, and bookkeeping services in Nepal are ruled by the FITT Act, 1992, and by the Nepal Chartered Accountants Act, 2053 (1997). FITT Act, 1992, restricted the establishment of foreign enterprises, or for foreign investment, in the accounting business. The Nepal Chartered Accountants Act provides for the establishment of the Institute of Chartered Accountants of Nepal, an autonomous body that works as a regulatory body for the accounting and auditing services, as well as for the setting service conditions of the professionals. This Act enacted for the promotion of auditors service, provides for the establishment of an autonomous body called "The Institute of Chartered Accountants of Nepal." The Institute works as a regulatory body for promoting the audit services and service conditions of audit professionals.

Nepal has made commitments in the WTO to open up financial and auditing services, accounting review services, compilation of financial statement services and bookkeeping services except tax return in the first three modes of supply. However, services under Mode 3 can be supplied only through incorporation in Nepal and with maximum foreign equity capital of 51 per cent.

Foreigners can work as accountants in Nepal, but the number of foreign employees cannot exceed fifteen per cent of the number of local employees that too at the managers, executives and specialists level.

(c) Engineering services

Engineering services were also protected in Nepal as the FITT Act 1992 (as amended in 1997), restricted the establishment of a foreign company, or for foreign investment, in the engineering consultancy services. However, this service has been opened after Nepal's WTO membership in April 2004. There are now no restrictions in Mode 1 and Mode 2. Up to 66 per cent foreign equity capital is also allowed in firms incorporated in Nepal to provide these services. There is however, restriction in Mode 4 as in the case of all other services as per Nepal's horizontal commitments.

1.2 Computer and Related Services

Computer and related services constitute a fast growing activity within the service sector in Nepal. There is no up-to-date, specific legislation and regulations regarding the computer and related services in Nepal. As this service is not included in the restricted list of FITT Act 1992, there were no restrictions in all modes of supply of this service. However, Nepal has restricted foreign equity capital up to 80 per cent for companies incorporated in Nepal to provide these services as per its commitments in the WTO.

1.3 Other Business Services

(a) Management consulting services

The FITT Act, 1992, restricted the establishment of foreign companies in the management consulting business. This service has been opened up after Nepal's WTO membership and there are no restrictions in the first two modes of supply. However, foreign companies wanting to supply this service in Nepal have to be incorporated in Nepal and are allowed maximum foreign equity capital of 51 per cent.

(b) Placement and supply services of personnel

There are no specific regulations on placement and supply services of personnel in the domestic market. However, the placement of Nepalese workers in foreign countries is regulated by Foreign Employment act, 2042 (1985). This act aims at controlling and regulating the business and trade of arranging employment of Nepalese citizens in foreign countries. Nepal has not made any commitment in the WTO regarding this service.

2. Communication Services

(a) Telecommunications services

The telecommunications industry is relatively young in Nepal, with the first telephone exchange established only in 1960. Since then, the market consisted of only one state- owned monopoly, Nepal Telecommunication Corporation (NTC), which has been dominating the market since its inception in 1975. Following the decision for privatization in 1997, a few more players have been able to enter the industry.

The first National Communications Policy was adopted in 1992. The objectives of the policy were to liberalize the telecommunications sector, to increase private sector participation in the development and operation of telecommunications services. In 1997 Telecommunications Act was passed to involve national and foreign sectors investors in telecommunications services. The telecommunication service in Nepal is governed by the Telecommunications Act, 1997 and Telecommunication Regulation 1997. The act provides for the establishment of an autonomous regulatory body, Nepal Telecommunication Authority (NTA), to regulate and facilitate healthy competition among the service providers.

This also led to the privatization of NTC, and the establishment of a regulatory body: Nepal Telecommunications Authority. Besides providing licences to establish and operate the services, it also approves and regularizes tariffs, prescribes the quality standard of the plant and equipment, and suggests the policies, plans, and programs to be adopted by the Nepali Government. A major barrier to entry in this sector is the "safeguard clause" of the 1998 Telecom Act prohibiting more than one operators in a particular service for a period of five years.

The policy was revised in April 2000 to remove restrictions in investment and accelerate broad market opening. It permits a liberal environment based on open licensing, widespread competition, specific service obligations for licensed operators, a proposed regime for non-compliance, reference to WTO obligations and a sketch of the NTC reforms renamed NT in April 2004.

During its WTO membership, Nepal has committed to open basic telecommunication services and mobile telecommunication services. It has also committed that no limitation on number of service providers will exist on January 2009. However, foreign participation is permitted only through a joint venture with up to 80 per cent equity participation. Value-added telecommunication services have also been opened up with no restrictions on mode one and two. Foreign participation in however, is allowed only trough joint venture with up to 80 per cent equity participation.

Liberalization of the telecommunication sector is fraught with difficulties. Market structure, regulatory framework and technology are all evolving simultaneously making it difficult to foresee the changes necessary (Wickramasinghe, 2000).

3. Construction and Related Engineering Services

Nepal allows up to 51 per cent foreign equity in enterprises incorporated in Nepal for the supply of construction work for civil engineering and has made commitment in the WTO to increase foreign equity participation up to 80 per cent after five years from the date of accession.

4. Distribution Services

Distribution services are governed by the general laws of the country, such as the Company Act, 2021 (1964, as amended, 1997), the Industrial Enterprises Act, 1992 (amended in 1996), and the FITT Act, 1992. According to the FITT Act, 1992 no permission is granted for the establishment of foreign companies or for foreign investment in retail trade. Nepal has also not made any commitment to open the wholesale and retailing services in the WTO except for the wholesale and retailing services of radio and television equipment, musical instruments, and records, music scores and tapes with a maximum foreign equity of 80 per cent.

5. Education Services

Nepal has a total of 34,634 schools (primary, lower secondary and secondary), with 6,463,670 student enrolled in these schools. Out of this 4,502,697 are enrolled in primary education, 1,374,796 are enrolled in lower secondary education, and 586,177 are enrolled in secondary education. Of this, 23,435 schools provide primary education, 7,097 provide lower secondary education and 4,102 provide secondary education and 1,018 higher secondary schools. Nepal has 193 students per school, 4 teachers per school, 49 students per teacher and 129 students per trained teacher. Student-teacher ratio is highest in lower secondary, i.e. 60. In primary schools it is better at 49 and in secondary schools it is the best at 36. In general, student teacher ratio in Nepal is very high, which shows poorly on appropriate investment in Nepal.

Within development regions, Eastern region has 4,772 primary schools, 1,486 lower secondary schools, 812 secondary schools and 193 higher secondary schools. Student-teacher ratio is 57 among primary schools, 83 among lower secondary schools and 59 among secondary schools in this region. Western Region has 6,063 primary schools, 1,857 lower secondary schools and 1,151 secondary schools and 261 higher secondary schools. Student-teacher ratio is 38 in primary schools, 54 in lower secondary schools and 31 in secondary schools in this region. Mid-Western Region has 3,251 primary schools, 782 lower secondary schools and 378 secondary schools and 61 higher secondary schools. Student-teacher ratio is 63 in primary schools, 83 in lower secondary schools and 46 in secondary schools in this region. Far-Western Region has 2,505 primary schools, 726 lower secondary schools and 373 secondary schools and 80 higher secondary schools. Student-teacher ratio is 57 among primary schools, 75 among lower secondary schools and 38 among secondary schools. With 6,844 primary schools, 2,246 lower secondary schools and 1,388 secondary schools, and 423 higher secondary schools, the central region has the most number of schools. The central region also has the best student-teacher ratio in the country: 46 in primary schools, 45 in lower secondary schools and 28 among secondary schools.

Nepal has over 30,000 public schools, 4,500 private schools and 3,500 community schools. Of the public schools, 27 per cent fall in the Central Region, 26 per cent fall in the Western Region, 21 per cent fall in the Eastern Region, 15 per cent fall in the Mid-Western Region and 11 per cent fall in the Far-Western Region. Of the private schools, 43 per cent fall in the Central Region, 25 per cent fall in the Western Region, 20 per cent fall in the Eastern Region, and six per cent each fall in the Mid-Western and Far Western Regions. Of the community schools, 31 per cent fall in the Central Region, 23 per cent fall in the Western Region, 19 per cent fall in the Far-Western Region, 14 per cent fall in the Western Region and 13 per cent fall in the Mid-Western Region. The concentration of all school is in the Central Region, owing to the fact that the capital, Kathmandu falls in this region. There is a stark difference in the number of private schools in the Central Region versus other regions.

In 2004, Nepal had 121,670 students enrolled in higher levels of education. Of these, 132,777 were enrolled in Tribhuvan University, 2,958 were enrolled in Mahendra Sanskrit University, and 2,476 were enrolled in Kathmandu University. In 2003, 6,388 students were enrolled in Eastern University and 4,614 were enrolled in Pokhara University.

As can be seen from the above data, a large number of institutions, both government and private, are involved in the delivery of education services in Nepal. However, the quality of education is still poor as is evident from the high teachers to student, student per school and low teachers per school ratios in all the regions and levels. In addition to this, there are disparities in the qualities of education between the different regions.

Liberalization of the education sector is a big debate, not only in Nepal but also in many developing countries. Given the generally poor quality of education in Nepal, both due to the lack of human and physical infrastructure, it remains a big question if allowing more foreign investment will help improve the quality of education. However, whether or not a more liberal education services sector is an answer to this remains a big question.

Nepal has made commitments in the WTO to open higher education services , adult education services and other education except for education services funded from state resources with up to 51 per cent equity capital which will be increased up to 80 per cent after five years from the date of accession.

6. Financial Services

(a) Insurance

The insurance business in Nepal was dominated by a government undertaking, Nepal Insurance Company, which was established in 1947. After the enactment of the Insurance Rules 1968, only two new insurance companies came into existence during the period of more than two decades, one in 1974, and another in 1987, with foreign equity of 10 per cent. Because of the inward looking and restrictive policies, the insurance sector grew at a very slow pace before initiation of the reform program. With de-regulation in the form of the Insurance Act 1992, private as well as joint-venture insurance companies have entered the insurance market. Today, private sector dominates the insurance market. Out of the 20 insurance companies in the country, 15 are private companies, three are the branches of foreign insurance companies, three are joint venture companies and one is predominantly the government owned company. Within insurance and insurance related services, Nepal has covered the areas such as: life, accident and health insurance services, non-life insurance services, re-insurance and retrocession, services auxiliary to insurance including broking and agency services (Nepal Rastra Bank, 2006).

The insurance business is regulated by the Insurance Act, 2049 (1992), and by the Insurance Rules, 2026 (1969). Although there were no legal restriction imposed on the entry of privately owned domestic, foreign and joint venture insurance companies in the insurance market, the Insurance Rules 1969 granted discretionary authority to the Insurance Board for licensing. After the enactment of the Insurance Act, 1992 and Insurance Regulation, 1993, insurance sector showed organized growth in the country at an accelerated rate. It is under the Act that an autonomous Insurance Board, “Beema Samiti,” was established to regulate and control the insurance business in Nepal (Nepal Rastra Bank, 2006). The Board is the governing body for the execution of the Insurance Act. A licence is required to operate insurance business. National and foreign companies have to apply to the Board to be registered as insurance companies. The act also regulates the licensing of insurance agents and surveyors, which apply both to the nationals and foreigners. There is no limitation on the total number of licences in the insurance sector.

The 1992 Insurance Act has the following main features (Khanal et al., 2005):

> It’s mandatory for all the insurance companies incorporated in Nepal to offer at least 20 per cent of their shares to the general public through public issuance, foreign investors are allowed to hold up to 80 per cent of the total issued shares, and a single company cannot indulge in both life and non-life insurance.

Also, national and foreign companies have to apply to the Board to be registered as insurance companies. Cross-border supply is not permitted in the insurance services (Khanal et al., 2005). As per Nepal’s commitments in the WTO branches of insurance services providers will be allowed in Nepal by 1 January 2010.

b. Banking and other financial services

In the mid-'80s, the government's liberal economic policy was guided by the Structural Adjustment Programme of the Bretton Woods Institutions. In order to import advanced banking know-how, the Commercial Act of 1984 removed most entry and exit barriers in financial services. It allowed foreign banks to enter Nepal as joint-venture partners, with a maximum of 50 per cent of capital share. This has been raised to 75 per cent through regulation. Additionally, the private sector was also allowed to establish banks on their own provided they met criteria laid down by Nepal Rastra Bank (NRB).

Banking and other financial services are regulated by NRB, as provided by the Nepal Rastra Bank Act 2002, Central Bank Act 2012 (1955), the Commercial Bank Act (1974), and the Finance Companies Act 2042 (1985). A bank has to be established as a limited liability company under the Company Act 1984. Nationals and foreigners can equally apply for the establishment of a commercial bank. Any foreign commercial bank that desires to open a representative branch office or liaison office in Nepal may register it under the Company Act with the approval of the NRB. However, the shares of a commercial bank cannot be sold or transferred to any foreign national without approval of the Central Bank.

In 2005, the Nepali financial system consisted of 17 commercial banks, 35 development banks, five regional rural development banks (RRDBs), 117 postal savings banks (licensed by the government), 63 finance companies, 19 savings and credit cooperative societies licensed by NRB involved in limited banking activity, and 47 non-governmental micro-credit financial institutions. Commercial banks, development banks, RRDBs, finance companies, cooperatives and NGOs licensed by NRB are under the supervisory purview of the NRB (Nepal Rastra Bank, 2006).

As per Nepal's commitments in the WTO, branches of wholesale banking will be allowed in Nepal by 1 January 2010. However, the total foreign shareholding in any institution providing financial services is limited to 67 per cent of the issued share capital. Nepal has kept Mode 1 and Mode 2 unbound in this services sub sector.

7. Health-related and Social Services

There are a number of institutions, both government and private, involved in the delivery of health service in Nepal. In the year 2005/06, Nepal had 4,396 institutions that provided health services. Of these 87 were hospitals, six were Health Centres, 699 were Health Posts, 293 were Ayurvedic Service Centres, 3,131 were Sub-Health Posts and 180 were Primary Health Centres. Nepal also had 6,796 hospital beds. In the same year, Nepal had 5,824 doctors, 11,637 nurses, 7,491 health assistants, 3,190 health workers, 3,985 village level health workers and 62,546 other skilled workers (this includes Women Health Volunteers, etc). For a population of 26 million, Nepal has 0.2 physicians per 1,000 people. In 2003, Nepal spent US$12 dollars per capita on health. Nepal spent 5.3 per cent of its GDP on health and related service (The World Bank, 2006).

Nepal Medical Council Act provides for the establishment of a Medical Council for the purpose of regulating the health services in the country and registering medical practitioners according to their qualifications.

As per Nepal's commitment in the WTO, direct ownership and management of hospital services is allowed in Nepal through incorporation in Nepal and with maximum foreign equity capital of 51 per cent. Medical experts are allowed to work in Nepal for a maximum of one year with the permission of Nepal Medical Council.

The weakness of the regulatory body in the health sector described raises some urgent questions regarding the need to strengthen the regulatory body before further liberalizing the sector. Frequent changes in government lead to frequent reshuffling and mismatched deputation of manpower. As a result there is a lack of experienced, competent and visionary leadership in the government machinery (Maskay et al., 2006). Most proposals for reforms and liberalization in the health sector remain undecided due to the lack of competent institutional structure for monitoring of quality care, the tax system, etc. (Maskay et al., 2006).

In a country like Nepal, where inequalities are high, liberalization of the health sector could lead to further aggravation and marginalization of the poor. Liberalization of the private health sector without adequately strengthening the public health sector particularly that has been catering to the need of rural population is likely to aggravate the situation (Maskay et al., 2006).

8. Tourism and Travel-related Services

In the year 2006/07, 516,000 tourists visited Nepal. Nepal's foreign exchange earnings from tourism sector for the year was US$205 million. On average, tourists stayed 13 days and spent about US$60 per day. Earnings from tourism make up about three per cent of Nepal's GDP. 100,000 people are directly employed in providing services to tourists while 125,000 are indirectly involved in providing services to tourists.

In 2005, most tourists, 43.5 per cent, visited Nepal for pleasure. 15.6 per cent came to Nepal for trekking and mountaineering, 12.7 per cent came for pilgrimage 5.9 per cent came for business, 4.5 per cent came for official reasons and the rest, 17.9 per cent, came for reasons other than those specified above. In 2005, most of the tourists to Nepal came from Asia. Of the 61.3 per cent Asian tourists, 25.7 per cent came from India while 35.6 per cent came from the rest of Asia. 26.1 per cent came from Western Europe, 6.1 per cent came from North America, 2.2 per cent each came from Eastern Europe and Australia and the Pacific, 0.9 per cent came from Central and South America, 0.7 per cent came from other regions, and 0.3 per cent came from Africa.

Nepal has 110 star hotels and 896 non-star hotels. Of these, eight are five-star hotels, eight are four-star hotels, 17 are three-star hotels, 36 are two-star hotels, and 41 are one-star hotels (MOCTCA, 2007). Kathmandu has seven five-star hotels, seven four-star hotels, 12 three-star hotels, 23 two-star hotels, 20 one-star hotels and 100 nonsstar hotels. Pokhara has one five-star hotel, one four-star hotel, two three-star hotels, six two-star hotels, and 12 non-star hotels (HAN, 2007). The star hotels have altogether 10,715 beds and non-star hotels have a total of 28,669 beds. Kathmandu has 954 travel agencies while Pokhara has 30 travel agencies (MOCTCA, 2007).

Tourism services are regulated by laws and industrial acts such as the Tourism Act, 2035 (1978) amended in 2053 (1997); the Hotel, Lodges, Restaurants, Bar and Tourist Guide Rules, 2038 (1981); the Travel and Trekking Agency Rules, 2037 (1980); the Trekking and Rafting Rules, 2044 (1985); and the Mountaineering Rules, 2036 (1979).

As provided by the Foreign Investment and Technology Transfer Act, 1992, no permission was granted for the establishment of foreign companies, or foreign investment in the Travel Agencies, Trekking Agencies, Water Rafting, Pony Trekking, Horse Riding, and Tourist Lodging. Nepal has opened up the travel agency and tour operator service for foreign investment up to 51 per cent of foreign equity capital since it became a WTO Member in April 2004.

Foreign direct investment is permitted in the hotel industry, for which Governments permission is required as provided by FITTA, 1992. As per Nepal's commitments in the WTO up to 80 per cent of foreign equity capital is allowed for hotel, lodging services and graded restaurants.

Annex 6: Generalized System of Preferences (GSP) in Developed Countries

Resolution 21(ii) at UNCTAD II in 1968 called for the establishment of a "generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries." Under GSP preference-giving countries grant select products originating in developing countries reduced or zero tariff rates over the MFN rates. The LDCs receive special and preferential treatment for a wider coverage of products and deeper tariff cuts.

GSP in the United States: GSP in the United States was first enacted in the Trade Act 1974 and made effective in 1976. The U.S. GSP provides preferential duty-free entry to numerous products of over 100 countries and territories. Among the 127 beneficiary countries, 40 countries are considered least-developed beneficiary countries and are eligible for GSP treatment for a wider range of products and are not subject to the competitive-need limitations. Most dutiable manufactured and semi-manufactured products, select agricultural, fishery and primary industrial products are eligible for GSP treatment.

GSP in the EU: The first European Community GSP was initiated in 1971 for a 10 year period which was subsequently renewed for a second decade (1981–1991). On 1 January 1995, after the conclusion of the Uruguay Round, the Community adopted GSP Scheme for the 1995–2004 period. The European's Union's new GSP scheme for 2006–2008 came into force on 1 January 2006 and will be in place until 31 December 2008. The new regime has three schemes, i.e. general regime, GSP plus and special arrangement for LDCs (EBA). Currently, 146 countries and 25 territories, including all the LDCs, benefit from GSP scheme. Under GSP, the EU adopted Everything But Arms (EBA) scheme for LDCs in 2001. The EBA offers LDCs higher degree of market access for virtually all products; it grants all LDCs duty and quota free access to the EU market and it has no time limit. The excluded product under EBA is arms (product of HS chapter 93).

GSP in Japan: Japan originally established its GSP on 1 August 1971. The current scheme was adopted in April 2001 and will be in place until March 2011. The Japanese GSP scheme includes: a general preferential regime; and a special preferential regime. The general preferential regime is applied to imports of designated items from designated GSP beneficiaries. The special preferential regime is applied to imports from designated items from least-developed countries (LDCs). However, for agriculture and specific manufactured products there are special provisions. There are 155 beneficiaries of Japan's GSP, including 140 developing countries and 15 territories. Of these, 108 are GSP beneficiaries and 47 are LDCs. Imports of GSP-covered items from LDCs qualify for duty-free treatment. In addition, the current GSP scheme introduced duty free items exclusively for LDC.

GSP in Canada: Currently Canada provides non-reciprocal tariff preferences to developing countries under the Generalized Preferential Tariff, the Least Developed Country Tariff, and the CARIBCAN. In 1983, LDCs were granted a zero rate on GPT-covered products with exception of clothing, footwear, certain labour-intensive industrial products as well as some agricultural products. It also extended product coverage for LDCs and the GPT tariffs were lowered to two thirds of the corresponding MFN rates during the 1990s. In 2000, further 570 tariff lines were added to the duty free list for LDCs bringing the share of duty-free lines for LDCs to 90 per cent. From 1 January 2003 all remaining tariff and quota restrictions on imports from LDCs (with the exception of supply-managed agricultural products and Myanmar) were removed. The initiative included textiles and clothing and a modification of rules of origin.

GSP in Australia: Australia first extended unilateral trade preferences to developing countries in 1976 under the Australian System of Tariff Preferences. Australia's non-reciprocal preferential tariff schemes can be grouped into four categories: developing country preferences, special rates for specific countries, Forum Island Country preferences, and preferences applicable mainly to LDCs. The Australian government provides duty-free and quota-free access to the Australian market for the LDCs.

Annex 7: Tariff Rates of Least-developed WTO Members

Country	Binding coverage (%)	Bound rates (simple average)	Maximum duty
Angola	100	59.2	80
Bangladesh	15.8	163.6	200
Benin	39.3	28.3	100
Burkina Faso	39.2	41.8	100
Burundi	21.8	68.2	100
Cambodia	100	19	60
Central African Republic	62.5	36.2	70
Chad	13.5	79.9	80
Dem. Republic of the Congo	100	96.2	100
Djibouti	100	41	450
Gambia	13.7	102	110
Guinea	38.9	20.1	75
Guinea-Bissau	97.8	48.6	50
Haiti	89.2	18.7	70
Lesotho	100	78.5	200
Madagascar	29.7	27.4	30
Malawi	31.2	75.9	125
Maldives	97.1	36.9	300
Mali	40.6	28.8	75
Mauritania	39.3	19.6	75
Mozambique	13.6	97.4	100
Myanmar	17.4	83	550
Nepal	**99.4**	**26**	**200**
Niger	96.8	44.3	200
Rwanda	100	89.5	100
Senegal	100	30	30
Sierra Leone	100	47.4	80
Solomon Islands	100	79.2	684
Tanzania	13.4	120	120
Togo	14	80	80
Uganda	15.8	73.4	80
Zambia	16.7	106.4	125

Source: WTO/ITC/UNCTAD, 2007