

IMPLICATIONS OF THE WTO MEMBERSHIP ON THE NEPALESE AGRICULTURE

INTRODUCTION AND OVERVIEW

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BACKGROUND

Following years of negotiations, Nepal was offered WTO Membership in September 2003 during the fourth WTO Ministerial at Cancun, Mexico. She became 147th Member of the WTO on 23 April 2004 after ratifying the Membership. The WTO Agreements cover a wide range of areas in the sphere of economic policy and a host of topics, ranging from trade in goods and in services to intellectual property rights. The Membership is viewed as a source of opportunities and challenges. In this context a commonly asked question is the implications it has on the economy of Nepal. While the opening of opportunities and challenges is generally acknowledged, ascertaining their nature and magnitude requires careful analysis. Nepal is not unique on this – similar questions were asked in other countries and are still being asked.

All WTO Agreements, Decisions and Understandings will have some impact on the agricultural sector. However, there are some Agreements that have a more direct bearing on it. These include the Agreements on: Agriculture (AoA); the Application of Sanitary and Phytosanitary Measures (SPS); Technical Barriers to Trade (TBT); and Trade-Related Intellectual Property Rights (TRIPS). Other important Agreements include those on trade remedy measures. One challenge for a WTO Member is to fully understand the meaning of all these Agreements from both legal and trade perspectives. This is essential *inter alia* for taking full advantage of the new trading opportunities created by the WTO Membership and for defending own trade interest. All in all, there is a great deal of homework and preparations to do. It is in this context that the Ministry of Agriculture and Cooperatives (MoAC), as the focal point for agriculture on WTO matters in Nepal, took initiatives to prepare itself for the challenges in the post-accession period. The first important step in this process was building human resource capability on WTO matters within the MoAC. This volume reports the analyses of 17 background studies. Yet, by no means it exhausts all the topics and issues.

The rest of the chapter is organized as follows. The following section provides an overview of the context within which the project was conceived, formulated and implemented, including the key issues and challenges facing a new WTO Member. The subsequent section summarizes the main findings of the various analyses reported in this volume. The last section discusses, as key recommendations, a substantive work programme in terms of five core areas for the MoAC to focus on, and an outline of an institutional arrangement within the MoAC for undertaking WTO-related works.

CONTEXT OF THE PROJECT

The MoAC has been taking initiatives for some years towards building trade policy capacity with WTO as the main focus. For example, a two-day awareness-raising workshop was held in Kathmandu in the summer of 1999 in collaboration with FAO. Fifty officials of the Ministry attended the workshop where the provisions of the WTO Agreement on Agriculture (AoA) in particular were presented and discussed. This was followed by a FAO-organized South Asia regional workshop in Kathmandu in November-December 2000, which was attended by 16 officials from Nepal. The workshop focussed on the WTO Agreements that have direct consequences for agriculture, notably the AoA, SPS, TBT as well as TRIPS in the context of bio-diversity and the protection of plant variety. In the mean time, other seminars have been organized in Nepal on one or more of these Agreements. The Ministry has also been organizing in-house discourses on these issues from time to time.

In continuation of its efforts on capacity building, the project *Implications of WTO Membership on the Nepalese Agriculture* was launched. The United Nations Development Programme (UNDP) funded the project while FAO agreed to provide technical assistance. The project had two main, inter-related objectives: building and strengthening human resource capability in the MoAC to understand and analyse WTO Agreements that have a direct bearing on agriculture; and to analyse the implications of these Agreements on the Nepalese agriculture. This was considered to be an essential first step for Nepal to assume new obligations and challenges and to position itself to take advantage of new trading opportunities in the agricultural sector following the WTO Membership.

As the focal point for agriculture on WTO matters, the MoAC will need to meet a number of obligations. First, periodic notifications to the WTO on matters such as domestic support measures need to be prepared on a timely basis and the policies and practices defended whenever questioned by other WTO Members. Second, the Ministry will have to monitor and analyse notifications by other WTO Members with implications for the Nepalese agriculture. Third, the Ministry may need to prepare briefs and statements for Nepal's mission to the WTO in Geneva in response to queries and requests for information from other WTO Members. In addition, Nepal needs to develop trade surveillance capability so that analytical briefs can be prepared on trade policy developments of other WTO Members that are likely to have implications for the Nepalese agriculture and which need to be raised at the regular meetings of various WTO Committees. Thus, there are many obligations and responsibilities that an effective WTO Member is expected to discharge. This means building in-house ability to understand the WTO Agreements, issues and to analyse their implications for Nepal. The alternative is to be what may be called a sleeping Member of the WTO.

The challenges and obligations are obviously more daunting at home. Throughout the accession process, and thereafter, all stakeholders in Nepal are eager to know the meaning and significance of the WTO Membership, especially on their implications for the economy in terms of benefits and costs. At the same time, there was, and continues to be, a great deal of confusion when it comes to the WTO issues. It is the responsibility of the government to respond to these re-

quests for information and analysis. More importantly, WTO Membership also implies that Nepal may need to adjust domestic policies and legislation as per the general WTO rules and her commitments at the time of the accession. Ultimately, to take advantage of the WTO Membership, it is essential to be competitive in trade, both in exports and in the domestic market. Currently, India absorbs bulk of Nepal's agricultural exports within the framework of a bilateral preferential trade agreement, giving an indication that Nepal is not competitive on a most-favoured nation basis both in the Indian and other markets. To break that dependency it is essential to be competitive. This is the most important challenge for Nepal.

This is the context of the project design. The project aimed to achieve its capacity building objective through a series of inter-related activities. First, it was decided that there should be in-depth analysis of all major WTO Agreements and provisions that have a direct bearing on agriculture for which 17 topics were identified and background papers prepared (Box 1). Second, to build capability within the Ministry the best way would be learning by doing. For this, it was agreed that as many officials of the Ministry should participate in the preparation of the background analyses as would be practicable. Thus, out of the 39 individuals who pre-

Box 1

List of background studies prepared under the project

Agreement on Agriculture

- . Domestic support measures
- . Market access
- . Export competition

SPS Agreement

- Trade in food products
- Trade in live animals and animal products
- Trade in plants and plant products

Topics related to the Agreement on TRIPS

- Legal framework for plant variety protection
- Potential products for Geographical Indications

WTO trade remedy measures

- Import surge and trade remedy measures

Topics on trade policy

- Nepal-India Trade Treaty and WTO compatibility
- Foreign direct investment on agriculture and agro-industries
- Trends in backward linkages and domestic sourcing of raw materials by agro-industries

Commodity case studies

- Tea
- Vegetable *ghee*
- Fruits
- Poultry Products
- Vegetable seeds

pared the background analyses, 31 were officials of the Ministry. This is a sizable critical mass of individuals within a single Ministry knowledgeable of the WTO Agreements and issues and with analytical capability. Even with some attrition over time, this capability will remain within the Ministry for many years to come. Initiatives of the Ministry to continue their involvement in this line of work will minimize erosion of the capability thus created.

A two-day workshop was organized in Kathmandu in November 2003 where the authors of the 17 studies presented their analysis and findings.¹ Each presentation was followed by comments of a panel of commentators and by floor discussion. Most of these comments have been incorporated in the following 17 chapters.

A SUMMARY OF THE FINDINGS OF THE BACKGROUND STUDIES

All of the 17 background studies prepared under the auspices of the project are presented as chapters here. They may be grouped into two categories: i) topics related to one or more of the WTO Agreements that have direct bearing on agriculture; and ii) broader topics related to trade policy. The first nine papers listed in Box 1 (Chapters 2-10) are in the first category, and the remaining eight (Chapters 11 to 18) are in the second category. Some of the latter studies also raise issues in other WTO Agreements. For example, the WTO Agreement on Trade-related Investment Measures or TRIMs features prominently in the study on backward linkages. The commodity case studies in particular demonstrate how more than one WTO Agreement has implications for the production and trade of commodities.

Most chapters in the first category of topics begin with an introduction to the basic rules and provisions of the relevant Agreement, which should be of interest particularly to those readers who are not conversant with the basic WTO rule. Following this, the studies typically analyse Nepal's case, in terms of the implications for Nepal, as well as selected key issues. Some of the chapters also include a small section on India, in view of the importance of Indian agricultural and trade policies for Nepal. All chapters conclude with a summary and some suggestions, including areas for further analysis in several cases.

Agreement on Agriculture

The AoA was the outcome of the Uruguay Round (UR) negotiations that started in 1986 and concluded in 1994. The long-term objective set by the AoA is to establish a fair and market-oriented agricultural trading system through substantial reductions in agricultural support and protection. Three background studies presented here (Chapters 2-4) cover the three main "pillars" of the AoA. These are domestic support measures, market access and export competition.

Domestic support measures

The focus of the domestic support provisions of the AoA is on limiting government subsidies on those measures that distort trade, while no limits are placed on support measures that do not distort trade. Four categories of measures are

¹ The Workshop agenda and the participants' list are in Appendices I and II at the end of this volume.

classified as non-distorting or exempt from disciplines – Green Box, Blue Box, development measures for developing countries under Article 6.2 of the AoA, and *de minimis* levels of support, i.e. outlays up to 5% of total value of agricultural production for developed countries (10% for developing countries). All other measures are classified as non-exempt (or Amber Box measures). These include, for example, subsidies incurred in supporting farm price and input subsidies. The approach taken in the AoA was to quantify the total level of non-exempt support for a base period (1986-88) and to reduce this total during the implementation period.

A majority of the developing countries did not have non-exempt support during the base period. So there was nothing to reduce. This is true for Nepal also. Thus, for these developing countries, the maximum level of non-exempt subsidies that can be granted is up to the *de minimis* level. In this context, the main question asked in the background study (Chapter 2) is whether the WTO rule constrains Nepal from supporting its agriculture through non-exempt measures. Note that, in contrast, no limits on support outlays are set in the case of exempt measures, and so there are no negative implications.

To answer whether the WTO rule constrains Nepal from supporting its agriculture through non-exempt measures the study estimates the levels of domestic support to agriculture under various categories or Boxes noted above. The main conclusion was that support to Nepalese agriculture is very low, relative to what the AoA permits. Currently, Nepal does not have any product-specific support programmes (e.g. support price for paddy) but the AoA allows this if the government wishes to implement such programmes in the future. The allowed limits are 10% of the value of output of the commodity which were estimated in the study as being up to Rs. 3, 223 million for paddy, Rs 185 million for sugarcane and Rs 10 million for tea. In addition, Nepal can grant subsidies that are not specific to any commodity (e.g. fertilizer subsidy) up to 10% of the value of agricultural output (VoAP). Compared with this limit of 10%, actual subsidies in the 1990s have been very low - less than 1% of the VoAP. In fact, even if the entire government budget on agriculture is assumed to be subsidies, the ratio does not exceed 5%. So, the key message is that the AoA provides ample room for Nepal to support its agriculture. The real constraint is resource, not the AoA.

In addition, the study provides detailed information on domestic support to agriculture in Nepal under the exempt measures. These are: agricultural research, extension, irrigation and so on. Overall, the message is the same – the actual level of support to agriculture is very low. In view of this, the study strongly recommends focussing debate on raising investment on agriculture in Nepal if the sector is to be competitive and thus benefit from WTO Membership.

Market access

At the time of the WTO accession, Nepal committed to bind all, i.e. without exception, agricultural tariffs. The simple average of the bound rates for agricultural products is 51% initially and 42% by 2006 after reduction. Some 80% of the bound tariffs are concentrated in the 30-50% range, with tariff on 90% of the tariff lines being at least 30%. Nepal did not have other market access commitments, e.g. there

are no Tariff Rate Quotas (TRQs), nor Nepal has access to the Special Safeguards (SSG). As the bound tariffs are already fixed there is little that can be done about it. For this reason, the focus of the paper is on discussing economic implications of alternative levels and structures of applied rates, considering the interest of the Nepalese agriculture. This is also a key policy concern in Nepal.

A question asked in the study is whether the bound rates provide necessary policy space to ensure some protection and to vary applied tariffs (upwards) when needed, for example, to respond to import surges? The main conclusion - based on a comparison of bound and applied rates for selected key product groups, notably cereals, meats, dairy, sugar, fruits and vegetables – is that there is a considerable degree of policy flexibility for a majority of agricultural products. That is to say, some protection can be provided and tariffs can be raised to higher levels in response to external shocks without breaching WTO commitments. This flexibility will be useful even if Nepal does not wish to protect some sub-sectors. The analysis also shows that there is a modest degree of tariff escalation. This means that the tariff structure favours processing activities and value addition in the country. But this is at the cost of less protection to primary products and thus to farmers. In some product groups, revenue consideration also seems to be a key motive.

The study also discusses pros and cons of alternative tariff structures, namely escalating tariffs; uniform nominal tariffs; different nominal rates aimed at uniform effective protection rates for all products/sub-sectors; and tariff structure with “peak” features. A number of issues are identified for further research and analysis.

Export subsidies and export restrictions

In common with all least developed countries (LDCs) and a majority of the developing countries, Nepal does not subsidize exports. At the time of the WTO accession, it committed not to subsidize exports in future also. One of the conclusions of the study is that this commitment is unlikely to have any negative implications for the Nepalese agriculture for two reasons. First, export subsidization is not a sound economic policy. Second, Nepal could not afford export subsidies at its low level of economic development. On the other hand, there were several instances in the past when export subsidization by other countries had some negative effects on the Nepalese agriculture. Therefore, it is in Nepal’s interest to tighten WTO rules on export subsidy.

There are, however, some provisions in the WTO Agreements that allow developing countries to assist exports and export-oriented enterprises. They can grant subsidies to reduce the cost of marketing, and domestic and external transport costs (e.g. assistance by Nepal to export oranges to Bangladesh). Second, the WTO Subsidies Agreement allows these countries, under certain condition, to assist export sectors through various incentive measures, e.g. duty drawbacks, tax breaks, currency retention schemes and so on. Hence the various export assistance schemes that Nepal also has are WTO-compatible. The challenge is to make sure that these funds and various fiscal incentives (or revenues foregone) are not misused. The study also notes that there is virtually no analysis undertaken to

evaluate the effectiveness of these schemes, which makes it very difficult to discuss the desirability or otherwise of these schemes.

The SPS Agreement and Trade in Food Products, Live Animals and Livestock Products, and Plants and Plant Products

With the prohibition of quantitative restrictions on trade and the gradual reduction of import tariffs, non-tariff trade regulations will be increasingly important for accessing markets. Under the WTO framework, Members are allowed to regulate trade in order to protect human, animal or plant life or health, provided this is not disguised protectionism. The SPS Agreement was negotiated as part of the Uruguay Round Agreements in order to strengthen the multilateral framework of rules and disciplines on sanitary and phytosanitary measures. Three background studies analyse the implications of the SPS Agreement – Chapter 5 in relation to trade in food products, Chapter 6 on trade in live animals and livestock products, and Chapter 7 on trade in plants and plant products. Taken together, the three chapters introduce the basic provisions of the SPS Agreement and discuss various issues in the context of Nepal. Gaps and deficiencies in standards are identified and some recommendations made.

It is a common knowledge that the level of technical standards of foods and other products in Nepal is fairly low, relative to standards set by international standard-setting bodies namely the Codex Alimentarius Commission, the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). These gaps will continue to be the major impediment for increasing export of agricultural products, thus undermining the gains of WTO Membership.

All three studies identify these gaps and deficiencies, and major issues in the respective commodity sub-groups addressed by them. By and large the main issues and constraints identified by the three studies are similar. They include: lack of comprehensive policies on standards which results into ambiguous enforcement by various agencies; lack of preventive and proactive measures in safety management; inadequate consideration to horizontal standards such as limits for pesticides, heavy metals, mycotoxins, and food additives; lack of good practices in production, processing and marketing; poor state of laboratory equipments; weak export inspection agency for inspection and certification of export products; lack of coherence between various laws; poor coordination among the law enforcing agencies; and inadequate capacity for equivalency, and mutual recognition agreements (MRA). Accordingly, the main conclusions reached point towards the: urgency of revising legislations on standards to make them compatible with the SPS Agreement; importance of addressing preventive approaches to safety management in existing regulations; redefining the role of consumers, traders and other stakeholders in the existing regulatory frameworks; and the need for in-process monitoring and assurance system to be practiced by producers, manufactures, handlers and traders.

The wide gap that exists in human resource capability is stressed in all three studies. For example, Nepal currently does not have capacity to undertake risk assessment and to determine appropriate levels of protection. Developing this capac-

ity requires a multi-disciplinary team from several subject areas. Other recommendations made include strengthening of Contact Points, Committees and National Enquiry Point for technical standards (e.g. Codex Contact Points, Codex Committees and Codex National Enquiry Point) as called for by the SPS Agreement. The importance of the equivalency and mutual recognition of standards as the most cost-effective means of facilitating trade is stressed in all three papers.

The study on trade in food products (Chapter 5) makes comparison of Nepalese and Indian food standards, with Codex standard as the reference. This is useful as one key objective is harmonization of standards between countries to the extent possible. At present, there is no Codex standard for a number of products, e.g. ghee (from milk), vanaspati ghee, coffee, tea, spices, biscuit and some food grains. Moreover, standards set by Nepal and India also differ for several food commodities, which has been a source of trade friction in the past. The study on plants and plant products (Chapter 7) proposes a framework for encouraging private sector participation in the efficient delivery of phytosanitary services.

Plant Variety Protection, Geographical Indications and the TRIPS Agreement

Two background studies analyse two key components of the TRIPS Agreement in relation to agriculture: intellectual protection of plant variety (Chapter 8) and Geographical Indications (Chapter 9).

The TRIPS Agreement requires all WTO members to provide for intellectual property protection for plant varieties, either by patents or by an effective *sui generis* system or by any combination thereof (Article 27.3 (b)). Work is underway in Nepal on legislation on this. The focus of the study (Chapter 8) is on analysing alternative models for the protection of plant variety and to offer some insights on farmer's rights and breeder's rights, two key elements of the model.

Considering its level of economic development, resource endowment, agricultural and industrial policies, public and private research capability, and special needs of small farmers and indigenous communities, the analysis concludes that a *sui generis* model of plant protection serves the best interest of the Nepalese agriculture. Among the other alternatives, the patent model is not found suitable for Nepal due *inter alia* to inadequate "seeds security" provisions while the UPOV 1991 model does not address effectively farmers' concerns. The paper identifies a number of essential features of the *sui generis* model and discusses required legislative and administrative provisions for developing a *sui generis* legislation.

The contribution of the second study (Chapter 9) is on identifying traditional Nepalese commodities for the purpose of Geographical Indications (GIs). Article 22 of the TRIPS Agreement provides a framework for the legal protection of GIs, which are prominent names of products identified to an area in a geographical sense. Although only wines and spirits are covered currently, debates are taking place to expand the current GI coverage to additional products also.

The study gives profiles of 10 selected products for likely GI registration. These are: *Jumli marshi* (rice from Jumla); *Pharpinge/Chhaimal Naaspaati* (pear from Pharping and Chhaimal); *Pyuthane moola* (radish from Pyuthan); *Ilame chi-*

yaa (Ilam tea); *Nepali kagaj* (hand-made paper); *Sallyani/Pyuthane timoor* (Nepali pepper from Sallyan and Pyuthan); *Koshi ko Jalkapoor* (Jalkapoor fish from Koshi river); *Kulekhaani ko asla maachhaa* (*Asla* fish from Kulekhani); *Achhaami gai* (cow from Achham); and *Lulu gai* (Lulu cattle). In addition 77 similar other products are listed. The paper also makes some suggestions for taking the process of the identification of the GI products and their profiling further.

Import Surges and Trade Remedy Measures

Virtually all trade agreements contain a safeguard provision that triggers response measures in order to safeguard certain overriding interests. The most typical problem that leads countries to resort to the remedy measures are import surges associated with both fair and unfair trade practices of trading partners. In Nepal itself, local newspapers frequently report the occurrence of import surges and their negative effects.

Chapter 10 introduces various WTO trade remedy measures and presents an analysis of import surge for five selected Nepalese agricultural products. The study notes that import surges could occur for many reasons, including unfair trade practices by exporting countries. Likely negative effects were analysed on the basis of indicators like crop area, production, domestic prices and industry capacity. The study finds that import surges do not necessarily and always lead to negative effects. For example, an import surge associated with a crop failure merely offsets the production shortfall without any negative effect. On the whole, observed statistical associations between import surges and impact indicators were fairly weak. However, the main reason for this seems to be the inappropriateness of the available statistics in Nepal for identifying the phenomenon of import surges and analysing negative effects. For example there are no statistics on quantity or volume of imports from India (only value data are available). Nor are the data available on monthly basis. The available data are often highly aggregated.

In addition to enacting legislation on trade remedy measures, the study recommends a trade surveillance system within the MoAC in order to identify surges on a timely basis and to take appropriate response measures. Such a system cannot function without good quality statistics. For this as well as other reasons, partnership with farm and trade associations (e.g. poultry association) would be valuable. This chapter also discusses the safeguard rule in the Nepal-India Trade Treaty and some related issues.

Other Topics on Trade Policy

Nepal-India Trade Treaty and WTO compatibility

The main focus of the study (Chapter 11) is on the question of WTO-compatibility of the Nepal-India Trade Treaty. Given that India accounts for about 80% of Nepal's total agricultural export, almost all of it within the framework of the Treaty, WTO-compatibility of the Treaty is of immense significance for Nepalese agriculture. The main conclusion reached is that some of the provisions of the Treaty are inconsistent with the WTO rules. The Treaty is neither a Free Trade Area (FTA) because it does not meet the "substantially all trade" criterion of GATT

Article XXIV as industrial products are excluded from reciprocal preferential treatment nor can it be justified under the Enabling Clause as a Preferential Trade Agreement (PTA) because India does not grant to other LDCs the same preferences given to Nepal. In other words, there are problems justifying the Treaty in the WTO. The third option is to obtain specific waiver (under Article IX of the WTO Agreement). This requires India to request and obtain the waiver. While this is possible, a waiver is only a second - or third-best way to continue trade agreements in view of the uncertainty involved. Other LDC members of the WTO, notably Bangladesh and Bhutan from this region, could object to the waiver if they feel that there are substantive gains to be made from the preferences.

The study considers some options for making the Treaty WTO-compatible. For example, it can be made a FTA by making trade in industrial goods also free for both parties. Similarly, the Treaty may be justified as a PTA under Enabling Clause by extending preferences to other LDCs also. There are many ifs and buts in both these options, with different economic consequences for Nepal and India, as well as to Bangladesh and others. The study assesses that it is unlikely that these changes would be acceptable to India. Some of the required changes may also not be in Nepal's interest.

Given these uncertainties, the study considers the option of South Asian Free Trade Area (SAFTA) as the middle way between the current PTA and a most-favoured nation (MFN) trade regime. While Nepal would not lose much in terms of preferences if SAFTA can include significant preferential treatment to the LDCs, SAFTA would also be WTO-compatible. The study notes that very little analytical work has been undertaken in Nepal on the costs and benefits of alternative trade regimes. As a result, debates on these issues do not seem to be based on informed analysis.

Foreign direct investment on agriculture and agro-industries

There is a synergy between trade liberalization and foreign direct investment (FDI). The legislative and policy framework the WTO membership entails are conducive to FDI. The study on FDI (Chapter 12) with a focus on agriculture and agro-industries was undertaken considering this context of complementarity. The study discusses a number of questions notably the followings. What has been the experience of FDI in agriculture and agro-industries? Are constraints and opportunities in this sub-sector different from other sectors? What is particular in this sector to attract FDI? What could be done to encourage increased FDIs that are beneficial?

The main findings and conclusions of the study include the following. Foreign investment in agro-based industries results in to similar benefits and faces problems as is in other sectors; there are some problems and complaints specific to agro-industries (e.g. difficulties in sourcing domestic agricultural raw materials in acceptable quality and volume, transport bottlenecks, intellectual property protection); Nepal has liberal macro policies but not a business-friendly environment; there are some issues on Nepal's attractiveness for FDI vis-à-vis the neighbouring states of India; there are some problems with exit policy; and trends in FDI are strongly influenced by Nepal-India Trade Treaty. Overall, the study finds that there

are no negative implications on the FDI of the WTO membership. If anything these are positive.

Trends in backward linkages and domestic sourcing of raw materials by agro-industries

This study (Chapter 13) reviews the extent of backward linkages of agro-based industries in Nepal in terms of increased use of domestic raw materials and identifies opportunities and constraints for promoting the use of domestic raw materials. The chapter also discusses some preliminary implications of the WTO Agreement on TRIMs in this area.

The main observations and suggestions of the study include the following. First, current tariff structure discriminates against the use of local raw materials by virtue of low tariffs on imported raw materials and higher duties on processed products. Balancing the interest of primary producers and processing industries requires good economic analyses. The study also discusses the likely effects of export restrictions and taxes. It notes that such policies lead to increased use of local raw materials as their prices are depressed, although farmers could lose from such policies. It suggests supporting institutional innovations like group approach to production and marketing, and contract farming to link small farmers with markets and industries. The study also finds that domestic policies and laws are mostly compatible with the Agreement on TRIMs. In other way, the TRIMs Agreement will not have any negative implications on the domestic sourcing of raw materials.

Commodity case studies - tea, vegetable ghee, fruits, poultry products and vegetable seeds

The background studies covered so far are of thematic nature in the sense that they analyse specific WTO Agreements and some topics on trade policy. The primary purpose of undertaking commodity case studies was to understand where and how various WTO-related provisions come into play in affecting the production and trade of the selected commodities. Thus these case studies are like “applications” of a more theoretical or thematic analyses of particular WTO Agreements.

The issues facing these commodities are often different. So are the extent to which various Agreements come into play. Among the various WTO Agreements, the AoA is expected to have the least implications for commodity policies while the SPS Agreement (as well as the TBT Agreement) will impact the most. This is because the AoA provides to Nepal considerable room for providing domestic support to the commodities, if the government so decides for other reasons. Similarly, Nepal's bound tariffs in the range of 30-40% can be considered to be high enough to protect the commodities if so desired, as well as to safeguard against external shocks. The AoA, as well as the WTO Subsidies Agreement, also provides adequate policy space to assist the exportation of these commodities if necessary. By contrast, Nepal must comply with the technical standards for food products, livestock and plants of importing countries that are typically the standards set by international standards-setting bodies. There is a wide gap in these standards and those of Nepal.

Given Nepal's high dependency on trade with India, the provisions of the Nepal-India Trade Treaty are perhaps more important currently than the WTO Agreements. This is certainly the case for vegetable ghee (Chapter 15) where the problems facing the industry include: uncertainty on account of periodic revisions of the Treaty; value addition issue; the likely erosion of the margin of tariff preferences if India lowers its bound tariff on vegetable ghee; the hassles involved in exporting ghee through India's State Trading Enterprise under canalization; the import surge claim by India; the luxury tax/countervailing duty; allocation of export quotas by Nepal; and issues on quality standards, assurances and inspections.

In the case of fruits (oranges and apples), these products suffer from low productivity at the farm level and low competitiveness due to high marketing costs. Seasonality in production was found to be a major source of problems in other areas, e.g. in marketing and trade, storage, alternative use of the fruits (e.g. processing). The study also discusses policy issues like subsidies on marketing and export, and cold storage, as well as the importance of promoting institutional innovations like group approach and contract farming. Also discussed are difficulties on account of India's quarantine practices and regulation on transport trucks.

A particular recommendation is developing the competitiveness of vegetable seeds as a strategic export commodity. Although the experience so far has not been encouraging, Nepal seems to have all the important ingredients for a successful seeds industry. These include: Nepal's agro-ecological diversity; proximity to large South Asian markets, notably India, as well as China; the high-value, low-volume nature of the product; and intellectual property protection to plant breeders and foreign investors on account of the TRIPS Agreement. There are many examples in the world where governments have been able to develop competitive advantages for selected, strategic products with favourable initial ingredients. This is a matter of setting a vision and working towards the goal.

MOVING FORWARD: KEY RECOMMENDATIONS FOR THE MOAC IN PARTICULAR

Competitiveness is the key to success in trade. As the reform process within the framework of the WTO deepens, the role of traditional policies such as border protection and subsidies becomes less and less important in influencing competitiveness. The WTO does not constrain countries from supporting their agricultural sector through measures that are not production- and trade-distorting. These include many things like roads, irrigation, electricity, research and technology dissemination, product standards, rural education and so on. WTO also encourages policies that do not distort prices and incentives. For Nepal the challenge is to identify and develop its comparative advantage and competitiveness using these instruments, as is to all WTO Members.

All the 17 chapters in this volume conclude with some suggestions specific to those topics, together with suggestions for further research and analysis. Many of these messages were also summarized in the previous section. Therefore, in order not to repeat them here, the rest of this sub-section reports some of the salient, crosscutting suggestions in the form of five core areas for the MoAC to focus on.

Core Areas for Focus by the WTO Desks of the MoAC

The WTO Desks within the MoAC (discussed below) will have to lead, coordinate and implement a substantive work programme on trade issues. For the sake of greater clarity, the activities are categorized into the following five core focus areas: WTO notifications and similar reporting works; mainstreaming agricultural trade issues in national policies and programmes; trade capacity building and trade policy analysis; information provision and collaboration with the private sector and civil society organizations (CSOs); and agriculture-related legislative reforms.

WTO notifications and similar reporting works

All WTO Members are required to fulfil some reporting obligations. These include notifications on domestic support measures and the implementation of new sanitary or phytosanitary measures, and replies to queries raised by other Members. In addition, an “active” WTO Member interacts with the work of the WTO in many different ways, taking interest in relevant notifications made by other Members, submitting counter-notifications, raising questions and issues in various WTO Committees and so on. Discharging these responsibilities would be one core activity of the national WTO Desks, in their respective areas of competence. In addition, they may need to prepare policy briefs and statements for the Nepalese delegation to the WTO. Eventually, Nepal also needs to develop trade surveillance capability so that analytical briefs can be prepared on trade policy developments of other WTO Members that have negative implications for Nepal.

Mainstreaming agricultural trade issues in national policies and programmes: Trade and WTO issues will be increasingly prominent in many areas of economic policies. Policies *inter alia* on competition, trade and investment are examples of the work in future. From the MoAC perspective, the most important challenge is to ensure that national economic policies do not undermine the interest of farmers and the agricultural sector. For example, the MoAC could play an active role in the work of the Tariff Board when it comes to determining applied tariffs on agricultural products. Similarly, in the context of granting incentives to commodities like tax breaks and duty drawbacks, the Ministry could ensure that agriculture and agro-industries also benefit from such incentives. All macro-economic policies impact on the agricultural sector. Therefore it is important to ensure that these policies do not discriminate against the agriculture sector.

The other important area where agricultural trade issues need to be mainstreamed or properly reflected is within the programmes of the MoAC itself. For example, the message that production has to be driven by markets, both domestic and external, and that food quality plays an important role along with cost of production, has to be disseminated and explained to farmers through the network of the extension programme. Similarly, several background studies have stressed on the importance of reprioritising research resources so that the new production technology helps farmers to link to markets and agro-industries. These changes are inevitable under the pressure of markets, but leading the process by the Ministry itself can save resources.

Capacity building on WTO Agreements, negotiations and trade policy analysis

This is a core focus area. It encompasses several related activities – a thorough understanding of the WTO Agreements, relations between the provisions of these Agreements and regional or bilateral trade agreements, skills in trade negotiations, trade policy analysis to support negotiations and so on. Building capacity to meet these challenges should be one of the main areas of the WTO desks. There is no unique way of building this capacity. The best way is learning by doing, as was done in this project where 40 individuals, most of them staff members of the MoAC, undertook analyses of various WTO Agreements. The primary responsibility of continuing this process, i.e. maintaining and improving the skills of this critical mass of officers within the MoAC, should lie with the WTO Desks of the MoAC. The Desks could lead and facilitate the process of trade policy analysis within the Ministry on a continuous basis. One of the key observations of many background analyses in this volume is that there is very little economic analysis of agricultural trade and commodity policies in Nepal, which is a significant handicap for informed and meaningful debate on policies and experiences. A strong recommendation common to most background studies is that there should be an effective economic analysis unit within the MoAC. An activity that can be initiated without any delay is for the WTO units to organize periodic interaction programmes on various WTO issues involving the MoAC officials, including those who participated in this project.

Many background studies point to the need for improving the management and presentation of agricultural statistics. First, given that the context here is WTO, the format for agricultural statistics should follow the one that is widely used for trade purposes, i.e. in terms of the Harmonized System (HS) classification, preferably at the six-digit level. Second, at least in its trade-related work, the MoAC should adopt the same definition for agricultural goods as used by the AoA (as listed in Annex 1 of the AoA). This means, for example, refined sugar and hides and skins are not industrial products but agricultural commodities. Third, efforts should be made to reconcile government statistics with those maintained by the private sector. Sometimes, the discrepancies are too wide for any meaningful dialogue to take place with the private sector on commodity and trade policy issues.

Information provision and collaboration with private sector and CSOs

There is a great deal of demand for information on the implications of the WTO Membership, and a great deal of confusion too. Different stakeholders will need different types of information. For example, traders in the export business would need to know about sanitary or phytosanitary regulations and certification procedures at home and in the export markets. The primary responsibility for the provision of such information lies on the government, in part because of the representation at the WTO. Other types of information may require economic analysis, e.g. the impact of the WTO Membership on the tea sector. The MoAC could take a number of initiatives through its WTO Desks. First, policy briefs can be prepared and disseminated. To begin with, the briefs can be based on the background studies in this volume itself. Second, training materials can be prepared for dissemination to farmers through the extension network. Third, a trade website on agricultural

issues would be needed eventually to post all these materials plus specialized information, particularly those that are useful for traders.

Many chapters in this volume have stressed on the value of public-private partnership in a wide range of areas. For example, the study on SPS Agreement and trade in plants and plant products raises the possibility of this partnership in delivering effective quarantine services. The poultry and other commodity case studies call for this partnership in order to improve statistics, analysis and, eventually, policies. One significant positive development in Nepal in recent years is the emergence of a strong private sector with specialized knowledge on commodity and trade issues. The Agro-Enterprise Centre (AEC) of the FNCCI has an excellent network of farm and trade associations. The AEC could be a bridge between the MoAC and these private sector entities. In parallel, there is a strong community of NGOs and CSOs. Some of these NGOs have developed capability on trade issues. Although there is some interaction between these organizations and government officials, there is no formal framework that facilitates such interactions and fosters a partnership. Suggestions are made in the studies for organizing periodic Round Tables with trade and farm associations, on commodity and trade issues, including on import surges and their effects, as well as on statistics. Some joint studies prior to such meetings would also be useful. The WTO Desks could play a lead role on this from the government side. Similar activities could be organized with the NGOs.

Agriculture related legislative reforms

One major implication of the WTO Membership is the need to revise the existing laws and/or to enact new laws to make them consistent with the WTO rules. Nepal has committed to a timetable or deadlines for this action at the time of the WTO accession. Several background studies, notably those on the SPS Agreement and Agreement on TRIPS, discuss these requirements in detail. These are also found in the Report of the Working Party on the accession of Nepal², and a recent FAO review of Nepal's legal regime in the area of agriculture.³ Work has already been initiated in a number of areas. The WTO Desks of the MoAC should take an active interest on the process because there is a synergy between other WTO-related works of the Desk and the effective implementation of the legislations on the ground.

Institutional Arrangement

A WTO Branch is already functional within the Agri-business Promotion and Statistics Division of the MoAC. The Branch is very small, with 2-3 officers only. This is obviously inadequate given the wide range of activities on agricultural trade and WTO matters. While the Branch needs to be strengthened with additional staff, there is a limit to which this can be done. Moreover, subject matter experts on various WTO topics are scattered in Departments and other units within the MoAC. Therefore, the institutional framework proposed here is based on the concept of a network consisting of a Central WTO Desk, expanded and evolved from the current

² Report of the Working Party on the Accession of the Kingdom of Nepal to the WTO, Document Number WT/ACC/NPL/16, 28 August 2003. Available at the WTO website.

³ A Review of the Agricultural Policies and Legal Regime in Nepal, 2004, FAO, Rome and Kathmandu.

WTO Branch, and similar Desks in other parts of the Ministry. The Central WTO Desk will be the nucleus of the network while other Desks may be called Subject Matter WTO Desks.

The rationale for this type of framework is the need for a strong central unit that serves as the focal point on all WTO matters in terms of overall leadership and coordination. This is desirable because trade and WTO issues are becoming increasingly important in many areas that were previously considered to be outside the domain of trade. For example, domestic support measures are now a WTO topic. Similarly, food safety and quarantine issues are increasingly becoming trade topics. Even the Nepal-India Trade Treaty cannot be seen any longer in isolation of the WTO framework. Moreover, new Agreements are being discussed at the WTO, e.g. competition policy, trade and investment, and environment and trade. A strong WTO Desk is essential for making the most of these synergies.

Central WTO Desk

As said above, the Central WTO Desk will expand and evolve from the current WTO Branch within the Agri-business Promotion and Statistics Division. This Desk has to be strengthened, with more staff, financial resources and some autonomy in managing its programme of work. This will be the focal point in Nepal for all WTO matters on agriculture.

The main responsibility of this Desk would be to lead, coordinate and implement a substantive work programme on agricultural trade and WTO issues. The key components of such a work programme were discussed in the previous subsection. They are in five core areas: preparing WTO notifications and maintaining liaison with the main WTO contact point in Nepal located in the Ministry of Industry, Commerce and Supplies, and through it with the office of Nepal's representation to the WTO in Geneva; mainstreaming agricultural trade issues in national policies and programmes; trade capacity building and trade policy analysis; information provision and collaboration with the private sector and NGOs; and agriculture related legislative reforms. The Desk will liaise closely with the Planning Division of the Ministry in mobilizing internal and external resources for trade-related activities, and in planning and programme development.

Subject Matter WTO Desks

It is envisaged that initially there will be 5 to 6 Subject Matter WTO Desks in various Departments and agencies affiliated with the MOAC. Some of them are well known, e.g. units dealing with the SPS Agreement, while some others will evolve over time as the work programme expands and adjusts. The following Subject Matter WTO Desks can be identified based on the range of the topics covered in the background studies.

SPS Desk for Food Safety: This Desk will be the focal point for SPS matters in relation to trade in food products. It will be located in the Department of Food Technology and Quality Control (DFTQC). The role, responsibilities, activities etc. of this Desk are discussed at length in Chapter 5.

SPS Desk for Live Animals and Livestock: This Desk will be the focal point for SPS matters in relation to trade in live animals and livestock products. It will be located within the Department of Livestock Services (DLS). The role, responsibilities, activities etc. of this Desk are discussed in Chapter 6.

SPS Desk for Plants and Plant Products: This Desk will be the focal point for SPS matters in relation to trade in plants and plant products. It will be located within the Directorate of Plant Protection. The role, responsibilities, activities etc. of this Desk are discussed in Chapter 7.

TRIPS-related WTO Desk: This Desk will look after agricultural issues related to the Agreement on TRIPS. The most important work, and a current priority, is to lead the process of formulating a *sui generis* legislation. The Desk will also undertake analytical works in other TRIPS-related works, one of which is to move forward the work on Geographical Indications initiated in this project (Chapter 9). The Desk will be located within the Environment and Biodiversity Section of the Gender, Equity and Environment Division of the MoAC, in view of the focal point for bio-diversity issues already located there. The Nepal Agricultural Research Council (NARC) will be the main partner.

Agricultural Trade Analysis WTO Desk: Economic analysis of various trade-related issues will have to be a major component of the overall work programme proposed here. As summarized earlier, almost all background studies in this volume include some recommendations related to the economic aspects of commodity production, marketing and trade. Some of these are substantive programmes, like setting a trade surveillance unit to monitor import surges, analysing the impact and proposing response measures. The same is true of analysing commodity problems through the entire chain of production to trade, and the question of incentives or disincentives facing commodities. Economic analyses are also essential for formulating government positions for various trade negotiations, notably Nepal-India Trade Treaty, SAFTA and WTO.

In view of the policy-oriented nature of many of the above topics, the Central WTO Desk itself will have to play a major role in moving forward the work on economic analysis. There are three other units that should be part of the Desk. One is the Market Research and Statistical Management Programme within the Agribusiness Promotion and Market Development Directorate. The second is the Directorate for Livestock Marketing Promotion within the Department of Livestock Services. And the third is the socio-economic research wing of the NARC. As the work programme evolves and experiences are gained, a need may be felt for a separate, specialized unit for economic analysis.

A Network of the WTO Desks: The idea of a network of various WTO Desks is simple to comprehend. Although each subject matter desk is specialized in its own technical area, there is a great deal of synergy in the work of the various other desks. In the background studies in this volume, this synergy was most conspicuous in the case of commodity studies where it was noted that typically several WTO Agreements had something to do with the production, marketing and trade of the commodities. Thus, from the standpoint of solving problems on the ground, it is

desirable that various Subject Matter WTO Desks work closely. In view of this, it is proposed that the MoAC constitutes a Network of WTO Desks within the Ministry.

The Network needs to be established formally. This has many advantages. First, all officials knowledgeable on WTO matters in the MoAC will have a common forum for working together. To start with, this could be the group of 31 officials that undertook various background studies reported in this volume. Second, a Network that is given some autonomy to meet, discuss, plan and implement various WTO activities would be much more effective than a collection of the Desks without such a formal Network. Third, given that trade and WTO topics are new and evolving, the MoAC needs to take maximum advantage of the expertise that exists outside the Ministry (e.g. in academia, business, trade and NGO sectors). Having a formal Network within the MoAC helps this collaboration considerably.

Thus, the proposed Network would involve some 30 or so core officers, assuming about 4-5 officials from each WTO Desk. Each member will be nominated by his or her Division or Directorate. They would be typically middle-level technical officers of the Division or Directorate. The success of the Network will depend a great deal on the right choice of the members because the successful implementation of many of the activities of the Network, at least in the initial stages, will depend on personal initiatives. This means that the members need to be not only technically competent but also enthusiastic about deepening their skills and expertise on trade-related works.

Related to the third point above, it is also proposed that Advisory Groups be formed for the purpose of brainstorming on WTO issues, as well as for providing expert advice to the WTO Desks. In view of the specialized, technical nature of the Desks, there should be one Advisory Group for each Desk. A typical Group will have 8 to 10 members, identified and nominated by the government. These would be experts from the academia, business and trade sectors, NGOs as well as from the government, both from within and outside the MoAC, and will be on individual capacity and not as representatives of their organizations. The Advisory Group for the Central WTO Desk could include some individuals with long administrative experience, e.g. retired government Secretaries, as well as politicians known to have a keen interest on trade issues. The Desks will organize interaction programmes with the Groups on a periodic basis to discuss policies, programmes and emerging issues. A due recognition from the government, and professional interest, would be the main incentive for experts to join the Groups.

It is also suggested that the MoAC consider creating some capacity on WTO matters at the level of the Regional Directorates also. Agriculture is becoming increasingly commercialised on a regional basis and at the same time more and more farm and trade associations are becoming active at the regional level. Having a staff at the Regional level with the basic knowledge of the WTO issues and other related skills in marketing and trade would contribute immensely to spread "WTO messages" to the field level.