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Exploring the Negotiation Strategy of Nepal at World Trade Organization

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Abstract

The Political Economy of neo-liberalization is supposed to benefit countries that adopted liberal trade policies. As the key driver, the World Trade Organization (WTO) establishes the minimum requirements for numerous agreements on goods, services, intellectual property, trade facilitation, and development elements of international trade. These agreements provide special and differential provisions for the Least Developed Countries (LDCs) and developing countries to be benefited from trade liberalization. This study analyzes the effectiveness of Nepal's economic diplomacy; particularly its negotiation strategy in various WTO agendas. This study finds that WTO agreements help emerging developing nations in improving their trade performance and attract foreign direct investment where Nepal and many other LDCs are performing weaker roles in trade negotiation resulting in a lower level of trade and investment. Therefore, this study offers some recommendations for fostering economic trade negotiation aspects of economic diplomacy.

Keywords: Trade Negotiation, Economic Diplomacy, Foreign Direct Investment, LDCs

1. Context

No country can stay in autarky in this globalized world. Through foreign policy and Economic Diplomacy that operates in a space constructed by the states in international systems, various international entities interact with each other on social, political, and economic fronts. Among others, the current system of international relations is found to be largely focused on economic relations. Against this backdrop, the states are trying to harness the benefits of globalization with smart economic diplomacy. Chatterjee (2020) states that economic diplomacy is broader than commercial diplomacy, it is a successful negotiating technique in the present context of diplomatic dealings, and moreover, it is aimed at harnessing the benefits of foreign investment in private sectors. Similarly, Naray, O. (2008) viewed commercial diplomacy as one of the important components of economic diplomacy. Economic diplomacy accounts for and represents three levels of negotiations namely national, regional, and international. So it needs to consider the multiple stakeholders' interests in economic prosperity regarding trade, finance, and investment.

The Nepalese economy began to liberalize gradually in the 1980s with the introduction of liberalism. Nepal unilaterally accelerated her liberalization in 1992, and it applied to join the General

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Agreements on Tariff and Trade (GATT). In 1995, we have seen the creation of the World Trade Organization (WTO) following the conclusion of the GATT Uruguay Round (WTO, 1995). Due to the robust Dispute Settlement Mechanism (DSM), where a member or member can bring a claim against a country that violates WTO rules, the WTO is seen as a rule-based organization. Trade in Goods, Trade in Services, and Trade Related Intellectual Property Rights are the three main areas covered by WTO agreements (The Legal Text: 1995). Nepal accelerated its economic diplomacy in preparation for joining the WTO. Since the WTO is an intergovernmental organization, its non-discriminatory principles of Most Favored Nations (MFN) and National Treatment (NT) serve as the cornerstone for greater market access for its members to engage in trade with any WTO member. Nepal joined with WTO on April 23, 2004, becoming its 147th member while also officially becoming the first country to join through the accession process (Trade Policy Review, 2012).

On the basis of neo-liberal theories of international relations, fervent WTO supporters, like Paul Krugman and Jagadish Bhagawati, among others, assert that its accords increase well-being. Neoliberal economists' claims that liberalization, deregulation, and privatization will be beneficial are a lie (Hart and Landsberg, 2006). Along with Nepal, several other less developed nations joined the WTO with similar goals of attaining export-led growth in addition to economic integration into the world's institutions. WTO collaborates with UN specialized agencies including the World Intellectual Property Organization (WIPO) and United Nations Conference for Trade and Development as well as other multilateral economic institutions (MEI) like the International Monetary Fund (IMF), and the World Bank. The "Economic Diplomacy" of developing nations is more hugely affected by liberal perspectives of institutionalism.

Together with the stalemate in WTO negotiation, and the success story of the North American Free Trade Agreements (NAFTA), there was a proliferation of Regional Trade Agreements (RTAs). Nepal is also a member of the South Asian Free Trade Agreement (SAFTA) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) and has entered into bilateral trade agreements with seventeen different trading partners (MOICS: 2018). It can be stated that Nepal is following multi-track economic diplomacy to get benefits from liberal trade policies in the context of economic globalization. Though economic diplomacy has become a dominant diplomatic strategy for larger economies and smaller ones. However, many less developed countries including Nepal are accounting for high trade deficits with stagnated exports and ballooning imports, and lower levels of investment due to the lack of sound economic diplomacy at national, regional, and international levels.

Developing and Least Developed Countries (LDCs) are the primary target of a number of issues at the WTO negotiations, such as Special and Differential Treatments (S& DT), Duty-Free Quota Free Market Access (DFQF), Aid for Trade (AfT), Technology Transfer, Technical Assistance and Capacity Building (TACB), among others (WTO Website). Aid for Trade has been recognized as a crucial tool of ODA that is well-targeted for Least Developed Countries (LDCs) and developing countries that have lower levels of productive capacity, supply-side constraints, lag behind in the global value chain, and inadequate economic infrastructures; and is intended to increase trade capacities in these areas.

The LDCs', Landlocked Countries', and Small Countries' development challenges are examined in the WTO's Committee on Trade and Development. Due to a number of factors, including strict Rules of Origin (RoO), non-tariff measures, Sanitary and Phyto-Sanitary (SPS) and Technical Barrier to

Trade (TBT) in the exportation of goods, and strict "Domestic Regulation" in the trade in services, many countries, including Nepal could not be fully benefitted from these lucrative schemes. At the regional level, SAFTA and BIMSTEC are producing lower economic results as compared to the Association of South East Asian Nations (ASEAN), North American Free Trade Agreement (NAFTA), and others. At the domestic level, economic diplomacy has been prioritized in policy but shadowed by the political interest basically targeted towards political power rather than economics.

Generally, WTO trade talks are not making desired progress except in cases of making "Agreements on Trade Facilitation." This context poses questions about whether members are truly engaging in WTO trade negotiations or not. It is seen that larger players' economic diplomacy is defensive however, less developed members like Nepal have shown keen interest in free trade.

Moreover, the trade deficit of Nepal is dramatically increased over the years and it received just 0.6 percent Foreign Direct Investment (FDI), which is quite lower than the LDC's average ratio (b360.com:2019). It also poses a question on the level and quality of the economic diplomacy of Nepal. Hence, the following research questions are unanswered and need to be analyzed in the context of Nepal's economic diplomacy at the WTO.

- a) What is the current status of the Economic Diplomacy of Nepal in various areas of WTO negotiation?
- b) How is the trend of trade and foreign direct investment in Nepal been since it joined WTO?
- c) How does Aid for Trade impact Nepal's trade performance?

2. Analysis of Nepal's Economic Diplomacy

The use of international diplomacy to advance a nation's economic development is known as economic diplomacy. Public officials and diplomats are involved in promoting international trade, according to Saner and Yu (2003), by providing information and counsel regarding commercial prospects as well as by planning and assisting in serving as hosts to trade missions from the home country. Economic diplomacy is the process of making international economic decisions, according to Bayne and Woolcock (2011). It refers to economic statecraft, a concept with a long history of analysis and a foundation in both economics and international relations.

2.1 Analysis of Nepal's Economic Diplomacy and Nepal's Economic Policies

According to neo-liberal economic theories, Nepal has developed its economic policies. Nepal has opened its markets in the majority of the sectors since joining the WTO. Nepal committed to a 99.3% tariff line while joining the WTO. In terms of tariff obligation, it was superior to China and Cambodia, but tougher than the founding GATT members. The landlocked country has introduced trade policies and plans and is continuously revising them. In the WTO Trade Policy Review sessions in 2012 and 2018, Nepal satisfactorily addressed its difficulties with liberalization and transparency as an LDC member. With a few exceptions for sensitive industries, Nepal's services are mostly open to the rest of the globe. Nepal is one of the beneficiaries of WTO- led AfT initiatives, from which Nepal's economic diplomacy of ODA is expected to mobilize towards building trade capacities and improving indicators of doing business.

2.2 Major Areas of Economic Diplomacy at WTO Negotiation

WTO agreements cover a wide range of trade issues. Thus, the WTO negotiations are rooted in the neo-liberal perspective of trade liberalization. Departing from the GATT scope of negotiation in trade in goods, the WTO has become a forum for negotiation in services, intellectual property, rules, environment, development, and other trade and investment issues. Trade is a cross-cutting economic policy where a large number of trade issues are being negotiated at the bilateral, regional, and multilateral forums. However, this article tries to explore the effectiveness of Nepal's trade negotiation strategy at the WTO, the multilateral level.

2.2.1 Trade in Goods negotiation

The merchandise trade of LDCs is still below 1%. (WTO, 2022). With regard to WTO negotiations, Nepal has been bounded its tariffs on agricultural and non-agricultural goods. US agricultural subsidies and European Union (EU) tariffs on agriculture are sensitive concerns in the negotiations. These are challenging topics from a political perspective. Another significant topic in (AMA) negotiations is food security. Industrial tariffs from developing nations like China, Brazil, India, and South Africa, among others, have caused the DDA negotiations to drag out during the NAMA negotiations. The diplomats have to focus on food security issues as it is of utmost importance to Nepal.

2.2.2 Analysis of Nepal's Trade Scenario

Nepal's export growth has been slowed after accession to the WTO in 2004 while imports have been increased dramatically. According to Trade and Export Promotion (TEPC) data, Nepal's merchandise trade was NRs 89.9 billion in FY2004/05 to NRs 314.7 billion in FY 2009/10, to NRs 697.9 billion in 697.9 billion in FY 2014/15 to NRs 1398.7 in FY 2020/21. Over the period, Nepal's exports remained stagnated and led to a huge trade deficit that pressurized the country's current account balance. Export-import ratio increased from 1:2.5 in FY 2004/05 to 1:15.31 in FY 2017/18, the highest over the period, and slightly reduced to 1:10.91 in FY 2020/21.

Nepal started to import rice, maize, wheat, and other agricultural products that make Nepal a net food importing country, and also resulted in a huge trade deficit. India has remained a dominant trading partner of Nepal as 60 percent of exports and imports are taking place with India. Thus, Economic diplomacy needs to focus on balancing trade relations with India.

Table 1: A Scenario of Nepal's Trade Balance (In Billion NRs)

Fiscal Year	Export	Imports	Trade Balance	Export/Import Ratio
2009/10	60.9	375.6	-314.7	1:6.2
2010/11	64.6	397.5	-333.0	1:6.2
2011/12	74.1	498.2	-424.1	1:6.7
2012/13	77.4	601.2	-523.9	1:7.9
2013/14	91.4	722.8	-631.4	1:7.9
2014/15	86.6	784.6	-697.9	1:9.1
2015/16	71.1	781.1	-710.0	1:11
2016/17	73.1	986.0	-912.8	1:13.5

Fiscal Year	Export	Imports	Trade Balance	Export/Import Ratio
2017/18	81.3	1245.2	-1163.9	1:15.31
2018/19	97.1	1418.6	-1321.5	1:14.6
2019/20	97.7	1196.8	-1099.1	1:12.24
2020/21	141.1	1539.8	-1398.7	1:10.91

Source: The author's calculation is based on Trade and Export Promotion Centre Data

2.2.3 Trade in Services Negotiation

In recent years, there is an increasing role of trade in services which is governed by General Agreements in Trade in Services (GATS). The Contribution of the Service sector to GDP is also increasing in the Nepalese context. Service negotiations are important as they cover a wide range of economic activities. Trade in services is done through four modes of supplies, modes 1 to 4. Domestic regulation, Request and offer approach, right to regulate, progressive liberalization, licensing and qualification requirements are the key issues to be considered in the spectrum of economic diplomacy.

According to WTO, operationalizing the services waiver for least-developed countries (LDCs) raised their request to implement the services waiver at a meeting of the Council for Trade in Services held on 11 March 2022. Members agreed on reviewing exemptions to the WTO non-discrimination principle.

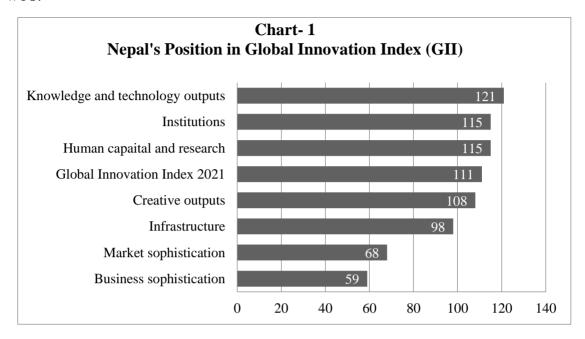
Nepal along with other labor exporting countries, relying on remittance, is concerned to make mode 4 services: the movement of natural persons is continuously requested to liberalize developed countries' service sectors in a fashion that those countries take advantage of trade in services globally. Economic diplomacy of less developed countries needs to be oriented towards market access in developed countries, with the provisions of waiver as they promised.

2.2.4 Trade-Related Aspects of Intellectual Property Rights (TRIPS) Negotiation

The preamble of the TRIPS agreement validates that the policy goals of the protection comprise developmental and technological objectives. Moreover, the preamble endorses the special needs of the least-developed Members who need generous flexibility for developing a wide-ranging and sustainable technological base (UNCTAD-ICTSD, 2005). Devereaux et al. (2006) found that during the Uruguay Round of trade negotiation, developed countries lobbying by Pfizer, Merck, and multinational companies, were able to widen the scope of IP. The same was also found in Doha's declaration on TRIPS and public health favored developing countries as that permits the issuance of compulsory licensing in case of national emergencies. The covid-19 pandemic recently proved the importance of the agreement.

Nepal is adopting a critical mass approach so as to enhance its negotiation position as a coordinator of the LDC group at the WTO. As a positive outcome, the LDCs transition period was extended in protecting intellectual property under the TRIPS agreement as special and differential treatment (WTO, 2013). Nepal's economic diplomacy needs to be strengthened in order to get benefits from the TRIPs agreement, particularly the implementation of TRIPS Articles 66.1 and 66.2. Similarly, Nagoya Protocol for Access to Benefit Sharing (ABS) is also crucial for developing countries in the

Patent and Industrial Property sector, but there is no clear direction for its realization. In this context, it becomes a crucial agenda for the economic diplomacy of Nepal and like-minded members of the WTO.



Source: Global Innovation Index 2021 (wipo. int) accessed on 7.20.2022

On the domestic front, protecting intellectual property rights and benefiting from them seems challenging. According to WIPO, as shown in chart 1, which represents the comparative competitiveness of Nepal. The overall performance of Nepal has remained above the lower middle-income group which is average in two pillars, namely Market sophistication and Business sophistication. Moreover, it has performed above the regional average in Business sophistication in Central and South Asia in 2021.

2.2.5 Rules of Negotiation

Nepal's exports face difficulties to fulfill Rules of Origin (RoO) criteria that are set for eligibility to enjoy preferences offered to LDCs and developing countries. Though the DFQF is specially targeted for LDCs export, Nepal's utilization has remained poor as per the statistics of the WTO. There are issues with domestic regulations of the developed countries with regards to services exports, such as licensing requirements and qualification requirements, primarily on the mode 4 of services supplies. As the negotiation of trade in services is based on a request and offer approach, there has not been much progress on the Rules Negotiation, particularly in domestic regulation. Nepal along with other less developed countries lacks the required skills in economic diplomacy in services negotiations. Their participation is lower while negotiating at the table. Rules on subsidy, anti-dumping, countervailing, and many others are important from the standpoint of larger impact in the areas of trade, finance, and investment among others, where economic diplomacy of poor economies is found to be ineffective.

2.2.6 Trade and Development

WTO claims that its agreements clearly recognize and address the link between trade and development. After a massive demonstration at the Seattle Ministerial, the dwindling future of the WTO got momentum at Doha Ministerial Conference, in November 2001, as the Trade Ministers launched the so-called 'development agenda' and were also given the name 'Doha Development Round'. Following the spirit of the development dimension of Doha, the Hong Kong Ministerial Declaration of 2005, emphasized the central importance of development. Hong Kong Ministerial also agreed to launch the Aid for Trade, designed to help developing countries and LDCs build supply-side capacity to promote their trade. At the Bali Ministerial Conference in December 2013, ministers adopted a number of decisions under the developmental pillar for developing and least-developed countries' trade (wto.org).

2.2.7 Foreign Direct Investment and Technology Transfer

It is widely believed that a greater IP protection environment supports attracting FDI to the host countries. In the same way technology undergoes transfer. Contrary to this notion, Nepal's FDI projects and volume remained poor in comparison to other LDCs, e.g., Bangladesh and Cambodia. China received the highest volume of FDI in 2021. Table 2 depicts FDI approval in Nepal; Nepal approved 364,510.52 million NRs as FDI which provide employment to 275,020 Nepalese which is quite lower than the demand of employment which has been not encouraging.

Fixed Cost Working No. of Amount of **Project Cost Employment** Scale **Projects** Capital FDI 317 391,260.06 362,635.30 30,160.63 214,349.26 59,286 Large Medium 529 68,673.97 49,228.18 18,902.61 52,499.49 49,591 Small 4,388 109,560.35 69,608.50 39,577.31 97,661.78 166,143 Total 5,234 569,494.39 481,471.98 88,640,54 364,510.52 275,020

Table 2: FDI Approval in Nepal (In million NRs)

Source: Department of Industry, Industrial Statistics, 2077/78

The economic diplomacy of Nepal at the national level seems less consultative which has also weakened the power of negotiators in Geneva, New York, and Brussels in regard to promoting trade, finance, and investment to harness unleashing trade and investment potential. Trade preferences. Major exports have relied on preferential schemes, Generalized System of Preferences (GSP), Everything but Arms (EBA), and Duty-Free and Quota-Free (DFQF) schemes led by WTO. These preferences work less because of tariff liberalization- the gradual reduction of the tariff, leading to a situation of 'preference erosion'. Nepal is engaging multilaterally and bilaterally to make these schemes favorable for LDCs exports. Mitigation of preference erosion has become a priority issue for Nepal. As Nepal is a recent graduate of a developing country, it needs a longer waiver period to enjoy the existing schemes. These issues, therefore, are the major concerns of Nepal's economic diplomacy.

2.2.8 Trade Facilitation

The most crucial agreement and negotiations for Nepal are those related to trade facilitation. Due to its landlocked location and open and porous border with its two main commercial partners viz. China and India, Nepal incurs significant costs in cross-border trade. The GATT Articles V, VIII, and X were negotiated in order to promote global commerce. As a result of its proactive negotiating approach in the trade facilitation agreement, some achievements have been achieved. Trade Facilitation has been regarded as one of the successful economic diplomacies in WTO negotiation. Since Nepal heads and leads the Trade Facilitation Committee in the LDC group, Nepal's role in Negotiating Group on Trade Facilitation is widely praised. Success in the Trade Facilitation discussions, which divided the members into groups A, B, and C, provided for distinct and special and differential treatment in terms of deadlines and other commitments shall be complied with by the respective members (WTO, 2018).

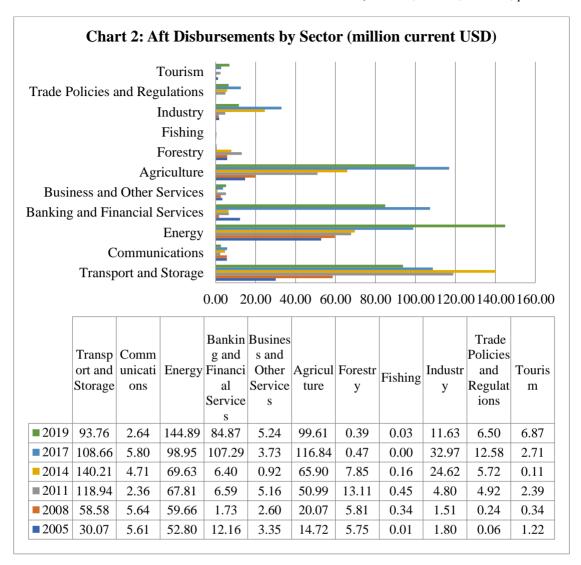
2.2.9 Aid for Trade

The WTO has introduced an Aid for Trade initiative for LDCs and developing countries as the Doha Round of WTO negotiations in order to prepare the way for leveraging Least Developed Countries and building their supply side countries (WTO, 2006). Nepal, an LDC, is one of the nations that benefited from AfT programs. The recipients first demanded additional help on top of the standard ODA, but eventually, the program was established as a component of the ODA. Together with Nepal's like-minded counterparts in the Committee on Trade and Development and the Trade Negotiating Committee, the negotiators from Nepal reiterate their commitment to well-targeted and expanded volumes of AfT. (Trade Policy Review of Nepal, 2012, 2018).

According to the OECD Creditor Reporting database, Nepal received 1274.57 million US dollars AfT, the highest among the sectors, during 2005-20 19 followed by energy, agriculture (1182, 789.71 million USD) and banking and financial sectors (457.44 million USD).

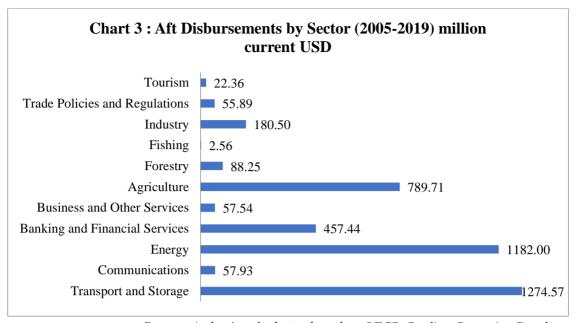
The EIF is the main mechanism through which LDCs access AfT and there is not enough pledge made by development partners under EIF. Chart 3 above shows that none of the sectors disbursed more than 8 million for Nepal in the trade capacity building sector.

The Enhanced Integrated Framework (EIF) is the delivery mechanism Aid for Trade. It is dedicated exclusively to assisting least-developed countries (LDCs) in their use of trade as an engine for growth, sustainable development, and poverty reduction. The EIF has a partnership of 51 countries, 24 donors, and eight partner agencies, including the WTO. The EIF has invested in over 170 projects, with US\$ 220 million committed to supporting the poorest countries in the world (wto.org). Contrary to the claim that LDCs are prioritized for AfT, the share of LDC-specific support in AfT has remained very low in LDCs. According to OECD data, the top ten recipients of AfT in 2019 were developing countries, except Bangladesh. Nairobi Ministerial Conference agreed and recognized the contribution of the Enhanced Integrated Framework (EIF) in mainstreaming trade in development policies of LDCs and building their trade capacity to enable them to achieve the 2030 Agenda for Sustainable Development (WT/MIN (15)/DEC).



Source: Author's calculation based on OECD Creditor Reporting Database

According to WTO, the Standards and Trade Development Facility (STDF), is another partnership, working in the area of developing international standards for food safety, plant and animal health, and access to global markets. The WTO manages the STDF trust fund, which has provided financing of over US\$ 50 million to support projects in the countries like Nepal.



Source: Author's calculation based on OECD Creditor Reporting Database

3. Summary, Conclusion, and Recommendations

Developing countries, LDCs in particular, need carefully to analyze the political economy of WTO agreements and their economic impact. Nepal, as a small player, has been playing a good role in the WTO negotiations, primarily in trade facilitation, preferences, and capacity-building aspects of economic diplomacy. The state joins with like-minded members and groups while performing its role in protecting the national economic interest. Nepal has been found to be less representative and plays a weaker role in services, rules, and intellectual property rights negotiation which need to be improved.

For the effectiveness of AfT, the support has remained moderate in Nepal. Nepal's trade performance could not be boosted by the AfT initiative as its impact on building competitiveness of Nepal's trade sector was found insignificant. The support and funds disbursed from 2005 to 2019 remained lower in comparison to LDCs' average and far below that the developing countries.

AfT has to be extended in volume and activities to make more timely demand-driven interventions, particularly in enhancing productive capacity, building trade-related infrastructure including ICT infrastructures, enhancing supply-side capacity, and technology transfer. Nepal has to focus on negotiation at the WTO to mobilize aid for trade through trade SWAP. Moreover, there is a pressing need of strong coordination and synergy among trade-related programs.

Despite the popularity of AfT among LDCs and donor communities, the generous support from donors is still inadequate. To overcome the constraints faced by LDCs in exports, market potentials developed through trade liberalization and preferential schemes need more focus on the value chain development of more products. Addressing the capacity constraints of Nepal, articulation of needs and priority is equally important. There exists a huge gap between commitments and disbursement

of AfT from development partners. The aforementioned facts and figure demonstrate that Nepal's exports of AfT-backed NTIS products is not satisfactory.

From the standpoint of international political economy, trade liberalization demands more cooperation and greater partnership. However, this study finds that there has been more flow of aid in developing countries to LDCs, which has to be considered by donors. Sincere efforts have to be made to integrate and benefit LDCs in the global economic environment.

As WTO has focused on neo-liberal economic agenda, Nepal can play prudent economic diplomacy which represents all three levels: multilateral, regional, and bilateral. Nepal should attempt to unleash potential not only on trade in goods, but also in the areas of services, finance, IP, rules, and development dimension of WTO systems. For this purpose, this study finds some gaps in coordination between capital-based officials and Geneva, Brussels, and New York-based diplomats. Inter-ministerial, agencies and public and private sectors have to make negotiating positions that produce results towards achieving SDGs and fulfilling the lofty dreams of "Prosperous Nepal and Happy Nepali."

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