

Bhutan and India's Free Trade Agreement (FTA) and the World Trade Organization (WTO): A Critical Appraisal

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ABSTRACT: Bhutan and India share a unique relationship, one that is grounded in enlightened leadership and stable governments. India helped to finance most of the development projects and investments in Bhutan, especially hydropower. In turn, most of the hydropower energy thus generated flows back to India's electricity grid, in the process benefitting both countries. A similar mutuality reveals in a range of other domains. The relationship formally began with the visit of Pandit Nehru to Bhutan in 1958. It flourished and strengthened in subsequent years and decades. The Free Trade Agreement (FTA) was entered into to reap the presumed benefits from free trade and commerce. Bhutan gains from this FTA since Bhutan has to import nearly everything from India and whatever Bhutan has for sale, India alone is sufficiently a big market for its products. This article will discuss the trade routes and FTA and Bhutan's attempt to join World Trade Organization (WTO), as well as refers to other developments in the region.

Key Words : Free Trade Agreement, World Trade Organization, land routes, imports, exports, SAARC, SAFTA, BIMSTEC, sanitary and phyto-sanitary standard SAARC, SAFTA

Introduction

Bhutan is one of the world's smallest countries; not in terms of size as there are many countries smaller in territory, but when measured by population. Bhutan is a so-called developing country, whose economy is largely based on forestry and agriculture, which continues to provide the main livelihood for more than 60% of the population (Khandu 2015). The rugged terrain and mountainous features make development activities difficult.

After the British left India, the enlightened leadership of Bhutan forged a new relationship with independent India. Just like the British Raj earlier, the newly independent India did not find Bhutan's external relations necessary as long as it was inward looking and isolated, which was the status quo for a long period. The basic framework guiding India and Bhutan's bilateral relations is the 1949 Treaty of Friendship and Cooperation. This treaty is characterized by mutual trust and understanding, with extensive cooperation in the field of economic development. The

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Free Trade Agreement was entered into in the year 1972 to reap trade benefits.

The Bhutanese economy is closely tied with the Indian economy. The industrial sector is technologically not fully developed, with most production being of the 'cottage type.' Most development projects rely on Indian migrant labor, especially in relation to infrastructure. Bhutan's hydropower and tourism potential are also key resources that drive the Bhutanese economy.

In recent decades, the country has made some progress in expanding the nation's production base and in improving social welfare. Model education, social, and environmental programmes are underway with support from multilateral development organizations. Each economic development plan and programme takes into account the government's desire to protect the country's environment and cultural traditions. As a case in point: the government, in its cautious expansion of the tourist sector, encourages visits by upscale, environmentally conscientious tourists, rather than allowing mass tourism, which is potentially ecologically and culturally destructive. At the same time, detailed controls and uncertain policies in such areas as industrial licensing, trader, labor and finance continue to impede foreign investment.

Among the South Asian Association for Regional Cooperation (SAARC) countries, Bhutan is the only country with which India has a relatively stable relationship. India has funded many of the Five Year Plan development activities in Bhutan. Instead of bandwagoning with other neighbors, Bhutan decided to consolidate an exceptionally strong relation with India. This turn to India was no doubt in part informed by the Chinese annexation of Tibet. Over time, however, Bhutan also developed aspirations to join other international countries by joining the WTO.

The South Asian Free Trade Agreement (SAFTA) came into effect from 1 January 2006. The idea of free trade was proposed in 1995 and SAFTA was signed during the 12th SAARC Summit during which India promised to cut down customs tariff to 5% for items imported from other SAARC countries. Accordingly, developing countries - Pakistan, India and Sri Lanka were to slash down customs duties between 0% and 5% within seven years, while least developed countries like Bangladesh, Bhutan, Nepal and Maldives agreed to do the same in 10 years (Wangchuk, 2009).

Following this brief introduction, the remainder of this article attempts to explain the Free Trade Agreement between Bhutan and India and the important trade routes agreed by the two countries. Next, it briefly explain the analysis of some import and export trade figures and the significance of the FTA. Since most of Bhutan's neighbors are members of World Trade Organization, Bhutan has been attempting to join this organization as well, and on which I will offer some reflections. I will also briefly mention other developments of which Bhutan is now a part, especially in relation to the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

Free Trade Agreement between 2 countries – India and Bhutan

Druk Yul, the land of Thunder Dragon, better known to the outside world as Bhutan, occupying an area of 18,000 square miles in Eastern Himalayas, remained in self-imposed isolation for many centuries. This long period of isolation was partially abandoned during the reign of third monarch, King Jigme Dorji Wangchuk who was alarmed by the Chinese invasion of Tibet in 1958 and its subsequent annexation, and the 1962 war between India and China. Since then, Bhutan has embarked upon an economic development plan in place of its earlier barter system, and has never looked back.

With the exposure to the outside world after 1960 the monarchy was forced to begin a process which might be called “defensive modernization”. Prior to the visit of then Indian Prime Minister, Jawaharlal Nehru in 1958, only a few economic reforms were initiated. The first proper road was opened in 1960 to the capital, connecting Phuntsholing, a then small town near the Indian border, to Thimphu. Today, Bhutan is well connected with blacked topped road zigzagging across the country. Although many developed countries offered to help Bhutan in its economic development projects, Bhutan could not accept them because of certain treaties with India. The 1910 Anglo-Bhutanese Treaty and the 1949 Indo-Bhutan Treaty of Friendship gave the British Raj and later the Indian government the right to ‘advise’ on Bhutan’s external affairs. Therefore, whatever economic reforms that has been undertaken till late 1970s was almost completely through Indian financial and technical aid. The deal struck between Bhutan and India, inter alia, was a guarantee of internal stability by Bhutan in return for massive development help from India (Perry 1989, 261).

China’s assertive stance towards Bhutan prompted it to get away from its age old and long traditional and cultural association with Tibet and to draw closer to British India and subsequently to independent India. As early as in 1949, Bhutan signed the Treaty of Perpetual Peace and Friendship with India to avoid possible annexation by China, in the process, and in return, opening the development road maps for Bhutan and trade with the help of India (Ramachandran, 2017). The basic framework of India and Bhutan bilateral relations is the Treaty of Friendship and Cooperation of 1949 between the two countries which was also followed by a trade agreement in 1972 – also characterized by close trust and understanding and extensive cooperation in the field of economic development and trade.

A free trade regime therefore exist between India and Bhutan. The India-Bhutan Trade and Commerce Agreement was renewed in March 1995 and is effective for a 10 year period from April 1995 to March 2005. The agreement was renewed in November 2016 (Chandra, 2019). The major items of export from Bhutan to India are electricity (from Chukha and Kurichhu Hydroelectric Project), cement, timber and wood products, minerals, cardamom, fruits products, potatoes, oranges and apples, raw silk and alcoholic beverages. Major exports from India to Bhutan are petroleum products, rice and, automobiles and spares, machinery and fabrics.

Trade Routes Identified

The Agreement on Trade and Commerce also provides for duty free transit of Bhutanese merchandise for trade with third countries. The 16 exit and entry points in India identified in the Protocol for Bhutan's third country trade are:

1. Jaigoan - road route
2. Chamurchi - road route
3. UltaPani - road route
4. Hathisar (Gelegphug) - road route
5. Darranaga - road route
6. Calcutta (air route and sea route)
7. Haldia - sea route
8. Dhubri (riverine route)
9. Raxaul (road & rail route)
10. Panitanki - road route
11. Chakrabandh - road route
12. New Delhi (air route)
13. Mumbai - sea & air route
14. Chennai - sea & air route
15. Phulbari - road route
16. Dawki - road route (Agreement on Trade, Commerce and Transit between the Royal Government of Bhutan and the Government of the Republic of India, 29 July 2006), and quite recently in 2021, another trade route was opened making it the 17th trade route
17. Pasakha - it is the recent land route connecting to West Bengal which was opened to Jaigoan and Ahlay which will facilitate connections between India and Bhutan in times of crisis like Covid 19 (India-Bhutan open new trade route on 16 July 2020).

These are important trade routes opened up for Bhutan by India for trading for development of the country. These routes are crucial given that this is the only route through which Bhutan can connect through the outside world, given the absence of relations with China.

Import and Export Figures

India is Bhutan's largest trade partner. During the year 2001-2002, inclusive of electricity, Bhutan's export to India totaled Rs. 4.91 billion and constituted 94.5 % of its total export. Imports from India were of the order of Rs. 7.38 billion, constituting 78% of its total imports (India Bhutan relations, 2008).

Bhutan has an estimated hydropower potential of 30,000 MW (megawatt) and 120 TWh

(terawatt hour) mean annual energy generation indicating an average development potential of 781 kW (kilowatt) in a square kilometer of area (catchment). So far, 23,760 MW has been identified and assessed to be technically feasible. Only 1.6% of the potential is harnessed so far (Tshering and Tamang, 2004).

Before the 1980s, third country import and export was nonexistent in Bhutan. Indo-Bhutan Trade Treaty was signed in 1972. It is renewed every ten years and the last time renewed was in 2016. The statistics on import from and export to India are given below.

(In Millions of Nu/IRS)

Year	Import	Export	Trade Balance
1990-91	1254.92	1129.57	(-) 1253.5
1991-92	1814.14	1465.13	(-) 349.01
1992-93	2082.62	1522.18	(-) 564.08
1993-94	2065.90	1785.98	(-) 279.92
1994-95	2750.00	2088.00	(-) 662.03
1995-96	2856.41	2489.18	(-) 367.23
1996-97	2890.00	3220.00	(+) 330.00
1997-98	3450.00	4040.00	(+) 590.00
1998-99	3620.00	4180.00	(+) 560.00

Source: Indian government publications, 2005

Bhutan-India Trade Statistics (NU/Rupees in Billion)

Source: Royal Monetary Authority of Bhutan, 2008

Year	Import	Export
1994-95	2.22	2.05
1995-96	2.79	3.07
1996-97	3.06	3.22
1997-98	3.68	4.04
1998-99	4.91	4.18
1999-2000	6.06	4.71
2000-2001	7.38	4.91

(Bhutan news online, 2008)

But the trade has jumped by leaps and bounds in 2019. Import of ten top items amounted to Nu. 68,906,111,049 billion out of the total import of Nu. 69.112 billion. Total export for 2019 was worth Nu.47.487 billion. Balance of trade as thus deficit by Nu.21.625 billion in 2019. Trade deficit was projected to be Nu. 37 billion for 2019. Bhutan is thus trending to be net importer

(Bhutan Trade Statistics, 2019).

Borrowings from outside continue to be the main financing source for development activities, which are continuously increasing. Until June 2020, the outstanding external debt amount increased by 5.3% to US\$ 2872.15 million (Nu.213, 687.97 billion) of which 71.1% is in the form of Rupee debt and 28.9 percent is Convertible Currency (CC) debt. The current existence of peg arrangement (Bhutanese currency is equated with Indian currency, i.e 1:1) and the bigger portion of the total debt which is denominated in Indian Rupee (INR) has helped to cushion the impact of exchange rate shocks. Further, the INR debt has been spent much on the hydropower development, covering more than 86.2% and self-liquidating in nature in terms of payment.

Besides, the CC debts amounting to US\$ 830.76 million (Nu. 61,808.544 billion at Nu.74.40 exchange rate as of 10 March 2021 is 28.9% and it is concessional loans from multinational institutions and bilateral partners, which are subject to exchange rate risk impacting both the stock as well as debt servicing of CC debt. For example, with depreciation of exchange rate in June 2020, the cost of debt servicing increased by Nu. 239.97 million and the debt stock by Nu.5,490.50 million (RMA Annual Report 2020).

The government outstanding debt stock as on 30th June 2019 was Nu. 184,174.524 million (US\$ 2,662.059 million) which is about 100.57% of GDP. The Government Equity Holdings and Government Guarantees as on 30th June 2019 were Nu.107, 160.782 million and Nu.1, 979.508 million respectively (Annual Financial Statements of RGoB for the year ended 30 June 2019). Certainly Bhutan is importing more and trade balance is not in Bhutan's favour. It has to work hard and diversify with value added goods in the future to export more to gain the favorable balance of trade.

Significance of FTA and Clauses in the Articles

Based on the age old ties between India and Bhutan, and with the desire to strengthen them further, FTA was entered into to reap the benefits from the free trade and commerce. Bhutan stand to gain from this FTA since Bhutan has to import nearly everything from India, and whatever Bhutan has for sale, India alone is sufficient a big market for its products. Besides, Bhutan is the only country with which India has good and mutually beneficial relation compared to other SAARC countries. Article -VIII says Trade between India and Bhutan will continue to be transacted in Indian Rupees and Bhutanese Ngultrums. In this regard, since Bhutan's exports are mainly edible items which are tax exempted, Bhutan stands to gain by way of excise refund on whatever imports that is made from India. Excise refund also used to make up about almost 10% of the national revenue income of Bhutan. However, there is an inconsistency here. It often helps small countries to thrive as an independent country through trade but at the same time face adverse conditions in the globalized markets and makes it quite vulnerable to exogenous shocks.

Bhutan is a landlocked country and that will of course remain so, and continue to influence

its economic conditions. 79% of Bhutan's total imports come from India and 90% of its exports are made to India. In the foregone paragraphs, a small description and analysis of the balance of trade and increasing debts services were explained to augment the argument. Opening to other countries is possible by joining WTO. But is it really worth to join the big league of nations? It is my contention that WTO membership is highly recommended as it guarantees level playing field for every member country in the WTO.

Current Status of Bhutan's accession to the World Trade Organization (WTO)

Bhutan developed aspirations to play equally important roles with other international countries by joining WTO. The process started in 1999 for Bhutan, when it applied for WTO membership. Since then, some legislative changes have been made in conformity with WTO norms.

The WTO has 164 members, including 36 Least Developed Countries (LDCs). At the end of 2017, 19 countries were at different stages and levels of negotiation for accession to WTO. Bhutan is currently one of the Observer States, meaning Bhutan has not become acceded member of WTO. Afghanistan became a member of WTO in 2016 (Press Release, Ministry of Economic Affairs, 2017). Bhutan also participated in the Enhanced Integrated Framework (EIP) High Level Dialogue to discuss and gain knowledge on market access opportunities and strengthening trade capacities of the LDCs.

Bhutan planned to join WTO by 2009

Bhutan planned to join WTO by 2009 by opening up 54 services and 5,820 goods for negotiations with 164 countries as potential trading partners.

Bhutanese key ministries representative officials were posted as a negotiating team at WTO headquarters in Geneva and doing preliminary study. It was expected that Bhutan would be able to join after the fifth working party meeting in 2009. The service sectors which were opened up were not expected to be uniform, which required Bhutanese partners to have maximum equity of 70 percent to a minimum of 49 percent. Besides it was necessary to register as Bhutanese company subject to prevailing domestic laws on labor, tax and applicable trade rules opening up only some portion (Bhutan Today, 7 June 2008). Bhutan would be allowed to impose maximum duty of 100 to 150 percent on all the non-agricultural and agricultural goods, and on sensitive products. However, once applied, the percentage cannot be applied higher than that. The average duty so far is 48.7 percent on Bhutanese agriculture products with the exception of red rice having a protective 100 percent maximum duty. The average duty rates is 26.3 percent for the non-agricultural items. The duty rates were originally higher but brought down to adjust and

accommodate with other countries' wishes. Becoming a member of WTO will open up the markets of other countries and so will have to open up the markets of Bhutan to other member countries of WTO, based on the principles of reciprocity and non-discrimination. In accordance with the Most Favored Nation (MFN) clause and single undertaking principle, Bhutan can enjoy the multilateral benefits without having to negotiate with one on one trade agreement with each member country. It will enable to initiate economic reforms – Bhutan has to make reforms that its laws and policies are in keeping with the WTO norms which are transparent and non-discriminatory and without vested interests.

USA had expressed interest in Bhutan's finance and energy sector, while China was willing to export some goods. Japan showed interest in establishing direct car showrooms and workshops and Canada in increasing days of business visa. The European Union (EU) expressed interest in Bhutan's services and goods. Bhutan's negotiating officials say that even other smaller countries have shown interest in trading. Any agreement to any one country in opening up services or goods will be applicable to all other countries as well. It is possible now to get foreign direct investments, capital, skills and transfer of technology to Bhutan, with a WTO tag guaranteeing that the country is safe and credible for any business. A major advantage is also that it will now be easier for the government and commercial sectors to look for markets in any of these countries for our export items like bio-food and handicrafts. However, the greater advantage for Bhutan would be a set of transparent strong domestic trading laws based on international trading laws to promote good governance and efficiency.

Apart from assistance from WTO, Bhutan as one of the least developed countries (LDCs) would also get some concessions, including tariff rates and the pace of opening up. Bhutan will graduate from LDC status in 2023. However, WTO confers Special and differential treatment for developing and least developed countries. WTO has over 150 provisions to safeguard against a wide range of concerns a developing country faces, like greater market access in agriculture and manufacturing and flexibility in meeting WTO commitments. It also includes greater opportunities for safeguarding measures to protect their economies and access to technical assistance and more time to meet WTO commitments. On the other hand, the unlimited exports from non-rupee countries will have an impact on trade balance and on Bhutan's limited foreign exchange reserves. Because of increased competition to domestic players, many smaller and weaker companies and competitors will have to shut down thus giving greater benefits and greater choices to the consumers. Trading laws once enacted cannot be easily changed with regard to market access of services and duty on goods leading to domestic policy inflexibility.

For this reason, Bhutan could face possible negative impacts in agriculture, as it is beset by poor technology, accessibility to outside world and marketing, thus making it tough and unfriendly to Bhutan's exports. However, Bhutan joining the WTO will be both an advantage and disadvantage when it comes to the disputes settlement mechanism, in the sense that Bhutan can take even big countries to court for unfair trade practices. Similarly, Bhutan can also be taken to international courts and penalized for barring anyone against WTO trade laws. Since Bhutan's application for membership, it has been making legislative changes in keeping with the WTO

regulations.

Bhutanese have to understand very well the agreements concerning sanitary and phytosanitary (SPS) issues with member countries of WTO, to avoid that sanitation and health issues are not misused to block trade. The other agreements like TRIPS (trade related aspects of Intellectual Property Rights) agreement to protect intellectual property rights and TBT (Technical Barriers to trade) are to make sure that duty on products are applied in a transparent manner and to ensure the standards of quality. Given all the complexities in becoming the WTO membership, Bhutan has stalled the process in becoming full membership since 2017. The final decision to join or not join WTO will lie in the hands of the National Assembly, who will take a vote on the issue after debating it in the National Assembly. As of now, the existing FTA between India and Bhutan is as good as regional trade benefitting both the parties which is also in keeping with the WTO norms.

Conclusion

Bhutan has tried hard to join the international community and the FTA and possible WTO membership is enabling this. The significance of being and becoming members of this organizations is made aware to the Bhutanese. If Bhutan does join the World Trade Organization, it is one of the major steps it will be taking in this century. To put this in perspective, Bhutan has been open to India but with WTO membership, it has more than 164 countries to contend with. Bhutan is not yet prepared in any sector starting from agriculture to industry.

Apart from far exporting to 164 countries, Bhutan already has a trade imbalance with India except in hydro power sector. The Ministry of Economic Affairs has also not done comprehensive survey on the impact of WTO on our services, jobs, industries, immigration, sovereignty of our laws, culture, environment and GNH and export potential. The only impact studies done are some power point presentations based more on international experiences to the conferences. However, Bhutan's FTA with India has made it possible to import everything through India without any tariffs and practically able to trade whatever Bhutan has for the sale. But joining the WTO will make Bhutan more open to the outside world and other countries. Therefore, Bhutan stands at a crossroad.

The Royal Government of Bhutan (RGoB) has stalled the process of joining the WTO as of now justifying that joining WTO will create one of the biggest constraints and obstructions to distract Bhutan from creating enabling and conducive conditions for Gross National Happiness (GNH). To plug into the system of globalization network with limited resources and expertise will be disadvantages to Bhutan which will be seen by WTO members as anti and irrational (Lamsang, 2017).

Given its size and immensity, India only can take the lead in transforming a grossly under-performing region like South Asia. The share of India in the total land area, population, and real GDP of South Asia in 2016 are 62%, 75% and 83% respectively. Two other countries are Bangladesh and Pakistan with shares in regional GDP of only 5.6% and 7.6 % (Balakrishnan, April

2021). For this reason, a focus on India, rather than the WTO, could be deemed more beneficial. In the recent decisions of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), two and a half years after the Kathmandu Summit, the grouping stands ready to move forward. BIMSTEC was established as grouping of four countries – India, Thailand, Bangladesh and Sri Lanka and later through Bangkok Declaration in 1997 to promote economic development, it was expanded to include Bhutan, Myanmar and Nepal.

The foreign ministers of the Member States cleared the draft for the BIMSTEC charter, recommending its early adoption. They authorized the rationalization of sectors and sub-sectors of activity, with each member-state serving as a lead for the assigned areas of special interest. They supported for the Master Plan for Transport Connectivity to be adopted at the next summit. Other preparations are completed for the signing of three agreements relating to mutual legal assistance in criminal matters, cooperation between diplomatic academies, and the establishment of a technology transfer facility in Colombo.

The recent deliberations however lack reference to the progress on the trade and economic dossier. The study in January 2018 of the Federation of Indian Chambers of Commerce and Industry suggested that BIMSTEC urgently needed a comprehensive Free Trade Agreement (FTA) to be a real game changer. It should ideally cover trade in goods, services and investment, promote regulatory harmonization. It should also adopt policies that develop regional value chains and eliminate non-tariff barriers. There is a lack of enthusiasm to engage in the vibrant business communities of these seven countries, and to develop dialogue, transactions and further interactions. In this regard, BIMSTEC also remains a work in progress. More than 20 rounds of negotiations to operationalize the BIMSTEC Free Trade Area Framework Agreement which was signed in 2004 are yet to bear fruit.

However, notable achievements has been made in Humanitarian Assistance and Disaster Relief and security that include cyber security, counterterrorism, and coastal security cooperation. Through constant focus and follow-up India has led, so much so, that some member-states have complained about the ‘over-securitization’ of BIMSTEC. But the trick to ensure balance is not to go slow on security, and to fast-track the pace of forging solid arrangements for economic cooperation. Correspondingly, while other national business chambers are yet to be optimally involved with the BIMSTEC project, the strategic and academic community has shown plenty of interest through the BIMSTEC Network of Policy Think Tanks and other fora (Bhatia 2021). Therefore, Bhutan’s relations with India is always in the right direction through FTA but moving slower in joining WTO.

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