
Role of WTO in the Promotion of Trade and IPR in Afghanistan

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ABSTRACT: *Accession to the World trade organization provided Afghanistan a platform to resolve its transit-related problems via this organization. The assessment of the impact of the World trade organization agreement can result in a dynamic capability that enables the country to respond to uncertain and changing business environments and to sustain its trade activities globally. The outcome and gaps can lead Afghanistan to work efficiently to enhance export, reduce imports and protect IPR regimes. The study reveals a lack of available and reliable research concerning trade and IPR protection in Afghanistan. It makes it challenging to integrate information and draw an interpretation about the impact of WTO on trade and IPR. The study's objectives are to review the WTO agreement of business and IPR with Afghanistan and analyze the future scope of the WTO agreement on the economy of Afghanistan.*

Keywords: Afghanistan, WTO Accession, Import and exports in Afghanistan, Intellectual Property protection in Afghanistan

1.0 PROLOGUE

Afghanistan's objective to become a member was the conviction that she would grow financially and benefit from trade-related opportunities and privileges. Likewise, it was believed that its trade- and transit-related problems would collapse, which would pave a path for foreign investment. To get enrollment in the WTO, Afghanistan brought in some internal reforms related to trade, economy, and investment. Making these changes in the country paves a path for trade activities. Assessing the impact of WTO, the agreement on the trade-in Afghanistan would provide evidence that the primary purpose of WTO is to resolve disputes, equal treatment, free trade, and transit dispute settlement. Also, the study identifies the loopholes that hinder the progress of trade and the protection of IPR in Afghanistan.

After completing the accession formalities, Afghanistan has become the 36th Least Developed Country (LDC) member of WTO¹. Afghanistan is a landlocked country but strategically located at the heart of Silk Road², which can even serve as the "trade and transit hub" of Central Asia and South Asia³. It is believed that sustainable economic growth through attracting significant trade and investment cannot be achieved without broader integration into the world economy. Afghanistan National Development Strategy (ANDS) explicitly recognizes the role of trade for economic development. It highlights Afghanistan's integration into the world economy as one of the key development goals for which membership in WTO is an essential step (ANDS, 2008). Economic Growth and Poverty Reduction are the core objectives of ANDS which place greater emphasis on a free market and private sector-led economy.

¹ There are 44 countries recognized as LDC by the UN, of which 34 countries are members of WTO. Eight LDCs including Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, Liberia, Sao Tome & Principe and Sudan are currently negotiating for WTO membership. Yemen is the recent LDC member of WTO.

² The Silk Road was a network of trade routes that linked cities, trading posts, hostels and caravan-watering places. It was most active from about 300 BC to 200 AD and extended between the Eastern Roman frontier in the Middle East to the Chinese frontier, with other paths going north through Afghanistan from the Indian Ocean to the Siberian Steppe.

³ Afghanistan representative presentation to WTO, 2012

With the belief that WTO will foster economic growth through increased exports and attraction of Foreign Direct Investment (FDI), Afghanistan applied for WTO membership. Almost all trading partners of Afghanistan at SAARC, Central Asia, and West Asia are WTO members or are in the process of accession, therefore WTO membership gives Afghanistan a broader chance for fair trade through dispute settlement mechanism at WTO (MoCI, 2012). However, WTO accession requires extensive reforms to adjust to its rules and regulations to be compatible with multilateral trade regimes under the WTO. These compliance requirements themselves pose a real challenge to a Least Developed Country like Afghanistan.

In Afghanistan, the terms and conditions for the WTO Accession are intended to accomplish its development needs. These incorporate working with domestic reforms for change to profitable investments, free markets, employment, and improving the welfare of Afghans. The obligations of WTO are to be abided by all WTO Members, on a Most Favorable Nation (MFN) basis as for both trade and Intellectual Property Rights (IPR).

Article 7 of the Afghanistan Constitution endeavors the provisions of international law, international organizations, and fostering respect for international obligation concerning treaties.⁴ Afghanistan ratified the Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972) in 2005. The WIPO treaty was consented to on 13 September 2005 and was implemented at the end of the year. The framework of copyright is governed by the law which aims to support the right of composers, authors, researchers, and artists. The Berne Convention under the International Union for the Protection of Literary and Artistic Works ("Berne Union") is in effect in Afghanistan since 2 June 2018 (Berne Convention No. 279). However, in Afghanistan, Trademarks and service marks are registered for ten-year terms and are renewable through the Ministry of Foreign Affairs. and Article 47 of the Afghanistan Constitution states that the country shall protect Intellectual Property Rights.⁵

International Trade will enable Afghanistan to specialize and export products promoting economic well-being and increasing national income and consumption. As Afghanistan is an LDC, it can specialize in the production of a single commodity without significantly affecting its prices in the international market where the country can benefit from international trade. The products can be provided at a comparatively cheaper price attracting more business. As international trade is an engine for growth for any country, the movement of capital and dissemination of technical knowledge helps divide labor based on specialization and efficiency. Free international trade is encouraged in Afghanistan but the country also faces problems of dumping where dominating industrial countries like China dump the goods cheaply. The domestic market is getting affected because of dumping and hence strategic protection measures for anti-dumping are an urgent need in Afghanistan. Stabilization and equilibrium in the balance of payments should be ensured in Afghanistan through accession to WTO. Domestic legislation for international trade must be strengthened to act following international law as there should not be any conflict between the two. The WTO agreement also encompasses agreements related to intellectual property rights which ensure optimum protection of rights of owners of intellectual property. Countries like India achieve maximum protection of intellectual property through the principles of national treatment, minimum standards protection, and constituting procedures and national laws which that infringement and enforcement of rights that can be legitimate. The same can be applied to Afghanistan. As a component of the negotiations of accession, Afghanistan fulfilled 9 bilateral market access agreements on goods and 7 bilateral market access agreements on services. These necessities of compliance themselves represent a challenge to an LDC like Afghanistan. Alongside this, Afghanistan faces difficulties in sustaining ongoing advancement gains despite mounting political vulnerabilities, declining international grant support, and insecurity. Policy choices are limited by the weak implementation capacity of government agencies, reflecting administration imperatives, and constrained macroeconomic policy alternatives with regards to narrowing fiscal space and weak money-related transmission mechanisms. Hence, this study is conducted to assess the impact of the WTO agreement on the trade and IPR in Afghanistan.

Afghanistan received membership to the World Trade Organization (WTO) at the 10th WTO Ministerial Conference in Nairobi, Kenya, on December 17, 2015. Afghanistan is 164th in the world and 36th among the less-developed countries that have received WTO membership.

Acceding to the WTO membership is a long process; Afghanistan was admitted after 11 years of negotiations. Afghanistan is among the least developed countries in the WTO and there are some expectations that their accession might impact newly emerged industries in the country.

⁴ Article 7 of the Afghanistan Constitution, 2004 directs that the state shall observe the United Nations Charter, interstate agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. The state shall prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants.

⁵ Article 7 of the Afghanistan Constitution, 2004 directs that the state shall devise effective programs for fostering knowledge, culture, literature and arts. The state shall guarantee the copyrights of authors, inventors and discoverers, and, shall encourage and protect scientific research in all fields, publicizing their results for effective use in accordance with the provisions of the law.

After World War II, the original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two "Bretton Woods" institutions: the World Bank and the International Monetary Fund. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. However, these negotiations failed as the draft ITO Charter extended beyond world trade disciplines.⁶

Meanwhile, 15 countries had begun talks in December 1945 to reduce and bind customs tariffs. With the Second World War having only recently ended, they wanted to give an early boost to trade liberalization and begin to correct the legacy of protectionist measures which remained in place from the early 1930s.

As a result of these negotiations, the new General Agreement on Tariffs and Trade (GATT) was born, with 23 founding members (officially "contracting parties"), in Geneva in 1947.

For almost half a century (until 1994), the GATT's basic legal principles remained much as they were in 1948, and several other meetings were held on further decreasing tariffs, among other relevant issues. For example, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping⁷ Agreement. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs and to improve the system. The eighth meeting, the Uruguay Round of 1986-94, was the last and most extensive. It led to the creation of the WTO and a new set of agreements.

Essentially, the WTO is a mediator among member states facing trade problems with other member states.⁸ The GATT focuses on trade in goods, while the WTO deals with trade in services and intellectual property. The WTO was established in 1994, during which time Afghanistan was involved in a civil war and did not have a strong central government capable of joining the organization. With the emergence of the Taliban, Afghanistan's Mujahedeen government was not recognized and its representatives to the UN were not accepted. Additionally, economic sanctions were placed on Afghanistan at that time. Due to these circumstances, Afghanistan was not eligible for WTO membership. However, after the new regime was established under the leadership of Hamid Karzai, Afghanistan officially asked for membership to the WTO on November 21, 2004.

Following the official request from Afghanistan, WTO established a working party, consisting of 28 countries and led by the Netherlands, on December 13, 2004. These countries included China, Pakistan, Tajikistan, India, Japan, Russia, Saudi Arabia, and the European Union, among others; most had trade ties with Afghanistan.

Afghanistan presented its Trade Policy Memorandum on March 31, 2009, and the questions and replies were sent on July 26, 2010. The working party held five meetings which took place on the following dates: 31 January 2011; 18 June 2012; 7 December 2012; 25 July 2013; and 11 November 2015. Eventually, the Working Party presented its finalized report to WTO on 13 November 2015. Afghanistan received membership after Afghan First Deputy Chief Executive Mohammad Khan signed the protocol at the 10th WTO Ministerial Conference in Nairobi, Kenya on December 17, 2015.

2.0 A policy of Afghanistan towards the WTO

Generally, Afghanistan's goal to become a member rested in the belief that Afghanistan would develop economically and would benefit from trade-related freedoms and privileges. It was also believed that its trade- and transit-related problems would dissolve and it would be able to attract foreign investment.⁹

Afghanistan, to receive membership in the WTO, brought about some internal reforms around trade, its economy, and investments. It signed 9 bilateral agreements related to goods and 7 others related to services.

The main aim of the WTO is to open borders for trade and reduce tariffs. Accordingly, Afghanistan has put an average of a 13.5% tariff on products, 33.6% on agricultural products, and 10.3% on non-agricultural products. Afghanistan joined the Information Technology Agreement (ITA) upon accession into WTO. This agreement asks all participants to eliminate duties on IT products covered by the ITA. Afghanistan's export tariffs will also be bound for 243 tariff lines. Of these, 29.6% are bound at 10%, 24.2% are bound at 2.5%. On services, Afghanistan has made specific commitments in 11 services sectors, including 104 subsectors.¹⁰

⁶ "Afghanistan Accession". *World Trade Organization*.

⁷ In economics, "dumping" is a kind of predatory pricing, especially in the context of international trade. It occurs when manufacturers export a product to another country at a price either below the price charged in its home market or below its cost of production. The purpose of this act is sometimes to increase market share in a foreign market or to drive out competition.

⁸ "Afghanistan Accession", Available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm

⁹ BBC, Afghanistan became a full member of the World Trade Organization, Available at https://www.bbc.com/pashto/afghanistan/2015/12/151217_wto_afghaan_membership_iy

¹⁰ "Overview of Afghanistan's commitments" (PDF). *WTO*. 13 December 2004.

3.0 Impact of Afghanistan's Membership in WTO

3.1 Resolving Disputes:

One of the aims behind establishing the WTO was to help member nations resolve their trade-related disputes.

3.2 Equal Treatment:

Joining the WTO gives Afghan exports access to all WTO member markets on a Most Favored Nation (MFN) basis. This means that Afghan exports will be eligible for the best treatment that the country provides to the goods of other WTO members.

For example, if the European Union grants the United States a low tariff on its potatoes, then Afghan exports must be given the same low tariff on exports of Bamiyan potatoes to the European Union.¹¹

3.3 Free Trade

The WTO aims to increase free trade in the world and remove obstacles toward it. Therefore, Afghanistan not only has access to the markets of 146 countries, but its exports would not face high tariffs in other countries.

3.3.1.1 Transit Dispute Settlement

Afghanistan is a landlocked country that has caused difficulties in the area of trade. Joining the WTO provides Afghanistan with a forum to resolve its transit-related problems via this organization. WTO rules will not force Pakistan to revise the Afghanistan–Pakistan Transit Trade Agreement to allow Afghanistan access to Indian markets.

3.3.1.2 Threat to Newly Emerged Industries

Governments in some countries that have recently started to become industrialized try to increase tariffs on imported goods for the domestic industries to survive in rivalry with foreign industries; however, Afghanistan, due to getting WTO membership, would not be able to increase tariffs on imported goods. Thus, newly emerged domestic industries could suffer in competition with foreign industries and could be defeated by imported goods. Some believe that this may lead to increased unemployment in the country.

3.3.1.3 Ending Subsidy

The WTO emphasizes eliminating agricultural and industrial subsidies, which could have a deep impact on Afghanistan's agricultural and industrial exports. Afghanistan will not be able to put high tariffs on imports.

4.0 Trade and Economic Profile of Afghanistan

Afghanistan is a landlocked, war-torn, and aid-dependent economy. 652864 square kilometers is the total area of the country and 30 million is the populace of the country out of which 78% are living in the rural territories and it is an agrarian economy (75% of populace; World Bank). Afghanistan's economy is molded by fragility and aid dependence. The private sector is narrow; with employment moved in low-profitability agriculture (44% of the labor force works in agribusiness and 60 percent of families earn from farming). Development of private areas and diversification is compelled by political vulnerabilities, declining international grant support, and insecurity. Policy choices are limited by the weak implementation capacity of government agencies, reflecting administration imperatives, corruption, and business environment (Afghanistan was positioned 173rd of 190 nations in 2020, Doing Business Survey).

Establishments and property rights that are weak restrict monetary inclusion and access to finance in Afghanistan, where the private sector has a share of three percent of GDP. The country has a structural trade deficit dependent on grant inflows. 75% of public spending is dependent on grants and security expenditures (national security and police) are 28% of GDP in 2019 and the public expenditure was 57% of GDP. A significant portion of production, exports, and employment, and includes opium production, smuggling, and illicit mining accounts for the illicit economy.

The industry in Afghanistan is at a primal stage. The industrial production of the nation incorporates textiles, furniture, soap, carpet, fertilizers, shoes, leather, non-alcoholic drinks, natural gas, and cement. The industrial products of the nation are predominantly implied for domestic consumption. Afghanistan, as indicated by the UN classification of nations is perhaps the poorest country on the planet and is categorized both as a Least Developed Country (LDC) and a Land-Locked Developing Country (LLDC). Measures like Human Development Index (HDI) places Afghanistan at a low degree of human advancement when measured by education, health, and living standards. The HDI in 2020 positioned Afghanistan 169th out of 187 nations and the Gender Development Index (GDI) places Afghanistan in group five, which is the lowest group of nations in terms of gender equality (Human Development

¹¹ "Why Afghanistan Should Join WTO?", Archived from the original on 2021-03-16, Available at <https://web.archive.org/web/20160316034654/http://moci.gov.af/en/page/8774>

Index Report, 2020). These measures mirror the consequences of many years of contention which has obliterated a large part of the agricultural and industrial capacity of the country.

4.1 Exports and Imports

In 2019, the estimation of merchandise exports from Afghanistan amounted to \$870 million. Commodity exports from Afghanistan diminished by 1.58% compared to 2018. Merchandise exports diminished by \$ 14 million (the estimation of merchandise trades from Afghanistan added up to \$884 million in 2018). The estimation of merchandise imports to Afghanistan added up to \$ 8.56 billion in 2019. Merchandise imports to Afghanistan expanded by 15.6% contrasted with 2018. Imports of goods grew up by \$ 1.16 billion in 2019 (the estimation of merchandise imports to Afghanistan was equivalent to \$7.4 billion in 2018).

The larger portion of exports of the country consists of dried fruits, fresh fruits, saffron, rags, leather, and precious stones to the target markets such as India, Pakistan, Kazakhstan, United Arab Emirates, Uzbekistan, etc. The nation's imports incorporate nearly everything from food to mechanical products, heavy machines, automobiles, and energy. The Afghan Government has perceived the significance of trade with its neighbors and has attempted to incorporate with them through membership in territorial associations like the South Asian Association for Regional Cooperation (SAARC) to which Afghanistan became a member in the year 2007, and Afghanistan is an observer from 2012 in Shanghai Cooperation Organization (SCO).

The nation conceded to minimum tariffs, but, it has not had the option to catch an important share in the markets for its exports. The South Asian Free Trade Area (SAFTA) was signed by SAARC member states as indicated by which the Non-Least Developed Contracting States (NLDCS), namely, Pakistan, India, and Sri Lanka and the other five Least Developed Contracting States (LDCs) including Afghanistan would reduce tariffs to 20% and 30%. Notwithstanding this Afghanistan has consented to Preferential Trade Arrangement (PTA) with India, as per which it has consented to decrease its tariffs for some fundamental goods like tea, sugar, medicines, cement imported from India.

5.0 Intellectual Property in Afghanistan

In the early times, there were some provisions related to IPR under the Commercial Law of Afghanistan which protected very few IPRs. However, the "Trademarks Regulation" was constituted in 1960 which was not effective. There were no regulations related to Patents, Copyrights Design and Geographical Indication. For a very long time the Ministry of Commerce, Ministry of Information and Culture, and commercial courts dealt with IPR in an unorganized manner. Because of the unorganized way of dealing, there was a lack of awareness about the importance of IP among the citizens, organizations, and industries in the country.

After the Government understood the significance of the implementation of IPR regulation in Afghanistan, the Ministry of Commerce and Industry (MoCI) proposed to the Economic Committee of the Council of Ministers in 2006. The proposal was made based on copyright laws existing in various countries such as the United States, European countries such as Germany and France. As Islamic traditions prevail strongly in Afghanistan, the copyright legislation of Arabic countries such as Egypt, UAE, and Qatar were studied (The Clean State, 2003). The main aim of this legal foundation was to encourage and register patents, trademarks, industrial designs, and geographical indications and to have access to IPRs globally. In 2009, the MoCI proposal was approved by the council of ministers to institute a department of IP.

The IPR regime focuses on the following:

- To strengthen the capacity of Afghanistan by formulating IP regulations
- To build the capability of the IP Department within MoCI
- To develop and build up IPRs and raise public awareness

The country needs technical assistance and capacity building through receiving equipment and support from WIPO along with participation in workshops and meetings through WIPO. Receiving training through international organizations in the field of IPR can boost the strengthening of IPR. Implementation of IPR poses major challenges and problems such as a weak IP department with limited resources, a weak judicial system, lack of public awareness and financial resources to boost the IPR system in the country. Article 47 of the Afghanistan Constitution states that the country shall formulate effective programs for fostering knowledge, culture, literature, and arts. A guarantee of copyrights of inventors, authors, and discoverers shall be given by the country which shall protect and encourage scientific research in all fields (Article 47 of Constitution of Afghanistan, 2004). Since Afghanistan acceded to the WTO, it becomes evident that the country can act per the international treaties related to trade and intellectual property. But the role and progress of international developments are limited in Afghanistan as their implementation has been restricted due to a lack of constitutional and authoritative legislature. Unconstitutional amendments and actions are not monitored by authorities and courts. Afghanistan has not had any legislation on patents and copyrights in the past and trademark legislation has not been administered appropriately and effectively to date.

However, after many efforts, full implementation of the TRIPS Agreement was started on 1 January 2019. Articles 3, 4, and 5 of the TRIPS Agreement applied from the date of accession to the WTO and WIPO. After the accession to WTO, it was one of the main commitments of Afghanistan to reform its existing trademarks framework. Any country needs to amend and update its IPR laws to act by the TRIPS agreement. Though the trademarks regulation existed in Afghanistan, its accordance with TRIPS was challenging as the country did not confirm licensing trademarks and trademark validity (Seddiqi, Hafizullah, 2020). This subsequently results in loopholes for increasing corruption and decreasing foreign investments. Hence, these deficiencies have to be fixed by Afghanistan to ensure legal and administrative protection of IPR.

For IPR, Article 10 of the Constitution of the Islamic Republic of Afghanistan mentions that the state shall “encourage and protect the safety of capital investment and private enterprises following the provisions of the law and market economy”. Also, Article 11 states that “matters concerning foreign and domestic trader governed by law concerning the economic requirements of public interest and the country”.

Accession to WTO and TRIPS leads to the organization of laws and regulations in the state which also strengthens the constitution of the country concerning provisions of IPR and international trade. It is therefore important to implement an IPR regime with effectiveness. It will boost and strengthen the IPR department of Afghanistan and inclusion of subjects on IPR in the education system can help students in schools, universities, and research centers gain awareness of the framework. Publishing articles and news through media can increase public awareness making the individuals, companies, and organizations function within the framework of IPR and international trade. Criteria must be developed for the identification and approval of claimed intellectual innovations. A comprehensive training program must be provided to judges, advocates, and authorities of IPR (Seddiqi, Hafizullah, 2020). A sound IPR framework can boost economic growth and its implementation is significant for Afghanistan.

5.1 Copyrights

Since 2008 copyright in Afghanistan has been governed by the law on the support the right of authors, composers, artists, and researchers (Copyright Law).¹²In 1958, Afghanistan ratified the Agreement on the Importation of Educational, Scientific, and Cultural Materials, with Annexes A to E and Protocol annexed (Florence, 17 June 1950). In 1979, it accepted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970) and in 2005 it ratified the Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972).¹³ It acceded to the WIPO treaty on 13 September 2005, which came into action at the end of the year.^{14,15}

In November 2003, the Copyright World Journal reported that a group, the Intellectual Property Working Group of the Afghanistan Transitional Commercial Law Project, had been working on setting up the first patent or copyright system for the country and updating its trademark laws. It is a joint project of the Center for International Management Education (CIME) and the American Bar Association's "Asia Law Initiative" (ABA-Asia).¹⁶ Since 2 June 2018, the Berne Convention is in effect in Afghanistan.¹⁷

As of 2005, Afghanistan has no official copyright relations with the United States,¹⁸ resulting in works published in Afghanistan not being copyrighted in the United States, and vice versa. In October 2007, the US Department of Commerce and the Afghanistan Ministry of Commerce and Industry signed a joint agreement to establish a forum for commercial cooperation including establishing intellectual property rights protection and enforcement.¹⁹

In 2005, Deputy-Minister of Information and Culture Sayed Aqa Husain Sancharaki stated that copyright law was forthcoming, which prompted the National Independent Commission for Radio and Television Broadcasting to

¹²"Afghanistan: Law Supporting the Rights of Authors, Composers, Artists and Researchers (Copyright Law)". *Wipo.int*. Retrieved 25 May 2021

¹³"Ratified and non Ratified conventions by country". *UNESCO*. Retrieved 25 May 2021.

¹⁴Publications - MEISCA Intellectual Property Express: MEISCA Intellectual Property express: Issue 42 Archived 25 May 2021, at the Wayback Machine

¹⁵ "Archived copy" (PDF). Archived from the original (PDF) on 2007-09-01. Retrieved 25 May 2021, Available at https://web.archive.org/web/20070901204207/http://www.copyright.org.au/pdf/acc/updates_tocs/toc/u05n06toc.pdf

¹⁶"The clean slate : Drafting Afghanistan's first copyright laws". *Copyright World*: 22–25. November 2003. Archived from the original on 2021-06-07

¹⁷"Berne Notification No. 279, Berne Convention for the Protection of Literary and Artistic Works, Accession by the Islamic Republic of Afghanistan". WIPO. 2018-03-02. Retrieved 2021-07-04.

¹⁸ *International Copyright Relations of the United States*. U.S. Copyright Office, Available at https://en.wikisource.org/wiki/International_Copyright_Relations_of_the_United_States

¹⁹U.S. Department of Commerce and the Afghanistan Ministry of Commerce and Industry Joint Statement on Commercial Cooperation" (PDF). 2007-10-07. Archived from the original (PDF) on 2021-08-11, Available at https://web.archive.org/web/20080911062606/http://trade.gov/static/afghanistan_jointstatement.pdf

circulate a statement requesting that media outlets either pay royalties or cease distributing material that had been created by Radio Television Afghanistan as the outlet began transforming to a public broadcaster. It was later pointed out that RTA had no right to make such an autonomous declaration.^{20,21}

The move was criticized by the heads of Ayna TV and Tolo TV, who argued that the cost of royalties meant that potential independent media outlets could not afford to broadcast, and the lack of independent media in the country meant broadcasters relied on RTA footage to play "a significant cultural role...filling this void". The act contradicted the ministry's edict to "promote national culture and traditions" by outlawing the broadcast of the majority of the country's traditional films, music, and programming.²²

5.2 Trademark

In recent years, the Islamic Republic of Afghanistan increasingly has attracted foreign business, including companies from the post-Soviet countries. An important moment when doing business in Afghanistan is obtaining rights to trademarks. It is possible to obtain them only by registering a trademark in Afghanistan.

Since Afghanistan is not a party to the Madrid Agreement²³ or the Protocol²⁴ thereto, as well as to other international and regional organizations, it is only possible to register a trademark following national procedure. In such countries, the national registration procedure is the only possibility to obtain protection for the trademark. As a rule, it includes a range of mandatory stages, namely:

- Filing application with the national patent office;
- Examination of the application;
- Making decisions upon the results of the conducted examinations;
- Publication in the official bulletin;
- Issuance of the title of protection (trademark certificate).

It is essential to indicate all goods and services for which the trademark is intended to be used in Afghanistan, as well as the classes of the ICGS corresponding to them. In the application for registration of the trademark, exclusive right can only apply to goods and services specified in the certificate of registration.

If the application is recognized as meeting all the requirements and the entire consideration process is successful, then the Department decides to register the trademark. The applicant pays the registration fee, and upon applying to the Department he receives a certificate of registration of the trademark. There are restrictions on the registration of trademarks in Afghanistan as in most Islamic countries. Following Islamic traditions, registration of trademarks, which are associated with alcohol, pork, as well as services of various drinking establishments and nightclubs, is not allowed.

5.3 Patents

Patent law is not in force in Afghanistan so far, and it is expected to come into force in near future. Unfortunately, at present, there is a legal vacuum in this field. Hence, it is not possible to file patent applications in Afghanistan at present. It is often a practice that a Cautionary Notice must be published in the local newspaper stating that such and such invention is related to a particular matter/field which belongs to such and such inventors/company. Although the publications of cautionary notices are not registered in any official registers, and it is only an advertisement but it could be a base for claiming priority right in the future when the patent law comes into force in the country. Therefore, the publication should be in detail, and not in a short form. If it is published in short form, it may not serve the priority purposes. The application of Afghanistan to join the WTO obliges it to have a proper working intellectual property system. Afghanistan lacks manufacturing facilities and basic infrastructure. In theory, patents promote innovation and recognize unsung inventors. However, in reality, they mostly help large corporations

²⁰"The National Independent Commission for Radio and Television Broadcasting involves itself in copyright regulation". *Internews Newsletter on Freedom of Journalism in Afghanistan* (8). December 2005.

²¹"Training workshop on Copy Right held by the National TV and ABU". *Internews Newsletter on Freedom of Journalism in Afghanistan* (15). October 2006.

²² Ibid

²³ The Agreement was established in 1891 for the purpose of providing a mechanism that would allow for a single and inexpensive international trademark registration and to eliminate the need for filing, prosecuting or maintaining separate registrations in multiple countries. Registration of a mark under the Agreement provides for the legal equivalent of registration in member countries designated by the mark owner. If the trademark office of the designated country does not communicate a refusal of registration to WIPO within 12 months (extended to 18 months under the Protocol) the mark will have the same protection as registered national marks in that country. The Agreement also provides for a simplified renewal system since registration to renew and chances to the original registration affecting all the countries included in the registration can be made through a single filing with WIPO.

²⁴ The Protocol was adopted in 1989 to correct the perceived deficiencies in the Agreement. However, the Protocol maintains the initial intention of the Agreement, to create a system of simple and inexpensive international trademark registration. Therefore, while only 57 countries are presently part of the agreement, a total of 74 countries including the U.S. are party to either both the Agreement and the Protocol or to the Protocol by itself.

to protect their business assets. The application process can be expensive and time-consuming due to the technical subject matter, and local governments cannot afford that. However, to join the WTO, Afghanistan must establish IP protection to facilitate trade and provide ground rules for international disputes.

Officially, the WTO – via the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) – sets out minimum requirements for its members on copyright, geographical indications, industrial designs, integrated circuit layout designs, patents, plant varieties, and trademarks, trade dress, and trade secrets. Afghanistan has never formally had a patent system and historically lacks a rule of law, particularly concerning trade and commercial law. Afghanistan needs to provide a mechanism to register and record inventions.

6.0 Accession Process to WTO of Afghanistan

The accession in 2004 to WTO was applied by Afghanistan with the following objectives:

- a) Protect steady and non-discriminatory access to exports of Afghanistan
- b) Protect non-discriminatory transit for Afghan exports
- c) Exercise control over unfair treatment of Afghan goods and services in foreign markets
- d) Economy modernization
- e) Develop and grow economy
- f) Growth in fiscal revenue
- g) Augmentation of the transparency and rule of law in the system along with good governance

Working Party was set up in 2004, however, the process of accession was moderate and sluggish. Afghanistan has gained huge progress starting from 2009 through multilateral and bilateral tracks. On March 31, 2009, intending to start conversations within the structure of the working party, Afghanistan presented the ‘Memorandum on the Foreign Trade Regime’ (MFTR) portraying its present laws and policies identified with trade in goods, services, intellectual property, and government procurement (WTO, 2009). Negotiation of accession sped up since the working party meeting which was held in 2010. Afghanistan effectively occupied with the negotiation while explaining the scope of questions acknowledged from Canada, EU, and the US and in regards to their investment and trade structure September 2012.

Afghanistan dispatched service negotiations in June 2011 and submitted the products offer during the first week of October 2012 to begin respective bilateral negotiations on merchandise toward the end of 2012 (WTO, 2013). On 25 July 2013, which was the fourth gathering of the Working Party, WTO members praised Afghanistan for its strong responsibility coordinated by its specialized contributions to propel its WTO accession negotiations to closure (WTO, Dec 2013). At the agribusiness plurilateral negotiations, led by the WTO Secretariat on 25 July, members encouraged the obligation of Afghanistan to tie export endowments at zero and welcomed the way that its domestic support was amassed in the "Green Box" (i.e., domestic aid for farming that is permitted without limits as it does not mutilate trade, or at most causes insignificant distortion) (WTO, 2013).

Afghanistan’s accession was approved in the year 2016. For goods, Afghanistan has undertaken tariff commitments and concessions that bind tariff rates for all products on average at 13.5 percent. The average is 33.6 percent for agricultural products and the average is 10.3 percent for non-agricultural products. Afghanistan has made explicit commitments in 11 services sectors, with 104 subsectors. Full execution of the TRIPS Agreement started from January 2019 for which from the date of accession, articles 3, 4, and 5 of the TRIPS Agreement were applicable. Any progressions made in-laws, guidelines, and practices of Afghanistan in the momentary period would not bring about a lesser level of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. Afghanistan looked for technical help to guarantee its ability to uphold its TRIPS- a consistent legal regime, upon the lapse of the transition period.

The economy of Afghanistan has steadily improved in the last decade due to the return of a large number of wealthy ex-pats, the modernization of the nation's agriculture sector, and the establishment of more trade routes with neighboring and regional countries²⁵. The billions of dollars in international assistance that came from ex-pats and outside investors saw this increase when there was more political reliability after NATO became involved in Afghanistan's reconstruction²⁶. The nation's GDP (PPP) stands these days at about \$70 billion with an exchange rate of \$20 billion (2017), and the GDP per capita (PPP) is about \$2,000²⁷. It imports over \$6 billion worth of goods but exports about \$1 billion worth of legal products²⁸, mainly fruits, and nuts.

²⁵Javed Hamim Kakar (2018), "Afghanistan's commercial goods arrived in Turkey through Lapis Lazuli route", Pajhwok Afghan News.

²⁶Pajhwok Afghan News (2007), "Afghanistan receives \$3.3b remittances from expats", October 19, 2007.

²⁷ Central Intelligence Agency (2018), "Afghanistan". The World Factbook, Available at <https://www.cia.gov/the-world-factbook/countries/afghanistan/>

²⁸TOLONews (2021), "Afghan Exports Dropped 21% in Last Fiscal Year", Available at <https://tolonews.com/business-170752>