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LEGAL IMPLICATIONS OF AFGHANISTAN'S WTO ACCESSION ON TRADE AND IPR SYSTEMS

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Abstract

The World Trade Organization (WTO) serves as a pivotal institution in global economic governance, influencing trade policies, regulatory frameworks, and economic development in member states. Afghanistan's accession to the WTO, finalized in 2016, marked a significant milestone in its post-conflict economic recovery and integration into the global trading system. This article examines the impact of Afghanistan's WTO accession on its trade policies and practices, with a specific focus on the changes in the intellectual property rights (IPR) regime. The analysis explores the opportunities and challenges faced by Afghanistan as it navigates the transition from a largely closed economy to a more liberalized, rules-based trading system. The study also discusses the implications of WTO-induced reforms on domestic industries, the legal framework surrounding IPR, and the broader socio-economic context within Afghanistan. Through a combination of qualitative analysis and policy review, this article provides a comprehensive understanding of the socio-economic and institutional shifts that Afghanistan has experienced post-accession, and the role of IPR in fostering innovation, investment, and sustainable development.

Keywords: WTO Accession, Afghanistan, Trade Policy, IPR, Economic Diversification, Legal Reforms, Innovation, Economic Growth, Capacity Building

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1.0 INTRODUCTION

Afghanistan has historically been a hub for trade and an essential part of the old Silk Road,³ occupying a strategically significant position at the intersection of South and Central Asia.⁴ The country's strong natural resource endowment offers more economic possibilities, and its geographic advantage has always made it easier to access foreign markets. However, Afghanistan's landlocked status it is bounded by Iran, Pakistan, Turkmenistan, Tajikistan, and China presents intrinsic obstacles to its economic growth.⁵ Afghanistan's trade prospects, both bilaterally and in terms of transit commerce with far-off international partners, are greatly influenced by the dynamics of its relations with these surrounding states.⁶

In 2004,⁷ Afghanistan enacted a new constitution that enshrined in Article 10 the state's commitment to fostering and

safeguarding private investment and enterprise,⁸ consistent with the rule of law and the principles of a market economy. In tandem, the country applied for membership in the WTO, marking a pivotal step in its broader reform agenda. As a least developed country (LDC), Afghanistan achieved WTO membership in 2016,⁹ signaling a transformative milestone in its ongoing economic restructuring and integration into the global trading system.

The accession process, which began in 2004 when Afghanistan applied and ended in 2016,¹⁰ was marked by significant reforms meant to improve the nation's ability to compete and interact with international markets. In order to promote both domestic economic growth and international trade relations, the administration emphasized its dedication to taking use of the opportunities provided by WTO membership. Afghanistan's WTO membership was essential to both its domestic reform

³ "Afghanistan and the Silk Road: The land at the heart of world trade" by Bijan Omrani, UNAMA (2010), <https://unama.unmissions.org/afghanistan-and-silk-road-land-heart-world-trade-bijan-omrani> (last visited Jan 6, 2025).

⁴ Ivan Safranchuk, 'Afghanistan's Political Future and Its Role in Eurasian Cooperation' (2019) 75 *India Quarterly* 15.

⁵ Elizabeth Wishnick, *There Goes the Neighborhood: Afghanistan's Challenges to China's Regional Security Goals*, 19 *BROWN J. WORLD AFF.* 83 (2012).

⁶ China and Afghanistan: Bilateral Trade and Future Outlook, <https://www.china-briefing.com/news/china-and-afghanistan-bilateral-trade-relationship-and-future-outlook/> (last visited Jan 6, 2025).

⁷ Scott Worden, *Afghanistan & Iraq: Afghanistan - An Election Gone Awry*, 21 *J. DEMOCR.* 11 (2010).

⁸ Article 10 of the Afghanistan Constitution 2004 states: "The state shall encourage, protect as well as ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and market economy."

⁹ In this research article, 'Afghanistan' refers to the government of Afghanistan from 2001 to 2021, which was led by Presidents Hamid Karzai and Ashraf Ghani. Both leaders served through an elected mechanism during their respective terms.

¹⁰ WTO | 2016 News items - Afghanistan to become 164th WTO member in one month's time, 16, https://www.wto.org/english/news_e/news16_e/acc_afg_29jun16_e.htm (last visited Jan 6, 2025).

program and its larger attempts to create a market-oriented economy. As a crucial signal to the global community, it offered guarantees of increased predictability, transparency, and government stability qualities thought to be crucial for promoting trade, drawing in foreign direct investment (FDI), and propelling economic growth. In addition to these short-term financial gains, WTO membership was anticipated to support the development of human capital, encourage job creation, ease technology transfer, and diversify Afghanistan's economy. Afghanistan sought to strengthen regional economic cooperation by utilizing its advantageous geographic position as a center for trade and transit. Afghanistan was also able to enter the global economic system through WTO membership, which provided rules-based access to 163 member states' markets.¹¹ Notably, Afghanistan had privileged classification as an LDC, which included unrestricted access to important international markets for its exports without tariffs or quotas.¹²

¹¹ Suhailah Akbari, *Afghanistan's Transit Regime*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 69 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_4 (last visited Jan 6, 2025).

¹² Suhailah Akbari, *Freedom of Transit of Landlocked Countries in Light of International Multilateral Agreements*, in

[A]fghanistan also had the chance to address important transit issues, which are especially significant for landlocked countries, during the accession process.¹³ The WTO's established transit regulations and dispute resolution process provided a methodical framework for dealing with these problems. However, at the time of Afghanistan's accession, some of its neighbors Iran, Turkmenistan, and Uzbekistan were not yet members of the WTO; Turkmenistan was an observer, and Uzbekistan was in the process of joining. Notwithstanding these obstacles, Afghanistan's admission allowed it improved access to global trade prospects and regional collaboration.¹⁴ Afghanistan's WTO admission was the result of a drawn-out and lengthy negotiation process.

THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 13 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_2 (last visited Jan 6, 2025).

¹³ Suhailah Akbari, *Legal Challenges Facing Afghanistan's Transit Trade with Pakistan*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 1 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_1 (last visited Jan 6, 2025).

¹⁴ Suhailah Akbari, *WTO Rules on Freedom of Transit*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 101 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_5 (last visited Jan 6, 2025).

Afghanistan took part in five meetings of the Accession Working Party between 2011 and 2015 after submitting its Memorandum on the Foreign Trade Regime in 2009. On July 29, 2016,¹⁵ Afghanistan was formally admitted as a member. In light of the decades of conflict that had previously economically isolated the country, the process's completion represented a turning point in Afghanistan's larger strategy for economic integration and prosperity. WTO participation did, however, open up new opportunities for trade, foreign direct investment,¹⁶ and economic growth, although there were drawbacks to this integration. Aligning Afghanistan's local legal and trade systems with the strict requirements imposed by WTO accords was one of the most urgent of these issues.¹⁷ Notably, it was determined that improving Afghanistan's intellectual property rights

(IPR) framework was essential to safeguarding regional companies, encouraging creativity, and drawing in foreign capital.¹⁸

2.0 THE GENESIS OF THE WORLD TRADE ORGANIZATION

The [W]orld Trade Organization (WTO), established in 1995, serves as a global institution aimed at regulating and promoting international trade.¹⁹ It succeeded the General Agreement on Tariffs and Trade (GATT), which had been in place since 1947. The WTO is composed of several key agreements, each targeting different aspects of international trade. These include GATT, the General Agreement on Trade in Services (GATS), and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, Agreement on Agriculture (AoA), Agreement on Sanitary and Phytosanitary Measures (SPS Agreement),²⁰ Agreement on Technical Barriers to Trade

¹⁵ *Afghanistan's WTO membership approved after 11 years of talks*, THE HINDU, Dec. 18, 2015, <https://www.thehindu.com/business/Afghanistan%E2%80%99s-WTO-membership-approved-after-11-years-of-talks/article60284454.ece> (last visited Jan 6, 2025).

¹⁶ Suhailah Akbari, *Legal Challenges Facing Afghanistan's Transit Trade with Pakistan*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 1 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_1 (last visited Jan 6, 2025).

¹⁷ *Afghanistan's WTO membership approved after 11 years of talks*, THE HINDU, Dec. 18, 2015, <https://www.thehindu.com/business/Afghanistan%E2%80%99s-WTO-membership-approved-after-11-years-of-talks/article60284454.ece> (last visited Jan 6, 2025).

¹⁸ Suhailah Akbari, *WTO Law and Public International Law: Focus on UNCLOS Rules on Freedom of Transit of Landlocked States*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 135 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_6 (last visited Jan 6, 2025).

¹⁹ Robert Howse & Joanna Langille, *Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future*, 117 AM. J. INT. LAW 1 (2023).

²⁰ Caroline E. Foster, *The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary by Joanne Scott* Oxford University Press, Oxford, 2007, 8 WORLD TRADE REV. 462 (2009).

(TBT),²¹ Agreement on Subsidies and Countervailing Measures (SCM),²² Agreement on Anti-Dumping (Anti-Dumping Agreement),²³ Dispute Settlement Understanding (DSU),²⁴ Trade Policy Review Mechanism (TPRM) and many more.²⁵ Together, these agreements form the core framework of the global trading system under the WTO.

²¹ Matthias Herdegen, *The Agreement on Technical Barriers to Trade*, in PRINCIPLES OF INTERNATIONAL ECONOMIC LAW, 3E 0 (Matthias Herdegen ed., 2024), <https://doi.org/10.1093/law/9780198897835.003.0017> (last visited Jan 6, 2025).

²² Jan Wouters & Dominic Coppens, *An Overview of the Agreement on Subsidies and Countervailing Measures – Including a Discussion of the Agreement on Agriculture*, in LAW AND ECONOMICS OF CONTINGENT PROTECTION IN INTERNATIONAL TRADE 7 (George A. Bermann, Kyle W. Bagwell, & Petros C. Mavroidis eds., 2009), <https://www.cambridge.org/core/books/law-and-economics-of-contingent-protection-in-international-trade/an-overview-of-the-agreement-on-subsidies-and-countervailing-measures-including-a-discussion-of-the-agreement-on-agriculture/8EF7782E2C2F9255A8CFE7FAED1B94CA> (last visited Jan 6, 2025).

²³ PHILIPPE DE BAERE, CLOTILDE DU PARC & ISABELLE VAN DAMME, *THE WTO ANTI-DUMPING AGREEMENT: A DETAILED COMMENTARY* (2021), <https://www.cambridge.org/core/books/wto-antidumping-agreement/1EF088F8B9ED5C49ABC227D9327C04A7> (last visited Jan 6, 2025).

²⁴ DISPUTE SETTLEMENT UNDERSTANDING, in AFRICA AND THE WORLD TRADE ORGANIZATION 25 (Richard E. Mshomba ed., 2009), <https://www.cambridge.org/core/books/africa-and-the-world-trade-organization/dispute-settlement-understanding/13ACAA1E9CB2E11463E1D2D9D80CD3A5> (last visited Jan 6, 2025).

²⁵ Trade Policy Review Mechanism, in WTO ANALYTICAL INDEX: GUIDE TO WTO LAW AND PRACTICE 2042 (World Trade Organization Legal Affairs Division ed., 3 ed. 2012), <https://www.cambridge.org/core/books/wto-analytical-index/trade-policy-review-mechanism/E20949B5E3AD437EB45AC19F1D5DEBFB> (last visited Jan 6, 2025).

The primary goal of the WTO is to facilitate a predictable and stable international trading environment.²⁶ This is achieved by administering trade agreements, ensuring compliance with agreed-upon rules, and promoting trade liberalization.²⁷ Among the key functions of the WTO are:

- i. *The WTO oversees the implementation of existing trade agreements and ensures that member states adhere to their commitments.*
- ii. *The organization provides a platform for resolving disputes between member countries, ensuring that international trade is governed by clear, enforceable rules.*
- iii. *The WTO monitors and reviews the trade policies of its members, promoting transparency and accountability in trade practices.*
- iv. *The WTO offers support, particularly to developing and least developed countries (LDCs), in implementing trade agreements and building*

²⁶ Abdur Chowdhury et al., *The Role of Multilateralism of the WTO in International Trade Stability*, 20 WORLD TRADE REV. 668 (2021).

²⁷ Suhailah Akbari, *Implications of WTO Rules on Freedom of Transit and Security Exceptions for Afghanistan–Pakistan Transit Trade*, in THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN 203 (Suhailah Akbari ed., 2021), https://doi.org/10.1007/978-3-030-73464-0_8 (last visited Jan 6, 2025).

capacity to engage in the global trading system.

- v. *The WTO serves as a forum for multilateral trade negotiations aimed at reducing tariffs, eliminating trade barriers, and liberalizing international trade across various sectors.*

The WTO also provides a dispute settlement mechanism, allowing members to resolve trade conflicts in a structured and impartial manner. By fostering negotiations on trade-related issues, the organization works towards reducing trade barriers, promoting economic integration, and ensuring that the global trade system remains fair and equitable.²⁸

3.0 AFGHANISTAN'S ACCESSION TO THE WTO

[A]fghanistan's accession to the WTO marked a pivotal moment in the country's efforts to liberalize its trade policy and integrate into the global economy. Afghanistan, as a Least Developed Country (LDC), was provided with certain flexibilities during the accession process, which offered some relief regarding the commitments it had to make in areas such as tariff reductions, services liberalization, and intellectual property rights. However,

²⁸ Ibid.

despite these concessions, Afghanistan was still required to align its national laws with the provisions of the WTO, particularly in areas that were critical for fostering international trade and investment.

The accession process for Afghanistan was a complex and lengthy one, involving a comprehensive review of its existing trade and economic policies.²⁹ This review process was followed by a series of bilateral negotiations with other WTO members, addressing specific areas of concern. The final step in the accession process was the signing of Afghanistan's Protocol of Accession, which outlined the specific terms and commitments Afghanistan agreed to adhere to upon joining the WTO.³⁰

²⁹ Despite significant efforts towards achieving membership, Afghanistan's accession to the WTO remains in abeyance. The country currently faces considerable political and legal challenges in relation to its WTO status. A central question is whether the current regime will accept laws based on the 2004 Constitution of Afghanistan, a foundational legal document that the Taliban regime rejects, labeling it as "Eurocentric" or "Westernized." This opposition persists despite the clear statement in the preamble of the Constitution that no law should contradict Islamic values. Article 2 of the 2004 Constitution stipulates: "The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free, within the bounds of law, to exercise and perform their religious rituals." However, a detailed discussion of Islam and the Constitution is beyond the scope of the present research article.

³⁰ Suhailah Akbari, *The Relationship Between Freedom of Transit and General and Security Exceptions Under WTO Rules*, in *THE WTO TRANSIT REGIME FOR LANDLOCKED COUNTRIES AND ITS IMPACTS ON MEMBERS' REGIONAL TRANSIT AGREEMENTS: THE CASE OF AFGHANISTAN'S TRANSIT TRADE WITH PAKISTAN* 167 (Suhailah Akbari ed., 2021),

The WTO Agreement itself consists of various legal provisions, but the core commitments that Afghanistan had to align with include:

- a) Afghanistan as a state committed to reducing tariffs on goods and services to enhance global competitiveness, as per the Protocol of Accession.
- b) The country agreed to bind tariffs at specific rates and ensure transparent, predictable trade policies.
- c) The country opened its service sectors, including finance, telecommunications, and transport, to foreign competition under the General Agreement on Trade in Services (GATS).
- d) The country strengthened its intellectual property laws, aligning with the TRIPS Agreement to protect patents, trademarks, and copyrights, crucial for attracting foreign investment and boosting knowledge-based industries.

4.0 AFGHANISTAN'S COMMITMENT TO THE WTO

Afghanistan's Accession Working Party Report (AWPR) outlined some specific

regulatory commitments,³¹ including transparency in privatization, compliance with commercial criteria for purchases and sales by state-trading enterprises, and the elimination of tariff exemptions and tariff rate quotas. Investment in Afghanistan is not a precondition for engaging in foreign trade, and all legal and natural persons have the right to engage in import and export activities in accordance with relevant WTO provisions on a non-discriminatory basis. Afghanistan participates in the Information Technology Agreement, eliminate the Red Crescent tax of 0.2%, and apply tariff exemptions and tariff rate quotas in a fully WTO-consistent manner.³² As part of its commitment, Afghanistan shall not impose or reintroduce any quantitative restrictions, including licensing, quotas, bans, permits, prior authorization requirements, or any other measures with equivalent effect, unless they are fully compliant with WTO

³¹These commitments include reforming laws such as food safety law, food safety law, trade secrets protection law, foreign trade law of goods, inventor and explorer protection law, domestic industry protection law, industrial projects protection law, trademark registration law, publishing and enforcing legislative documents, quarantine law and plant protection, animal health and veterinary law, standards law, geographical indications law, consumer protection law, income tax law, VAT law, law of mines, copyright law, customs law, subsidiary law and compensatory measures, and anti-dumping law.

³² Ahmad Shah Mobariz, *Afghanistan's WTO Accession: Costs, Benefits and Post-Accession Challenges* (2015), <https://repository.unescap.org/handle/20.500.12870/1328> (last visited Jan 6, 2025).

https://doi.org/10.1007/978-3-030-73464-0_7 (last visited Jan 6, 2025).

provisions. Existing import prohibitions on certain commodities shall be eliminated, and any recourse to balance of payments provisions or government assistance measures for economic development shall be applied in a manner consistent with WTO obligations.

Afghanistan shall administer and apply commercial policy measures provided for in its legislation intended to protect domestic production or advance national interests in conformity with relevant WTO agreements. The necessary WTO-conforming legal machinery will be put in place before any anti-dumping or countervailing duties or safeguard measures are applied.

Afghanistan has agreed to gradually bring its policies into conformity with the Agreement on TBT Agreement, a staged action plan for attaining full conformity with the Agreement on the Application of SPS Agreement, and the Agreement on TRIMS. Free zones and special economic areas should be managed in conformity with WTO provisions, including the TRIPS and TRIMS Agreement, and the Agreement on SCM. Since accession in 2016 to 2021, various ministries have been working on some of commitments. The following short sections highlight some salient points of activities in these areas.

4.1 General Agreement on Tariffs and Trade (GATT)

The GATT serves as the foundational agreement regulating trade in goods. It seeks to promote free trade by reducing tariffs and other trade barriers. Article II of the GATT encapsulates the Schedules of Concessions.³³ This particular article requires each member including of Afghanistan to bind its tariffs and offer concessions on trade in goods. It sets out the maximum allowable tariff rates for each country and aims to prevent arbitrary

³³ Article II of GATT states that:

1. Each contracting party shall bind itself to the schedules of tariff commitments specified in Annex 1A of this Agreement, which lists the tariff concessions that it will apply on imports of goods.
2. under Schedules of Concessions, (a) The schedules shall contain a list of the specific commitments made by the contracting party with respect to tariff rates, duties, and other charges, including reductions and bindings that apply to each product or class of products. (b) The schedules will be legally binding, meaning that once a tariff is bound, a member cannot unilaterally raise it without negotiation and compensation to other WTO members.
3. The tariffs in the schedules are "bound," meaning that a country cannot increase them above the agreed-upon levels without entering into negotiations with other countries and offering compensation for the affected parties.
4. The schedules allow for gradual reductions in tariffs over time, typically as part of phased commitments agreed upon during accession or subsequent trade negotiations.
5. Countries are required to ensure that all tariff commitments are clear and transparent, enabling all other contracting parties to assess the impact of tariff policies on trade.
6. Any new tariff measures or modifications to existing tariffs must be notified to the WTO, ensuring that any changes are consistent with the schedules of commitments.

increases in tariffs.³⁴ These commitments were essential for integrating Afghanistan into the global trade system by providing tariff predictability and transparency. Under this article, Afghanistan agreed to binding tariffs that could not be unilaterally raised, ensuring stability in trade relations and fostering foreign investment. Additionally, Afghanistan committed to gradual tariff reductions over time, allowing for economic adjustment, especially in sensitive sectors like agriculture. The country also had to ensure transparency in its tariff schedules, making them accessible and clear to international traders. Failure to comply with these commitments could lead to legal disputes under the WTO dispute settlement mechanism, potentially undermining Afghanistan's credibility. Afghanistan's adherence to these rules was critical for creating a more open and competitive market, while also requiring domestic reforms in areas like customs procedures and trade facilitation to align with international standards.³⁵ Thus, Article II provided a legal framework for Afghanistan to promote economic growth, attract

investment, and comply with global trade norms. Article XX of GATT proclaims General Exceptions which permit countries including of Afghanistan to impose certain trade restrictions on grounds such as public health, national security, and environmental protection.³⁶ However, these exceptions must meet the criteria outlined in the article and must not be discriminatory.

4.2 General Agreement on Trade in Services (GATS)

The GATS governs trade in services, ensuring that barriers to trade in services such as banking, telecommunications, and transport are reduced.³⁷ Article XVI,³⁸ obliges members to provide market access

³⁶A WTO dispute panel ruled in the case of US, Gasoline (WT/DS2/R) that the US violated GATT rules by imposing inconsistent environmental regulations that restricted imports of gasoline without offering a fair opportunity for foreign producers to meet the new standards.

³⁷ Juan A. Marchetti & Petros C. Mavroidis, *The Genesis of the GATS (General Agreement on Trade in Services)*, 22 EUR. J. INT. LAW 689 (2011).

³⁸ Article XVI: Market Access

1. Each Member shall ensure that, with respect to any measure covered by its schedule, it does not maintain or adopt restrictions that limit the number of service suppliers, the total value of service transactions or assets, or the total quantity of service output, which can be supplied in the market, unless otherwise specified in its schedule.
2. A Member shall not impose or maintain measures which limit or require the specific authorization of foreign investment, except as specified in its schedule.
3. Each Member shall ensure that foreign service suppliers are provided market access, subject to the specific limitations that it has scheduled in its list.

³⁴For instance, if a country commits to a tariff of 10% on a certain product, it cannot increase this tariff beyond 10% without renegotiating the commitment with other WTO members.

³⁵ Jock A. Finlayson & Mark W. Zacher, *The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions*, 35 INT. ORGAN. 561 (1981).

for foreign service providers and not to impose restrictive measures such as limitations on the number of service providers, the value of services, or restrictions on foreign equity participation.³⁹ Article XVII,⁴⁰ mandates that once foreign service suppliers enter the domestic market, they must be treated no less favorably than domestic service providers.⁴¹

For Afghanistan, to liberalize and integrate its economy, adherence to Article XVI (Market Access) and Article XVII (National Treatment) is crucial. Article XVI required Afghanistan to open its service sectors to foreign providers, promoting market liberalization, attracting foreign investment, and enhancing sectors like banking and telecommunications with foreign expertise.

³⁹In the case of European Communities, Bananas (WT/DS27/AB/R), the WTO Appellate Body found that the European Union's banana imports restrictions violated GATS because they placed disproportionate restrictions on foreign services and service providers.

⁴⁰ Article XVII espoused with the National Treatment which states that:

Each Member shall accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, subject to any conditions or qualifications set out in its schedule.

Each Member shall not adopt or maintain measures that discriminate against foreign services and service suppliers, either through taxes, regulatory measures, or other policies that provide an unfair advantage to domestic suppliers.

⁴¹Post and Telecommunications (WT/DS163/AB/R) involved a challenge by the US regarding Korea's discriminatory treatment of foreign telecommunications services. The dispute panel ruled that Korea violated its obligations under GATS by restricting market access for foreign suppliers.

Article XVII mandated equal treatment for foreign service providers, ensuring fair competition and transparency, particularly in sectors like banking. These commitments required Afghanistan to align its domestic policies with WTO rules, fostering a competitive environment, boosting investment, and facilitating the country's integration into the global economy. By honoring these provisions, Afghanistan could modernize its service sectors, create jobs, and improve its infrastructure, ultimately contributing to its broader economic development.

4.3 TRIPS Agreement and Afghanistan's Compliance

The TRIPS Agreement is a crucial element of the WTO's framework, establishing minimum standards for the protection and enforcement of intellectual property (IP) rights across its member states.⁴² TRIPS aims to ensure that creators, innovators, and businesses enjoy adequate protection of their intellectual property in member countries, thereby fostering innovation and

⁴² Introduction to the TRIPS Agreement, , *in* A HANDBOOK ON THE WTO TRIPS AGREEMENT 1 (Antony Taubman, Hannu Wager, & Jayashree Watal eds., 2 ed. 2020), <https://www.cambridge.org/core/books/handbook-on-the-wto-trips-agreement/introduction-to-the-trips-agreement/3208A0BB4B229EB053FB26C9528FD21A> (last visited Jan 6, 2025).

encouraging trade in goods and services that involve intellectual property.

As part of its commitments under the TRIPS Agreement, Afghanistan has established two dedicated intellectual property (IP) offices within its Ministry of Industry and Commerce and Ministry of Information and Culture.⁴³ The first office is responsible for the administration of patents, trademarks, industrial designs, geographical indications, and genetic resources, while the second office manages the registration of copyrights.⁴⁴ In order to function effectively and ensure compliance with international IP standards, these offices necessitate substantial support in the areas of capacity building, the development of procedural guidelines, and the implementation of automation systems. Such investments are critical to enhancing the operational efficiency of these offices, enabling them to better serve the needs of stakeholders and uphold Afghanistan's obligations under the TRIPS agreement.

⁴³ Ahmad Shah Mobariz, *Afghanistan's WTO Accession: Costs, Benefits and Post-Accession Challenges* (2015), <https://repository.unescap.org/handle/20.500.12870/1328> (last visited Jan 6, 2025).

⁴⁴ Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

4.3.1 General Provision

The TRIPS Agreement, under Article 1,⁴⁵ sets out the scope of the intellectual property protection that member states must provide. This includes patents, copyrights, trademarks, geographical indications, industrial designs, and trade secrets.⁴⁶ The Agreement mandates that WTO members adhere to the minimum standards of protection and enforcement of intellectual property rights (IPRs) as outlined.

This provision gives Afghanistan some flexibility in adapting its intellectual property laws but also obliges it to meet the minimum standards laid out in the TRIPS Agreement. Afghanistan, as an LDC, had a longer period to bring its IPR system into full compliance with TRIPS, but it was expected to make substantial progress in protecting IPRs from the moment of accession.

4.3.2 Patents

Under Article 27 of the TRIPS Agreement,⁴⁷ member countries are required to grant

⁴⁵ Article 1 states that: "Members may, but shall not be obliged to, implement in their laws more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement."

⁴⁶ Carlos M. Correa, *Interpreting the Flexibilities Under the TRIPS Agreement*, in ACCESS TO MEDICINES AND VACCINES 1 (Carlos M. Correa & Reto M. Hilty eds., 2022).

⁴⁷ Article 27 enshrines that: "Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new,

patents for inventions in all fields of technology, subject to certain conditions.⁴⁸ The provision establishes the minimum criteria for granting a patent, which include novelty, inventive step, and industrial applicability. For Afghanistan, compliance with Article 27 of the TRIPS Agreement meant revising its patent laws to grant patents based on these criteria, ensuring that Afghan innovators and foreign companies alike had access to patent protection in the country. This was a significant shift, as Afghanistan had limited patent protections before its WTO accession.

4.4 Copyright and Related Rights

Article 9 of the TRIPS Agreement requires countries to adhere to the minimum standards of protection for copyright and related rights,⁴⁹ including the rights of authors, performers, and producers of sound recordings.⁵⁰ It mandates that member countries provide protection for literary,

involve an inventive step, and are capable of industrial application.”

⁴⁸ Jayashree Watal, *Implementing the TRIPS Agreement: Policy Options Open to India*, 32 ECON. POLIT. WKLY. 2461 (1997).

⁴⁹ Article 9 proclaims that: “Members shall comply with Articles 1 through 21 of the Berne Convention for the Protection of Literary and Artistic Works, and give effect to the provisions of that Convention.

⁵⁰ Copyright and related rights, , in A HANDBOOK ON THE WTO TRIPS AGREEMENT 39 (Antony Taubman, Hannu Wager, & Jayashree Watal eds., 2 ed. 2020), <https://www.cambridge.org/core/books/handbook-on-the-wto-trips-agreement/copyright-and-related-rights/B2A857751EA242DA43F5A054BE5778B1> (last visited Jan 6, 2025).

artistic, and scientific works, ensuring that creators have exclusive rights to their creations. Afghanistan’s legal framework for copyright protection was updated following WTO accession, with a focus on aligning national laws with the Berne Convention.⁵¹ The establishment of clear copyright laws was particularly important in encouraging creative industries and attracting investment in sectors such as literature, music, and software development.

4.5 Enforcement and Dispute Resolution

The TRIPS Agreement also outlines the enforcement mechanisms for the protection of intellectual property rights, including the ability of IP holders to seek remedies through legal channels.⁵² Article 41 to Article 61 provide detailed provisions on civil and criminal enforcement of IPRs, including the availability of injunctions, damages, and border measures to prevent the importation of counterfeit goods.⁵³ Afghanistan had to ensure that its enforcement mechanisms were strengthened to meet the TRIPS standards. This required

⁵¹ Sujitha Subramanian, *The Changing Dynamics of the Global Intellectual Property Legal Order: Emergence of a “Network Agenda”?*, 64 INT. COMP. LAW Q. 103 (2015).

⁵² James R. LaVaute, *Alternative Dispute Resolution and Enforcement of Statutory Rights*, 6 LABOR LAWYER 107 (1990).

⁵³ For instance, Article 41 States that Members shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of IPRs.”

reforms in its legal system, the establishment of specialized IP courts or tribunals, and the capacity-building of law enforcement agencies to combat counterfeit and piracy activities.

4.6 Socio – Economic Implications

[A]fghanistan's accession to world trading forum represents a significant shift in the country's economic framework, bringing it into the global trade system and aligning it with international standards. One of the most important aspects of WTO membership is the adherence to the TRIPS Agreement,⁵⁴ which establishes global standards for the protection of intellectual property (IP). This article examines the socio-economic implications of Afghanistan's WTO membership, focusing on foreign investment, domestic innovation, enforcement challenges, and socio-cultural impacts.⁵⁵

4.7 Enhanced Foreign Investment

[O]ne of the key outcomes of Afghanistan's WTO accession is its enhanced ability to attract

FDI.⁵⁶ As a member of the WTO and a signatory to the TRIPS Agreement, Afghanistan is now committed to implementing strong intellectual property (IP) protections, which are crucial for industries such as pharmaceuticals, technology, and creative sectors. The TRIPS Agreement (Article 27) states that: "*Patent shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.*"

This provision is particularly important for sectors reliant on innovation and technology, as it guarantees patent protection for inventions and innovations. Foreign investors are more likely to invest in countries with robust IP protections, knowing that their intellectual property will be safeguarded from unauthorized use or replication. Afghanistan's legal reforms in this area such as the adoption of a Patents, Industrial Designs, and Trademarks Law have made the country a more attractive destination for FDI. However, Afghanistan still faces challenges in creating an environment conducive to attracting substantial foreign investment. Weak

⁵⁴ Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

⁵⁵ Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

⁵⁶ Ahmad Shah Mobariz, *WTO Accession of Afghanistan: Costs, Benefits and Post-Accession Challenges*, 17 SOUTH ASIA ECON. J. 46 (2016).

infrastructure, insecurity, and a limited range of industries capable of innovation remain obstacles to realizing the full potential of its WTO membership.⁵⁷

4.8 Boost to Domestic Innovation

The TRIPS Agreement also plays a critical role in fostering domestic innovation by encouraging Afghan entrepreneurs to invest in research and development (R&D).⁵⁸ Under Article 9 of TRIPS,⁵⁹ member states are required to provide protection for copyright and related rights. This provision helps protect original works such as literature, music, software, and industrial designs, thereby incentivizing Afghan creators to develop new products and services. For Afghanistan, the protection of copyrights in sectors such as literature, music, and software can encourage the development of a local creative economy. Similarly, the establishment of robust patent

protection (as per Article 27) will help protect local innovations, thus creating a more favorable environment for Afghan inventors and businesses to engage in R&D activities. Afghanistan's reform of its Copyright Law and Patent Law has contributed to the creation of a legal framework for protecting domestic innovation. However, local businesses and entrepreneurs still face challenges, particularly due to the country's underdeveloped research and educational infrastructure.

4.9 Challenges in Enforcement and Implementation

While Afghanistan's legal frameworks have been updated to comply with WTO and TRIPS requirements, enforcement of intellectual property rights (IPR) remains a significant challenge.⁶⁰ The TRIPS Agreement (Article 41) requires member states to establish enforcement procedures that ensure the effective protection of intellectual property rights.⁶¹ In Afghanistan, weak judicial and administrative capacity, a

⁵⁷ Afghanistan recognizes the potential of WTO membership to attract FDI understanding its role in stimulating economic activity, job creation, technology transfer, and skill development. In parallel, the government has developed and endorsed a comprehensive National Export Strategy (NES) to promote trade. This strategy focuses on key areas such as quality management, trade facilitation, skills development, and access to finance, while prioritizing products like saffron, fresh and dried fruits, carpets, marble, and precious stones for export promotion.

⁵⁸ B.N. Pandey & Prabhat Kumar Saha, *Competition Flexibilities in the Trips Agreement: Implications for Technology Transfer and Consumer Welfare*, 57 J. INDIAN LAW INST. 92 (2015).

⁵⁹ TRIPS Article 9 declares that: "Authors of works shall enjoy the exclusive right to authorize the reproduction of their works."

⁶⁰ S.K. Verma, *Enforcement of Intellectual Property Rights: Trips Procedure & India*, 46 J. INDIAN LAW INST. 183 (2004).

⁶¹ TRIPS Article 41 states that: "Members shall ensure that enforcement procedures are available so as to permit effective action against any act of infringement of intellectual property rights."

lack of infrastructure,⁶² and limited public awareness of IPR present obstacles to effective enforcement. Although the Afghan Intellectual Property Office has been established, the country still lacks the necessary resources to combat widespread counterfeiting and piracy, particularly in sectors like textiles and pharmaceuticals, where IP violations are common. Capacity building in both the public and private sectors is essential to overcome these challenges. The Afghan government must focus on training law enforcement officers, judicial officials, and businesses on the importance of IPR protection. Article 66.2 of TRIPS provides for technical assistance to developing countries and least-developed countries (LDCs) like Afghanistan, which can be instrumental in building the country's enforcement capacity.⁶³ This provision highlights the importance of international cooperation in strengthening Afghanistan's capacity to protect intellectual property. The provision offers Afghanistan the opportunity to receive technical assistance from

developed WTO members to enhance its IPR enforcement capabilities.

4.10 Balancing IP Protection with Cultural Heritage

A critical challenge for Afghanistan in implementing TRIPS is balancing the protection of intellectual property with the preservation of its cultural heritage. Afghanistan has a rich history of traditional knowledge and practices, particularly in agriculture, crafts, and textiles.⁶⁴ These practices, often passed down through generations, are not easily protected under formal IP systems, which focus on individual ownership and innovation. TRIPS Article 22 addresses the protection of geographical indications (GIs), which are critical for Afghanistan's agricultural and craft sectors.⁶⁵ For example, Afghan carpets and textiles, which are recognized worldwide for their quality and craftsmanship, can be protected under GIs. By registering Afghan carpets as a GI, the country can safeguard the uniqueness of its products and prevent exploitation by foreign entities that might attempt to market products as "Afghan" without adhering to

⁶² Kara Jensen, *Obstacles to Accessing the State Justice System in Rural Afghanistan*, 18 INDIANA J. GLOB. LEG. STUDIES 929 (2011), <https://www.repository.law.indiana.edu/ijgls/vol18/iss2/11>.

⁶³ TRIPS Article 66.2 enshrines that: "Developed country members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country members."

⁶⁴ Nancy Hatch Dupree, *Cultural Heritage and National Identity in Afghanistan*, 23 THIRD WORLD Q. 977 (2002).

⁶⁵ TRIPS Article 22 states that: "Geographical indications are to be protected in order to prevent the use of false or misleading indications that suggest a product originates from a different place."

the same standards. However, the TRIPS Agreement poses challenges for the protection of traditional knowledge that does not fall under conventional intellectual property categories. For example, traditional agricultural practices and medicinal knowledge, which are widely used in rural Afghanistan, may not be easily protected under patents or copyrights. The Afghan government must develop policies to protect this knowledge while respecting cultural values and community-based innovation.

4.11 Trade Policy Reforms and Afghan Market

[A]fghanistan's accession to the WTO required substantial reforms to its trade policies to align with international standards. These included commitments to reduce tariffs, remove quantitative restrictions, and adopt transparent customs procedures. As per GATT Article II,⁶⁶ Afghanistan agreed to bind its tariffs and reduce them to more competitive levels. Before its accession, Afghanistan had high tariffs and numerous non-tariff barriers that hampered trade. Post-accession, Afghanistan's average tariff rate dropped from 24% to approximately 13%, which facilitated increased imports of machinery, electronics, and consumer goods.

⁶⁶GATT Article II encapsulates that: "Each Member shall ensure that its customs duties and charges of any kind are applied only in accordance with its Schedule of Concessions."

This trade liberalization has resulted in improved access to global markets and has attracted foreign investors looking for new opportunities in Afghanistan.

Afghanistan also made commitments under the Trade Facilitation Agreement (TFA),⁶⁷ which aims to simplify customs procedures and reduce trade costs. These reforms have led to improvements in customs efficiency, reducing delays and costs associated with cross-border trade. However, Afghanistan's infrastructure and security concerns continue to limit the full potential of trade liberalization.

4.12 Economic Growth and Employment

Afghanistan's WTO membership has contributed to moderate economic growth,⁶⁸ particularly in export sectors like agriculture (dried fruits) and textiles. However, the country's narrow export base and lack of diversification continue to limit the broader economic benefits of WTO membership. The reduction in tariffs has benefited Afghan consumers by lowering the cost of imports, but domestic industries that are unable to compete with cheaper imports face challenges.

⁶⁷ Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

⁶⁸ Ibid.

In line with GATT Article III, which mandates the fair treatment of domestic and imported goods, Afghanistan's domestic industries are exposed to international competition, which may lead to job losses in sectors that cannot compete with cheaper imported goods. However, new opportunities may arise in export-oriented sectors that can benefit from global market access.

5.0 AFGHANISTAN IN THE POST-ACCESSION ERA

Afghanistan's involvement with WTO is a significant step towards its integration into the global economy.⁶⁹ As the first Least Developed Country (LDC) to establish a dedicated mission in Geneva, Afghanistan has actively participated in WTO activities, chairing key bodies such as the Committee on Trade Facilitation, the Committee on Trade and Development, and the Accession Working Party for South Sudan.⁷⁰ Afghanistan has also played a role in initiatives like the 2017 Joint Statements on Investment Facilitation for Development and

⁶⁹ Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

⁷⁰ Afghanistan joined the WTO as its 164th Member and also ratified the Trade Facilitation Agreement | TFAF, <https://www.tfafacility.org/news/2016/07/afghanistan-joined-wto-its-164th-member-and-also-ratified-trade-facilitation-agreement> (last visited Jan 6, 2025).

Micro, Small, and Medium-sized Enterprises (MSMEs) and registered as a third party in several WTO disputes.⁷¹ Afghanistan has also supported other LDCs through the g7+ WTO Accessions Group,⁷² which focuses on facilitating the integration of fragile and conflict-affected economies into the global trade system.⁷³ The country is also building institutional capacities to defend its trade interests, including dispute settlement and trade safeguards. Afghanistan's participation in the WTO accession processes of neighboring countries offers opportunities to strengthen regional trade ties.⁷⁴

6.0 ACCESSION TO THE WTO AND THE ROAD AHEAD

Afghanistan's potential integration to the WTO presents both advantages and significant legal and institutional challenges,

⁷¹ Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

⁷² The g7+ WTO Accession Group held its 3rd Ministerial Meeting in Abu Dhabi, calling for the WTO to play active role in promoting the nexus between trade and peace., G7PLUS, <https://www.g7plus.org/press-release/the-g7-wto-accession-group-held-its-3rd-ministerial-meeting-in-abu-dhabi-calling-for-the-wto-to-play-active-role-in-promoting-the-nexus-between-trade-and-peace/> (last visited Jan 6, 2025).

⁷³ Hafizullah Seddiqi, *Afghanistan Legislative Commitments to the WTO: A Deeper Look at Afghanistan's Compliance with TRIPS*, 27 INDIANA J. GLOB. LEG. STUD. 269 (2020).

⁷⁴ *Will WTO membership boost trade and investment in land-locked Afghanistan?*, INTERNATIONAL GROWTH CENTRE (2016), <https://www.theigc.org/blogs/will-wto-membership-boost-trade-and-investment-land-locked-afghanistan> (last visited Jan 6, 2025).

particularly in the country's post-conflict context.⁷⁵ WTO membership guarantees non-discriminatory treatment in global trade, ensuring that Afghanistan adheres to the rights and obligations shared by all members. This provides Afghanistan access to multilateral trade rules and mechanisms, providing legal assurances of stable, transparent, and predictable trade frameworks. The legal certainty that accompanies WTO membership could attract foreign investment by fostering a business environment compatible with international trade norms. Afghanistan also benefits from the WTO's dispute-settlement mechanism, allowing it to resolve trade disputes in a structured and legal manner. Additionally, the WTO's Most-Favoured-Nation (MFN) principle ensures Afghanistan equal access to markets of all WTO members, a crucial element for an economy seeking to diversify and expand its trade relations. However, the legal and procedural hurdles associated with WTO accession are particularly daunting for a post-conflict country like Afghanistan. Under Article XII of the WTO's founding Agreement, the

⁷⁵ Getting the Fundamentals Right: The early stages of Afghanistan's WTO accession process, OXFAM POLICY & PRACTICE, <https://policy-practice.oxfam.org/resources/getting-the-fundamentals-right-the-early-stages-of-afghanistans-wto-accession-p-114503/> (last visited Jan 6, 2025).

terms of accession are negotiated on a case-by-case basis, leaving Afghanistan vulnerable to potentially unequal negotiations. The process involves three main negotiation tracks: bilateral, multilateral, and plurilateral.⁷⁶ On the bilateral track, Afghanistan needs to negotiate with individual WTO members to secure market access commitments and tariff reductions, which requires significant legal and administrative capacity. The multilateral track involves scrutiny of Afghanistan's entire trade regime to ensure compliance with WTO agreements, including complex areas such as intellectual property rights, agricultural subsidies, and competition law. The plurilateral track, concerning agricultural subsidies, may face significant challenges, as new members no longer have the right to provide export subsidies, an essential tool for many developing countries.

7.0 WTO AND THE TALIBAN GOVERNMENT

The Taliban's takeover of the Afghan government on August 15, 2021,⁷⁷ has led to a series of complex legal and political

⁷⁶ WTO accession and the Trade Facilitation Agreement | UN Trade and Development (UNCTAD), (2024), <https://unctad.org/news/wto-accession-and-trade-facilitation-agreement> (last visited Jan 6, 2025).

⁷⁷ INTERNATIONAL CRISIS GROUP, *Regional Diplomacy after the Taliban Takeover*, Page 3 (2024), <https://www.jstor.org/stable/resrep57948.5> (last visited Jan 6, 2025).

challenges, particularly in the realm of international trade law.⁷⁸ The international community, including major European states and the United States, has largely withheld recognition of the Taliban regime as the legitimate government of Afghanistan. This diplomatic isolation has far-reaching consequences, not only for Afghanistan's political future but also for its economic standing, trade engagements, and compliance with international legal norms, particularly those enshrined under the auspices of the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and other international bodies.⁷⁹ The status of Afghanistan in relation to the WTO remains in abeyance due to the absence of formal recognition of the IEA government by the United Nations (UN).⁸⁰ Afghanistan's membership in the WTO, an organization that plays a pivotal role in regulating international trade and fostering global economic cooperation, remains uncertain.

⁷⁸ Seyfullah Hasar, *Recognition of Governments and the Case of the Taliban*, 23 CHIN. J. INT. LAW 73 (2024).

⁷⁹ Taliban and UNAMA Discuss Reactivating Afghanistan's WTO Membership, (2024), <https://www.afintl.com/en/en/202405304868> (last visited Jan 6, 2025).

⁸⁰ Seyfullah Hasar, *Representation of Afghanistan before the International Court of Justice*, EJIL: TALK! (Oct. 16, 2024), <https://www.ejiltalk.org/representation-of-afghanistan-before-the-international-court-of-justice/> (last visited Jan 6, 2025).

This uncertainty exacerbates Afghanistan's trade vulnerabilities, as the country's accession process to the WTO, which had reached its final stages under the current abeyance. The question of whether the Taliban-led regime constitutes such a government is key to Afghanistan's eligibility for WTO membership.

The lack of recognition of the Taliban regime by a significant number of countries, coupled with Afghanistan's non-membership in key international organizations like the UN, the WTO, the World Bank, and the International Monetary Fund (IMF), has effectively isolated Afghanistan from the global legal and economic order.⁸¹ This isolation hinders Afghanistan's ability to regulate its trade, protect its intellectual property, safeguard food security, and address public health concerns. Additionally, it undermines Afghanistan's capacity to participate in scientific development, innovation, and the protection of traditional knowledge and cultural heritage, which are crucial for the country's socioeconomic growth.

In the realm of international investment law, Afghanistan faces significant challenges in

⁸¹ Adam Van Liere, *Afghanistan's Accession into the World Trade Organization*, (2011), <https://papers.ssrn.com/abstract=1766691> (last visited Jan 6, 2025).

attracting foreign direct investment (FDI), which could serve as a catalyst for economic recovery and technological advancement. The presence of a bilateral investment treaty (BIT) with China regarding the country's mineral resources has led to concerns over the potential for monopolistic arrangements that may disproportionately benefit foreign investors at the expense of Afghanistan's long-term economic interests.⁸² It is vital that Afghanistan, once reintegrated into the international community, be allowed to exercise sovereignty over its resources in a manner that promotes economic diversification, scientific development, and social equity.

Furthermore, Afghanistan's citizens possess fundamental human rights that must be respected and protected. Among these is the right to access advanced technologies, including artificial intelligence (AI), biotechnology, and the internet. The pace of technological innovation requires Afghanistan's participation in global research and development efforts, and its isolation from international bodies impedes its ability to access cutting-edge technology critical to improving public health,

advancing scientific progress, and addressing the country's ongoing food security challenges. The right to health, which encompasses access to affordable, accessible, and quality healthcare, must be recognized and protected through participation in international legal frameworks that govern the global distribution of medical technology, pharmaceuticals, and biotechnology.

Therefore, the legal and political challenges posed by the Taliban's control of Afghanistan require a nuanced approach to resolve. The WTO, as the primary institution for regulating global trade, has an opportunity and obligation to play a pivotal role in Afghanistan's economic reintegration. A collective approach to WTO membership, one that transcends political differences and focuses on the humanitarian and economic needs of the Afghan people, is both legally justifiable and ethically imperative.

8.0 FINDINGS

The study reveals key findings regarding Afghanistan's WTO accession, highlighting opportunities and challenges:

- i. Afghanistan's WTO membership improved market access, increased trade growth, and attracted foreign investment, but challenges remain in

⁸² China and Afghanistan: Bilateral Trade and Future Outlook, <https://www.china-briefing.com/news/china-and-afghanistan-bilateral-trade-relationship-and-future-outlook/> (last visited Jan 6, 2025).

- fully liberalizing sectors like agriculture.
- ii. Legal reforms aligned with TRIPS have facilitated the protection of local products and traditional designs, but weak enforcement, limited innovation, and lack of public awareness hinder full utilization of IPR benefits.
 - iii. WTO membership offers potential for economic diversification, but the country remains reliant on agriculture and textiles, with rural-urban disparities, job losses in some sectors, and challenges for small enterprises.
 - iv. Weak legal infrastructure, corruption, and political instability impede effective enforcement of trade and IPR laws, requiring significant capacity building to realize the full benefits of WTO integration.

9.0 SUGGESTION

To fully leverage WTO membership, Afghanistan must strengthen legal frameworks, foster innovation, diversify its economy, and build institutional capacity for sustainable growth and global integration. Key suggestions are:

1. Strengthen IPR enforcement through specialized courts and transparent systems.
2. Invest in human capital by training legal professionals and enhancing research & development.
3. Launch campaigns to promote IPR awareness and encourage innovation, especially in non-traditional sectors.
4. Support SMEs with policies on credit access and business incubation.
5. Focus on rural infrastructure development and decentralized economic growth to bridge urban-rural disparities.
6. Streamline customs procedures, improve transport, and enhance the foreign investment climate.

10.0 CONCLUSION

[A]fghanistan's accession to the WTO and its commitment to implementing the TRIPS Agreement have created significant opportunities for economic growth, foreign investment, and domestic innovation. However, these opportunities are tempered by challenges in enforcement, cultural concerns, and the need for economic diversification. To effectively capitalize on the advantages of WTO membership, Afghanistan must enhance its institutional capacity, invest in human capital,

and match its laws with international standards, while safeguarding its cultural legacy.

The TRIPS Agreement establishes a legal framework for reform, with essential clauses like Articles 27, 9, 22, and 41 forming the basis for these modifications. Effective implementation necessitates the coordinated efforts of both the Afghan government and the international community. Afghanistan's entry into the WTO signifies a significant transformation in its legal and economic framework, offering both prospects and obstacles. The nation must persist in its endeavors to reform its intellectual property framework, tackle enforcement challenges, and enhance awareness among stakeholders. These reforms may yield substantial economic advantages, including enhanced foreign investment, innovation, and market accessibility. Although Afghanistan has advanced in harmonizing its intellectual property laws with international standards, enforcement issues persist as a significant impediment. In the absence of strong enforcement measures and enhanced engagement from both public and private sectors, the potential advantages of these reforms would remain unfulfilled. Moreover, Afghanistan's persistent dependence on a limited array of exports underscores the pressing necessity for enhanced economic diversification.

While WTO participation has created new avenues for trade and investment, realizing widespread economic advantages necessitates the resolution of governance challenges, including corruption and political instability.

Afghanistan's potential to utilize WTO membership for sustained economic growth will hinge on its ability to cultivate a more inclusive, competitive, and diversified economy. Enhancing its intellectual property regime, in conjunction with other structural reforms, will be crucial for fostering local innovation, safeguarding intellectual property, and enticing foreign investment. To ensure these reforms yield enduring effects, Afghanistan must reconcile the disparity between legal frameworks and their practical implementation, guaranteeing that the advantages of trade liberalization permeate the whole economy, from local enterprises to major industries.

Therefore, Afghanistan's journey toward sustainable economic development depends on its capacity to enhance legal frameworks, improve governance, and foster an environment favorable to innovation and investment in the global economy. The efficacy of these initiatives will eventually ascertain the extent to which the nation can fully leverage its WTO membership and the socio-economic prospects it affords.