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# **The Need for and Cost of Selected Trade Facilitation Measures Relevant to the WTO Trade Facilitation Negotiation: A Case Study of Nepal**

**Pushpa Raj Rajkarnikar \***  
**Nephil Matangi Maskay**  
**Shiva Raj Adhikari**

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\*Pushpa Raj Rajkarnikar is the Executive Director of Institute for Policy Research and Development (IPRAD), Nepal and Nephil Matangi Maskay is the Deputy Director of Nepal Rastra Bank. The views presented in this paper are those of the authors and do not necessarily reflect the views of ARTNeT members, partners and the United Nations. This study was conducted as part of the Asia-Pacific Research and Training Network on Trade (ARTNeT) initiative, aimed at building regional trade policy and facilitation research capacity in developing countries. This work was carried out with the aid of a grant from the World Trade Organization (WTO). The technical support of the United Nations Economic and Social Commission for Asia and the Pacific is gratefully acknowledged. Any remaining errors are the responsibility of the authors. The authors may be contacted at [iprad@ntc.net.np](mailto:iprad@ntc.net.np) and [nmmaskay@mos.com.np](mailto:nmmaskay@mos.com.np)

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## ***Abbreviation***

ASYCUDA	=	Automated System for Customs Data
CTD	=	Custom Transit Declaration
DoC	=	Department of Customs
ESCAP	=	Economic and Social Commission for Asia and Pacific
FA	=	Financial Assistance
FGD	=	Focus Group Discussion
FNCCI	=	Federation of Nepalese Chambers of Commerce and Industries
FNCSI	=	Federation of Nepal Cottage and Small Industries
FY	=	Fiscal Year
GAN	=	Garment Association of Nepal
GATT	=	General Agreement on Tariffs and Trade
GDP	=	Gross Domestic Product
GSP	=	Generalized System of Preference
HAN	=	Handicraft Association of Nepal
HS	=	Harmonised System
ICD	=	Inland Clearance Depot
IMF	=	International Monetary Fund
ITC	=	International Trade Centre
LC	=	Letter of Credit
LDC	=	Least Developed Country
MOICS	=	Ministry of Industry, Commerce and Supplies
NITDB	=	Nepal Inter-modal Transport Development Board
NMTTFP	=	Nepal Multi-modal Transit and Trade Facilitation Project
NRB	=	Nepal Rastra Bank
NW II -TRCBP	=	Nepal Window II Trade Related Capacity Building Program
OECD	=	Organisation for Economic Cooperation and Development
OGL	=	Open General License
PAN	=	Permanent Account Number
PSI	=	Pre-shipment Inspection
SAD	=	Single Administrative Document
SME	=	Small and Medium Enterprise
SPS	=	Sanitary and Phyto Sanitary Measures
TA	=	Technical Assistance
TBT	=	Technical Barrier on Trade
TF	=	Trade Facilitation
TIA	=	Tribhuvan International Airport
TPC	=	Trade Promotion Centre
TRIPS	=	Trade Related Intellectual Property Rights
UNCTAD	=	United Nations Conference on Trade and Development
UNESCAP	=	United Nations Economic and Social Commission for Asia and Pacific
WB	=	World Bank
WCO	=	World Customs Organisation
WTO	=	World Trade Organisation

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## **Executive Summary**

Trade facilitation is a longstanding and traditional feature of General Agreement on Tariffs and Trade (GATT), which is expected to have serious implications for developing member countries. This study aims to evaluate the need for and the cost of implementing trade facilitation measures in Nepal in the context of the ongoing WTO negotiation.

Nepal initiated market-oriented economic reforms in 1985. Trade liberalization under the economic reform was significant. Trade facilitation, however, has received its due attention only in recent years. The Government of Nepal introduced the Automated System for Customs Data (ASYCUDA) in selected customs offices and implemented a three year (2003-2006) Customs Reform Action Plan in the process of TF.

- The major features of the current TF situation in Nepal include: Delays in customs clearance; complications in customs valuation; time gap between publication and implementation of policies and laws; lack of advance ruling system; low litigation rate of appeal; lack of adequate coordination among border agencies and delays in clearance of goods in the Kolkatta port. While the systems of advance lodgment, risk assessment and audit based control are still at an early stage there, consultative and feedback mechanisms between government and traders exist. But traders complain that their suggestions are least considered among others.

A small-scale perception survey was carried out among importers and exporters. The survey revealed:

### Major perceptions

- current status of access and availability of information is normal
- There is gap between information supply and absorption capacity of SMEs
- Document requirement is not excessive and time consuming
- Fees and charges levied on export and import are reasonable
- Custom regulation is not a big problem
- Arbitrary payments are often required to expedite the release of goods
- ASYCUDA system has not been able to produce desired level of result

### Most problematic factors in conducting trade:

- Delay in inspection and release of goods
- Custom valuation
- Tariff classification
- Technical and sanitary requirements

### Respondent indicated following priority TF needs:

- Elimination of bribery and other corrupt practices of customs personnel
- Timely and comprehensive publication and discrimination of trade rules and regulations
- Establishment of an advance ruling system.

Although they are not directly related with TF, respondents gave high priority in human resource development and infrastructure development for trade facilitation.

### **Cost of TF Needs**

Despite the difficulty to estimate cost of trade facilitation measures, a very crude estimation is done at US\$ 34 million, which may need revisions. At this stage, what is important is identification of TF measures and priorities.

### **WTO Negotiations on TF**

The WTO members on various aspects of Trade Facilitation have submitted a large number of proposals. Some of them are already in practice in Nepal, hence should be easily acceptable to it. Some of them are difficult to be implemented due to resource constraint. Such proposals can be implemented on best endeavor basis. But some proposals are even not acceptable.

### **Conclusion**

Member countries need to be cautious and make concerted efforts to arrive at a consensus on the adoption of TF measures, beneficial to all and affordable by member countries. All countries need to subscribe a basic package and adopt a gradual implementation mechanism from simple to advanced measures.

# **1. Introduction**

## **1.1 Research Context**

Trade facilitation is the simplification and harmonization of international trade procedures, including activities practices, and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade (WTO/UNCTAD, 2001)<sup>1</sup>. It reduces the transaction cost as well as complexity of international trade induced by documentation, procedure and regulations and hence expands trade resulting in both economic growth and development. In view of such an important role for trade facilitation, many international organizations, including the World Trade Organization (WTO), have included it in their scope of work.

A number of international agreements hold direct implications for trade facilitation. WTO agreements that effect trade facilitation include: the Customs Valuation Agreement, the Agreement on Rules of Origin, the Harmonized Commodity Description and Coding System (HS), the Agreement on Import Licensing Procedures, the Agreement on Technical Trade Barriers to Trade, Agreement on Sanitary and Phytosanitary (SPS) Measures and the Agreement on Preshipment Inspection (PSI). Trade facilitation has been a long standing and traditional feature of GATT and subsequently WTO agreements. GATT articles V, VIII, and X also directly relate to trade facilitation. These articles are related to freedom of transit (Article V), fees and formalities (Article VIII), and publication and administration of trade regulations (Article X).

Although some provisions of the WTO relate to trade facilitation, it was only included in the WTO work program by the Singapore Ministerial Conference held in December 1996. Other issues raised in the Singapore Ministerial conference included competition, and investment and transparency in government procurement and services. However, the inclusion of these issues for negotiation, subject to explicit consensus on the modalities of negotiations, by the Doha Ministerial Conference held in 2001 created a sharp division between North and South. But, adoption of the August 1st General Council decision, known as the 'July Package,' opened the way for negotiation on trade facilitation. It identified five priority areas for negotiation, which along with agriculture, non-agriculture market accession, services and development, include trade facilitation. Thus, trade facilitation is the only 'Singapore issue' that survived for further negotiation. The other four issues were put on. An agreement on trade facilitation at the WTO is expected to have serious implications for the developing member countries. In this regard, a research effort has been initiated regarding trade facilitation among a number of developing countries in the East and South Asian Region. This research study is aimed at supplementing the above mentioned research effort by presenting a case study on trade facilitation from the perspective of the Kingdom of Nepal.

On April 23, 2004, Nepal became the 147<sup>th</sup> member of the WTO and its first Least Developed Country (LDC) member to enter through the regular accession process. Nepal is a least developed country with per capita income of US\$ 250 per annum. Surrounded by the People's Republic of China in the north and by India in the south, east and west, it is also a landlocked country. It has open borders with India.

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<sup>1</sup> Business and WTO Negotiation on Trade Facilitation (ITC).

Nepal's trade regime is liberalized to a great extent. It is now one of South Asia's most open and trade dependent countries. Presently, trade accounts for 40 percent of GDP (Government of Nepal, 2005). Fertilizer, petroleum products, medicine, automobile, and electronics are major items of imports while garment carpet, corrugated sheets, vegetable ghee, jute goods, handicrafts and pasmina are the major exports items. Exports have remained volatile due to unstable commodity baskets and market concentration. Similarly, trade competitiveness has been weak primarily because of high transaction costs. According to a recent World Bank study on Nepal's trade and competitiveness, Nepal's foreign trade transaction costs as a landlocked country are relatively high and have been deterrent to domestic economic growth (World Bank, 2003). Within this context, this study examines Nepal's need for and cost of selected trade facilitation measures relevant to the WTO trade facilitation negotiations.

## **1.2 Research Objectives**

The broad objective of the study is to evaluate the need for and the cost of implementing trade facilitation measures in Nepal in the context of the ongoing WTO negotiation on trade facilitation. The specific objectives are to:

1. Find out the current status of trade facilitation in Nepal.
2. Identify the problems encountered in the process of trade facilitation.
3. Identify the need for trade facilitation measures and their priorities for the Kingdom of Nepal.
4. Estimate the cost of implementing selected trade facilitation measures.
5. Make policy recommendations in terms of priorities for selected trade facilitation measures in Nepal.

## **1.3 Methodology**

This study uses both secondary and primary data. Secondary data were utilized for preliminary evaluation of trade facilitation in Nepal and estimation of the costs of trade facilitation needs. Secondary sources mainly include acts, rules and regulations, previous studies, and publications and web pages of government agencies such as the Department of Customs (DoC), the Nepal Rastra Bank (NRB) and the Ministry of Industry, Commerce and Supplies (MOICS). Primary data were collected from exporters, importers, officials of business associations and government agencies.

The study was done in four stages. Firstly, available secondary data and literature were reviewed to draw a picture of the current status of domestic trade facilitation. Secondly, a small scale survey was conducted among exporters and importers of major items with a structured questionnaire designed in line with the Asia-Pacific Research and Training Network on Trade (ARTNeT) research guide and questionnaire. Subsequently, survey data were compiled, analyzed and preliminary conclusions drawn to elicit the needs from the business community in the study. Thirdly, officials of government agencies were interviewed with a checklist developed

on the basis of eleven trade facilitation areas\* identified in Organization for Economic Cooperation and Development (OECD) research. Government agencies included the Ministry of Industry, Commerce and Supplies, the Department of customs, the Nepal Inter-Modal Transport Development Board (NITDB) and three selected major custom offices located in Tribhuvan International Airport Kathmandu, Biratnagar and Birgunj, covering both air and inland shipment. On the basis of information collected from secondary and primary sources, a WTO World Customs Organization (WCO) self-assessment check list was prepared to capture the trade facilitation situation in the country. The fourth stage of the project included collecting, compiling and analyzing the primary data.

In the process, trade facilitation measures currently being implemented were examined with reference to WTO Articles V, VIII and X. Trade facilitation measures that are not yet in place were also identified along with estimation of their implementation costs roughly in terms of time, capital and human resource needs as well as capacity building. Finally, a focus group discussion (FGD) was organized to get feedback on the draft report. The FGD was held among businessmen associated with the Federation of Nepalese Chambers of Commerce and Industries (FNCCI), Federation of Nepalese Cottage and Small Industries (FNCSI), Nepal Foreign Trade Association, Handicrafts Association of Nepal, among others. The valuable suggestions given in the ARTNeT conference by the participants, peers and advisory panel were incorporated in the final draft.

#### **1.4 Limitation**

The study was undertaken within a short period of time and with limited resources. Mainly for this reason, primary data were collected from a small number of respondents. Only 44 traders representing both big and small enterprises dealing in the import of lubricants, fertilizers, medicine, automobile and electronics, and in the export of garments, carpet, handicrafts, agro products, corrugated sheet and wires, were included in the survey. All of them are from Kathmandu Valley. Similarly, only few government officials were interviewed. Among 29 major customs only 3 were selected for interview: one from Kathmandu valley and two from outside Kathmandu.

Trade Facilitation covers a wide range of activities. However the scope of the study is limited. It concentrated only on those activities related to GATT Articles V, VIII and X as the WTO negotiation aims to clarify and improve relevant aspects of these articles with a view to further expedite the movement, release and clearance of goods, including goods in transit.

Lack of adequate information on current and planned expenditure on TF related projects severely constrained the cost estimation of trade facilitation needs.

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\* a. Publication and dissemination of (Customs) information; b. Consultative and feedback mechanisms with traders; c. Review and appeal procedures and due process; d. Advance lodgment (of goods declaration) and processing of data; e. Procedures for assessment, collection, and repayment of duties; f. Risk assessment; g. Audit based controls; h. Special procedures for authorized traders; i. Separate of release from clearance; j. Security for duties and taxes; k. Cooperation and coordination among different authorities.

## **1.5 Organization of the Study**

The study is organized into six sections. The next section presents a review of government initiatives and ongoing projects related to trade facilitation in Nepal. The third section contains an assessment of the trade facilitation situation in Nepal in relation to GATT Articles V, VIII and X. The fourth section deals with results of the perception survey undertaken to assess the trade facilitation needs and priorities of the private sector in Nepal. Section five provides an account of the cost of trade facilitation and selected trade facilitation measures. Implications for the WTO negotiations on trade facilitation are discussed in the sixth section. The last section presents concluding remarks and recommendations.

## **2. An Overview of Trade Facilitation in Nepal**

### **2.1 Literature Review**

Trade facilitation is the process of addressing “invisible” barriers to trade. It is a means of improving the efficiency of international trade and economic development. Issues such as quantitative restrictions or high tariffs are visible trade barriers. While these have to be dismantled, there exists a series of other barriers, which may be administrative or procedural and are trade restrictive. For example, in a study of documentation requirements for importing or exporting a consignment in India, Nepal and Pakistan, ESCAP pointed out that the number of document types required can vary from 15 in Pakistan to 29 in India and 83 in Nepal. Cumbersome documentation requirements do not facilitate rapid and low cost business transactions. Indeed, a recent study carried out by the OECD finds that transaction costs contribute between 2 and 15 percent of trade transaction values, and that trade facilitation measures could result in savings between 2 and 3 percent of the total value of trade. In some instances, 100 documents and 20 different organizations are involved in conducting international transactions. Savings from more efficient data processing could be as high as US\$ 100 billion.

Cost estimates of customs and related import formalities range from two to five percent of the value of merchandise trade. Trade facilitation is therefore a potentially very cost effective way of reducing the cost of trading. It is estimated that trade facilitation measures could save more than US\$ 150 billion per year. While accepting that trade facilitation is beneficial to trade, the issue of high start-up costs is an additional matter of concern. The amount of money required to create a customs clearance infrastructure that will be as efficient as that of Singapore, even in small developing countries, may well exceed US\$ 100 million.

Many international or regional organizations such as the International Trade Commission (ITC), OECD, UN Conference on Trade and Development (UNCTAD), UNESCAP, World Bank (WB), and the WTO have studied and produced a number of documents on trade facilitation. However, research on the impact of trade facilitation is scant, particularly in developing countries. Research on this aspect should be expedited so as to dismantle the “invisible” trade barriers represented by trade facilitation costs and make doing business more efficient.

Wickramasinghe (2004) in his discussion paper “A Multiple Approach to Trade Facilitation in South Asia” says that developing countries, despite their willingness, were not

able to autonomously implement trade facilitation measures due to lack of resources. Filmer (2003) concludes that traders in Nepal are in a vulnerable position as they are forced to hire containers in Kolkatta for a fixed number of days to transport goods to Nepal, with penalty rates if the containers are not returned to Kolkatta within the specified time. He further points out that customs delays and restrictive customs arrangements force traders into illegal practices. Gupta (2001) remarks that implementation of trade facilitation-related WTO arrangements requires strengthening before embarking on a search for a new agreement on trade facilitation in the WTO. These arrangements already deal with trade facilitation issues such as the agreements on customs valuation, rules of origin, pre-shipment, inspection, import licensing procedures, technical barriers to trade and the application of sanitary and phytosanitary standards. Chander (2005) opines that all South Asian countries should have a common position on most trade facilitation issues being discussed and negotiated. He further argues that, as a landlocked country, Nepal is the only South Asian member of the WTO which may have a slightly different approach to trade facilitation negotiations.

Furthermore, Adhikari (2005) views that, given the cost of implementing the trade facilitation measures which will be eventually proposed after completion of negotiations, all South Asian countries should be careful to ensure they receive sufficient and targeted technical assistance from their development partners to implement these measures. At the individual country level, it is worthwhile for them to conduct studies to map out their technical assistance requirements. However, most of international trade studies in Nepal aim to assess the impact on macroeconomic policies. Although important for macroeconomic policy these studies do not specifically address trade facilitation. Dispersed throughout the study, Nepal (2005) briefly discusses the constraints to flows of export goods from Nepal. Nepal's trade and competitiveness study provides a brief on the status of trade facilitation in Nepal and suggests improving customs procedures by linking them with issues of governance and infrastructure rather than in isolation. Despite the fact that the study recommends specific trade facilitation measures, implementation costs are not estimated.

Customs procedures are one of the main components of trade facilitation. Ghimire et al. (2005) studies Nepal's customs policies from a legal perspective and develops a number of recommendations to improve customs law and administration. The study suggests that a review of the prevailing legislation is needed in order to strike a balance between customs control and trade facilitation. The Nepal Window II Trade Related Capacity Building Program (NWI-TRCBP) released a draft report on trade facilitation focusing on the proposals tabled by fellow WTO member states for ongoing trade facilitation negotiations.<sup>8</sup> The report includes a review of proposals from a Nepalese perspective. The report emphasizes the need for automation and transport networks to enhance trade efficiency. However, the need remains for studies on the priorities and costs of trade facilitation in Nepal in relation to WTO negotiation covering broader aspects of trade facilitation needs

## **2.2 Major Government Initiatives**

Nepal is a small landlocked country with trade limited to India and Tibet, the autonomous region of China. The Nepalese economy was virtually closed until the first half of the 20<sup>th</sup>

century. Only after the advent of democracy in the country in 1951 was the Nepalese economy opened to the rest of the world, enhancing the role of trade in the economy.

In 1956 and 1962, respectively, the Import and Export Control Act and the Customs Act came into effect. These acts have served as basic laws for moving goods to and from Nepal. However, the Import and Export Control Act lost its relevance in trade liberalization as it aims to control or prohibit the export and import of restricted items. The existing Customs Act 1962, although amended in 1997, is also oriented toward control and enforcement and does not reflect modern international customs practices, as outlined in the Kyoto convention and WTO requirements.

Nepal announced its first trade policy in 1981. In the area of trade facilitation, this policy aimed to remove Octroi on exports and imports and simplify as well as expedite the custom inspection procedure. This policy was replaced by a new trade policy in 1992, which, among others, set objectives of launching container service for export cargoes in order to reduce hassles in the transit country; expanding and improving existing bonded warehouse facility made available since 1985 for import of textiles to be used in manufacturing of readymade garments for exports and implementing Duty Drawback System introduced in 1983 effectively. Implementation of these policy measures was slow. Although export procedures were simplified and container service was initiated, bonded warehouse could not be expanded.

Nepal's development strategies, including trade policies, were inward looking in general, and oriented towards import substitution until the mid-1980s. Nepal initiated market-oriented economic reforms under the Economic Stabilization program supported by the 18 month stand-by arrangement with the IMF in 1985. Trade liberalization under the economic reforms was significant. Trade facilitation, however, was not a priority. The core elements of trade liberalization included reduction and restructuring of import duties, dismantling most quantitative restrictions and import licensing requirements, and introducing the full convertibility of the Nepalese rupee for current account transactions.

Trade facilitation, nevertheless, has received its due attention in Nepal over recent years. In this backdrop, the Government of Nepal initiated several trade facilitation measures. Nepal introduced ASYCUDA (a software for customs processing designed and promoted by UNCTAD) in selected custom offices. ASYCUDA was introduced in order to strengthen the ability of the Department of customs to cope with the increasing demand for more rapid imports clearance, improve services to the trading community and revenue collection, and to align the customs system to international standards<sup>12</sup>. Implementation of a Three Year (2003 – 2006) Customs Reform Action plan is another major initiative undertaken by the government regarding trade facilitation. Establishment of the Inland Clearance Depot, also referred to as the “dry port,” is also a milestone in the process of trade facilitation, particularly in view of the landlocked feature of the country.

### **2.2.1 ASYCUDA**

The computerization of custom offices promotes simplification and standardization of documents, expedites processes, reduces administrative discretion, improves quality of record keeping, and facilitates audits and post-release investigation. On the whole, it accelerates the clearance of goods and benefits both the government and the business community. The most widely used computer software for customs automation in developing countries is ASYCUDA.

Nepal introduced ASYCUDA in 1996 as a component of a trade facilitation project funded by the Asian Development Bank. Satisfied with ASYCUDA performance Nepal customs has gradually expanded its use. It was firstly implemented in Tribhuvan International Airport (TIA) custom godown number 2 and DoC. Later, in the second phase, it was extended to TIA godown numbers 1 and 3, Birgunj, Bhairahawa and Biratnagar customs. Likewise, in the third phase, it was implemented in three more customs namely Mechi, Kirshanagar and Tatopani. Lastly, ASYCUDA was extended in the Birgung ICD, Gaur and Nepalgunj custom offices. Thus, by the end of FY 2004/05 it covered 9 custom points (Birantanager, Birgunj, Bhairahawa, Tribhuwan International Airport, Kirshnagar, Tatopani, Gaur, Nepalgunj Customs and the Dry port at Birgung). However, the computer program is being used only for goods declaration, processing and accounting for payment, a relative fraction of ASYCUDA's capabilities. Customs computers, for example, are not linked to each other or with headquarters. ASYCUDA's capabilities to provide other modules, e.g., selectivity, cargo information and broker declaration, have not yet been used. Various forms of tests are being conducted for the application of these different modules. As there are no wide area nor local area networks, the system of sharing information via computers has not been established except in the customs department where a local area network has been established.

In Nepal, the basic problem is inadequate support for the ASYCUDA system. The implementation programme has been badly designed as a one-off computerization exercise rather than as part of a comprehensive customs administration reform program. Hence, there was no improvement in the customs clearance time. It is clear from analysis of the experience of different countries that computerization is likely to be much more effective if it is used as a component in a wider customs reform program.

### **2.2.2 ICD/ Dry Port**

The establishment of an Inland Clearance Depot (ICD), which is also known as a 'Dry Port' is of vital importance for landlocked countries like Nepal wishing to improve their transport services through the introduction of multi-modal transport and containerization. Nepal established the "Nepal Inter-modal Transport Development Board" (NITDB) in 1997 with the objective to oversee the economical and efficient management of ICDs for the facilitation of Nepal's foreign trade. The main functions of NITDB are to develop, manage and promote ICD terminals, to prescribe criteria for determining service charges, and to conclude a railway operation agreement with Indian Railways.

Nepal also launched the Nepal Multimodal Transit and Trade Facilitation Project (NMTTFP) in 1998 with an estimated total cost US\$ 28.5 million (US\$ 23.5 million credit from the World Bank and US\$ 5 million from the government). The purpose of NMTTFP is to: construct a rail-based ICD in Birgunj, Biratnagar and Bhairahawa; procure four Reach Stackers for Birgunj ICD; operate the Automated System for Customs Data (ASYCUDA) and Advance Cargo Information systems (ACIS); enhance trade and transport facilitations, reforms and introduce transport and multi-modal legislation. Railway lines from Raxual to ICD Birgunj were constructed under the grant assistances of the government of India.

The main objectives of ICDs are to reduce transport costs, achieve competitiveness in imports and exports through reduced overhead costs, promote competitive transport services and

open opportunities to private sector operators through their involvement in management and operation of ICDs.

The three ICDs of Biratnagar, Birgunj and Bhairahawa were handed over to NITDB for their management and operation by the above project after the completion of their construction. NITDB has leased out three ICDs to the private sector for terminal management for a period of 10 years. NITDB is monitoring the activities of these terminal management companies. After completion, the Birgunj rail ICD remained closed for a long time in absence of agreement between Nepal and India on the clearance and inspection of the rail container at Raxaul, the border point of India, before entering into the ICD in Nepal. Lack of agreement with Indian railways for shipment to the Birgunj ICD was yet another reason the closure. However, it came into operation in July 2004. Additionally, the government is considering introducing a one stop window system for providing customs services as well as multi-modal transport facilities for the trading and industrial activities of the business community. Physical infrastructure development work will be initiated on the land allocated for the construction of a special economic zone in Birgunj in order to increase benefits from the dry port located at Birgunj and promote third country targeted exports.

### ***2.2.3 The Three Year Customs Reform Plan***

The Customs Administration should be transparent and predictable in providing the maximum level of facilitation for the movement of goods. The following are important for this: standardized clearance procedures; transparent and fair treatment from customs officials; promotion of voluntary compliance and facilitation; and risk management techniques. Regarding the promotion of voluntary compliance and facilitation, issues such as audit, verification and enforcement should also be targeted. In this context the customs department designed a three year custom reform action plan, which was implemented in FY 2003/04. The program accords high priority to institutionalizing scientific custom valuation procedures, simplifying checking procedures, reducing documentary requirements, automating custom processes and selectivity checking based on risk analysis. Simplification of passenger checking procedures, implementation of human resources development plan and modernization of custom infrastructures are also the part of the programme towards the institutional development. The plan also aimed at forming a Trade Facilitation Committee at the central level in order to harmonize custom work with trade facilitation.

The major achievements under the three year customs reform plan till the end of FY 2004/05 are as follows:

- A total of 109 post-clearance audits were conducted as of mid-July 2005.
- Clearance of goods within 2 hours has started.
- General selectivity module test to implement selectivity module in customs clearance was completed.
- Customs Procedure 2060 (working procedures for customs clearance) developed and implemented from September 2003.
- Trade Facilitation Committee has been formed and started working in July 2004.
- A booklet of consolidated customs circulars was prepared and distributed to field officials.

- Company registration and PAN registration certificates may be submitted only once which is treated as valid for the whole year.
- Risk management system started at Biratnagar customs on a test basis.
- Checking system started on a selective basis to check the use and misuse of duty exemption given by customs.

The innovative features of the Department of Customs' current management practices include: introducing a citizen charter for ensuring public services to people in an accountable, transparent and efficient manner; making provisions for time-bound services; installing a one point help desk for packaging custom services; carrying out regular monitoring and evaluation of performances of customs stations through 20 work indicators; and following a customs operation flow chart consistent with international best practices.

Yet control and clearance procedures are largely manual and documentary requirements excessive. Clearance practices involve extensive discretionary actions by customs officers. Strategic concepts for customs control such as systems of risk assessment for import shipments, selective checking, post-release review, and post release audit, are new concepts in Nepal. An unhealthy customs environment increases the chances of irregular influences on the classification and valuation of goods. Customs clearance delays at the borders and TIA are due to the Selectivity Module not yet being operational. As a result nearly 100 percent of cargo is inspected. Even with the implementation of ASYCUDA, clearing imports and exports is a document intensive activity and the clearance time has not decreased with the Selectivity Module lacking. Shipments are delayed also because of the time required for decisions by customs officers on valuation issues. The capacity of DoC to conduct post entry audits related to clearance activities is also limited. Transit procedures remain cumbersome and shipment to Nepal untimely.

The ASYCUDA system will be extended to additional customs offices and post clearance audits will aim to make customs valuation systems more scientific and transparent. Likewise, a valuation manual and necessary training will be prepared. This reform program is based on international standards and best practices.

### ***2.3 Major Ongoing Capacity Building Projects***

Customs Reform, ASYCUDA and ICD are the major ongoing projects. As an ongoing project, another ICD is being constructed in the Karkarbhitta customs. Additionally, the Nepal Window II: Trade Related Capacity Building Programme, jointly implemented by UNDP and the Nepalese government, assists the Customs Department in the creation of a Customs Valuation Manual. USAID is providing consultant services to help customs simplify procedures and staff training.

## ***3. Assessment of the Trade Facilitation Situation***

This section discusses issues related to the publication and administration of trade regulations, fees and formalities connected with importation/exportations and freedom of transit, based primarily on secondary sources of information. Information was collected from acts,

regulations and other publication. Supplementary information was collected through interviews with government officials and traders, during which a modified shorter version of the WCO trade facilitation self-assessment checklist was used (see Annex 1).

### **3.1 Article X**

#### **3.1.1 Publication and Availability**

Transparency in international trade is essential in order to allow commercial operators to fully understand the conditions and constraints for entering and operating in a market. Thus, a basic tenet of trade facilitation is the ready availability and accessibility of information on laws, regulations and administrative policies and procedures. Nepal publishes in the Nepal Gazette all trade related measures and laws, regulations, and administrative rulings of general application pertaining to or affecting trade in goods, services or TRIPS, including multilateral agreements or treaties to which Nepal is party.

The Department of Customs, under its three-year reform program, released 22 publications including one on integrated tariff rates. It also developed a downloaded web page. Similarly, MoICS developed a web page ([www.moics.gov.np](http://www.moics.gov.np)) with trade related information.

Two domestic trade points have been developed in order to integrate Nepal into the Global Trade Point Network. The Himalayan Trade Point Kathmandu was created in coordination with the Trade Promotion Centre and Federation of Nepal Cottage and Small Industries. The Trade Point Kathmandu was created in coordination with the Federation of Nepalese Chambers of Commerce and Industries and Kathmandu College of Management. A WTO Reference Centre was also established under the Department of Commerce to enhance flows of trade related information among stakeholders.

Likewise, as required by WTO agreements, enquiry points have been established to respond to queries on sanitary and phytosanitary measures (SPS) as well as technical barriers to trade (TBT) issues. The Department of Food Technology and the Department of Standards and Measurement have been designated as official points for queries on SPS and TBT issues, respectively. The DoC has also opened a Help Desk to respond to the queries of individual stakeholders.

Overall, it seems that availability and access to general information is not a serious problem in Nepal. SMEs alone have indicated it as a problem to some extent demonstrating instances of losses incurred due to policy changes of which they are not aware.

#### **3.1.2 Time Period Between Publication and Implementation**

Government acts, rules and regulations are required to be published in the official gazette. But there is no stipulated time regulation or deadline for doing so, often resulting in significant time lags between publication and implementation. It is not unheard of for publications to follow implementation by six months or more. However, public announcements through other media succeed in making the major components of newly formulated policies, acts and rules or their amendments widely known to concerned parties prior to implementation.

Information transmitted via electronic communication channels such as the Internet is also often not timely updated by the respective government agencies. Hence significant improvements are needed to bridge the gap between publication and implementation of various trade-related rules, regulations and necessary directives.

### ***3.1.3 Consultation and Commenting on New or Amended Rules***

Consultative and feedback mechanisms are fundamental factors of trade facilitation as they: enhance the predictability of the regulatory environment, improve public confidence and support, increase the prospects of compliance, and provide a tool for improving regulatory quality. In Nepal, consultative arrangements with traders exist at different levels and on different aspects. The Revenue Board, with representation from the trading sector among others, serves as an advisory agency to the government at the national level. The Board provides suggestions on the formulation of the annual government budget.

At the departmental level, a trade facilitation committee in DoC, comprised of government and private sector representatives, discusses and resolves customs- related problems. In addition, a monthly hearing system was also introduced in order for the business community to lodge complaints with the concerned authority. At the local customs office level, there are valuation committees with trading sectors representatives. MOICS also has a Trade Advisory Group, consisting of current and former government officials, former diplomats, and business and service and non-governmental organizations. Eight sub-groups have been formed under the Trade Advisory Group. Among them the Trade Facilitation Group is one.

However, no known consultative mechanism on operational aspects exists for issues such as location, competence and custom offices' hours of business. While large volume traders are in fact aware of policy changes beforehand, they do not complain that they are not consulted, but rather that their suggestions are least considered and that policy changes are often inconsistent.

### ***3.1.4 Advance Ruling***

The system of advance ruling does not exist in Nepal. Neither mechanism nor legal provisions are available for this.

### ***3.1.5 Appeal Procedures***

According to the Customs Act 1962, if any consignment is smuggled without paying duty, such consignment is confiscated and a fine equal to the value of consignment is imposed or imprisonment of 5 years or both is awarded. As indicated in the survey, the trading community feels that the penalty provision is overly severe. An appropriate mechanism of appeal for reviewing and correcting administrative action related to customs and border matters are essential for persons or firms engaged in international trade. In Nepal, several avenues of appeal are available at different levels for different issues. In the case of classification and valuation, traders may appeal to the Director General of the Department of Customs against a custom office decision. The Director General reviews the merits of a specific case and makes a decision by

duly consulting with a committee formed for this purpose. This consultative committee comprises of experts and representatives of the trade and industry sectors.

Traders who are not satisfied with the decision of the custom office/DoC may appeal to the tribunal. But in practice the litigation rate is very low, as the court proceeding is costly and time-consuming. In the year 2003/04, out of 2,635 customs offices decisions on valuation, appeals were lodged only for 397 (15 percent). The Director General holds the discretionary power to make final decisions on tariff classifications without any recourse to appeal. In other cases, parties, not satisfied with the decision of customs, may appeal to the Revenue Tribunal. Appeal to the Revenue Tribunal, however, is likewise rare. This is perhaps because of fear among traders of different treatment by customs officials if appeal is made against their decision. In order to expedite the appeal procedure, establishment of an independent Administrative Tribunal to review the decision of the customs authority regarding customs valuation is under consideration (WTO, 2003). The decision of the Administrative Tribunal may be appealed to the Revenue Tribunal, which should review and correct administrative action relating to customs.

### **3.1.6 Advance Lodgment**

Advance lodgment of declaration and supporting documents prior to arrival of goods can greatly facilitate their rapid release. This enables authorities to process data and to assess trade risks in order to determine required action prior to goods arrival in the custom territory. Traders also will know the amount of duty payables in advance. Advance lodgment enhances transparency and predictability in international trade transactions. However, as this system has only recently been introduced in Nepal many traders remain unaware of it.

## **3.2 Article VIII**

### **3.2.1 Fees and Charges**

Nepalese traders, particularly exporters, pay different fees for different purposes. Custom offices require certificate of origin for all preferential exports from Nepal. The chamber of commerce and its 17 affiliated local chambers issue such certificates and charge a fee of 0.12 percent of the consignment value. Some fees are product specific. For instance, the Handicraft Association of Nepal issues valuation certificates for handicrafts and charges a fee of Rs 20 for the invoice value up to Rs 8000 and at 0.25 percent for the value in excess of Rs 8000. For handicrafts produced from domestic animal bone and horn, a fee of Rs 50 is charged for the value up to Rs 10000 and Rs 100 for value exceeding Rs 10000. For leather products, a certificate is issued on request at a fee of Rs 20.

Similarly, the VISA cell constituted under the National Productivity and Economic Development Center charges 0.12 percent on the value of each consignment of readymade garments to the United States of America and Canada. Exporters have to fill out forms for the generalized system of preferences (GSP) while exporting to European countries. The TPC sells the forms for the GSP. However, for Nepalese hand-knotted woolen carpets, the Carpet and Wool Development Board issues the GSP form to the exporters at a fee of Rs 2 per square meter.

On the import front, Nepal has already brought almost all goods into the open general license (OGL) system through its trade liberalization process. No license is required to import goods using a letter of credit. However, a license from the department of commerce is required to import goods, if payment is made by other means. In such a case a fee of 1.1 percent is charged. Imports up to US\$ 30 thousand are allowed without a letter of credit. Private sector importers view this charge as high.

### ***3.2.2 Formalities connected with importation and exportation***

#### **Import Formalities**

In Nepal, only the government firm, company or individual are allowed to engage in import trade. All items with exception of restricted ones (like arms and ammunitions and narcotic drugs) are allowed to be imported under the open general license or OGL system. However, a letter of credit is required for the import of goods worth more than US\$ 30 thousand. For the import of goods the importer has to complete the banking and insurance formalities, clearing and forwarding processes, and customs procedures.

There are slight differences in the process regarding imports from India and third countries, and also from the Tibet autonomous region of China. Various documents are required to be submitted with the customs point before the clearance of goods including: the import declaration form or custom transit declaration form; commercial invoice; packing list; bill of lading or airway bill; insurance policy; letter of credit; firm registration certificate; certificate of origin; income tax clearance certificate; value added tax registration certificate; and lab test certificate. In the case of goods to be imported from India, documents like the In-bond form and DRP Invoice must be submitted. For the import of some specific products, recommendation letters from concerned government agencies are also required. For instance a recommendation letter from the Department of Veterinary Services must be submitted to import animal feeds.

#### **Export Formalities**

Like import trade, no license is required for the export of goods to India and third countries. However, the GSP form is required for the export of carpets, which can be obtained from the Trade Promotion Centre, or Carpet and Wool Development Board. Similarly, visas are required for the export of readymade garments. The National Productivity and Economic Development Center issues such visas. The Chamber of Commerce issues certificates of origin for other exported goods. Handicraft exports require valuation certificates issued by the Handicraft Association of Nepal as well as permits from the Department of Archeology. While exporting goods, the exporter is required to submit the following to the customs office: export declaration form; invoice; packing list; certification of origin; firm registration certificate; income tax registration certificate; value added tax registration certificate; airway bill or manifesto of transportation; insurance policy; letter of credit/ advance payment; customs transit declaration form and other product specific documents. Lab tests are also sometimes required by the customs.

### **3.2.3 Border Agency Coordination**

Different border agencies are involved in the task of regulating international trade from different viewpoints. Increased cooperation and coordination among these agencies will greatly enhance trade facilitation. While offices representing different ministries such as health, agriculture and industry work in coordination in custom offices, the level of coordination remains inadequate. Often there is duplication of physical examination of shipments by separate agencies causing clearance delays. No coordination exists among custom offices, the Department of Archeology and the MICS. For instance, although one window has been established by the MICS, exporters still require permits for handicraft exports from the Department of Archeology. Lack of coordination among ministries is also often unreported, which delays formulation and implementation of reform programs.

### **3.2.4 Release and Clearance of Goods**

The issue of the rapid movement of goods is very important as a trade facilitation measure because delays in movement may cause considerable financial losses. Customs procedures are a critical element in this regard. A recent study concludes that insufficiencies in customs procedures in Nepal result in unnecessary customs clearance delays as well as imposition of extra costs to the trading community. Customs houses are not equipped with modern tools and technical staff powered to use alternative methods for physical examination of good. This is one of the main reasons for delays in custom clearance.

Although the Single Administrative Document (SAD) was introduced in four major customs along with the implementation of ASYCUDA, customs clearance still requires a long list of documents ranging from 11 for exports to 20 for imports from a third country. Some of this documentation can be reduced. For example, a provision may be made that traders submit a PAN registration certificate only once in a year instead of requiring the same for the clearance of each and every consignment. Similarly, customs offices may cease requesting certificates of origin from Nepalese customers if importing countries do not require them.

Even in customs offices where ASYCUDA has been introduced, clearance procedures are largely manual and hence time consuming. Computers are primarily used in the clearance process for automated checking of the internal consistency of the declaration, application of the duty and tax rates corresponding to the declared H-S code, and checking the correctness of calculations. This has done little to speed up customs clearance as all other steps remain manual.

Clearance should be completed within two hours after presentation of declaration with explanations being required in writing if clearance could not be finalized within the stipulated time. However, in practice clearance can take up even two or three days. After visiting the customs site and observing the clearance procedures, a research team concluded as impossible to clear customs in two hours under the present working conditions.

No provision exists for special procedures for authorized persons in Nepal. Many other countries provide a special procedural facility to trustworthy traders on the basis of their customs track record.

Risk assessment is an important element of any customs reform program. The major benefit to most traders from the system of risk assessment is that the bulk of clearance will be processed quickly without being subject to physical examination, which is carried only on a selective basis. In this system, custom administration concentrates its scarce resources examining only high risk transactions. But this strategic concept for customs control is missing in Nepal. Although the Department of Customs includes risk assessment in its three-year plan, progress lags in initial stages. Criteria for selective examination have been developed and tested. Also a risk assessment system was introduced in Biratnagar customs, one of the main customs in the country, on a trial basis.

Customs administrations have two-pronged objectives: custom control and trade facilitation. Striking a balance between these two objectives is essential. Risk assessment facilitates trade but physical examinations of cargoes are undertaken only on a selective basis. Audit based controls, supplementary to the risk assessment technique, are also required to ensure efficiency and effective compliance. They include post clearance audit and post clearance inspection. Post clearance audit was recently initiated in Nepal, although audit cases remain few, numbering only 109 in the FY 2004/05. A manual was prepared for post clearance inspection. However, it has yet not been practiced.

The payment of customs duties and taxes by traders is a precondition for the release of goods. However, release can be simplified in the context of advance lodgment of declaration and with a security system in place. If customs accepts a general security clearance for all of a trader's transactions for a given period of time instead of requiring security clearance each time goods are imported/exported, release of goods becomes much faster. Currently such a system is generally not available in Nepal, with the exception of facilities for bonded warehouse and pass-book for the importer of raw materials to be used in specific export products. Under the system of bonded warehouse and pass-book, importers need not pay duties each time they import goods; duties are instead adjusted in their deposit with customs.

### ***3.2.5 Tariff Classification***

The Nepalese customs administration adopted the Harmonized System of commodity description and coding system, although it has not been a contracting party of the HS convention. Exporters and importers have to declare the harmonized code. However, there are instances of differences in interpretation of the goods not only between customs and traders but also between customs and other government departments, and among customs itself. Pharmaceuticals importers report that the classification of an import item by the Department of Drug Administration often differs from the customs classification. The discretionary power lies in the hands of custom officials as regards to the decision on tariff classification. Hence, it has been one of the major gray areas of corruption in custom administration. In the process of trade liberalization, Nepal reduced tariff rates and bands significantly. Now there are only five bands of tariff 0, 5, 10, 20 and 80 percent.

## ***3.3 Article V***

### ***3.3.1 Transit Matters***

Nepal has no direct access to the sea. The nearest seaport is located in Kolkatta, India, which is 660 miles away from the center of Nepal. Nepal, therefore, requires transit facilitation from India for trading with the rest of the world. Although existing arrangements allow the Nepalese traders to use the Mongla port of Bangladesh through Phulbari-Banglabandh, the India-Bangladesh land border, this port has been used in a limited way by Nepalese traders. They are more familiar with the Kolkatta port and the insufficient infrastructure in between the Bangladesh border to the Mongla port proves discouraging. Thus, Nepal has to depend on India for transit facilities for third country trade. Nepalese traders have to clear their cargos both in Kolkatta and Nepal. Clearance of goods in Kolkatta takes as long as 3 to 5 days. Partial clearance is not allowed in Kolkatta.

There is a Treaty of Transit between Nepal and India which guarantees the freedom of transit across their respective territories through mutually agreed upon routes. This treaty governs the rules and regulations pertaining to the traffic in transit. According to the treaty, no distinction shall be made which is based on flag of vessels, exit, destination, ownership of goods or vessels. This is in line with Article V of GATT.

The treaty of Transit with India was renegotiated in 1999. Although there are procedures outlined in this agreement for transit from Kolkatta to Nepal, the processing time at the port of Kolkatta normally takes 3 to 5 days for transit goods even with all of the required transit documents and the one time lock system of containers. Processing the documents to clear Indian customs is a time consuming activity. The Kolkatta Port Trust also sets up different tariff rates for Indian and Nepalese cargo: the latter's rate is much higher.

A Custom Transit Declaration (CTD) is used for shipments from Kolkatta port to Nepal. The shipment is verified at the Indian border. The shipments may be inspected in transit also. But it is not done normally. Transit to and from Nepal is subject not only to the Indian central government regulations but also to those of the local state governments. There is very little alignment of transit documentation between India and Nepal other than the CTD.

Inland Clearance Depots (ICDs) have been established in Birgunj, Biratnagar and Bhairahawa. Nepalese traders hire containers in Kolkatta to transport goods for a fixed number of days. If they cannot return the container within the fixed days, they have to pay penalty charges to the container company. Delays in customs clearance both at the Indian border and in Nepal thus result in extra costs to Nepalese traders. As there is a syndicate among transport enterprises in Kolkatta, Nepalese traders do not enjoy benefit of competition while hiring containers. ICD Birgung has a railway link to Kolkatta. This ICD was opened with the concept of dry port. But businessmen view that it is not being operated as a dry port in any real sense as goods can not be delivered here for the destination. The exporter has still to bear responsibility of clearing goods in Kolkatta. Moreover, the facility of dry port is not yet available at Kathmandu, which is the major traffic-generating center in Nepal, to facilitate inter-modal container movement.

Nepal so far is not a transit country for any other country. Hence there is no provision for transit goods in Nepal's trade related laws, polices, process and mechanism. However, Nepal has made a positive response to India's recent proposal to operate trade between India and China through Nepal. If Nepal is to be the transit point, acts rules and regulations need to be amended accordingly and a suitable mechanism needs to be developed.

#### **4. Trade Facilitation Needs and Priorities of the Private Sector**

A small-scale survey was carried out among importers and exporters to obtain their perceptions of and needs in relation to the existing trade facilitation measures of GATT articles V, VIII and X. These articles cover, respectively, freedom of transit, fees and formalities and information, and procedure and appeal. The survey included both small and large enterprises. Two business houses and seven individual enterprises participated in the survey, representing the views of altogether 44 enterprises<sup>2</sup>. Most of them deal with export/import businesses. Only 25 percent of them are manufacturing enterprises. While administering the survey questionnaire, some exporter/importers were also interviewed for supplementary information. This section is mostly based on results of the survey. However, information received from exporters/importers through other means is also used as supplementary inputs.

##### **4.1 Perceived Level of Trade Facilitation and Implementation**

The survey respondents perceive the current status of access and availability of information as normal. Custom regulations and required documentations are available. Respondents also agree that changes in regulations and requirements are promptly and conveniently made available. But there is disagreement that laws, regulation and judicial decision are applied in uniform, impartial and reasonable manner.

The views expressed in the survey regarding access and availability of information by SMEs and other enterprises are clearly different. It seems that there is a gap between information supply and the absorption capacity of SMEs.

A formal private sector consultative mechanism exists in Nepal at various levels and in different forms. But comments from the private sector are often not considered. Therefore, the mechanism is not very effective. Reflecting this situation the respondents agree that a formal and effective private sector consultative mechanism exists in Nepal.

**Table 1 - Private Sector Perceived level of implementation of TF Measures in Nepal**

<b>Issues</b>	<b>Average Score (Out of 7)</b>	<b>Standard Deviation</b>
Trade and customs procedures and regulations are publicly available and easily accessible	5.3	0.86
Information about changes in regulations and procedures are made available promptly and conveniently to the public	5.3	1.63
Laws, regulations and judicial decisions are applied in a uniform, impartial, and reasonable manner	3.3	1.44
An independent system to appeal trade and/or customs authorities' decisions is available and operates effectively	4.6	1.46
A formal and effective private sector consultation mechanism exists, allowing traders to comment on proposed changes to regulations and procedures before they are issued and implemented	4.3	0.69
An effective advance ruling system is in place	1.3	0.46
Documentation requirements for import/export are excessive and time	4.0	1.31

<sup>2</sup> Responses from the Mahesh Overseas Group and Golchha Organisation Pvt. Ltd represented 12 and 15 companies, respectively. We calculated weighted averages of the business groups based on the number of their holdings.

consuming		
On average, fees and charges levied on export and import are reasonable	5.0	2.05
Penalties and fines for minor breaches of customs regulation (e.g., due to typing mistakes) are small and reasonable	4.3	0.90
Irregular and arbitrary payments are often required to expedite release of goods from customs	6.6	1.11
Submitting required trade documentation to trade/customs authorities for approval is easy	5.0	1.62
Computerization and automation of customs and trade procedures have noticeable reduced average time of clearance	3.0	0.47
Treatment of goods and vehicles in transit is non discriminatory	6.0	1.36
Goods in transit are subject to unreasonable transit duties or transit charges	4.0	1.69
Regulation and procedures for goods in transit are clearly defined and widely available	6.3	0.62
Vehicles in transit are allowed to use the most convenient routes to their destination	6.0	0.36

Note 1= Strongly disagree, 4= No opinion, 7= Strongly agree

Source: *Trade Facilitation Survey 2005*

There is no system of advance ruling in Nepal. The survey result clearly reflects this. Although the number of required document range from 11 for exports to 20 for import, most of the respondents do not feel it as excessive and time consuming. The average score stood at 4 out of 7, indicating that document requirements are normal. According to the survey questionnaire, 7 stands for strong agreement of the statement that documentation requirement for imports/exports are excessive and time consuming and 1 stands for strong disagreement of the same. A specimen questionnaire is appended. The respondents also agree that fees and charges levied on exports and imports are reasonable, although scope for improvement remains. Some respondents view that since fees levied by individual associations like HAN and GAN are service charges they should be fixed and not *ad valorem*. However, other respondents are not dissatisfied since the collected fees are spent in the interests of the trading community.

As indicated by the survey results, traders in general do not perceive penalties and fines for minor breaches of customs regulations as a significant problem. However, irregular and arbitrary payments are often required to expedite release of goods from customs. Almost all respondents strongly agree on this point. The ASYCUDA system introduced in Nepal in 1996 has been unable to produce the desired level of results. Some respondents disagree that computerization and automation of customs and trade procedures have noticeably reduced average clearance time.

According to the survey results, vehicles in transit are not discriminatorily treated in Nepal. Respondents also agree that rules and procedure in this regard are clearly defined and widely available. But they did not give any opinion on duties and charges on transit goods in Nepal, since it is not a transit country.

## **4.2 Trade Facilitation Priorities of the Private Sector**

According to the survey findings, the private sector gives highest priority to the elimination of bribery and corrupt practices of officials involved in the clearance and release of imported goods. The average score on this issue stood at 4.7 (5 being the highest priority

according to the questionnaire). In Nepal there is a significant time gap between publication and implementation of information. Respondents are thus of the view that improvement in timely and comprehensive publication and dissemination of trade rules and regulations lessens the communication gap between government agencies and traders, particularly the small and medium class enterprises.

An advance ruling system helps the businessman to make aware of the future likely problem in advance and plan the action accordingly. It also reduces the discretionary power and policy inconsistency of the customs officials while assessing the duties and taxes. As there is no advance ruling system in Nepal, the respondents are of the view that an advance ruling system allowing the importer, in advance of trade, to obtain binding rules should be established on a priority basis.

Improvement of human resource development and infrastructure development are other priority areas indicated by the survey respondents. Improvement in these areas will enhance the speed of clearance and release of goods reducing problematic extra costs. Other priority areas indicated by the survey respondents include: improvement in coordination between the relevant agencies; harmonization and standardization of the documents based on international standards; computerization and automation of trade procedures; improvement in customs inspection; and control procedures and improvement in the effectiveness of an appeal mechanism

**Table 2**  
**Trade Facilitation in Nepal: The Private Sector Perspective**  
**Trade Facilitation Needs and Priorities**

Issues	Average Score (out of 5)	Standard Deviation
Reduction and simplification of documentation requirements	3.0	0.42
Elimination of bribery and other corrupt practices of customs personnel	4.7	1.28
Establishment of a single window for one time submission	4.3	1.31
Harmonization and standardization of documentation requirements based on international standards	4.3	0.70
Independent appeal mechanism for traders	4.0	0.95
Improvement in customs inspection and control procedures	4.0	1.04
Computerization and automation of trade procedures	4.0	0.90
Timely and comprehensive publication and dissemination of trade rules and regulations	4.7	0.66
Completing clearance of goods before they have arrived physically in the Customs territory	3.7	0.69
Establishment of enquiry points and/ or call centers	3.3	0.72
Establishment of consultation mechanism for trader inputs	3.7	1.14
Establishment of an advance ruling system	4.7	1.19
Implementation of international and regional transit systems based on international standards and practices	3.3	0.73
Separating release from clearance procedures, i.e. allowing goods to be released before all clearance formalities have been completed	2.7	0.72
Human resource development	4.5	0.62
Infrastructure development	4.5	0.75

Note: 1= Low priority, 2= Medium priority, 3= High priority, 4= Very high priority, 5= Highest priority

Source: *Trade Facilitation Survey 2005*

### 4.3 Problems

According to the survey result, the private sector ranks inspection and release of goods as the most problematic area in conducting trade. Although DoC declared that inspection would be completed within 2 hours of goods arrival, it in fact takes much longer. The practice of 100 percent checking is still in place. This is the area where the private sector bears most extra costs.

The second most problematic area as indicated by the survey result is customs valuation, followed by tariff classification in third place. Although the Nepalese customs administration adopted the transaction value method, it often uses its discretionary power to not accept commercial invoices submitted by the trader. Similarly, due to a lack of coordination between customs and other concerned departments, tariff classification proves problematic, despite Nepal's adoption of the HS. Technical and sanitary requirements are additional challenges also faced by exporters. While on the one hand testing lab facilities are not adequately available in Nepal, on the other hand foreign buyers do not recognize domestic test standards. Additionally, many SMEs are unaware of the technical requirements of a buyer country.

Nepal has liberalized its trading system to a large extent. No license is required for importing goods through letters of credit (L/C). However, an import license is required to import goods through other modes of payment. Previously, imports without L/C were allowed up to U.S.\$10,000. Now the limit has been raised to U.S.\$30,000. The importer has to pay a license fee of 1.1 percent, which is not required in case of imports through L/C. A few respondents stated this as a problem.

More than 90 percent of respondents view that most problems are related to domestic policies, procedures and regulations although there are some difficulties in transit and foreign countries. Tariff discrimination by the Kolkatta Port Trust and congestion in the Kolkatta Port are prime examples of problems Nepalese traders face while importing from or exporting to third countries. Nepalese exporters, however, seldom face difficulties in fulfilling high levels of technical requirements by the foreign buyers.

In addition to the problems covered by the survey questionnaires, some respondents also indicated some country-specific problems. Made possible by a large investment, Nepal established a dry port in Birgunj. But it is not working as a dry port in any real sense as Nepalese traders are still required to clear cargo both in Birgunj and Kolkatta.

**Table 3**  
**Trade Facilitation in Nepal: The Private Sector Perspective**  
**Most Problematic Factor in conducting Trade**

Factor	Rank
Customs Valuation	2
Inspection and release of goods	1
Tariff classification	3
Technical or sanitary requirements	4

*Source: Trade Facilitation Survey 2005*

The physical infrastructure and equipment at most customs points are not only inadequate but also of low standards for the efficient clearance of goods. Most customs are not equipped with any of the following: laboratory, X-ray, weighing bridge, crane and forklift truck, container

scanner, warehouse nor a comfortable room for customs clearance. Developing a stand-alone capacity for testing is critical as there are no private laboratories in Nepal.

## **5. Cost of Trade Facilitation Needs**

Based on the trade facilitation needs and priorities indicated by the private sector survey and information collected from other sources, this chapter discusses some trade facilitation measures urgently required in Nepal. However, given the resource constraints in the country, it is not possible to implement the needed trade facilitation measures without adequate external technical and financial assistance. But it is difficult to estimate the total costs of all trade facilitation measures. Government documents do not provide this information. Hence, crude figures are estimated on the basis of cost data available regarding the three-year customs reform plan, ICD Project and ASYCUDA.

### **5.1 Selected Trade Facilitation Measures**

#### **5.1.1 Inspection and Release of Goods**

The private sector indicated delays in inspection and release of goods as a major problematic factor in conducting trade. Although the Systems of Post Entry Audit and Pre-clearance were introduced in some custom offices, they have not been effective. Procedures for effective and wide implementation of Post Entry Audit and Pre-clearance remain to be developed. According to the directives of the DoC, customs offices are required to clear the goods within two hours. However, in practice, it takes much longer time and involves extra costs. Therefore, the private sector has placed the elimination of bribery as a top priority.

#### **5.1.2 Customs Valuation**

The private sector indicated customs valuation as another major problematic factor in conducting trade. Current valuation procedures in Nepal are based on Article 13 of the Customs Act according to which customs duties on imports are assessed on the basis of transaction prices. Furthermore, the Fiscal Act of 2001 specifies that WTO principles shall be applied in determining transaction values. However, the Department of Customs has difficulty in determining transaction values based on the invoice provided because procedures for determining the value are not fully developed nor understood. Nepal needs to make necessary arrangements as a member of the WTO to implement the WTO valuation system by 2007.

#### **5.1.3 Advance Ruling**

The private sector accords high priority to the establishment of a system of advance ruling, which currently does not exist in Nepal. It is important to initiate necessary action in this regard as it helps businesses to be aware of likely future problems and plan action accordingly in advance. A system of advance ruling also reduces the discretionary power and policy inconsistencies of customs officials while assessing duties and taxes.

#### **5.1.4 Other Measures**

Human resource and infrastructure development in Nepal play vital role in enhancing trade, although indirectly related to WTO negotiations on trade facilitation.

##### **5.1.4.1 Human Resource Development**

Human resource development plays vital role in both speeding up of custom clearance and bribery reduction. Human resource development is required for timely and comprehensive publication of information.

There are about 1,700 staff in the customs administration with only about 5 percent holding positions at the officer level. The non-officer level staff has no strong academic backgrounds and their levels of technical competency is additionally low. In order to enhance customs efficiency, they should be equipped with officer level staff with proper academic backgrounds, especially with knowledge of information technology. Moreover, both introductory training for new employees and specialized training for existing ones in various areas should be frequently provided. Staff technical competency, attitude and behavior towards traders should also be improved. The development of the international trade system along with rapidly changing information technology combine to make the global trading mechanism more complex, requiring competent and qualified personnel in the business circles. Although some programs for private sector capacity building have been launched by different international institutions, more programs are required to make them fully competent. On the whole, competency-based human resource management is necessary in the public as well as private sectors.

##### **5.1.4.2 Good Governance**

Good governance is another important factor that plays a vital role in the elimination of corruption, as well as in the prompt and efficient delivery of services. In order to be an effective partner in improving trade competitiveness and reducing transaction costs, the Department of Customs, in addition to collection of revenue, should also focus on facilitating the movement of goods and developing a voluntary compliance culture in the business community. However, the present Customs Act and department culture are heavily oriented towards control, revenue collection and enforcement. Hence, the revision of the Customs Act and rules should be made so as to reflect modern international customs practices as outlined in the Kyoto Convention and in the requirement for WTO systems.

Various new procedures and approaches will have to be based on a sound and transparent legal framework. A key issue today is the maintenance of good morale and honesty in the customs administration. The 1993 Arusha declaration highlighted this issue and recommended following 12 points<sup>3</sup> to combat corruption in customs administrations. Although civil service reform is in progress, it does not provide the required management accountability, human

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<sup>3</sup> Clarity in customs laws, simplicity in customs laws, simplification of procedures, automation, division of work, internal audit, external audit, promotion, upgrading, code of conduct, training, and transparency.

resources and administrative framework to effectively manage the Department of Customs. So, managerial authority and flexibility should be streamlined, and performance standards relating to services to the traders and the public should be introduced. Both the code of conduct and disciplinary measures should be specific and staff performance indicators should be implemented and regularly monitored. On the whole, an effective form of organization and management with clear objectives, strategic and operational plans, and performance criteria should be introduced. Strategies of integrity should be adopted and the institutions should be directly oriented towards trade facilitation.

#### **5.1.4.3 Infrastructure Development**

Infrastructure development plays a crucial role in trade facilitation. For this reason, the private sector accords it high priority. In the context of the current trade facilitation situation in Nepal, developing physical facilities in customs houses and extending ICDS are two main components of infrastructure development.

The physical facilities in customs offices play an important role in enhancing the speed of customs clearance. However, the physical infrastructure and equipment at most customs points are not only inadequate but also are of lower standards for the efficient clearance of goods. Most of the customs are not equipped with laboratories, X-ray machines, weighing bridges, cranes and forklift trucks, container scanners, warehouses and comfortable rooms for customs clearance. Regarding customs laboratories, developing stand-alone capacity for testing is critical as there are no private laboratories in Nepal. There is also need for construction of building, yard reform, and installation of additional equipments, among others.

Establishment of ICD in Birgunj (rail-based) and in Biratnagar and Bhairahawa (both road-based) facilitated the operation of international trade with third countries. The management and operation of these ICDs is supposed to have reduced transport costs, achieved competitiveness in imports and exports through reduced overhead costs, and promoted competitive transport services to some extent. After the operation of ICDs in 3 points, construction of another ICD in Kakarbhitta (eastern Nepal) is underway under the financial assistance of ADB. Like Birgunj ICD, it would have been economical and beneficial for carrying trade with third countries, if there were rail linkages from ICDs to seaports and all major towns in India.

From the international trade transaction viewpoint in the western part of the country, it is advisable to establish ICDs in major custom points like Nepalgunj and Mahendranagar. Although Kathmandu is the major traffic generating center in Nepal, there is no dry port. In order to facilitate international movement of goods to and from Kathmandu a dry port should be extended there.

#### **5.1.5 Computerization**

Computerization in concerned ministries and departments such as the MOICS and the Department of Commerce as well as their various cells, improves the timely and comprehensive publication and dissemination of trade-related rules and regulations. Similarly, computerization of customs offices not only enhances the speed of customs clearance but also improves

coordination among border agencies and harmonization and standardization of documents. Therefore, full-fledged computerization is essential.

Although there are various benefits to customs automation, a large number of customs offices are yet to be computerized in Nepal. Out of 29 main customs offices and 143 sub-customs offices, only 9 main customs offices and the DoC have been computerized. Even in computerized offices, many activities related to customs clearance are not covered. Different modules of ASYCUDA are yet to be used. Remote clearance, electronic transmission of documents, and electronic scanning of goods have not been introduced. ASYCUDA does not cover certain activities of customs such as deposit, partial clearance, auction, and old due collection. The DoC is planning to acquire separate software for computerizing these activities. Local area networks (LAN) within customs offices, and wide area networks (WAN) both within customs offices and between customs offices and the DoC are yet to be established. Thus, the following activities are urgently required for completion of customs automation:

- Implementation of ASYCUDA in more customs offices.
- Full implementation of ASYCUDA using different modules meant for different purposes in the offices where it has been introduced.
- Establishment of LAN and WAN.
- Acquisition and use of other software for activities which are not covered by the ASYCUDA.

## **5.2 Cost of Trade Facilitation Needs**

The budget for the third year of the three-year customs reform plan is estimated at Rs 227.4 million. The budget seems to be meager given the wide scope of the work plan, including human resource development, governance reform, simplification of customs procedures, automation, and enhancement of physical facilities,. It also aims to provide technical assistance for certain activities, which has not been included in the budget. The cost of three ICD projects in Birgunj, Biratnagar and Bhairahawa amounted approximately to U.S. dollar 28.5 million. On the basis of these two figures, crude estimate of the costs of introduction of trade facilitation measures comes to approximately U.S.\$34.0 million. The cost breakdown is given below. Additionally, technical assistance (TA) for different aspects of trade facilitation is required from donor agencies. The cost of TA is not included in this estimate. This is a very crude estimation based on the limited information mentioned above. It does not in any way represent the views of the government.

**Table 4**  
**Cost of Trade Facilitation**

S. No.	Particulars	U.S.\$in million
1	Extension of inland clearance depots	25.0
2	Computerization in DoC , MOIC and other related offices	1.0
3	Human resource development in both government and private sector	1.0
4	Good governance	2.0
5	Introduction of advance ruling system and other administrative reform	1.0
6	Physical facilities in customs	4.0
	<b>Total</b>	<b>34.0</b>

Needs assessment is likely to be an ongoing process, changing over time as TF measures are progressively implemented. Financial and technical assistance requirements also change accordingly. The above cost figure is a very crude estimation and may need further revision. At this stage, however, what is important is identification of TF measures and priorities. Once TF measures are agreed, accurate cost estimation would need to be undertaken in later stage. For this and for agreement on TA/CB issues, an adequate transition period should be allowed to WTO member countries particularly LDCs.

## ***6. Implication for the WTO Negotiations on Trade Facilitation***

### ***6.1 Priority TF measures to be considered for inclusion in the WTO TF agreement***

The private sector perceives the current status of trade facilitation in Nepal as generally normal although they see ample scope for improvement. They do not perceive the current state of trade facilitation as seriously problematic for conducting trade. Whatever problems they face are mostly domestic.

Nepal has not so far made any proposals to the WTO Negotiating Group on Trade Facilitation. However, the trade facilitation proposals submitted by different countries, independently or jointly, as part of the WTO negotiation may exert both positive and negative impact on Nepal's trade, if negotiation is finalized. Although the private sector did not emphasize the importance of transit issues, government officials interviewed during the study viewed transit facilities as a critical element for trade facilitation in Nepal. This is supported by the previous literature in this field.

Article V, related to transit, is of particular relevance to Nepal and other land-locked countries. To facilitate flows of goods to and from a landlocked country, a wide range of modes of transport should be available. So, Nepal should independently or jointly make a proposal that transit rights be applicable in shipment of goods through all modes of transport including pipeline and transmission line.

Article V provides freedom of transit via routes most convenient for international transit. It does not grant freedom of transit through all routes. This limits the choices of landlocked countries. At the same time, freedom of transit should not be viewed only as access to the sea. Landlocked countries especially LDCs should be provided the right to choose the route and means of transport. Furthermore, transit countries should provide national treatment in all transit goods irrespective of route and mode of transportation. TF measures taken to enhance the speed of customs clearance such as pre-arrival clearance, international standard procedure, and risk assessment-based clearance, should also be applied to the transit goods indiscriminately.

Article V provides the right to contracting parties for movement of goods via the territories of transit countries. But clear definition of goods is still lacking. A broad and clear definition of goods to include both tangible and intangible products should be made. It may be easier to list what cannot be classified as goods.

## 6.2 Proposals by other WTO members

A large number of proposals have been submitted by WTO members on various aspects of TF. Some of them are already in practice in Nepal, hence should be easily accepted by the country. A table showing Nepal's current status of TF measures vis-à-vis WTO proposals is given below. Some TF measures are difficult to implement due to resource constraints. Such proposals can be implemented on a best endeavor basis only, not as binding commitments. As reciprocity can not be exempted from LDCs, special and differential treatment (S&D) is required in implementation of certain proposals. Some proposals are not acceptable, and are discussed further in this section.

**Table 5**  
**Status of Trade Facilitation Measures in Nepal and WTO TF Proposals**

Main Areas Covered	Groups of Measures Falling Under Those Areas	Status in Nepal
A. Publication and Availability of Information	1. Publication of Trade Regulations	√
	2. Publication of Penalty Provisions	√
	3. Internet Publication	√
	a. Internet "publication" of the elements set out in Article X of GATT 1994	X
	b. Internet "publication" of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory (W/13)	X
	4. Notification of Trade Regulations	√
	5. Establishment of Enquiry Points/SNFP/Information Centers	Only at a limited level
B. Time Periods Between Publication and Implementation	1. Interval between Publication and Entry into Force	√
C. Consultation and Commenting on New and Amended Rules	1. Prior Consultation and Commenting on New and Amended Rules	√
	2. Information on Policy Objective Sought	Not Clear
D. Advance Ruling	1. Provision of Advance Rulings	X
E. Appeal Procedures	1. Right of Appeal	√
	2. Release of Goods in Event of Appeal	√
F. Other Measures to Enhance Impartiality and Non-Discrimination	1. Uniform Administration of Trade Regulations	√
	2. Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials	
	a. Establishment of code of Conduct	√
	b. Computerized System to Reduce/Eliminate Discretion	√
	c. System of Penalties	Not Clear

	d. Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences	Not Clear
	e. Appointment of Staff for Education and Training	√
	f. Coordination and Control mechanisms	Limited Effort
G. Fees and Charges Connected with Importation and Exportation	1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	
	a. Specific Parameters for Fees/Charges	√
	b. Publication/Notification of Fees/Charges	√
	c. Prohibition of Collection of Unpublished Fees and Charges	√
	d. Periodic Review of Fees/Charges	√
	e. Automated Payment	X
	2. Reduction/Minimization of the number and Diversity of Fees/Charges	X
H. Formalities Connected with Importation and Exportation	1. Disciplines on Formalities/ Procedures and Data/ Documentation Requirements Connected with Importation and Exportation	
	a. Non-discrimination	√
	b. Periodic Review of Formalities and Requirements	√
	c. Reduction/Limitation of Formalities and Documentation Requirements	√
	d. Use of International Standards	Yet to be implemented
	e. Uniform Customs Code	√
	f. Acceptance of Commercially Available Information and of Copies	In very limited cases
	g. Automation	√
	h. Single Window/One time Submission	Limited effort
	i. Elimination of Pre-shipment Inspection	No policy decision
	j. Phasing out Mandatory Use of Customs Broker	X
L. Consularization	1. Prohibition of Consular Transaction Requirement	√
J. Border Agency Cooperation	Coordination of Activities and Requirements of all Border Agencies	Let to be done
K. Release and Clearance of Goods	1. Expedited/Simplified Release and Clearance of Goods	
	a. Pre-arrival Clearance	X

	b. Expedited Procedures for Express Shipments	X
	c. Risk Management/ Analysis, Authorized Traders	Being initiated
	d. Post clearance Audit	Being initiated
	e. Separating Release from Clearance Procedures	X
	2. Establishment and Publication of Average Release and Clearance Times	X
L. Tariff Classification	Objective Criteria for Tariff Classification	√
M. Matters Related to Goods Transit	1. Strengthened Non-discrimination	Not applicable
	2. Disciplines on Fees and Charges	Not applicable
	a. Publication of Fees and Charges and Prohibition of Unpublished ones	Not applicable
	b. Periodic Review of Fees and Charges	Not applicable
	c. More effective Disciplines on Charges for Transit	Not applicable
	d. Periodic Exchange between Neighbouring Authorities	√
	3. Disciplines on Transit Formalities and Documentation Requirements	Not applicable
	a. Periodic Review	Not applicable
	b. Reduction/Simplification	Not applicable
	c. Harmonization/Standardization	Not applicable
	d. Promotion of Regional Transit Arrangements	Not applicable
	e. Simplified and Preferential Clearance for Certain Goods	Not applicable
	f. Limitation of Inspections and Controls	Not applicable
	g. Sealing	Not applicable
	h. Cooperation and Coordination on Document Requirements	Not applicable
	i. Monitoring	Not applicable
	j. Bonded Transport Regime/Guarantees	Not applicable
	4. Improved Coordination and Cooperation	Not applicable
	a. Amongst Authorities	Not applicable
	b. Between Authorities and the Private Sector	Not applicable

### 6.2.1 Acceptable Proposals

Paraguay, Rwanda and Switzerland (TN/TF/W/39) have made a proposal to provide S & D treatment to LDCs regarding the extent, timing and entering into commitments in view of their implementing capacity. This is an acceptable proposal in view of the hardship faced by the LDCs, particularly landlocked LDCs. The provision of S & D treatment to LDCs should be binding. Proposals related to publication of information, enquiry points, consultative

mechanisms and appeals procedures are also acceptable as they are already in existence. However, TA/FA is required to enhance the capacity of extending these facilities. Similarly, risk assessments and post clearance audit systems have also been initiated in Nepal on a trial basis. These measures can be implemented provided TA/FA are available. Therefore, a proposal related to these measures can also be accepted. Similarly, proposal (TN/TF/W/28) of providing national treatment on transit goods by the transit country member is also very important for a landlocked country and it should be implemented in the form of a binding commitment. There are few other transit proposals that should be supported by Nepal given the importance of transit facilities. They are given below in Table 6.

**Table 6**

<b>Reference</b>	<b>Sponsors</b>	<b>Proposals</b>
TN/TF/W/28	Bolivia, Mongolia and Paraguay	<ul style="list-style-type: none"> <li>a) National treatment for landlocked developing members by transit members</li> <li>b) Introduction of Bonded Transit Regime by transit member to member countries enjoying transit facility</li> <li>c) Application of international standards in transit facilities</li> <li>d) Preferential treatment to perishable goods in transit</li> <li>e) Periodic meeting of neighboring countries</li> </ul>
TN/TF/W 35	European Commission	<ul style="list-style-type: none"> <li>a) Legitimate transit policy objectives</li> <li>b) Publication and simplification of fees and charges related to transit</li> <li>c) Promotion of regional transit arrangements</li> <li>d) Bonded transport Regime</li> <li>e) Coordination amongs authorities</li> </ul>
TM/TF/W 30	Peru	International Standards for transit formalities
TN/TF/W 39	Paraguay, Rwanda and Switzerland	<ul style="list-style-type: none"> <li>a) Standardization and internationalization of customs documents and procedure</li> <li>b) Border coordination and cooperation</li> <li>c) Simplified procedures for authorized traders</li> <li>d) S &amp; D treatment to LDC members</li> </ul>

### **6.2.2 Proposals Acceptable for Voluntary Implementation**

Pre-arrival clearance and advance ruling systems greatly enhance the flow of goods. The Nepalese private sector also gives high priority to these measures. But these are very new

concepts for countries like Nepal. Hence, proposals on these measures should not be binding on them. Proposals on these TF measures can be accepted on a best endeavor basis.

### **6.2.3 Unacceptable Proposals**

There are some proposals which are very difficult for Nepal to implement. For example, given the level of technological development in the country, Nepal may not be able to implement technology intensive proposals such as use of the WCO Customs Data Model (TN/TW/W 18) and phasing out of the physical documents (TN/TW/W 36). Hence, such proposals can not be accepted.

## **7. Concluding Remarks**

As it removes invisible barriers, trade facilitation plays an important role in enhancing international trade. Articles V, VII and X of GATT 1994 provides the basis for freedom of transit, fees and formalities to be applied in importation and exportation and publication and administration of trade regulations in order to expedite the movement, release and clearance of goods (including goods in transit).

The fourth Ministerial conference of the WTO held in Doha in 2001 included trade facilitation in its package of agendas, known as the Doha Development Agenda (DDA) for further negotiations subject to explicit consensus on the modalities of negotiations. However, it created a sharp division between the North and South. But adoption of 4 July package agreed to by the WTO General Council on 1st August 2004 opened the way for negotiation on trade facilitation. It identified five priority areas of negotiation including TF.

Although a WTO member, Nepal's trading community does not currently perceive trade facilitation as a serious problem in Nepal. The trading community reported that current policies and established procedures in relation to trade facilitation do not pose a big problem. Nevertheless, there is ample scope for reforms. The main areas requiring reforms are human resource development and good governance. Despite the fact that some capacity building programs have taken place under the auspices of donor agencies, competent human resources is still very much inadequate.

Automation of customs services is already in progress and needs to be further extended. Similarly, inland clearing facilities, which are of a great importance for exporters and importers in landlocked countries, and have been made available in three customs ports in Nepal, should be extended in other major customs. All these reform measures need external financial and technical assistance. Furthermore, elaboration of transit freedom covering alternative avenues and modes of transportation is also important for a landlocked country like Nepal in the long term.

A host of proposals on TF measures are under negotiation at the WTO. Previous studies show that impact on trade of these TF measures is generally positive. However, some TF proposals, if negotiated, may have negative implications for member country trade, including Nepal. Such implication may even be serious. For instance phasing out physical documentation may not be currently feasible in Nepal. Similarly, introduction of pre-arrival clearance (TN/TF/W 10) may result in significant revenue losses if implemented without strong post-clearance audit system. Hence, member countries need to be cautious and make concerted efforts

to arrive at a consensus on the adoption of essential TF measures, beneficial to and affordable by all member countries. But there is no “one size fits all.” Given their resource constraints, developing countries’ concern are more in building their capacity to implement capital/technology intensive measures. Therefore, TF measures are to be negotiated considering required TA/FA. In this context, it can be concluded that the following proposal by Switzerland based on gradual implementation mechanism seems to be suitable to Nepal:

*“The first object would be that all countries subscribed to a basic package (simple reforms that required essentially administrative measures). A limited number of additional packages would then be defined, each package containing a certain number of increasingly demanding and more efficient measures (e.g. advance lodging, risk assessment and special procedures for authorized traders) leading – in the last package to more advanced measures such as the single window. Members would be asked to comply early with the basic package but would schedule over time the date of effectiveness of more advanced packages” (TN/TF/M/5).*

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# Annexes

## Annex 1

### Self Assessment Checklist for WTO TRADE FACILITATION NEGOTIATIONS (short version developed by WTO based on WCO Check List)

Question	Response	Comments and precisions
	[Yes=1; No=0]	

**Questions/Issues related mainly to Article X (publication and administration of trade regulations)**

**PUBLICATION/AVAILABILITY OF INFORMATION**

Is any of the following published?

laws-	1
regulations	1
documentary requirements	1
standard operating practices	1
standard processing times	1
specific customs procedures	1
tariff classification	1
valuation	1
exemptions, prohibitions, restrictions	1
duty & tax rates	1
fees and charges	1

administrative arrangements & requirements	1
management plans	0
rulings	0

judicial decisions	1
agreements with other countries	1
other?	1

Supreme court decisions are published in Nepal Law Journal.  
But decisions of lower level court are not published

Is relevant Customs and trade related information made available via the internet?	1
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Is relevant Customs and trade related information made available in:

Customs offices	1
embassies	0
consulates	0
trade missions/offices	0
government buildings/offices	0
public buildings/offices	0
other?	0

Is relevant information made available in English, French or Spanish?	0
Does Customs charge for information provided?	0
When charges are made, are costs limited to only the service provided?	
Is information relevant to any proposed changes or new requirements made available sufficiently in advance for interested parties to take account of them?	0
Does Customs publish all proposed changes or new requirements in advance of the entry into force?	0
Do stakeholders have the opportunity to contribute/develop/influence/question all proposed changes of new requirements in advance of the entry into force?	1
Does Customs invite comments from the public and trade on all proposed changes or new requirements in advance of the entry into force?	1
Has Customs established information services such as:	
client/help desk	1
enquirey point	1
customer/trader contacts	1
call center	1
other?	

## Rulings

Does a system exist of national legislation establishing appropriate provisions for binding rulings by Customs?	1
Does national legislation provide for Customs to furnish rulings within a specified period?	0
Are ruling processes established with specific time limits?	1 Only for certain activities and only in DoC, not in customs offices.
Do ruling procedures provide the opportunity for appeal with review and/or judicial process	1
Does the administration provide binding rulings for:	
valuation	1
classification	1
origin	1

other Customs purposes?	1
<b>Appeals and Review</b>	
Are internal appeal and review mechanisms established?	1
Are internal appeal and review mechanisms independent?	1
Are provisions established for an initial appeal to Customs?	1
Are provisions established for a further appeal to an authority independent of Customs?	1
Are provisions established for a final right of appeal to a judicial authority?	1
Do appeal processes have specific time limites?	1
Are goods released pending the outcome of an appeal?	1 If liabilities are discharged as per ruling
Is a security of other form of guarantee required?	1 The dutiable amount has to be deposited as security before appeal.
<b>Management</b>	
Are systems in place to monitor and evaluate the performance of Customs against established standards and/or indicators?	1
Are training programmes established for Customs clearance procedures	1 Not adequately
Are all Customs staff given training on integrity matters?	1 But nor specifically on integrity
Has a Code of Conduct/Code of Ethics been developed and implemented by Customs?	1
<b>Systems and Procedures</b>	
Is the customs automated?	1 But not fully
Is electronic filing of entry documents provided for?	0
Do customs and other agencies share information electronically?	0
Are pre-arrival clearance procedures used?	0
Does the administration grant immediate release/clearance procedures to any category of goods?	
Does the administration specify a minimum value/minumum amount of duties and taxes below which no duties and taxes will be collected?	0

Do you have separate expedited procedures for express consignment shipments?	0
Can data be submitted prior to arrival of the goods?	1
Can goods be released prior to completion of all clearance formalities?	0
Do you have weight or value restrictions for express consignment shipments?	0
Does the administration use risk analysis to determine which goods should be examined?	1 Just initiated or trial basis in selected customs.
Do Customs control systems include audit based controls?	1 Just initiated or trial basis in selected customs.

Does the Customs administration authorize persons with an appropriate compliance record for simplified and special procedures

0

For authorized persons  
 \* can goods be released on the provision of minimum information with full clearance being finalized subsequently-can goods be cleared at the declarant's premises  
 \* other

0

**Questions/Issues related mainly to Article VIII (Fees and Formalities connected with importation/exportations)**

Does the administration charge for the provision of information to the trade?	0
Do fees for customs processing reflect the cost of services rendered?	No fees are charged other than duties and taxes
Are fees published? the amount? time due? entity assessing the fee? how payment can be made?	1 Refers fees charged by different agencies to issue GSPcertificate, certificate of origin
Are fee amounts published on the internet?	0

**Questions/Issues related mainly to Article V (Freedom of Transit)**

**General**

Have international transit systems been implemented?	0
Have regional transit systems been implemented?	0
Is the Customs territory a landlocked country?	1
Are transit corridors established within the Customs territory?	0
Are transit routes prescribed?	1 India Nepal transit treaty has prescribed transit route for Nepal.

Are transit routes agreed in consultation with trade operators?	0
Is abuse of the Customs transit system a concern in the Customs territory?	0
Is a strict route stipulated for all high risk goods?	0
Is Customs escort required for all high risk goods?	0
Are time limites imposed for transit goods?	0
Are current border posts and Customs offices suitably located for effective transit operations within the Customs territory?	0
Are operating hours coordinated with other Customs administrations?	
Are controls and responsibilities at border posts coordinated with other border agencies?	
Are controls and responsibilities at border posts coordinated with other country's Customs administrations?	
<b>Documentation</b>	
Is a Goods declaration required for all goods in transit?	Not applicable as Nepal is not a transit country.
Is a standardized Customs transit declaration/document in use?	1 This document is used for goods moving via India to an from and Nepal.
Have documentary requirements for transit coordinated with other border agencies?	Not applicable as Nepal is not a transit country.
Are documentary requirements for transit coordinated with other border agencies?	Not applicable as Nepal is not a transit country.
Are simplified transit declarations in use?	Not applicable as Nepal is not a transit country.
<b>Securities and Guarantees</b>	
Are goods in transit relieved of the payment of duties and taxes?	Not applicable as Nepal is not a transit country.
Are any fees and charges levied in connection with Customs transit?	Not applicable as Nepal is not a transit country.
Has an international guarantee system been implemented?	Not applicable as Nepal is not a transit country.
Are securities and/or guarantees required for all goods in transit?	Not applicable as Nepal is not a transit country.
Are cash deposits required for goods in transit?	Not applicable as Nepal is not a transit country.
Are securities and/or guarantees discharged as soon as the obligations have been fulfilled?	Not applicable as Nepal is not a transit country.

**Examinaton**

Are examinations for goods in transit based on the application of risk assessment?

Not applicable as Nepal is not a transit country.

**Authorized Trades**

Are simplified procedures established for authorized consignors involved in the transit procedure?

Not applicable as Nepal is not a transit country

**Seals and Fastening**

Are seals and identification marks affixed by foreign Customs accepted for Customs transit operations?

Not applicable as Nepal is not a transit country.

*This Questionnaire was developed by WTO based on the WCO Self Assessment Check List*

Annex 2  
Private Sector Survey Instrument and Results

**I. Perceived level of implementation of GATT Articles V, VIII, and X in Nepal**

Average score

**Please indicate the extent to which you agree (or disagree) with each of the following statements:**

1.1 Relevant trade and customs procedures and regulations are publicly available and easily accessible 5.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.2 Information about changes in regulations and procedures are made available promptly and conveniently to the public 5.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.3 Laws, regulations and judicial decisions are applied in a uniform, impartial, and reasonable manner 3.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.4 An independent system to appeal trade and/or customs authorities' decisions is available and operates effectively 4.6

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.5 A formal and effective private sector consultation mechanism exists, which allows traders to comment on proposed changes to regulations and procedures before they are issued and implemented. 4.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.6 An effective advance ruling system is in place, which allows the importer, in advance of trade, to obtain binding rules in certain specific areas (e.g., tariff classification, customs valuation, origin) 1.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.7 Documentation requirements for import/export are excessive and time consuming 4.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.8 On average, fees and charges levied on export and import are reasonable (i.e., are limited to the cost of services rendered by the authorities) 5.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.9 Penalties and fines for minor breaches of customs regulation (e.g., due to typing mistakes) are small and reasonable 4.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.10 Irregular and arbitrary payments are often required to expedite release of goods from customs 6.6

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.11 It is easy to submit required trade documentation to trade/customs authorities for approval 5.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.12 Computerization and automation of customs and trade procedures have noticeably reduced average time of clearance 3.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.13 The treatment of goods and vehicles in transit is non-discriminatory (i.e., imported goods are not discriminated based on origin and/or destination) 6.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.14 Goods in transit are subject to unreasonable transit duties or transit charges 4.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.15 Regulation and procedures for goods in transit are clearly defined and widely available 6.3

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.16 Vehicles in transit are allowed to use the most convenient routes to their destination 6.0

ق	ق	ق	ق	ق	ق	ق
Strongly Disagree	Disagree	Slightly Disagree	No Opinion	Slightly Agree	Agree	Strongly Agree

1.17 Overall, in which of the following areas do you face the most problems (*please select the 4 most problematic areas and then rank them from 1 to 4 [1 = most problematic; 4= least problematic]*):

- |  |   |
|--|---|
| a) ____ Obtaining an import license            | b) __3__ Tariff classification                |
| c) ____ Submission of documents for clearance  | d) ____ Identification of origin of the goods |
| e) ____ Payment of fees and penalties          | f) __2__ Customs valuation                    |
| g) __4__ Technical or sanitary requirements    | h) __1__ Inspection and release of goods      |
| i) ____ Other ( <i>please specify</i> ): ..... |   |

1.18 Have problems and inefficiencies related to trade and customs regulations and procedures in Country resulted in significant costs (or losses) to your business?

Yes  No

*If yes, please elaborate (what is the cost trade documentation and complying with trade/customs regulations as a percentage of transaction value? Which trade/customs regulations or procedures are the most costly for your business? How could they be improved?)*

1.19 Overall, would you say that most of the difficulties you face in exporting from (importing to) Country stem from domestic trade procedures/regulations OR from procedures/regulations in the countries of your buyers (suppliers)?

Mostly from domestic procedures/regulations  
95 percent

Mostly from foreign procedures/regulations  
5 percent

*Please elaborate as needed:*

## II. Identifying trade facilitation needs and priorities in Nepal

Please indicate what level of priority should be accorded by the Government to each of the following measures to facilitate international trade and reduce your cost of doing business (Please read through the entire list of measures once before deciding on the level of priority for each: 0 = lowest priority; 1 = low priority; 2 = medium priority; 3 = high priority; 4 = very high priority; 5 = highest priority).

	<b>Average score</b>
2.1 <u>Timely and comprehensive publication and dissemination</u> of trade rules and regulations (e.g., through the Internet)	4.7
2.2 Establishment (or improvement in the effectiveness) of enquiry points and/or <u>call centers for up-to-date information</u> on trade procedures	3.3
2.3 Establishment (or improvement in the effectiveness) of a <u>consultation mechanism</u> through which traders can provide inputs on proposed new or amended rules and regulations	3.7
2.4 Establishment (or improvement in the effectiveness) of an <u>appeal mechanism</u> outside of the authority of customs or related agencies for traders to dispute customs and other authorities' decisions	4.0
2.5 Establishment (or improvement in the effectiveness) of an <u>advance ruling system</u> , which allows the importer, in advance of trade, to obtain binding rules in certain specific areas (e.g., tariff classification, customs valuation, origin)	4.7
2.6 Beginning and, if possible, <u>completing clearance of goods before they have arrived</u> physically in the Customs territory (based on advance submission of good declaration and other documents)	3.7
2.7 Separating release from clearance procedures, i.e., <u>allowing goods to be released before all clearance formalities have been completed</u> (this may be subject to providing a financial guarantee to customs and/or post-release audit)	2.7
2.8 <u>Reduction and simplification</u> of the documentation requirements for import and export procedures	3.0
2.9 <u>Harmonization and standardization</u> of documentation requirements based on international standards	4.3
2.10 Improvement of coordination between relevant agencies, particularly on document requirement, e.g., through the <u>establishment of a single window for one-time submission</u> and collection of all trade documents	4.3
2.11 <u>Computerization and automation of trade procedures</u> , e.g., online submission and approval of customs declarations, cargo manifests, including electronic payment of fees and customs duties.	4.0



### **Annex 3**

#### **List of the Surveyed Enterprises**

##### **Name of Firms Type of business**

1. Classic Pasmina Pvt. Ltd. Exporter
2. Navajeevan Textile Pvt. Ltd. Exporter
3. Nepalese Crafts Ltd. Exporter/ Manufacturer
4. Jay Santoshi Rolling Mills Pvt. Ltd. Importer/ Manufacturer
5. Tamrakar Utensil Industries Pvt. Ltd. Importer/ Manufacturer
6. Akash Plastic Pvt. Ltd Importer/ Manufacturer
7. JMB Overseas Company Pvt. Ltd Importer
8. Amrita Craft Pvt. Ltd. Exporter
9. Guru Arts Entreprises Pvt. Ltd. Exporter
10. Shristi Carpet Pvt. Ltd. Exporter/ Manufacturer
11. Makalu Carpet Pvt. Ltd Exporter/ Manufacturer
12. Cottage Craft Pvt. Ltd. Exporter
13. Loojah Enterprises Pvt. Ltd. Exporter
14. Elina Garments Pvt. Ltd Exporter/ Manufacturer
15. Mahabouddha Carpet Pvt. Ltd. Exporter/ Manufacturer
16. Lubricants Pvt. Ltd. Importer
17. Packing materials Enterprises Pvt. Ltd Importer
- Mahesh Overseas Group
18. Mahesh Overseas Enterprises Pvt. Ltd. Importer/Exporter
19. Hemanta Trade Centre Pvt. Ltd Importer/Exporter
20. Mahalaxmi Maida Mills Pvt. Ltd. Manufacturer
21. Rising Polymer Industries Pvt. Ltd. Manufacturer
- 22 Robin Commercial Centre Pvt. Ltd. Import/Export
23. Relaxo Footwear Industries Pvt. Ltd. Manufacturer
24. Jayanta Plastic Industries Pvt. Ltd. Importer/Exporter
25. Robin Foaming and Paper Product Pvt. Ltd. Manufacturer
26. Ananta International Pvt. Ltd. Importer/Exporter
27. pashupati Biscuits Pvt. Ltd. Manufacturer
28. REliance Umbralla Inudstries Pvt. Ltd. Manufacturer
29. Pinky International Pvt. Ltd. Importer/Exporter
- Golchha Organization
30. Arihant Multifibres Ltd. Manufacturer/Exporter
31. Sri Raghupati Jute Mills Ltd. Manufacturer/Exporter
32. Biratnagar Jute Mill Manufacturer/Exporter
33. Bhudeo Khadya Udhyog Manufacture
34. Hulas Steel Industries Pvt. Ltd. Exporter/Manufacturer
35. Neotric Nepal Pvt. Ltd. Importer
36. Sri Hanuman Industries Manufacturer
37. Sri Ram Sugar Mills and Distillery Unit Manufacturer
38. Eastern Sugar Mills Ltd. Manufacturer
39. Himanshu Maida Mills and Khadya Udhyog Manufacturer

40. Hulas Motors Pvt. Ltd. Exporter/Manufacturer
41. Hulas Metal Crafts Pvt. Ltd. Manufacture/Exporter
42. Hulas Engineering Works Manufacturer
43. Him Electronics Pvt. Ltd. Importer
44. Bhudeo Trading Importer/Exporter

## **Annex 4**

### **List of Persons Interviewed/ Discussed**

1. Mr. Krishna Hari Baskota, Director General, DoC
2. Mr. Prachanda Man Shrestha, Joint Secretary, MOICS
3. Mr. Madhusudan Prasad Bhattarai, Chief Custom Officer, TIA
4. Mr Dhruba Pant Chief Custom Officer, Birgunj
5. Mr Hari Saran Pudasaini Chief Custom Officer, Biratnagar
6. Mr. Diwakar Golcha, First Vice President, FNCCI
7. Mr. Mahesh Agrawal, Past President, Nepal Chamber of Commerce
8. Mr. Akhil Chapagai, President, Nepal Foreign Trade Association and  
Chairperson, International Business Committee, FNCCI
9. Mr. Pancha Ratna Sakya, President, HAN
10. Mr. Suresh Pradhan, General Secretary, FNCSI
11. Mr. Niranjana Tiwadewala
12. Mr. Kedar Bahadur Amatya, Past President, GAN
13. Mr. Kalyan Krishna Tamrakar, Past President, HAN