

# WORLD TRADE ORGANIZATION

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## **Working Party on the Accession of Nepal**

### **REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE KINGDOM OF NEPAL TO THE WORLD TRADE ORGANIZATION**

#### **Introduction**

1. At its meeting on 21-22 June 1989, the Council of Representatives established the Working Party to examine the application of His Majesty's Government of Nepal (HMG/N) for accession to the General Agreement on Tariffs and Trade (GATT 1947) under Article XXXIII, and to submit to the Council recommendations which might include a draft Protocol of Accession. In a communication dated 17 February 1997, HMG/N applied for accession to the World Trade Organization (WTO). Having regard to the decision adopted by the General Council on 31 January 1995 (WT/GC/M/1), the existing Working Party on the Accession of Nepal to the GATT 1947 continued as a WTO Accession Working Party with the mandate to examine the application of HMG/N to accede to the World Trade Organization under Article XII, and to submit to the General Council recommendations which may include a draft Protocol of Accession. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/NPL/4/Rev.7.

2. The Working Party met on 22 May 2000, 12 September 2002 and 15 August 2003. At its meeting on 15 October 2002, the General Council took note that H.E. Mr. P.-L. Girard (Switzerland) had been appointed Chairman of the Working Party in replacement of H.E. Mr. R. Farrell (New Zealand) who had left Geneva and was no longer available.

#### **Documentation provided**

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Nepal (document WT/ACC/NPL/2 and Corr.1 and Addenda), the questions submitted by Members on the foreign trade regime of Nepal, together with the replies thereto, and other information provided by the authorities of Nepal (WT/ACC/NPL/3 and Corr.1 and Addenda; WT/ACC/NPL/5; WT/ACC/NPL/6; WT/ACC/NPL/7; WT/ACC/NPL/9; WT/ACC/NPL/10 and Revision 1; WT/ACC/NPL/11; WT/ACC/NPL/12; WT/ACC/NPL/13; WT/ACC/NPL/14; and WT/ACC/NPL/15), including the legislative texts and other documentation listed in Annex I. The Legislative Action Plan of Nepal aimed at the implementation of the WTO Agreements circulated in document WT/ACC/NPL/10/Rev.1 is reproduced in Annex II.

#### **Introductory statements**

4. The representative of Nepal said that the Kingdom of Nepal, a least developed land-locked mountainous country with a small but open economy, had been facing the problems of poverty, marginalization, weak institutional capacities and financial and technical constraints. The population of the country was estimated to be 23 million people. Per capita income was US\$240, with 38 per cent of the population living with less than one dollar a day, and 82 per cent living with less than two

dollars a day. Agriculture which was dependent on the vagaries of the monsoon was the main source of income and employment. Agriculture accounted for around 41 per cent of GDP and more than 80 per cent of employment. Rice was the major cereal product followed by maize, wheat and millet. Woollen carpets and ready made clothing were the leading export items constituting about 85 per cent of total overseas exports. Other important industrial products were food, beverage and cement production. Tourism contributes about 12 per cent of the total foreign exchange. High transit costs, absence of basic infrastructures, dependence on traditional technologies, etc. were some of Nepal's structural limitations. Due to the fact that total exports met less than half Nepal's import requirements, donor support was essential for the country's economic survival.

5. The representative of Nepal said that notwithstanding a difficult economic and political environment and internal instability and strife, Nepal had sought to achieve a peaceful settlement of the internal problem and to systematically reform and open its economy. HMG/N had liberalized the economy unilaterally over the years because of the conviction that economic reform and trade liberalization would attract investments, promote development and, contribute to generate productive employment and alleviate poverty, in a general framework of equity, participation and market based efficiency. Limited physical, material and human resources had constrained Nepal's capacity to reap the benefits of globalization and liberalization. In order to pursue the accession process effectively, Nepal had very important technical assistance needs including capacity building. Accession to WTO was an essential component of the country's integration into the world economy. The commitments to be undertaken by Nepal in the accession negotiations should be consistent with the capacity of a land-locked LDC and, in accordance with the decision adopted by WTO General Council on 10 December 2002 with respect to the accession of LDCs, taking into account the important development, financial and trade needs of Nepal.

6. The representative of Nepal noted that trade was not an end itself. It was a means to develop the underdeveloped economies, ensure the flows of knowledge, technology and resources with the aim of improving the global standards of living of all mankind, including in particular the poorer segments of mankind. Globalization should pave the way towards a new era of humanity and civilization with a fair and equitable distribution of welfare.

7. Recalling the decisions adopted at the Fourth WTO Ministerial Conference and at the Third UN Conference on LDCs, the representative of Nepal noted that as an LDC Nepal would need transitional arrangements in order to bring its foreign trade regime into full consistency with the WTO Agreements on Customs Valuation, TBT, SPS and TRIPS. HMG/N planned to accomplish this task in accordance with the Legislative Action Plan submitted to the WTO.

8. Members of the WTO welcomed Nepal's application to accede to the World Trade Organisation. They expressed the view that WTO membership would be important for Nepal's development and integration into the world trading system and would also constitute a major step forward in the WTO evolution to achieving the goal of universality and representation of the interests of all trading nations. In expressing appreciation for the significant efforts already undertaken by Nepal to achieve compliance with WTO rules and principles, they noted that further work was needed in order to implement some important WTO Agreements. WTO Members pledged to work constructively with Nepal in accomplishing this objective, and offered to provide technical assistance to facilitate Nepal's accession. WTO Members looked forward to Nepal's early accession on appropriate terms including transitional arrangements to enact and implement the legislative modifications required. Recalling Nepal's status as a least-developed country, some Members acknowledged Nepal's commitment to the principles of the multilateral trading system, economic reform and market policies. They noted that Nepal was a key member of the South Asian Association for Regional Cooperation (SAARC), whose population constituted almost one fourth of humanity and of South Asian Preferential Trading Arrangement (SAPTA). In their view, economic, intellectual and moral arguments, including the credibility of the WTO, justified according special and

differential treatment similar to that enjoyed by other LDCs in the existing and forthcoming WTO Agreements when agreeing on Nepal's terms of accession.

9. The Working Party reviewed the economic policies and foreign trade regime of Nepal and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of Nepal's foreign trade regime, and on the terms and conditions of Nepal's accession to the WTO are summarized below in paragraphs 10 to 155.

## **ECONOMIC POLICIES**

### **Monetary and fiscal policy**

10. The representative of Nepal said that the monetary policy of Nepal was geared towards managing liquidity so as to achieve the domestic price stability, and to improve the balance of payments situation of the country. Accordingly, broad money and narrow money aggregates were targeted to increase in line with the predetermined benchmarks. The Central Bank (Nepal Rastra Bank, NRB) had given up exercising direct instruments of monetary control since the early 1990s and has resorted to indirect instruments only. In this context, open market operations had become the main instrument of monetary control in Nepal. Treasury bills are the main instruments used in such operations. NRB bonds were also used as open market instruments in the past. Besides the open market operations, the bank rate and the cash reserve ratio are the other additional instruments deployed by the Central Bank for monetary control.

11. The representative of Nepal said that since the start of the 1990s the Government had pursued an ambitious tax reform programme with the aim of raising public savings, broadening the tax net and to improve the overall efficiency and fairness of the tax system. Reforms had been undertaken to broaden the tax base, lower income tax rates, and to simplify the rate structure across a whole range of taxes. The fiscal policy of the Government was to pursue the following major objectives: (i) reduction of unproductive expenditure in the public sector; (ii) reform of the income tax structure by reducing high rates and broadening the tax base; (iii) reduction of net domestic borrowing to 0.5 per cent of GDP; and (iv) streamlining of bureaucracy.

### **Foreign exchange and payments**

12. The representative of Nepal said that the Central Bank published exchange rates for its internal purpose and the market rate was determined by the foreign exchange market. Import licenses to obtain foreign currency for specific goods are no longer required. The present system facilitates 100 per cent of capital transfer in the form of foreign investment and subsequent repatriation of profit in foreign currencies. Foreign currency bank accounts can be freely opened. In case of the emergence of balance of payments (BOP) problems, the Government may resort to restrictive measures. He added that the Nepalese Rupee has been pegged to the Indian Rupee at the rate of NRs. 1.6 per Indian Rupee since February 1993. The current exchange rate is about 76.00 Nepalese Rupees per US Dollar (June 2003). Several amendments had been made in the Foreign Exchange (Regularisation) Act, 2019 (1962) in order to reflect the liberalisation policy. Money changers had been authorized to operate in the main cities of Nepal. Moreover, the Government had declared its commitment to make Nepal an international financial services centre and had formulated an Act in this regard. Nepal had also entered into negotiations with respect to the Poverty Reduction and Growth Facility (PRGF) with the International Monetary Fund.

13. The representative of Nepal said that the current international payments regime consists of different provisions for payments made through convertible currency and non-convertible Indian Rupees. For countries other than India, payment was made through convertible currency, mainly US Dollars. Selected commodities could be imported from India through US Dollar payments as well.

Nepal's exchange rate system is presently free of restrictions on the making of payments and transfers for current international transactions except for restrictions on payments for personal travel. However, the necessary foreign exchange will be made available (either through commercial banks or the Central Bank) upon the production of the required documentary evidence for all bonafide transactions. All exporters are required to bring the export payment to Nepal within 6 months. However, the exporters could retain up to 100 per cent of the export proceeds for themselves through the opening of a foreign currency account with the local commercial banks. There was no time limit for such retention. To import goods from India, the Letter of Credit could be opened in Indian Rupees in favour of the exporter. The Nepalese bank could also, if requested by the importer, make direct payment to the exporter, in Indian Rupees, through an Indian Bank. The importer could receive Indian Rupees from the Nepalese bank to make direct payment to the Indian exporter. Nepal had accepted Article VIII of the Articles of Agreement of the IMF. However, Nepal may restrict the quantity or value of imports in order to safeguard its external financial position and its balance of payments. Nepal was also a member of the Asian Clearing Union (ACU). Trade transactions among ACU members were cleared through the Asian Currency Unit. As far as capital transaction was concerned, the Ban on Investments in Foreign Countries Act, 1964 prohibits any form of investment including the purchase of property, bank deposits, investments in shares and bonds by Nepalese citizens in foreign countries. The repatriation of capital investments and profits by foreigners was allowed in accordance with the Foreign Investment and Technology Transfer Act 1992.

### **Investment regime**

14. The representative of Nepal said that a major objective of national economic policy was to promote and encourage a transparent and fair business environment for both domestic and foreign investment, and to increase the role of the private sector in Nepal's development process. For this purpose, a liberal industrial policy was adopted in 1992 consisting of the Industrial Enterprises Act, 1992, the Foreign Investment and Technology Transfer Act, 1992, and the One Window Policy of 1992. Sections 2, 3 and the annex of the Foreign Investment and Technology Transfer Act, 1992 are relevant for all foreign investment and cover the major criteria for the permission of foreign investment. Under this policy, a high level committee had been formed with the Director General of the Department of Industries as its Coordinator in order to coordinate the activities of various agencies related to industrial enterprises. The major thrust of these Acts and policies lies in their openness with emphasis on market-driven strategies, and the dominant role of private initiative and enterprise. The Government acts as a facilitator to the private sector and concentrates its efforts on the development of the infrastructure required, as well as in guaranteeing a stable macroeconomic environment. The policies and Acts mentioned above apply to all sectors of economic activities within the country. The Industrial Policy of 1992 identified foreign investment promotion as an important strategy in achieving the objectives of increasing industrial production, meeting the basic needs of the people, creating maximum employment opportunities, and paving the way for improvement in the balance of payments situation. Foreign investment was expected to supplement domestic private investment through foreign capital flows, technology transfer, and providing access to international markets. The first amendment of the Foreign Investment and Technology Transfer Act (FITTA), 1992 in 1996 had opened further avenues for investors, and had also simplified the administrative procedures. Some of the salient features of the Industrial Enterprises Act, 1992 and of the Foreign Investment and Technology Transfer Act, 1992 (as amended) were as follows: foreign investment requires an approval from the Department of Industry. A person desiring to avail the foreign investment or technology transfer shall be required to make an application to the Department. It grants permission directly in the case of an industry with fixed assets up to 1 billion Rupees and in accordance with the decision of the Industrial Promotion Board in the case of an industry with fixed assets of more than one billion Rupees within 30 days from the date of application; foreign investors were allowed to hold 100 per cent ownership in industries; foreign investment was open in every sector of economic activities, except for very few sectors such as cottage industries, arms and ammunitions, security printing, currencies and coinage, retail business, travel and trekking agencies, consultancy services,

etc. (specified in an Annex of the Foreign Investment and Technology Transfer Act, 1992); technology transfer was encouraged in all public enterprises of industries; the law prohibits the nationalization of any private sector industries; the Government does not intervene in fixing the prices of industrial products in the private sector industries. The statutory provision of FITTA guarantees full repatriation of the amount received from the sale of equity, profits, or dividends and interest on foreign loans, and the repatriation of the amount received under an agreement for the transfer of technology. Foreign investors were granted a business visa as long as the investment was retained. A resident visa would be provided for a foreign investor, who at a time makes an investment in excess of US\$100,000 or equivalent and retains it. Nepal was a member of the Multilateral Investment Guarantee Agency (MIGA), had signed Reciprocal Encouragement and Protection of Investment Agreements with France, Germany, the United Kingdom and Mauritius and would conclude such agreements with a number of other countries. Agreements avoiding double taxation were effective with India, Norway, Thailand, Sri Lanka, Mauritius, Austria, Pakistan, China, and Republic of Korea.

15. In response to questions concerning the need of approval for industrial ventures, the representative of Nepal said that in accordance with Section 3 of the Foreign Investment and Technology Transfer Act, 1992, approval from the Department of Industries was required for all foreign investment. As provided by the Industrial Enterprises Act, 1992, permission for domestic as well as foreign investment was required only for industries producing explosives, including arms, ammunition and gun powder, security printing, bank notes and coin industries; cigarette, bidi, cigar, chewing tobacco, khaini industries and industries producing goods of a similar nature utilizing tobacco as the basic raw material and alcohol or beer producing industries. The specific requirements to get the permission were not detailed in either of these Acts. He said that the sectors listed below were not open for foreign investment. Most of these sectors were reserved for nationals, mainly in order to promote the activities of small entrepreneurs who generally use indigenous skills, resources and technology. Some sectors were restricted for national security reasons: cottage industry; personal service business (business such as hair cutting, beauty parlour, tailoring, driving training, etc.); arms and ammunitions industries; Explosives, gunpowder; Industries related to radioactive materials; Real estate (excluding construction industries); Motion picture industries (produced in national languages and the language of the nation); Security printing; Currency and coinage business; Retail business; Travel agency; Trekking agency; Water rafting; Pony trekking; Horse riding; Cigarette, *bidi*, alcohol (excluding those exporting for more than 90 per cent); Internal courier services; Atomic energy; Tourist lodging; Poultry farming; Fisheries; Bee keeping; Consultancy services such as management, accounting, engineering and legal services etc. Approval from the Government was required for foreign investment in other areas. Interested foreign investors should apply in writing, in the prescribed format, to the Department of Industry or Department of Small and Cottage Industry or any other office as prescribed by the Government. The decision on the application shall be communicated to the applicant within 30 days from filing of the application.

16. The representative of Nepal also indicated that the recommendations made in the studies conducted by FIAS had been incorporated in the amendments of Industrial Enterprises Act, 1992 and the Foreign Investment and Technology Transfer Act, 1992.

### **State ownership and privatization**

17. The representative of Nepal said that Nepal had completed the privatization of a number of previously government owned enterprises listed below. The methods of privatization and other information are given below. The net (book value) worth of the remaining state-owned enterprises account for about 15 per cent of Nepal's GDP.

**Table 1: Privatization of Previously Government-Owned Enterprises**

S.No	Name of the Company	Year of Privatization	Method of Privatization	Sales Proceeds (Rs. '000) <sup>1</sup>	Proportionate Share		
					Mgt	Emp	Public
1.	Bhrikuti Paper Mills (BPM)	Oct. 1992	Asset and business sale	229,800	70	5	25
2.	Harisidhi Brick and Tile Factory (HBTF)	Oct. 1992	Asset and business sale	226,900	72	5	23
3.	Bansbari Leather and Shoe Factory	Mar. 1992	Asset and business sale	22,400	75	5	25
4.	Nepal Film Development Company (NFDC)	Nov. 1993	Share sale	64,662	51	5	44
5.	Balaju Textile Industry Ltd. (BTI)	Dec. 1993	Share sale	17,716	70	5	25
6.	Raw Hide Collection and Development Corporation Ltd. (RHCD)	Dec. 1993	Share sale	3,990	--	--	100
7.	Nepal Bitumen and Barrel Udhog Ltd. (NBBU)	Jan. (1994)	Share sale	11,640	65	5	30
8.	Nepal Lube Oil Ltd. (NLO)	Jan. 1994	Share sale	30,424	40	5	33 <sup>2</sup>
9.	Nepal Jute Trade and Development Company	1993	Liquidation	Liquidation	--	--	--
10.	Tobacco Development Company	1994	Liquidation	Liquidation	--	--	--
11.	Nepal Foundry Industry (NFI)	Mar. 1996	Share sale	14,473	51	5	44
12.	Shri Raghupati Jute Mills (SRJM)	Aug. 1996	Share sale	82,204	65	5	30
13.	Biratnagar Jute Mills (BJM) <sup>3</sup>	Dec. 1996	Management contract	Business contract	--	--	--
14.	Nepal Bank Ltd. (NBL) <sup>4</sup>	Mar. 1997	Share sale	125,140	--	5	54 <sup>5</sup>
15.	Agriculture Tools Factory (ATF)	May 1997	Share sale	95,100	65	5	30
16.	Bhaktapur Bricks Factory (BBF)	Aug. 1997	Lease	20,300 (10 years, lease)	--	--	100 HM GN

18. The representative of Nepal said that Section 6 of the Privatization Act, 1992 states that when the Government intends to privatize any Government Corporation, it shall publish a notice in respect of the privatization of such a Government Corporation in the Nepal Gazette. The Act makes it mandatory for the Government to initiate the privatization process only after the publication of a

<sup>1</sup> It includes the price of management share only.

<sup>2</sup> Rest of the shares are in the name of other corporations.

<sup>3</sup> BJM is a semi-government enterprise in which private sector has majority shares. The decision to contracting out was taken by the company's board and all the procedures were taken accordingly.

<sup>4</sup> In this bank the government had majority shares. The government decided to sell some of its shares in the market, so that the private sector could become the majority shareholder. So it floated 10 per cent of the shares in the share market. Now the government is a minority shareholder i.e. it holds only 39 per cent of the total shares.

<sup>5</sup> HMGN owns 39 per cent shares.

notice in the Gazette. Under Section 7 of the Privatization Act, 1992, the Government may form a team of experts for the evaluation of the Corporation in this respect. Section 8 of the same Act has given alternatives of the privatization process to the Government, i.e., converting shares or selling intact to private buyers or giving on lease etc. In accordance with Section 9 of the same Act the Government must call for public tender for privatization by publishing a notice which has to be in accordance with international practice. Section 10 of the same Act describes the basis for the evaluation of tenders. The privatization committee evaluates the proposals received from private parties accordingly. In accordance with Section 11(4) of the same Act, the terms and conditions mentioned in the Agreement in respect to privatization must be published to inform the public. The parties concerned may ask for attested copies of relevant documents under number 17 of the Chapter on Document Scrutiny of the Country Code (Muluki Ain). Likewise, Article 16 of the Constitution of the Kingdom of Nepal provides the right to seek and get information in respect of matters of public importance. Nepal is also ready to adopt a better mechanism in regard to transparency through proper legislation. The Privatization Act, 1992 was silent on the mechanism of review or appeal regarding any unsuccessful tenders by investors whether national or foreign. Nevertheless, the unsuccessful tender participant, in principle, may approach the Court of Appeal under the Administration of Justice Act, 1991.

### **Pricing policies**

19. The representative of Nepal said that in accordance with the Foreign Investment and One Window Policy 1992, the Government did not intervene in fixing the prices of industrial products either by the private sector industries or State-owned enterprises except for necessary products as defined by the Acts. The products concerned were petroleum products (HS codes 2710, 2711) and salt (HS code 2501), however in the interest of consumer protection price controls could be applied to other products.

20. The representative of Nepal stated that in the application of price controls now or in the future, Nepal would apply such measures in a WTO-consistent fashion, and take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994, and in Article VIII of the General Agreement on Trade in Services (GATS). He also confirmed that Nepal published the list of goods and services subject to State control and any changes in its Official Gazette and would continue to do so after accession. The Working Party took note of these commitments.

### **Competition policy**

21. The representative of Nepal said that Nepal did not at present have a competition law, but Nepal was seeking assistance to draft legislation to ensure fair competition in various business activities in due course. The respective legislation would be consistent with the WTO Agreements. The Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 which is reproduced in Annex II of this Report indicates that the Ministry of Industry, Commerce and Supplies would prepare a draft Competition Bill by November 2003, the Council of Ministers was expected to endorse the Bill by February 2004 and the expected approval date was July 2004.

## **FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

22. The representative of Nepal said that in 1990 a democratic constitution had replaced the Panchayat System. The Constitution of the Kingdom of Nepal, 1990 had established the King as the Head of the State and the Prime Minister, responsible to the parliament, as the Head of the Government, and an independent judiciary. The parliament was a bicameral legislative body, consisting of the lower house, the House of Representatives, and the National Assembly, the upper house. The executive, legislative, and judicial powers were well defined and separated. The executive power of the Kingdom of Nepal was vested with His Majesty the King and the Council of

Ministers and the responsibility of issuing general directives, controlling and regulating the administration of the Kingdom of Nepal lies in the Council of Ministers. His Majesty the King as the Head of the State appoints the leader of the Party which commands a majority in the House of Representatives as Prime Minister and constitutes the Council of Ministers on his recommendation and under his Chairmanship. The Prime Minister and the other ministers in the government are collectively responsible to the Parliament. The other ministers are also individually responsible for the business of their respective ministries to the House of Representatives as well as to the Prime Minister. Due to the lack of internal security Parliamentary elections were not held in 2002 as scheduled. His Majesty the King had appointed the current Prime Minister under the provisions of the present Constitution. A cease fire reached in February 2003 had suspended hostilities. The current talks with all political entities and groupings were expected to lead to Parliamentary elections being held in the coming period. In the meantime, the government exercised legislative authority in conformity with constitutional provisions by means of Ordinances.

23. In accordance with the Constitution, the parliament consists of His Majesty the King and the two Houses of parliament. The House of Representatives consists of two hundred and five members elected from one-man election constituency on the basis of one-person-one-vote system through a secret ballot. Nepal had adopted the simple plurality or "first past the post" election system under which a candidate receiving the largest number of popular votes in a given constituency is elected. The National Assembly consists of sixty members, ten of which are nominated by His Majesty the King from amongst persons of high reputation, and 35 members, including at least three women members, are elected by the House of Representatives on the basis of proportional representation by means of the single transferable vote system. Fifteen members are elected from five Development regions. The tenure of the members of the House of Representative is five years. The tenure of the members of the National Assembly, which is a permanent House, is six years and tenure of one third of the members expires every two years.

24. Except as otherwise expressly provided in the constitution, the parliament is empowered to enact any law. A bill passed by one house of the parliament is transmitted to the other house as soon as possible and if the receiving house passes it, it is presented to His Majesty the King for his assent. The bill becomes an Act upon such assent. The Government is empowered to promulgate rules or regulations under a delegated legislative power vested under an Act of Parliament. The constitution provides certain specific provisions concerning ratification of, accession to, approval of, and acceptance of a treaty. Depending on the content, nature, and term of a treaty, a joint sitting of both houses of the parliament or the House of Representatives is authorized to ratify or accede to. Normally, multilateral treaties concerning trade which require ratification or accession are ratified or acceded to by the House of Representatives by a simple majority vote. Once treaties are ratified, they are executed at the national and international levels. A treaty may be invoked on a collateral issue, which the courts may have to determine before adjudicating on the rights of the parties. However, the Supreme Court, in case it decides that the provision of an Act is inconsistent with the provision of a treaty to which His Majesty's Government is a party, the provision of the treaty in question prevails. Under the Nepal Treaties Act, 2047 (1990) in case of divergence between the provisions of Nepalese law and provisions of the international treaty to which the Kingdom is a party, the provision of the treaty shall apply to the extent of the divergence. Following its ratification by the House of Representatives, the WTO Agreement would be an international treaty.

25. The judiciary is an independent organ. The powers relating to justice in the kingdom are exercised by the courts and other judicial tribunals in accordance with the provisions of the constitution, the laws of the country, and universally recognized principles of justice. The judiciary comprises three tiered courts consisting of 75 District Courts, 16 Appellate Courts, and one Supreme Court. The Chief Justice of the Supreme Court of Nepal is appointed by His Majesty the King on the recommendation of the Constitutional Council, a constitutional body composed of the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National



Assembly, and the Leader of the Opposition in the House of Representatives as its members. The appointment of other judges of the Supreme Court, Appellate Courts, and District Courts is made by His Majesty the King on recommendation of the Judicial Council. In Nepal, judges are not part of the civil service and the terms and conditions of their service have been determined by law as required by the constitution. The Supreme Court, the apex of the judicial system, has, *inter alia*, extraordinary jurisdiction for the enforcement of fundamental rights as provided by the constitution in Part 3 and can issue appropriate orders and writs including the writ of habeas corpus, mandamus, certiorari, prohibition and quo warranto. Moreover, it is also empowered to declare any law or any part thereof either void *ab initio* or from the date of its decision on the ground of inconsistency with the constitution, because such law imposes an unreasonable restriction on the enjoyment of the fundamental rights of the citizen. Similarly, appellate courts may issue habeas corpus, mandamus writs and injunction orders. Nepalese courts are competent to entertain and adjudicate all suits concerning real estate located in Nepal and estate matters with respect to assets in Nepal and also any other suits, if the defendant is domiciled in Nepal or the claim derives from an event that has occurred in Nepal or from any act made or done in Nepal regarding the defendant's domicile. If a foreign company has a branch in Nepal, it is treated as a domiciled party. A Nepalese court may also adjudicate suits concerning transactions made abroad if both the plaintiff and defendant are domiciled in Nepal. Summons are to be served on defendants domiciled abroad through letters rogatory issued by the courts. No. 34 of Adalati Bandobasta (court management) of Muluki Ain (Country Code) provides that summons to be served on defendants domiciled in Nepal through letter rogatory issued by the foreign courts are satisfactory only if a reciprocal agreement to that effect has been concluded by the Government with the foreign state concerned. Muluki Ain is the general law of the land and any other specific act may replace the provision of the Muluki Ain if a specific act to that effect is made. In addition to the above mentioned courts, there is also a provision in the constitution which stipulates that law may provide for the establishment of special types of courts and tribunals for the purpose of hearing of special types of cases. However, a special court or tribunal may not be constituted for the purpose of hearing a particular case. In practice, there are special permanent tribunals to adjudicate and resolve revenue disputes (Revenue Tribunals), labour disputes (Labour Court) and disputes concerning dismissal of civil service employees (Administrative Court). Pursuant to the Arbitration Act, 1998, arbitration had become an effective mechanism for settlement of disputes arising out of commercial contracts. Nepal was a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

26. Under Articles 35 and 41 of the Constitution of the Kingdom of Nepal, 1990, and the His Majesty's Government (Allocation of Business) Regulation 2000, the following Ministries are responsible for making and enforcing the policies affecting foreign trade in goods and services:

- (a) The Ministry of Industry, Commerce and Supplies<sup>6</sup> is principally responsible for making and enforcing policies on trade including foreign trade. The responsibilities of this ministry include: Formulating and enforcing trade policy. Study, research, and survey on internal and international trade. Making policy decisions on import and export trade regime and conducting international trade relations. Formulating policies and setting requirements for public trade enterprises. Preparing and negotiating treaties and agreements relating to foreign trade (and transit), as well as participating in bilateral and multi-lateral intergovernmental trade negotiations. Contact, assistance and coordination with national, regional, international organizations pertaining to trade and transit. Study and survey of different means of carriage of goods in the internal and international trade, and of the management necessary for cheaper carriage, including multi-modal transport schemes. Training to develop capable manpower in the appropriate areas. The Department of Commerce

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<sup>6</sup> The Ministry of Commerce, the Ministry of Industry and the Ministry of Supplies were merged in the year 2000

deals with technical issues such as the registration of trade firms, and where appropriate, permits licenses or authorization for goods to be imported in or exported from Nepal. The Trade Promotion Centre operates as a separate government undertaking to promote foreign trade, particularly overseas trade.

The Ministry is responsible for policies related to foreign investment, promotion thereof and matters relating thereto; promotion of industrial investment; development and transfer of technology; industrial promotion and protection; patent design and trade mark.

The Ministry is responsible for issues related to the policy on supplies of basic needs goods and its implementation; supervision of the market and regulation of policy prices for enterprises under it; regular and balanced supply of consumer goods and necessary consumer goods through these enterprises.

- (b) The Ministry of Finance is responsible for activities related to public expenditure, currency; banking, insurance, revenue policy and planning; revenue administration and collection of customs duties and taxes levied by the government from time to time; general price policy for State-owned enterprises; exchange and control of foreign currencies and control of accounts as well as mobilisation of foreign aid.
- (c) The Ministry of Culture, Tourism and Civil Aviation is responsible for issues related to tourism industry and tourism promotion; trekking, mountaineering; development of air transportation and other tourism trade related service and issues.
- (d) The Ministry of Labour and Transport Management is responsible for activities related to policy on development of inland and water transport; regulation of transportation and carriage by land and sea including multi-modal transport and trade facilitation. It is also responsible for activities related to labour policy and its implementation; study and research of labour force and labour market, and its use; work permit to foreigners; administration and management of labour.
- (e) The Ministry of Agriculture and Cooperatives is responsible for activities related to policy on agriculture and agriculture production in general; development and improvement of food, cash and industrial crops; agricultural engineering and sophisticated agricultural inputs; agricultural nurseries and development of seeds; development of dairy and dairy products; fishery; marketing and price regulation of basic agricultural products, agricultural inputs, and development of agricultural technology; plant quarantines; food research, and import, sale and distribution of fertilizers and agricultural inputs.

27. The Constitution of Nepal provides a unitary form of government. There was no division of authority between central and sub-central or regional governments in Nepal. However, the laws of the country provide for the delegation of authority to the local authorities as and when required.

28. The representative of Nepal said that the implementation of the WTO Agreements would require the preparation of important pieces of legislation. He submitted the action plans circulated in documents WT/ACC/NPL/10/Rev.1, 12, 13, 14 and 15 (reproduced in Annex II and Tables 3, 5, 7 and 10) which set up a precise calendar plan aimed at enacting the legislation required to implement the WTO Agreements during the period 2003-2006. The representative of Nepal said that Nepal undertook the commitment that any changes in laws, regulations and practices during the transitional arrangements would not result in a lesser degree of consistency with the provisions of the relevant

WTO Agreements than existed on the date of accession, and that the scope of application of existing inconsistencies with WTO provisions in those areas would not be allowed to increase.

29. In response to questions concerning the existence of the right to appeal against decisions made by the Department of Industry and other administrative entities as required by the WTO Agreements on Import Licensing, Customs Valuation, TBT, SPS and TRIPS, the representative of Nepal said that under Article 18 of the Industrial Enterprise Act, 1992 there was a provision of appeal against the decisions taken by Department of Industry to the Industrial Promotion Board. The importer had the right to appeal to the Revenue Tribunal over the decision of customs officials in respect to the determination of customs value under Section 37 of Custom Act, 1962. Nepal was currently examining the possibility of establishing an independent administrative tribunal to review the decision of the customs authority regarding customs valuation. The decisions of the administrative tribunal could be appealed to the Revenue Tribunal which should provide prompt review and correction of administrative action relating to customs matters, in accordance with Article X:3(b) and (c) of GATT 1994. The Nepalese legislation provides the right to appeal to the affected party concerning decisions of the authorities on matters related to technical barriers to trade, sanitary and phytosanitary measures, import licensing, copyrights, trademarks, patent and design.

30. A member of the Working Party expressed readiness to provide technical assistance to Nepal for the establishment of a system for the review and appeal against administrative decisions in areas covered by specific transitional arrangements and in other areas. The representative of Nepal said that Nepal would review the legislation on administrative appeals to ensure that a system for review of decisions will be in place by enactment or amendment of appropriate legislation, in some cases new tribunals may be established.

31. The representative of Nepal said that upon the date of accession, Nepal would establish or designate tribunals or procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of a general application referred to in Article X:1 of the GATT 1994, Article VI of GATS. The tribunals or procedures would also include actions relating to the implementation of national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters. The tribunals or procedures responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter. The review procedure would include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. Notice of the decision on appeal should be given to the appellant and the reasons for such a decision provided in writing. The Working Party took note of these commitments.

## **POLICIES AFFECTING TRADE IN GOODS**

### **Registration Requirements**

32. In response to questions concerning the requirements necessary for obtaining the registration to engage in business, the representative of Nepal said that all companies, national or foreign, have to be registered with the competent authority to engage in business in Nepal. This includes export and import activities. Limited liability companies, including joint venture agencies, sole proprietor and partnerships, business undertakings for industrial ventures, register at the Department of Industry. Agencies, sole proprietor undertakings and partnership businesses for trading are required to register at the Department of Commerce. The Nepalese legislation provided different procedures for the registration of a private firm and a company. The Private Firm Registration Act, 1956 governs the registration of a private firm- defined as any firm, a company or a concern set up by any person – to engage in the business of export or import. The running of a private firm without registration was

prohibited. The Department of Commerce registers firms engaged in commerce whereas the Department of Industry was concerned with firms engaged in industry. Any individual desiring to register a private firm must submit the form prescribed by the Private Firm Registration Regulation 1978 Rule 3, Schedule-1 along with the prescribed application fees to the concerned department. If the Department finds the statement of the application to be true and reasonable to register, it will register the private firm and issue a certificate of registration accordingly. The registration of a company was governed by the Company Act, 1997. An application with a Memorandum of Association and the Articles of Association of the company along with application fee must be submitted to the Office of the Company Registrar. The Registrar, makes any necessary inquiries, registers the company and issues a certificate of incorporation within 15 days. The Registrar had the authority to reject the application if the proposed name of the company is already registered, or the proposed name is against public morals or the objective of the company is contradictory to existing laws, or the conditions required to incorporate the company under the Act are not fulfilled. In this case, the Registrar gives due notice and explain the reasons for rejection to the applicant. The registration of entities with respect to trade in services was governed by other laws, e.g., Nepal Agency Act, 1958, Partnership Act, 1964.

33. In response to questions concerning the registration fees, the representative of Nepal said that the application fee and the registration fee of different kinds of legal entities were nominal, non-discriminatory and not related to the value/ volume of export and import. He requested the identification of the specific GATT 1994 and GATS obligations applicable to the registration fees. The system of corporate registration in Nepal had been primarily introduced for statistical purposes. The level of such fees varied depending on the nature of legal entity - sole proprietorship, partnership or company, and only approximated the cost of collecting statistics and verification of documents. These registration fees were not more onerous for those registering for importation and exportation than for firms that produce domestic goods.

34. The commitment was sought that there would be no restrictions on the right of individuals and enterprises to import and export goods into Nepal's customs territory, except as provided in WTO Agreements, and that individuals and firms would not be restricted in their ability to import or export based on their registered scope of business. The commitments should ensure that fees associated with the right to import and export were applied in conformity with the WTO, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994.

35. The representative of Nepal confirmed that all registered companies could import and export goods for business purposes on the basis of the import and export regulations of Nepal. Individuals could import for business as long as they were registered as sole proprietor undertakings. Foreign firms could register to import or export their own produce without establishing a physical presence or investment in Nepal and without having the intent to distribute imports in the domestic market. A registered firm or company could change or extend the scope of business, e.g., to include importation and exportation, by submitting application indicating the desire to do so to the agency where it was originally registered, with the exception of prohibited sectors and with the stipulation that the applicant should get an activity license in advance if he applies for changing or extending the scope of business to include a sector where such a license is required. Retail businesses were reserved for Nepalese nationals. Nepal believed that the agency business (which was not required for importation or exportation) was covered by GATS. The relevant market access conditions would be governed by Nepal's schedule of specific commitments on services. The registration requirements for companies that conduct purely domestic activities and for companies engaged in import and export activities were the same. The registration requirements were the same for both national and foreign firms.

36. The representative of Nepal said that Nepal confirmed that from the date of accession, its laws and regulations relating to exportation and importation of goods and all fees, charges and taxes levied thereof, including registration requirements would be applied in full conformity with WTO

obligations, including Articles I, VIII:1(a), XI:1 and III of the GATT 1994 and that Nepal would implement such laws and regulations in full conformity with these obligations. The Working Party took note of these commitments.

## **Import Regulation**

### **Customs tariff**

37. The representative of Nepal said that the prevailing basic customs tariff rates were 5, 10, 15, 25, 40, 80 and 130 per cent. There was a significant number of tariff lines with zero duty. The majority of the import items fall in the customs duty range of 10-20 per cent. The unweighted average customs duty rate for imports was approximately 11 per cent since 1996/97. The maximum tariff rate of 130 per cent applied to cars and jeeps will be reduced and specified in the goods schedule. A minimum tariff rate up to 5 per cent applied for daily consumption items. As a general rule, Nepal applied *ad valorem* duties. A very limited number of products such as motor fuels, kerosene oils, gas and fuel oils, cement clinkers and some cements, liquor, tobacco and tobacco products were subject to specific duties. The Harmonized System of Commodity Classification (HS) was incorporated in Nepal since the fiscal year 1992/93. The 2002 version of the HS Nomenclature had been put into effect. Nepal's Customs Tariff is available in the Secretariat.

38. Nepal's commitments on bound tariffs are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/NPL/16/Add.1) annexed to Nepal's draft Protocol of Accession to the WTO.

### **Tariff rate quotas, tariff exemptions**

39. The representative of Nepal said that there were no tariff quotas for imports in effect in Nepal. The current legislation provides for certain tariff exemptions and tariff reductions, in order to facilitate the import of specific goods on a provisional basis. These measures were taken by the government and published in the Nepal Gazette. They were valid for all suppliers of the goods specified in the Custom Tariff. Import duty exemptions were in effect for the importation of the following goods: books; equipment and vehicles for trolley bus services; medical equipment for public health projects; cold storage equipment for the preservation of agricultural products including fish and fruits; alternative power development equipment; high quality printed materials imported for the promotion and publicity of the tourism in Nepal; threshing machines and husk-machines (Pankhi); raw jute; and crates for keeping eggs, falling under chapter 48. The list of exemptions and tariff reductions was published in the Customs Tariff.

### **Other duties and charges (ODCs)**

40. Some members of the Working Party noted that Nepal levied on a number of products the Local Development Fee, the special fee, the agriculture development fee, the cigarettes and alcohol fee and the alcohol control service fee. They requested that the fees be incorporated into the customs tariff rates, or as a minimum bound at the currently applied rates, upon accession, in accordance with the Understanding on Article II paragraph 1(b) of GATT 1994.

41. The representative of Nepal said that for reasons related to local development, health and education, including the need to generate fiscal revenue earmarked to respond to critical local needs, the Local Development Fee of 1.5 per cent of the value of imports had been set up. Other duties and charges in the range of 2.5 per cent - 11.5 per cent were levied on industrial goods, and in the range of 2.5 per cent - 14.5 per cent were levied on agricultural goods. These non-tariff charges were applied to the c.i.f. value of the imported goods. In the revised market access offer on goods, Nepal confirmed the elimination of ODCs for all tariff lines over a period of time between two and ten years

as reflected in the Goods Schedule annexed to the Protocol of Accession of Nepal. After that date all ODCs would be bound at zero.

42. The representative of Nepal confirmed that from the date of accession Nepal would eliminate ODCs in accordance with the timetable contained in the Goods Schedule annexed to the Protocol of Accession of Nepal. Nepal also undertook not to introduce new ODCs. The Working Party took note of these commitments.

### **Charges for Services Rendered**

43. The representative of Nepal said that currently there are no duties and charges imposed on imports for customs processing. Nevertheless, the Customs Act of 1962 and customs regulations provide the authority to the Customs Office to charge for the services rendered. There was a charge of 1 per cent of the total value of the imported goods as import licence fee. He acknowledged that such a fee was based on import value, not the cost of services, and indicated that Nepal intended to change the import licence fee to the system of determining the fee based on the flat rate or the *ad valorem* rates, whichever is lower. Nepal reserved the right to introduce customs processing/customs fee equivalent to the cost of services rendered for the items not requiring import licences.

44. The representative of Nepal said that from the date of accession Nepal would charge an import licence fee representing the approximate cost of the services rendered. Nepal would apply this and any other fees and charges for services rendered in accordance with WTO Agreements, in particular with Article VIII of the GATT 1994. The current charge of 1 per cent would be at a flat rate in NRs to ensure that it did not exceed the approximate cost of administering application of import licenses. The Working Party took note of these commitments.

### **Quantitative import restriction including prohibitions**

45. The representative of Nepal said that all items were free for import. Nepal at present applied no import quotas. The products banned for import, domestic production and sale, in accordance with the Export Import (Control) Act, 1957, the Narcotics Drug Control Act, 1976, and the Country Code (Muluki Ain), are listed hereunder.

- (a) Narcotic drugs like opium and morphine;
- (b) Liquor containing more than 60 per cent alcohol;
- (c) Beef and beef products.

The products restricted for import and domestic production are listed hereunder:

- (a) Materials used in the production of arms and ammunition;
- (b) Guns and cartridges;
- (c) Caps without paper;
- (d) Arms and ammunition, and other explosives.
- (e) Wireless, walkie talkie and similar other audio communication equipment's
- (f) Valuable metals and precious stones. Nepal did not restrict the importation of jewellery made of valuable metals but there was a restriction on the importation of gold, silver and other valuable metals and precious stones.

### **Licensing procedures**

46. The representative of Nepal said that automatic licensing was applied for information purposes both for the import and export of all goods not restricted. Licenses were also applied for the personal baggage exceeding the established allowance. In addition, the Treaties of Trade and Transit

between Nepal and India envisage licensing in order to ensure that the transit of goods does not violate Articles 8 and 9 of the Transit Treaty, which embody restrictions applied in India in the spirit of Articles XX and XXI of GATT 1994 (general and security exceptions). The Department of Commerce issues the licenses in accordance with the following procedures. The licensing system is not intended to restrict either the quantity or the value of imported goods. It is simply intended to protect public health, consumer and environment welfare and national security. Alternative methods in the form of the requirement to present to the competent authorities the letters of credit have been introduced in order to obtain the necessary information and simplify the procedures. Import licensing was authorized and maintained under Export Import (Control) Act, 1957, Export - Import Rules, 1978, Customs Act, 1962, Customs Regulation, 1969, Annual Finance Act based on annual Budget Speech of Finance Minister, and the order made by the Ministry of Commerce pursuant to the Export and Import (Control) Act, 1957 and Rules, 1978. Import licensing was statutorily required. The designation of products to be licensed and the licensing of products to be imported was not left to administrative discretion. The government may abolish the system of licensing only by statutory action. At present, the automatic licensing system had been relaxed and the submission of application for obtaining a license was not required. However, the letters of credit opened for imports and exports must be presented at the customs office during the time of export and import.

47. For the restricted import products an import licence is required. The Export Import (Control) Act, 1957 gives the right to the government to introduce import controls in the case of BOP problems and in specific cases of governmental assistance to economic development. The government may specify whether to apply them by value or quantity. There is no requirement as to how far in advance an application for a licence must be made. A licence can be obtained within a shorter time limit or for goods arriving at the port without a licence, if all documents are in order. A licence can be granted immediately upon request, if all documents are in order. There are no limitations as to the period of the year during which applications for licenses and/or importation can be made. Import licenses are, in most cases, issued by a single administrative organ which is the Department of Commerce. Applications for licenses are submitted to the DOC. Application may also be reviewed by experts of another agency in certain cases involving goods where assessment of conformity with standards and technical regulations is required. In this case, the Department of Commerce coordinates with the agencies concerned. There are no circumstances under which an application for a licence may be refused other than for failure to meet the basic requirements. When a licence is refused the applicant is advised of the reasons. He may appeal to the Ministry of Industry, Commerce and Supplies, within 35 days of the notice issued to him of such refusal. The applicant should clearly mention in his complaint his name and address, subject-matter to complaint, claims and reasons of claims. He must submit copies of all the relevant documents along with the complaint for evidence and a copy of the complaint should also be sent to the licensing authority.

48. The representative of Nepal said that the following products are subject to import licensing:

**Table 2: Products Subject to Import Licensing**

HS Number	Description	Justifying Provision of WTO
85.28	All types of radio communication system with the frequency range of 30 Khz to 300 Khz.	Article XXI of GATT 1994
85.28	Radio transmitter and transceiver	
85.29	Television transmitter, FM radio transmitter	
85.25	Wireless transceiver	
85.25	Walkie talkies	
85.17	Cordless telephone	
85.29	Video sender	
85.28	Amateur radio	
85.17	Inmarsat terminal (portable satellite hand set)	
85.17	Satellite communications equipment	

HS Number	Description	Justifying Provision of WTO
85.17	Radio paging system-paging transmitter, pager	
85.17	Communication equipment-cellular telecommunication base station, cellular hand set.	
85.28	Satellite broadcast receiver.	
85.28	Satellite receiver (other than broadcast)	
85.17	Radio repeater station	
85.17	Radio navigation, transmitter/transceiver	
85.17	Radio determination transceiver, receivers	
93.05	Materials used in the production of arms and ammunition.	
93.01-93.04	Guns and cartridges	
93.06	Caps without paper	
93.07	Arms and ammunition and other explosives	
Chapter 71	Valuable metals and precious stones	None, except Article XX (c) of GATT 1994 for gold and silver

49. The representative of Nepal said that Nepal would enact legal instruments codifying the substance of the WTO Agreement on Import Licensing Procedures and to bring its licensing provisions for valuable metals and precious stones into conformity with WTO by applying automatic licensing. Provisions relating to gold and silver would be administered in conformity with Article XX(c) of GATT 1994. As stated in the Legislative Action Plan reproduced in Annex II of this Report, amendments to the Export Import (Control) Act, 1957 (Amendment) and to the Export Import (Control) Regulations, 1978 (Amendments) had already been prepared, or would be prepared by the Department of Commerce in August 2003, and would be submitted by the Ministry of Industry, Commerce and Supplies to the Council of Ministers by September and October 2003, respectively. It is expected that endorsement and adoption by the Council of Ministers of the amendments to the Act and the Regulations would be approved in December 2003.

50. The representative of Nepal confirmed that, from the date of accession, Nepal would eliminate and would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements, and other restrictions having equivalent effect, that cannot be justified under the provisions of the WTO Agreement. If balance-of-payments measures were necessary, Nepal would impose them in a manner consistent with the relevant WTO provisions, including Article XII and Article XVIII of the GATT and the Understanding on Balance-of-Payments Provisions of the GATT 1994. He further confirmed that the legal authority of the His Majesty's Government of Nepal to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO. The Working Party took note of these commitments.

### **Customs Valuation**

51. The representative of Nepal said that in accordance with the Customs Act, as amended in 1997, the customs value of the imported goods was assessed on the basis of the invoice price shown in the invoice document provided by the importer. If the customs had reasonable doubt that the invoice price did not correspond to the price actually paid for the goods, that is the transaction value, the customs would refer to the value of similar, or identical goods imported into Nepal. If this information was not available, the customs would refer to the international prices, local market price, suggested price lists of manufacturers, recorded prices of previous imports of identical or similar goods, a list of reference prices and other available information. The Customs was not applying the provisions of Articles 5 and 6 of the Agreement on Implementation of Article VII of GATT 1994



regarding imputed or computed valuation. There were no provisions in the current legislation to the case when the buyer and seller are related and how the customs should act in those cases. There were no minimum prices in effect. Due to the need to ensure revenue protection and trade facilitation, a reference price list was still used for comparison purposes with the invoice price with respect to sensitive products. Nepal was examining the modifications that would have to be introduced in current legislation and practices to fully implement the WTO Custom Valuation Agreement. To attain this objective it would be necessary to train personnel, to prepare implementation measures and to upgrade the institutional capabilities and material infrastructure of the Customs Administration. The timetable for complete implementation would depend on the progress that would be achieved on those issues. Nepal would require technical assistance in this respect.

52. The representative of Nepal recognized the fact that custom valuation based on the value of local goods and on reference prices was contrary to the WTO Customs Valuation Agreement. He confirmed that Nepal intended to adopt the valuation methods of Articles 5 and 6 of the Agreement and to improve Nepalese legal provisions to implement a WTO consistent regime. Nepal would incorporate the remaining provisions of the WTO Agreement on Customs Valuation into the Customs Act, 1962 and the Customs Regulation, 1969. A timetable for the enactment of legislation that implements the WTO Agreement on Customs Valuation in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 and in the action plan circulated in document WT/ACC/NPL/15. The Department of Customs had prepared the amendments to the Customs Act, 1962 (Amendment) and to the Customs Regulations, 1969 (Amendment) which would be submitted by the Ministry of Finance to the Council of Ministers by August 2003. These amendments would be endorsed and adopted by the Council of Ministers by 31 December 2003. Having regard to the action plan, Nepal would implement the provisions of Articles 7 and 10 of the Customs Valuation Agreement at the time of accession if the valuation of imported goods for customs purposes could be ascertained on the basis of the transaction value, the transaction value of identical goods or the transaction value of similar goods.

53. In response to questions concerning the right to appeal referred to in Article 11 of the Customs Valuation Agreement, the representative of Nepal said that in accordance with Section 37 of the Customs Act 1962, the importer had the right to appeal to the Revenue Tribunal against the decisions of customs officials in respect of the determination of customs value. Nepal was currently preparing the establishment of an independent administrative tribunal to review the decisions of the customs authority regarding customs valuation. It was foreseen that the decisions of the administrative tribunal would be subject to appeal to the Revenue Tribunal, which was a part of judicial system. Nepal believed that such institutional system would provide prompt review and correction of administrative actions relating to customs matters, in accordance with Article X:3(b) and (c) of GATT 1994 and the Agreement on Customs Valuation. He confirmed that in pursuance of the action plan contained in Table 3, the right to appeal to an independent administrative tribunal would be in effect on 31 December 2004. The Working Party took note of this commitment.

54. Some Members of the Working Party requested that Nepal describe the surety bond system provided for in section 13.6 of the Customs Act 1962, provide a timetable for enacting the Interpretative Notes referred to in Article 14 of the Customs Valuation Agreement, and clarify the manner of publication of customs issues including valuation referred to in Article 12 of the Customs Valuation Agreement. One member also indicated that it did not appear that section 13.6 of the Customs Act, 1962 meets the requirements of Article 13 of the Agreement. The representative of Nepal responded that The Financial Ordinance 2003 section 8 (3) has further elaborated the system of surety bond as provided in section 13.6 of the Customs Act, 1962. The Ordinance provides that if the transaction value of the goods could not be ascertained and the importer wishes to clear up the goods beforehand, the Customs Officer may fix a provisional value for immediate clearance. The importer will have the right to clear the goods after paying the duty on such provisional value by making a deposit in an earnest account. The Ordinance had the force of law. Concerning publication of

legislation, regulations and administrative decisions on customs issues including valuation, amendments to the Customs Law and Customs Regulations will provide that they will be published in the Nepal Gazette or in the notification of the Customs Department or may be available in the web-site of the Customs Department. The Interpretative Notes will be incorporated in law and regulation in accordance with Nepal's action plan for the implementation of the Customs Valuation Agreement.

55. The representative of Nepal requested that the Working Party grant a transitional period from the date of its accession to allow Nepal to obtain and utilize technical assistance to assist in the full implementation of the obligations of the Agreement. Full implementation of the Agreement on Customs Valuation would be carried out gradually and progressively and would be completed, at the latest prior to 1 January 2007, in accordance with the timetable contained in Table 3 below. He confirmed that during the transition Nepal will not be required to observe the provisions of Article 7:2(a) or (f), thereby allowing for the application of reference values and values based on local prices to be applied to imports for the purposes of customs valuation. In addition, the provisions of Articles 5, 6, 10, 11, 12 and 14 of the Agreement would be gradually adopted in accordance with Table 3. If such a transitional period were granted, Nepal's deviations from the provisions of the Agreement would be strictly limited to these Articles, and all other provisions of the Agreement would be implemented for all imports.

56. During this period, Nepal would ensure that its regulations under current legislation in place and additional legislation implemented during the transition concerning customs valuation would be applied on a non-discriminatory MFN basis to all imports. Any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement on Customs Valuation than existed on the date of accession. Nepal would participate in the work of the Committee on Customs Valuation and would seek out all available technical assistance, including under Article 20:3 of the Agreement, to ensure that its capacity to fully implement the Agreement upon expiration of the transition period is assured. The representative of Nepal presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 3).

57. The representative of Nepal stated that legislation on the valuation of imports for customs and taxation purposes conforming to the requirements of the Agreement on Customs Valuation would be enacted by 1 July 2004. Nepal would progressively implement the Agreement on Customs Valuation in accordance with the action plan in Table 3, and with the understanding that during this period the scope of implementation of other aspects of the Agreement, as described in paragraphs 55 and 56, would be applied by Nepal. Full implementation will start from 1 January 2007. The Working Party took note of these commitments.

**Table 3: Action Plan for Implementation of the Agreement on Customs Valuation**

Action	Implementation Date
Current legal provisions provide the right of appeal of administrative decisions to the Revenue Tribunal (Article 11)	Completed
Sureties for the release of merchandise provided for in current Customs Act 1962 Article 13.6 and the Financial Ordinance 2003 (Article 13)	

Action	Implementation Date
Approval of amendments to the Customs Act and the Customs Regulations, enacting the legislative framework for the following measures:  Gradual implementation of valuation hierarchy: --Transaction valuation (Article 1) --Transaction value of identical goods (Article 2) --Transaction value of similar goods (Article 3) --Enforcement of Prohibited forms of Valuation when transaction value or transaction value of identical or similar merchandise is applicable (Article 7(b), (c), (d), (e) and (g))  Provision in legislation for the protection of confidential information (Article 10)  Publication of relevant laws and regulations (Article 12)  Importer's right to an explanation in writing from the customs administration concerning the determination of customs value (Article 16)	Prior to 1 January 2004
Amendments to current legislation to establish an independent administrative tribunal for right to appeal from administrative decisions (Article 11)  Training of customs officials in the areas of clearance, verification, audit and the method to combat valuation fraud  Preparation Customs Valuation Manual	Prior to 1 January 2005
Provision in law and regulations of the Interpretative Notes (Article 14)	Prior to 1 January 2007
Gradual implementation of valuation hierarchy: further amendments to legislation to complete implementation: --Imputed value (Article 5) --Computed value (Article 6) --Enforcement of Prohibited forms of Valuation (Article 7(a) and 7(f))	Prior to 1 January 2007
Full implementation of Agreement on Customs Valuation	Prior to 1 January 2007

### **Application of Internal Taxes**

58. The representative of Nepal said that consistent with Article III of GATT 1994 domestically produced goods and imported goods were both subject to the same taxes, namely value added tax (VAT) and excise taxes. The Local Self Governance Act 1998 had abolished the local transit tax called octroi.

### **VAT**

59. The representative of Nepal said that in the fiscal year 1997/98, the VAT had replaced the sales tax and all the existing taxes on services, including entertainment and hotel, and contract taxes. VAT had been introduced with the rate of 10 per cent for taxpayers registered in the VAT office and 20 per cent for taxpayers who do not report to the VAT office, in order to enhance tax collection and discourage tax avoidance. At the time when the Value Added Tax Act was enacted, every person (defined in the Act as any individual, firm, company, association, institution, partnership firm, cooperative, joint business, religious endowment, or fund; or any Government body, any religious organisation, charitable trust or similar other bodies and branches or sub-branches there engaged, with or without profit, in taxable transactions) engaged in any transaction is required to apply for registration in a prescribed form to the tax officer within 90 days from the commencement of this Act.

After the commencement of this Act, every person desirous to be involved in any commercial transaction is required to register in the tax office before beginning to engage in such transactions. While evaluating the application, tax officers may ask the applicants for additional information and documents and it shall be the duty of an individual to submit such information/document within seven days to the concerned authority. Upon the verification of the application form, the tax authority shall issue the Registration Certificate to the concerned individual within 30 days from the date of filing the application. The Certificate should be displayed in a conspicuous place at his principal place of transaction. If there is more than one place of transaction, he should display a copy of the registration certificate, attested by a tax officer, conspicuously at each place. It shall be the duty of every registered person to use the registration number for all transactions related to value added tax, excise duty and to other transactions as prescribed. Exemption from registration was provided to small vendors whose commercial transaction value was less than NRs 2.0 million (approximately US\$26,000 at current exchange rates) during the last twelve months.

60. The representative of Nepal said that the Value Added Tax Act 1996 provided a number of goods and services exempted from the application of VAT. In addition, VAT is applied to certain other goods and services at a zero rate. Section 5 of the Act provides that these exemptions from VAT application are applied equally to imports and domestic products. These exemptions and zero rates are listed in Annex III.

61. In response to questions concerning the tax exemptions in favour of cottage industries, the representative of Nepal said that cottage industries having transactions less than the annual taxable transaction threshold level of 2 million NRs turnover established in the VAT regulations were exempt from VAT. The Industrial Enterprises Act 1992 defines 'Cottage Industry' as industries utilizing specific skills or local raw materials and resources, and labour intensive and related with national tradition, art culture such as handloom; pedal-loom; semi-automatic loom; warping, dyeing and printing; tailoring (other than ready made garments); knitting, hand knitted woollen mats and blankets (*radi, pakhi*); woollen carpet; *pasmina*; woollen garments; carpentry; wooden artistic product; cane and bamboo works; natural fibre products; hand made paper and goods made up thereof; gold; filigree products including silver, brass, copper, precious and semi precious stones; ornaments; sculpture and pottery; honey, *chauri*, cardamom processing; clay or ceramic pottery; leather cutting and tanning; rural tanning and leather goods producing works; jute, *sabai* grass, *babio*, *choya*, cotton thread products; artistic products made up of bones and horns; stone carving; ceramic fine arts; *pauwa*; boutique; incense stick (*dhup*); dolls and toys industries with the fixed assets of up to two hundred thousand rupees.

### **Excise Tax**

62. The representative of Nepal said that the excise tax was levied to the products specified in the Finance Act. This tax did not apply to imported goods. Imported goods were subject to the equalising duty levied at the rate of the excise tax applicable to the products listed in the Financial Act. The objective of this measure was to provide the same treatment to domestically produced and imported goods. The excise tax was applied to domestic goods on the basis of ex-factory price. Imported goods were taxed on the basis of C.I.F price. Excise taxes as of July 2002 are listed in Annex IV.

63. Noting that chhyang, beer, cider and other beverages were subject to tax differentials, a Member asked that Nepal explain whether chhyang was produced in Nepal for commercial sale, if chhyang was exported, if the excise tax on chhyang was collected at the time of production or at the point of sale, and whether chhyang was a fermented beverage like beer or wine, or a distilled beverage like whisky or vodka. The representative of Nepal responded that chhyang was a fermented beverage like beer and its alcohol content depends on the manner the diverse local tribal people ferment it. At

present, chhyang was neither produced for commercial sale nor was it exported. In case it was produced for commercial sale, the excise tax would be collected at the time of production.

64. The representative of Nepal confirmed that, from the date of accession, Nepal would apply its domestic taxes, including value-added and excise taxes, in a non-discriminatory manner consistent with Articles I and III of the GATT 1994. For beverages classified as "chhyang", a fermented beverage similar to beer, Nepal would maintain an equal rate of excise duty for chhyang and beer from the date of accession. The Working Party took note of these commitments.

### **Rules of Origin**

65. The representative of Nepal said that the application for import requires the importer to state the country of origin of the goods to be imported. Nepal was applying the rules of origin under the SAPTA agreement in order to establish whether preferences should be applied on imported goods. In case of exports, document certifying the origin of goods, export declaration form, invoice, letter of credit, packing list, visa for ready-made garments for exports were required along with the application. Members of the Federation of Nepalese Chambers of Commerce and Industry were the only agencies authorized to issue a certificate of origin for certifying the export of Nepalese origin goods.

66. In response to further questions, the representative of Nepal said that proof of origin was required for products originating in those countries exporting to Nepal under preferential treatment. The certificate of origin issued by an authority designated by the Government of the exporting country and notified in accordance with the Certification Procedure constituted the proof of origin. Products wholly produced or obtained in the exporting country or products not wholly produced or obtained but processed in the exporting country were considered to originate in the exporting country. Raw or mineral products extracted from its soil, its water or sea beds, agricultural products harvested, animals born and raised and the products obtained from these animals, products obtained by hunting or fishing, products of sea fishing and other marine products taken from the high seas by its vessels and processed and/or made on board its factory ships, used articles collected and the recovery of raw materials, waste and scrap resulting from manufacturing operations and goods produced exclusively from the above products were considered products wholly produced or obtained in the exporting country. Products worked on or processed as a result of which the total value of materials, parts or produce originating in other countries or of undetermined origin used, did not exceed 50 per cent of the f.o.b. value of the products produced or obtained, and the final process of manufacture was performed within the territory of the exporting country, were eligible for preferential concessions. Similarly, products covered by sectoral agreements between member countries of regional groupings were also eligible for preferential treatment. Nepal only requires proof of origin to determine whether goods qualify for preferential treatment under the trade agreements to which it is a Party or by national legislation. Nepal was ready to implement the WTO Agreement on Rules of Origin.

67. The representative of Nepal confirmed that Nepal would introduce a WTO-consistent regime with respect to rules of origin upon accession, incorporating the provisions of the WTO Agreement on Rules of Origin. Nepal would incorporate the provisions of the WTO Agreement on Rules of Origin into the Customs Act, 1962 and the Customs Regulation, 1969. A timetable for the enactment of legislation that implements the WTO Agreement on Rules of Origin in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1. The Department of Customs had prepared the amendments to the Customs Act, 1962 (Amendment) and to the Customs Regulations, 1969 (Amendment) which would be submitted by the Ministry of Finance to the Council of Ministers by August 2003. It is expected that the Council of Ministers would endorse and adopt these amendments by 31 December 2003 and the provisions of the new law would come into force in 2004.

68. The representative of Nepal confirmed that Nepal, from the date of accession, would adopt the procedural protection covering the requirements of Article 2(h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin in its domestic legislation and that for non-preferential and preferential rules of origin, respectively, the relevant Nepalese authorities would provide, upon request of an exporter, importer or any person with a justifiable cause, an assessment of the origin of the import and outline the terms under which it will be provided. The Working Party took note of these commitments.

### **Other customs formalities**

69. The representative of Nepal confirmed that Nepal did not require any kind of certification of the customs documentation by consular officials.

### **Preshipment inspection**

70. The representative of Nepal said that there was no system of preshipment inspection in Nepal.

71. The representative of Nepal confirmed that if in the future Nepal engaged the services of a preshipment inspection enterprise, Nepal would put into place a preshipment inspection system programme in conformity with the WTO Agreement on Preshipment Inspection and would ensure that preshipment inspection enterprises operating on its behalf complied with the provisions of the WTO Agreements, including the Agreements on Customs Valuation, Import Licensing Procedures, and Technical Barriers to Trade. Provision would be made that decisions by such firms could be appealed by importers in the same way as administrative decisions taken by the His Majesty's Government of the Kingdom of Nepal. Any preshipment inspection regime would be temporary. Nepal would also give due consideration to the recommendations of the Working Party on Pre-shipment Inspection of 2 December 1997 and subsequent recommendations issued by that Working Party. The Working Party took note of these commitments.

### **Anti-dumping, countervailing duties and safeguard regimes**

72. The representative of Nepal said that Nepal did not have an antidumping or countervailing duty regime at this time, but intended to introduce a WTO-consistent legal regime with respect to anti-dumping and countervailing measures. A timetable for the enactment of legislation to introduce an anti-dumping law that implements the WTO Agreement on Anti-Dumping in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1. Draft legislation would be prepared in December 2003, the endorsement by the Council of Ministers would take place in March 2004 and the expected approval date was July 2004.

73. A timetable for the enactment of legislation that implements the WTO Agreement on Subsidies and Countervailing Measures in Nepal's legal regime was also provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1. A draft bill, policies and regulations to establish a countervailing duty regime would be prepared by the Department of Industry, submitted to the Ministry of Industry, Commerce and Supplies and were expected to be adopted by the Council of Ministers in May 2004.

74. With reference to the safeguards regime and protection of the balance-of-payments, the representative of Nepal said his Government was authorised to restrict imports by issuing an order in accordance with Section 3 of the Export Import (Control) Act, 1957. The involved authorities are the Ministry of Industry, Commerce and Supplies, Department of Commerce and the Central Bank who would only use that authority in conformity with WTO provisions. Currently, there were no quantitative restrictions on imports other than those banned for import or domestic production listed in paragraph 45 to 48 above. The representative of Nepal noted that it was the intent of his

Government to introduce WTO-consistent legislation and amend the Export Import (Control) Act (1957) and Regulations (1978) in accordance with the Legislative Action Plan contained in WT/ACC/NPL/10/Rev.1, authorizing trade restrictions for trade remedies and for balance of payment purposes only in the cases specified in the WTO Agreements and in accordance with WTO provisions.

75. The representative of Nepal confirmed that from the date of accession Nepal would only use the authority in Section 3 of Export Import (Control) Act of 1957 in conformity with WTO provisions, including in compliance with GATT 1994 Article XVIII and the Understanding on the Balance of Payments Provisions on the General Agreement on Tariffs and Trade 1994. Nepal planned to introduce WTO-consistent legislation and regulations on safeguard measures and other trade remedies as indicated in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1. He further confirmed that Nepal would apply safeguard, anti-dumping, or countervailing duty measures only after notifying and implementing laws in conformity with the provisions of WTO Agreements on Safeguards, the Implementation of Article VI of the GATT, and on Subsidies and Countervailing Measures, and that after accession Nepal would apply any such measures only in conformity with the relevant WTO provisions. The Working Party took note of these commitments.

### **Export regulation**

#### **Registration requirements, customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

76. The representative of Nepal said that the same registration requirements and tariff nomenclature were used for imports and exports. The import and export licensing regime had been introduced for statistical purposes. Currently Nepal levied export duties on the items listed in Annex VI. The purposes of levying export duties are to discourage environmental degradation, to ensure food security and to discourage trade diversion to neighbouring countries. The application for the export licence was submitted to the Director-General of the Department of Commerce under the prescribed form indicated in Schedule-2 of the Export Import Regulation 1978. The necessary documents and the information required were mentioned in the application form. The export licenses were granted for different purposes, e.g., for commercial purpose, for purposes of private use for specimen purpose, for purposes of Government office use, for maintenance purpose etc. The commercial purpose export licence is granted only to registered entities. The Authority issues the certificate of export licence, in accordance with the format prescribed in Schedule-4 of the Export Import Regulation 1978.

77. The purpose of the export duties on natural resources were aimed at preserving the environment and the country's afforestation resources. The legal basis for the export duties was the Finance Act. The export duties applied by Nepal are listed in Annex VI.

78. The representative of Nepal said that Nepal levied an export service fee of 0.5 per cent *ad valorem*. The export service charge is applied on the basis of f.o.b. price, to all exports from Nepal. Nepal has not considered reducing further the service charge. An important reduction has already been implemented from 2 per cent to the current 0.5 per cent. The current level of the service charge did not represent a tax on export for fiscal purposes. Nepal was examining the cost of the services rendered by the administration with respect to exports and imports and would revise the export charge, along with the import licensing fee, to bring them into conformity with the requirements of Article VIII of GATT 1994.

79. The representative of Nepal said that from the date of accession Nepal would charge an export service fee representing the approximate cost of the services rendered, and would apply this

and other fees and charges for services rendered to exports in accordance with WTO Agreements, in particular with Article VIII of the GATT 1994. In this regard, the current charge of 0.5 per cent would be at a flat rate expressed in NRs to ensure that it did not exceed the approximate cost of the export services rendered. The Working Party took note of these commitments.

#### **Quantitative export restrictions, including prohibitions, quotas and licensing systems**

80. Some Members of the Working Party noted that Nepal banned from exportation the following products: Raw hides and skin (including dry salted); Raw wool; All imported raw materials, parts and capital goods; Mamira; and Logs and timber. In their view, the ban on the export of raw hides and skins, raw wool, and logs and timber could not be justified under Articles XI(a) and XX(g) of the GATT 1994, unless the export restrictions were made effective in conjunction with restrictions on domestic production or consumption, or action was taken to prevent or relieve critical shortages of foodstuffs or other products essential to Nepal. The ban on the export of imported raw materials, parts and capital goods appeared to be inconsistent with Article III and XI of GATT 1994 and should be eliminated. The representative of Nepal said that logs, timber and mamira obtained from naturally grown plants were exhaustible natural resources and it was Nepal's responsibility as a signatory of various Multilateral Environmental Conventions, to preserve and protect natural resources. Thus, there were also restrictions for domestic consumption and for authorized uses. Nepal would consider lifting the ban or restriction on the export of these products which were planted (not natural resources) and grown for commercial purposes. The export restrictions on raw hides and skins and raw wool, had been temporarily applied and Nepal intended to lift this export restriction at an appropriate time. Nepal had banned the export of imported raw materials, parts and capital goods due to the possibility of trade deflection. These measures would be reviewed in the light of Article III and XI of GATT 1994.

81. The representative of Nepal said that as a party to the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), Nepal honoured the obligations stemming from the said Convention. The Forest Act, 1992 did not award any export licence for the products prohibited by the Convention. The list of protected wild animals and forest based products banned for exports as of July 2001 is as follows:

**Table 4: List of Protected Wild Animals and Forest-based Products**

Wild Animal		
HS Code	Scientific Name	English Name
01.06	Macaca assamensis	Assamese monkey
01.06	Manis pentadactyla	Indian pangolin
01.06	Caprolagus hispidus	Hispid hare
01.06	Canis lupus	Wolf
01.06	Ursus arctos	Himalayan bear
01.06	Ailurus fulgens	Red panda
01.06	Prionodon pardicolor	Spotted linsang
01.06	Felis bengalensis	Leopard cat
01.06	Felis lynx	Lynx
01.06	Neofelis nebulosa	Clouded leopard
01.06	Panthera tigris	Tiger
01.06	Panthera uncia	Snow leopard
01.06	Elephas maximus	Asiatic elephant
01.06	Rhinoceros unicornis	Rhinoceros
01.06	Sus salvanius	Pygmy hog
01.06	Moschus moschiferus	Musk deer
01.06	Cervus duvauceli	Swamp deer



Wild Animal		
HS Code	Scientific Name	English Name
01.06	<i>Bos gaurus</i>	Gaur
01.06	<i>Bos grunniens</i>	Wild yak
01.06	<i>Bubalus bubalis</i>	Wild buffalo
01.06	<i>Ovis ammon</i>	Great Tibetan sheep
01.06	<i>Pantholops hodgsoni</i>	Tibetan antelope
01.06	<i>Antilope cervicapra</i>	Black buck
01.06	<i>Tetraceros quadricornis</i>	Four horned antelope
01.06	<i>Hyaena hyaena</i>	Striped hynae
01.06	<i>Platanista gangetica</i>	Gangetic dolphin

Forest Based Products, Restricted for Exports	
HS Code	
12.11	<i>Cordyceps sinensis</i>
12.11	<i>Orchis incanata</i>
12.11	<i>Nardostachys grandiflora</i>
12.11	<i>Rauwolfia serpentine</i>
12.11	<i>Cinnamum glaucescens</i>
12.11	<i>Valeriana jatamansi</i>
12.11	<i>Lichen spp</i>
12.11	Rock exudate (Silazit)
12.11	<i>Abis spectabilis</i>
12.11	<i>Taxus baccata</i>
12.11	<i>Michelia chanpaca</i>
12.11	<i>Acacia ctechu</i>
12.11	<i>Shorea robusta</i>

82. With reference to the export of handicrafts, the representative of Nepal said that there were no fixed valuation prices for handicrafts, or an export minimum price list. The exporter submits its export prices to the Handicrafts Association, who evaluates the proposed prices on the basis of certain criteria, to recommend the exporter an export price. Criteria used by the Handicrafts Association were: Measurement - height and weight; Cost of materials incorporated: domestic and from third country; Cost of labour incorporated in the products; and the Quality of the product. The Handicrafts Association is a private entity, with no Governmental intervention. It evaluates export prices as a service to producers to avoid them under-pricing their products for export. For the export of handicrafts made from the parts of domestic animals, the exporters must present the exporters declaration form, the invoice and a sample of the goods to be exported to the Handicrafts Association. The Association issues a No Objection Letter if they are made from parts of domestic animals. The service fee charged by the Association for this purpose is: NRs 50 for FOB value less than NRs 10,000; and NRs 100 for FOB value NRs 10,000 and above. The Association reviews the price according to the criteria described above, and if it is approved the certificate is issued. In the case of archaeological goods the exporter has to produce the approval certificate from the Department of Archaeology. The service fee charged by the Handicrafts Association is 0.5 per cent of f.o.b. price of exported goods.

83. The representative of Nepal said that as stated in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 the Export Import (Control) Act, 1957 (Amendment) and the Export Import (Control) Regulation 1978 (Amendments) would be amended. Amendments to bring any export licensing requirements or other export control requirements into conformity with WTO provisions had already been prepared, or would be prepared by the Department of Commerce in

August 2003, and would be submitted by the Ministry of Industry, Commerce and Supplies to the Council of Ministers in September and October 2003, respectively. Nepal would review and identify provisions inconsistent with the WTO, and the export/import legislation would be amended to bring it into conformity with the relevant WTO provisions. Endorsement and adoption by the Council of Ministers of the amendments to the Act and the Regulations would be approved by 31 December 2003.

84. The representative of Nepal confirmed that from the date of accession, Nepal would apply its export licensing requirements and other export control requirements in conformity with WTO provisions, including those contained in Articles XI, XVII, XX and XXI of the GATT 1994. The Working Party took note of these commitments.

#### **Export financing, subsidy and promotion policies**

85. The representative of Nepal said that in order to provide a macro-environment conducive for export promotion, the Government had formulated trade policy, export policy, foreign exchange policy and domestic trade policy. A Commercial Council with majority participation of the private sector had been formed to coordinate activities of all agencies involved in the export activities. Foreign exchange for the purpose of current account transactions of the balance of payments had been made convertible. Income from exports had been exempted for income tax purposes. The duty drawback system for the import of raw materials for exportable commodities had been made more effective. Other export promotion activities such as participation on international trade fairs, product development, product diversification and quality improvement of exportable commodities have been encouraged. The Government had undertaken or planned to undertake export promotion activities for the following commodities: Agricultural Commodities such as lentils, Niger seeds, tea and coffee, ginger, cardamom, vegetable seeds, flower, silk and silk products, medicinal herbs, fruits etc.; Industrial Goods such as woollen carpets, readymade garments, leather and leather products, cotton products, woollen sweaters, woollen mufflers etc.; Traditional Handicraft Products etc.; Products of Cottage and Small Industries and Other Products such as computer software. The Trade Promotion Centre, established in 1971, had been working as the Secretariat of the Nepal Trade Promotion Board, constituted under an order of the Development Board Act 2013. The primary objective of the Centre was to promote Nepal's export trade in particular and foreign trade in general. In 1995 amendments were made to the Nepal Trade Promotion Board (Formation Order) and the scope of the activities of the Centre was extended to import management. The Board was chaired by the Secretary of the Ministry of Industry, Commerce and Supplies and included representation of the Ministries of Industry, Commerce and Supplies, Finance, business associations and communities.

#### **Internal Policy Affecting Foreign Trade in Goods**

##### **Industrial policy, including subsidy policies**

86. The representative of Nepal said that Nepal did not provide direct payment of incentives to any industry. There were certain exemptions in terms of income tax, sales tax, excise duty and customs duties to the industries qualifying under the conditions stated in Industrial Enterprise Act 1992. The purpose of the incentives was to ensure balanced industrial development both regionally and sector-wise. Nepal had not compiled data on the revenue exempted by such incentives and on the identification of recipients. The following provisions governed the incentives provided:

- (a) cottage industries are exempted from sales tax, excise duty and income tax;
- (b) income tax in excess of twenty per cent is not levied on the income derived from any industries except industries utilizing tobacco as their basic raw material, and alcohol or beer producing industries;

- (c) except for industries utilizing tobacco as their basic raw material, alcohol or beer producing industries and saw-mill and catechu industries, any industry using 80 or more than 80 per cent of indigenous raw material in its products and supplying all its manpower from among Nepalese citizens are entitled to obtain a rebate at the rate of 10 per cent of the income tax;
- (d) any national priority industry which constructs and operates road, bridge, tunnel, rope way, flying bridge, and manufactures and operates trolley buses and trams are entitled to a rebate of 50 per cent of the income tax on their income for ten years from the date of operation. Other national priority industries such as agro and forest-based industries, engineering industry (producing agricultural and industrial machinery), industry manufacturing fuel saving or pollution control devices, solid waste processing industry, hospital and nursing home (only outside the Kathmandu valley), industries producing ayurvedic, homeopathic and other traditional medicine, industries producing crutch, seat belt, wheel chair stretcher and stick and so on to be used in aid of the disabled and orthopaedic, cold storage installed for the storage of fruits and vegetables, are entitled to get a rebate of 50 per cent of the income tax on their income for seven years from the date of operation;
- (e) any industries except industries utilizing tobacco as their basic raw material, and alcohol or beer producing industries established in remote, undeveloped and underdeveloped areas are entitled to get a rebate of 30, 25, and 20 per cent of the income tax respectively and 35, 25 and 15 per cent of the excise duty respectively for a period of ten years from the date of operation;
- (f) Fruit-based fruit processing and cider and wine industries with fixed assets up to NRs2.5 million, established in particular areas, are entitled to an excise duty and sales tax exemption for a period of ten years, and fruit based alcohol are entitled to excise duty and sales tax exemption for a period of five years. Such exemption could be extended for additional period of three years;
- (g) if an industry diversifies itself through reinvestment, in the same or any other industry, and expands its installed capacity by 25 per cent or more, modernizes its technology or develops ancillary industries, it is entitled to a deduction of 40 per cent of new additional fixed assets from its taxable income;
- (h) any industry investing in process or equipment, which has the objective of controlling pollution or which may have a minimum effect on the environment is entitled to reductions of up to 50 per cent from the taxable income for such investment;
- (i) any industry is entitled to deduct 10 per cent of the gross profit from the taxable income on account of expenses related to technology, product development and efficiency improvement;
- (j) no income tax is imposed on dividends earned out of the investment made in any industry;
- (k) up to 5 per cent of gross income spent for the advertisement of the products or promotion services, hospitality and any other similar expenses is allowed to be deducted while assessing the taxable income;
- (l) If an industry provides direct employment to 6 hundred or more than 6 hundred Nepalese citizens round the year, an additional income tax rebate at the rate of 10 per cent for that year is granted in addition to other facilities;
- (m) If any industry utilizes locally available raw materials, chemicals and packing materials etc. on which excise duty or sales tax or both are already imposed, the excise duty, sales tax or both shall be reimbursed to the industry utilizing such raw materials, chemicals and packing materials;
- (n) No income tax is levied on the profits earned through export;
- (o) An industry is entitled, for the purpose of the income tax, to deduct the amount of expenses incurred by it for the long-term benefit provided its workers and employees including housing, life insurance, health facilities, education and training.

- (p) Subsidies in seeds, plants, irrigation pipes and pumping were provided by the respective line agencies. These subsidies, though small in quantity, were provided directly to the producer-farmers who use these products as inputs. Only farmers were eligible for these subsidies.

87. Some Members of the Working Party said that they considered that the exemption from incomes taxes for profits earned through export, sales and excise tax exemptions for use of local raw materials, as well as the rebate of 10 per cent of the income tax for industries using eighty per cent or more local raw materials in their output were prohibited subsidies under Article 3 of the Subsidies Agreement. In their view this subsidy should be eliminated and notified under Article 25. The representative of Nepal said that as a least developed country, Nepal should benefit from the special and differential treatment provided in Article 27 of the Agreement on Subsidies. The representative of Nepal said that the Income Tax Act, 2000 had eliminated a number of rebates previously given by related legislation. For example, it had deleted the following provisions on income tax related facilities and concessions as provided for in the Industrial Enterprises Act, 1992.

- (a) Exemption of income tax in excess of 20 per cent on the income derived from any industries other than the ones producing cigarettes, bidis, cigars, chewing tobacco, and industries producing other goods of a similar nature utilizing as their basic raw materials and alcohol or beer producing industries,
- (b) Exemption of a rebate at a rate of 10 per cent of the income tax for any industry using 80 or more than 80 per cent of indigenous raw materials in its products and supplying all its manpower from among Nepalese citizens, except for cigarette, bidi, cigar, chewing tobacco, khaini industries and industries producing other goods of a similar nature utilizing tobacco as their basic raw material and industries providing alcohol or beer, and saw mill and catechu industries.
- (c) A rebate of 50 per cent of the income tax of income earned by any national priority industry, which constructs and operates roads, bridges, tunnels, rope ways, flying bridges, etc. for a period of ten years from the date of operation.
- (d) Entitlement of an industry that diversifies itself through reinvestment in the same or expending its installed capacity by 25 per cent or more, modernizes its technology or develops ancillary industries to a deduction of 40 per cent of new additional fixed assets from its taxable income.
- (e) Permission to capitalise pre-operation costs incurred by any industry in connection with skill development training.
- (f) Permission to deduct up to five per cent of gross income spent for the advertisement of the products or promotion services, hospitality and other similar expenses, while assessing taxable income.

It had also repealed the provision contained in the Foreign Investment and Technology Transfer Act (FITTA), 1992 under which a foreign investor shall be levied income tax at the rate of 15 per cent only, on the income earned from a foreign technical as well as management service fee and royalty.

88. The representative of Nepal said that as stated in the Legislative Action Plan reproduced in Annex II of this Report, the Industrial Enterprises Act, 1992 (Amendment), the Industrial Enterprises Regulations and the Industrial Policy 1992 (Amendment) would be amended to bring them into conformity with the WTO Agreements on Subsidies and Countervailing Measures and on Trade Related Investment Measures. Amendments had already been prepared, or would be prepared by the Department of Industry in June and August 2003 and March 2004. These amendments would be submitted by the Ministry of Industry, Commerce and Supplies to the Council of Ministers in December 2003 and May 2004, respectively. Nepal would identify subsidy measures incompatible with the WTO and these would be eliminated. Endorsement and adoption by the Council of Ministers

of the amendments to the Acts and the Regulations would be approved in February and May 2004. The Working Party took note of these commitments.

89. The representative of Nepal confirmed that Nepal would administer its subsidy programmes, including those provided for in the Industrial Enterprise Act 1992, in full conformity with the WTO Agreement on Subsidies and Countervailing Measures, including Article 27.2. All necessary information on such programmes would be notified to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Nepal's Protocol of Accession. The Working Party took note of these commitments.

### **Technical Regulations and Standards**

90. The representative of Nepal submitted the Check List of Illustrative TBT Issues circulated in document WT/ACC/NPL/5 and the following laws, "Nepal Standards (Certification Mark) Act, 1980" and "Standard Weights and Measures Act, 1968". These laws set a transparent system with the intervention of laboratories to carry out tests, provision for judicial review and compliance with the most favoured nation and national treatment obligations.

91. He said that the authority to determine standards in relation to any goods, process or services was the Nepal Council of Standards (NCS). The Council was a government body chaired by Minister for Industry, Commerce and Supplies and the members include, among others, the president of Federation of Nepalese Chambers of Commerce, and representatives from Tribhuvan University. A Technical Committee under the NCS sets standards based on internationally defined parameters, national data and national requirements, among others. The participation in the Technical Committee currently included representatives of the concerned Ministries and Governmental agencies, the private sector through the Federation of Nepalese Chambers of Commerce and Industry (FNCCI), Consumers Forum and the universities. The Council can invite specialists to its meetings.

92. The Nepal Bureau of Standards and Metrology (NBSM) prepared preliminary drafts of the standards or technical regulations which were then submitted to the Technical Committee for review and amendment, if necessary. The NBSM elaborates all standards and technical regulations, except for health and food products and oversees all mandatory certification activities. The Ministry of Health through its Department of Drug Administration, and the Ministry of Agriculture through the Department of Food Technology and Quality Control, are responsible for the formulation of standards and technical regulations based on international standards, when available, to guarantee the protection of health and food products, respectively. Foreign organizations do not currently participate in mandatory certification activities.

93. The Decisions of the Technical Committee were circulated to concerned agencies to provide comments within 30 days. With the agencies recommendations or suggestions a final draft is produced by the NBSM. The final draft is sent to the National Council for Standards, who review it and, if necessary, introduce amendments and then the Council approves it. Once approved, the standards or technical regulations are sent for publication and implementation. Technical regulations are published in the Nepal Gazette. Standards are published in booklet form. Once standards were set, the government may make them mandatory technical regulations upon the recommendation of the ministry concerned e.g. Ministry of Agriculture, Ministry of Health, Ministry of Environment, and the consumers association. Such recommendations were currently made without seeking additional advice through the Technical Committee. There was a very limited number of technical regulations that applied basically to raw wool, cement, iron bars, mineral water, CGI Sheets, Dry Cell Battery, GI Wire and LPG cylinders. In the case of wool, it was necessary to guarantee the quality of Nepalese carpet exports; in other cases the considerations related to consumer safety. The importation of plant and plant products had to meet the standards laid down by the Division of the Plant Protection of the Department of Agriculture. The Division examined samples of the non-food item before a permit is

issued by the customs for import. Nepal was a Corresponding Member of ISO and followed the standards prescribed by ISO. In elaborating National Standards, the NBSM follows international standards. National standards are based on ISO standards, standards of the British Standard Institute, of the International Electrical Committee, on the Indian Standards, and if required on CODEX and ESTM Standards.

94. The representative of Nepal said that currently technical regulations applied only to iron bar, cement, mineral water, wool, CGI Sheets, Dry Cell Batteries, GI Wire, and LPG cylinders, Nepal did not currently accept as equivalent, certificates from third country certification bodies. With regard to standards, 596 product and testing methods had been approved to date. Another 200 were in the process of drafting. Most Nepalese National Standards are based on international standards. If there are no international standards then the NBSM will elaborate the national standard according to the country's requirements. The ratio of standards based on international standards is 90 per cent.

95. With reference to the quality certification system, the representative of Nepal said that the National Certification Mark (NCM) currently in use consists of the authorization granted by the NBSM, upon request to any company producing goods for which technical regulations and standards exist in Nepal, to use a distinctive sign in their products which means that the product complies with the required regulations or standards. In order to grant authorization to use the distinctive mark in any product, the NBSM conducts inspections, testing, and sets other requirements such as to have in-house laboratories, necessary skill manpower and quality manuals, that the producer has to fulfil in order to receive the authorization. After authorization has been given, the NBSM undertakes frequent inspections and testing in the industries and in the market. To date quality certification marks have been approved for 111 companies, covering 32 products. The products and number of companies that have received approval are listed in Annex V of this report.

96. The representative of Nepal recognized that amendments would have to be made to the standards regime including the Nepal Standards (Certification Mark) Act 1980 and the Regulations 1982 (Amendment) to bring them into full compliance with the WTO Agreement on Technical Barriers to Trade. Nepal also intended to review its technical regulations in light of WTO provisions, and was seeking technical assistance to help with this work. As a first step, in June 2003 the Ministry of Industry, Commerce and Supplies established an enquiry point in the Nepal Bureau of Standards and Metrology. A timetable for the enactment of legislation that implements the WTO Agreement on Technical Barriers to Trade in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 and in the action plan circulated in document WT/ACC/NPL/13. Amendments would be prepared in June 2004 and September 2005 and would be submitted to the Council of Ministers. These amendments would be endorsed and adopted by the Council of Ministers by 31 January and 31 December 2005. Having regard to the action plan, Nepal would implement fully the provisions of the Agreement on Technical Barriers to Trade, including compliance with the Code of Good Practice, by 31 December 2006.

97. In light of these plans, the representative of Nepal requested that the Working Party grant a transitional period from the date of its accession until 1 January 2007 for implementation of the WTO Agreement on Technical Barriers to Trade, to allow Nepal to obtain and utilise technical assistance to fully implement the obligations of the Agreement. During this period, an enquiry point would be brought into operation at an early stage and Nepal would provide national non-discriminatory and MFN treatment to all imports in the application of technical regulations, standards and conformity assessment procedures. Measures in place already consistent with the provisions of the Agreement would not be subject to transitions, and Nepal would ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement than existed on the date of accession. Existing technical regulations would be notified to the Committee on Technical Barriers to Trade and reviewed for conformity to WTO requirements. Any standards, technical regulations, and conformity assessment

procedures adopted during this period would be developed in conformity with the provisions of the Agreement. Nepal would fully participate in the work of the Committee on Technical Barriers to Trade. He added that Nepal would seek out all available technical assistance including under Article 11 of the TBT Agreement to ensure that its capacity to fully implement the Agreement upon expiration of the transition period is assured. In response to requests from delegations for more specificity, the representative of Nepal presented an Action Plan setting out details of the steps Nepal would take in order to achieve this objective and a timetable for each step (Table 5).

**Table 5: Action Plan for Implementation of the Agreement on Technical Barriers to Trade**

Action	Implementation Date
Establishment and operation of a single Contact Point for Information ("enquiry point") Nepal Bureau of Standards and Metrology (NBSM) P O Box 985 Balaju Kathmandu, Kingdom of Nepal Tel./Fax: +977 1 435 0689 Email nbsm@nbsm.gov.np	Prior to 1 January 2004
Identification --of the authority responsible for notifications and publications and other internal procedures to ensure transparency obligations are met on an ongoing basis (e.g., the Nepal Bureau of Standards and Metrology (NBSM)) --of the publication or website where notices of standards, technical regulations and conformity assessment procedures will appear	Prior to 1 July 2004
Strengthening of documentation and networking system and training of personnel involved on TBT notification and publications  Approval of Amendments to Nepal Standards Act  Initiation of prior publication for comment of all technical regulations, standards, and conformity assessment procedures in the identified journal or website	Prior to 1 July 2005
Approval of Amendment of Nepal Standards Regulations  Establishment of procedures for the development and application of technical regulations in conformity with WTO and compliance with Code of Good Conduct for establishment of standards  Submission of Statement on Implementation (G/TBT/1)	Prior to 1 January 2006

Action	Implementation Date
<p>Upgrading existing testing and calibration facilities</p> <p>Completion of review and adjustment of technical regulations and procedures in accordance with WTO requirements</p> <p>Establishment of scheme of registration and certification of products</p> <p>Establishment of</p> <p>--a system of nondiscriminatory procedures for the recognition of conformity assessment; and</p> <p>--a system for mutual recognition or accreditation (Articles 5 and 6)</p> <p>Full implementation of the WTO Agreement on Technical Barriers to Trade</p>	<p>Prior to 1 January 2007</p>

98. The representative of Nepal confirmed that Nepal would progressively implement the Agreement on Technical Barriers to Trade in accordance with the Action Plan in Table 5 and with the understanding that during this period the scope of implementation of other aspects of the Agreement, as described in paragraph 97 would be applied by Nepal. Nepal would implement fully the provisions of the Agreement on Technical Barriers to Trade, including compliance with the Code of Good Practice by 1 January 2007. The Working Party took note of these commitments.

#### **Sanitary and Phytosanitary Measures**

99. The representative of Nepal said that the export and import of plant and plant materials such as seeds, saplings, and seedlings was subject to phytosanitary measures at the border checkpoints and at the Tribhuvan International Airport, Kathmandu in accordance with the Plant Protection Act, 1972 and Plant Protection Rules, 1974. These products were examined for the possible presence of any obnoxious or restricted pathogens, pests, and weed seeds on the basis of the items listed in the act and rules which are periodically updated following the recommendations of the Regional and International Plant Protection conventions and the findings of national surveys and surveillance. Check posts were under the jurisdiction of a central level Plant Quarantine Section of the Plant Protection Directorate in the Department of Agriculture. The Contagious or Infectious Disease Act, 1963 authorized the government to intercept any person, animal, animal products, and feeds suspected of carrying an infectious disease or agent at entry points. Such a person and animal may be hospitalized or isolated for "examination and control" as per the act. Animal quarantine check posts located at the border areas were coordinated and administered by the Animal Quarantine Section of the Animal Health Directorate at the central level. A separate Animal Health and Livestock Services Act was enacted and enforced in 2000 that governs the Animal Quarantine. Minimum standards or specifications had been fixed for certain categories of agricultural products (food products—processed and unprocessed) and animal feeds under the Food Act, 2033 (1967) and Food Rules, 2027 (1970) and the Animal Concentrates Act, 1976. The export and import of such products must comply with the fixed standards. The responsibility to implement these laws lies with Department of Food Technology and Quality Control in association with the local administration.

100. The Pesticides Act, 1991 and Pesticides Rules, 1994 regulate the export and import of pesticides with a view to protect the environment and ensure sanitary measures. These acts and rules authorize the Ministry of Agriculture and Cooperatives to ban and/or restrict any PIC pesticides that are potentially hazardous to health. With respect to Drug Policy and Regulatory Service, the Department of Drug Administration had the responsibility of implementing the Drug Act, 2035 (1978) and the Drugs Registration Regulation, 2038 and the Drugs Examination, Inspection,



Regulation, 2040. The department with the aid of various regulations has been implementing the provisions of the act. In accordance with the objectives of the "Health for all" and to improve and manage coordination among the governmental, non-governmental and private organizations involved in the activities related to drug production, import, export, storage, supply, sales, distribution, quality assessment, regulatory control, rational use, and information flow, the National Drug Policy 1995 had been implemented. It puts emphasis on the maintenance, safeguarding and promotion of the health of people by making the country self-reliant in drug production; ensuring the availability of sale of effective, standard, and quality drugs at affordable price in quantities sufficient to cover the needs of the country, and to cover effectively all the drug-related activities including production, import, export, storage, safety, supply and distribution. Medicines imported into the country should comply with the standards laid down by the Ministry of Health.

101. In response to questions, the representative of Nepal submitted the Check List of Illustrative SPS Issues (WT/ACC/NPL/6). With reference to the Plant Protection Act, 1972 and the Plant Protection Regulation, 1975, he said that the Act and Regulations cover the essential legal framework to address all the requirements of enforcing phytosanitary measures for import and export of agricultural commodities. The Seed Act, 1998 required only notified seeds to be exported or imported to help maintain seed quality.

102. At the request of Members of the Working Party, the representative of Nepal provided the Pesticides Act, 1991, and Pesticides Regulation, 1994. He said that considering the shared responsibility between the exporting and importing country in protecting health and the environment from harmful effects of listed pesticide and industrial hazardous chemicals, in accordance with the prior informed consent procedures (PIC), Nepal bans all the PIC listed pesticides and chemicals (22 pesticides and 5 industrial chemicals) except Methyl Parathion and Monocrotophos because there were no alternatives for these products. The importation of these products was under active review. Nepal had participated in the Plenipotentiary Conference in Rotterdam (September 1998) for signing the PIC Convention.

**Table 6: PIC List – Pesticides and Industrial Chemicals**

Pesticides	Industrial Chemicals
2,4,5, - T	Crocidolite
Aldrin	Polybrominated biphenyl (PBB)
Captafol	Polychlorinated biphenyl (PCB)
Chloroenzilate	Polychlorinated trephines (PCT)
Chlordane	Trist (2, 3 dibromopropyl) phosphate
Chlordimeform	
DDT	
Dieldrin	
Dinoseb	
1, 2 – dibromoethane (EDB)	
Fluoroacetamide	
HCH	
Heptachlor	
Hexachlorobenzene	
Lindane	
Mercury compounds	
Pentachlorophenol	
Certain formulations of metamidophos	
Methyl-parathion	
Monocrotophos	
Parathion	
Phosphamidon	

103. With reference to international organizations, the representative of Nepal said that Nepal adheres to the International Plant Protection Convention (IPPC) executed and administered by FAO. Nepal was a member of the Asia Pacific Plant Protection Commission (APPPC). Nepal had adhered to the FAO "Plant Protection Agreement for the Asia and Pacific Region" on 5 August 1965. APPPC was a regional organisation adhering to IPPC charters for harmonizing the implementation of phytosanitary measures. Through APPPC, Nepal was trying to streamline and scientifically build land border quarantine procedures considering that Nepal is geographically landlocked. The Animal Health and Livestock Service Act 1998, Slaughter House and Meat Inspection Act 1998 and the Veterinary Council Act 1998 were in force. Nepal was a member of the OIE; Codex Alimentarius and Asia Pacific Plant Protection Commission. He stressed that Nepal was fully committed to adopt all the sanitary measures in relation to equity, transparency, harmonization, adoption of regional conditions, risk assessment, and control inspection and approval procedures, and also for the administration and implementation with all the WTO member countries. Even though there were constraints in terms of technical expertise and resources to fulfill these commitments, Nepal would give priority to the strengthening of the plant and animal quarantine service in the country to make sanitary and phytosanitary measures consistent with WTO obligations.

104. In response to questions concerning the National Drug Policy, the representative of Nepal said that the measures the Department of Drug Administration (DDA) had taken to achieve self-sufficiency in drug production were as follows: provide technical inputs in drug production and quality assurance; lower custom duties on the importation of raw materials, machinery and analytical instruments at one per cent of the invoice value; lowered the income tax for five years; and provided foreign currency needed for purchasing raw materials and machinery. There were some 25 pharmaceutical companies producing about 20 per cent of the national demand for drugs. For the purpose of protecting health, the administration had formulated and implemented different regulations

with respect to importation, exportation, supply and distribution of pharmaceutical products in Nepal. The enforcement of industrial property rights in respect of pharmaceuticals was the responsibility of the Department of Industry (DOI).

105. The representative of Nepal recognized that amendments would have to be made to the sanitary and phytosanitary regime including the Plant Protection Act, 1972 (Amendment), the Plant Protection Regulation, 1975 (Amendment), the Seed Act, 1998 (First Amendment) and to other legal texts to bring them into full compliance with the WTO Agreement on Sanitary and Phyto-Sanitary Measures. As a first step, the Ministry of Agriculture and Cooperatives would establish an enquiry point by 1 January 2004. A timetable for the enactment of legislation that implements the WTO Agreement on Sanitary and Phyto-Sanitary Measures in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/ Rev.1 reproduced in Annex II of this Report, and in the action plan circulated in document WT/ACC/NPL/12. Amendments prepared and approved during the period 2004-2005 would be submitted to the Council of Ministers. These amendments would be endorsed and adopted by the Council of Ministers in August 2004, April 2005 and December 2005. Having regard to the action plan, Nepal would implement fully the provisions of the Agreement on Sanitary and Phytosanitary Measures, by 31 December 2006.

106. In light of these plans, the representative of Nepal requested that the Working Party grant a transitional period from the date of its accession until 1 January 2007 for implementation of the WTO Agreement on Sanitary and Phytosanitary Measures, to allow Nepal to obtain and utilise technical assistance to fully implement the obligations of the Agreement. During this period, existing measures would be applied on a non-discriminatory basis, i.e. providing for national treatment and MFN treatment to all imports. Measures in place already consistent with the provisions of the Agreement on Sanitary and Phytosanitary Measures would not be subject to transitions, and Nepal would ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement than existed on the date of accession. Technical regulations and other measures adopted during this period would be developed in conformity with the provisions of the Agreement. Priority would be given to the establishment of a functioning enquiry point and the notification of all of Nepal's SPS measures to the Committee on Sanitary and Phytosanitary Measures. He added that Nepal would seek out all available technical assistance including under Article 9 of the SPS Agreement to ensure that its capacity to fully implement the SPS Agreement upon expiration of the transition period is assured. Nepal would fully participate in the work of the Committee. In response to requests from delegations for more specificity, the representative of Nepal presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 7).

107. The representative of Nepal confirmed that Nepal would progressively implement the Agreement on Sanitary and Phytosanitary Measures in accordance with the Action Plan in Table 7 and with the understanding that during this period the scope of implementation of other aspects of the Agreement, as described in paragraph 106 would be applied by Nepal. Nepal would implement fully the provisions of the Agreement on Sanitary and Phytosanitary Measures by 1 January 2007. He also confirmed that Nepal would consult with WTO Members upon request if they deemed that any measures applied during the transition period affected their trade negatively. The Working Party took note of these commitments.

**Table 7: Action Plan for Implementation of the Agreement on Sanitary and Phytosanitary Measures**

Action	Implementation Date
Food Act 1966 – Codex Alimentarius	Completed
Establishment and operation of a single Contact Point for Information (“enquiry point”) (Article 7 and Annex B:2)	Prior to 1 January 2004
Acquisition of equipment and training of SPS enquiry point personnel (Article 7 and Annex B:2)	Prior to 1 January 2005
Approval or Amendments to: Plant Protection Act 1972 Seed Act of 1988  Designation of authority responsible for making notifications to the WTO and ensuring transparency obligations are met on an ongoing basis  Review of all existing regulations and new amendments to ensure regulations are based on risk assessments and sufficient scientific evidence.  Upgrading of human resources with special emphasis on quarantine management, meat inspection, veterinary investigation and animal disease risk analysis.  Declaration of pest or disease-free areas and areas of low pest or disease prevalence (Article 6 and Annex A:6 and A:7)	Prior to 1 July 2005
Approval or Amendments to: Plant Protection Regulations 1975 Membership in the International Plant Protection Convention  Implementation of Publication and Notification procedures including a process to take comments into account without discrimination (Annex B:1,3, 5 and 10) Initial notification of legislation and regulations to WTO	Prior to 1 January 2006
Development of SPS guidelines and protocols	Prior to 1 July 2006
Upgrading and strengthening of quality control unity, laboratory, quarantine system and field veterinary system  Opening new quarantine check post and development of pre and post quarantine facilities  Harmonization with international standards, guidelines, and recommendations (Article 3)  Control, inspection and approval procedures for all SPS measures  Full implementation of the WTO Agreement on Sanitary and Phytosanitary Measures	Prior to 1 January 2007

### **Trade-Related Investment Measures (TRIMs)**

108. The representative of Nepal confirmed that Nepal would amend the trade related investments measures regime included in the Foreign Investment and One Window Policy, 1992 (Amendments), Industrial Policy, 1992 (Amendment), Industrial Enterprises Regulations, Industrial Enterprises Act 1992 (Amendment), Foreign Investment and Technology Transfer Regulations and the Foreign Investment and Technology Transfer Act 1992 (Amendment) to ensure that there was full compliance

with the WTO Agreement on Trade Related Investment Measures. A timetable for the enactment of this legislation was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1. Policies would be prepared by the Department of Industry by August 2003 and adopted by the Ministry of Industry, Commerce and Supplies by September 2003. Draft bills and regulations would be prepared by the Department of Industry and would be submitted by the Ministry of Industry, Commerce and Supplies to the Council of Ministers. The expected approval dates for all the legislation would be May 2004.

109. The representative of Nepal confirmed that Nepal had carefully reviewed the relevant legislation and was unable to find any measures currently in place inconsistent with the Agreement on Trade-related Investment Measures. He added that these measures would be notified to the Committee on TRIMs upon accession as part of Nepal's initial WTO notification. The Government of Nepal would ensure that, from the date of accession, no trade-related investment measures would be introduced unless in conformity with the requirements of the Agreement, including Article 4. The Working Party took note of these commitments.

### **State trading**

110. The representative of Nepal said that the State-owned enterprises in Nepal were independent entities under the general supervision of the concerned ministries. They had been established essentially with the objective of ensuring adequate supply of raw materials and essential goods. These enterprises operated on commercial considerations and provide equal opportunities for all suppliers as prescribed in GATT 1994 Article XVII and in the Understanding on the Interpretation of Article XVII of GATT 1994. The government had made statutory provisions for transparency and cost-consciousness in the operations of these enterprises. For example, they were obliged to call for at least three quotations for procurement and adopt competitive bidding for any contract. The information concerning the following State owned enterprises should not in any way be interpreted as considering them State-trading enterprises with exclusive rights or privileges:

- Nepal Food Corporation mainly procures food grains to stabilize prices and supply of food grains in deficit area.
- National Trading Limited imports essential goods such as cement, sugar, clothes, and iron rods with a view to stabilize price.
- Nepal Coal Company imports coal for manufacturing firms. (underway to liquidation)
- Nepal Transit and Warehouse Company functions as an autonomous body responsible for clearing and forwarding cargo.

Nepal Oil Corporation, which imports petroleum products and enjoyed exclusive rights to import petroleum products excluding lubricants, and the Salt Trading Corporation, which imports salt and sugar, have special privileges and would be notified under Article XVII of GATT 1994.

111. The representative of Nepal confirmed that upon accession Nepal would notify and provide information on the activities of Nepal Oil Corporation and Salt Trading Corporation in accordance with Article XVII of the GATT and the Understanding on that Article Nepal would apply its laws and regulations governing the trading activities of enterprises with special or exclusive privileges and would otherwise act in full conformity with the provisions of the WTO Agreements, in particular Article XVII of the GATT 1994 and the Understanding on that Article; and Article VIII of the GATS. The Working Party took note of these commitments.

**Free zones, special economic areas**

112. The representative of Nepal said currently there were no free zones in Nepal. If Nepal establishes free zones, as a WTO Member, Nepal would apply the WTO Agreements and Nepal's Protocol in the zones, and the application of normal customs formalities to goods produced in these areas when they enter the rest of Nepal, including the application of tariffs and taxes. The Working Party took note of this commitment.

**Government Procurement**

113. The representative of Nepal said that in the fiscal year 1997/98 Government procurement had been NRs 16.2 billion (US\$238 million). The rules on Government procurement require publication of tender notices in national dailies at least twice for procurements amounting more than NRs1 million. In case of global tender, tender notice is circulated to the foreign diplomatic missions situated in Nepal. There was no offset policy. The procurement of certain products was not reserved for local industry but priority was given to Nepalese products if the price difference with foreign products was not above 10 per cent.

114. In response to questions concerning participation in the Agreement on Government Procurement, the representative of Nepal said that, at the moment, Nepal did not intend to take part in Plurilateral Trade Agreements such as the Agreement on Government Procurement. However, consideration would be given to the possibility and ability to seek observer status.

**Agricultural policies**

115. The representative of Nepal said that agriculture was the dominant sector of the Nepalese economy, giving employment to about two-thirds of the total population and contributing more than 40 per cent to GDP. This was basically a private sector activity in which the government played a supportive and facilitating role to enhance agricultural production and productivity. Nepal imports significant quantities of high value agricultural products such as fruits, vegetables, livestock, and processed products mainly from India. The import of grains, however, is made only during drought years. Nepal's major export items comprise basic agricultural products such as maize, mustard, ghee, ginger, pulses (lentil and gram), broom grass, live animals, wheat flour, oil cake, jute, fresh vegetables and vegetable seeds, orthodox tea, niger seeds, hide and skin, rice bran, vegetable oil, spices, cardamom, and fruits. The total value of agricultural production was approximately NRs349,064 million. The total value of import of agricultural commodities was NRs6,330.3 million in the fiscal year 1996/1997. Nepal was a net food-importing country. In the fiscal year 1997/98, Nepal had allocated NRs. 600 million (US\$10 million approx.) for subsidy on the import and transport of chemical fertilizers and US\$12.7 thousand have been allocated to subsidize for soil tests to be carried out on the request of farmers to establish the best crop for their plant of land. There were no specific incentives for the export of agricultural commodities. The government facilitates exports by providing market information and easy access to foreign exchange as a general policy. For this purpose, the government provides to exporters technical facilities to open foreign currency accounts out of the income generated from exports. Restrictions on import of agricultural products were as follows.

**Table 8: Restriction on Import of Agricultural Products**

Items	Reason
Citrus sapling/ plants	To prevent citrus decline syndrome as per PP Act 1972
Bread fruit plants	To prevent pingalap disease as per PP Act 1972
Potato tuber from Indian wart-affected areas	To prevent wart disease as per PP Act 1972
Lathyrus sativus	Because of high content of BOAA (B-N-Oxalyl/Amino-L-Alanine) responsible for causing Lathyrus diseases (published in <i>Nepal Gazette</i> , 1992)
BVO containing drinks	For health reason (Food Act, 1967)
DDT, Methyl parathion	For reasons of health and environment protection (Public Enterprises Act, 1991)
Beef	For religious reasons

116. The representative of Nepal stated that agricultural producers are assisted by Government programmes in areas such as support for general research relating to different products, extension services, marketing and promotion activities including agriculture market information, natural disaster relief through crop subsidies, loans and grants for irrigation, natural disaster relief through crop subsidies, other infrastructure support for small farmers, urea transport subsidies for remote areas, subsidies for tea promotion and dairy development grants. He indicated that Nepal does not have agricultural export subsidies. Information concerning domestic support and export subsidies in the agriculture sector was circulated in document WT/ACC/SPEC/NPL/2/Rev.1 and Corr.1, where the Base Total AMS was below the *de minimis* percentage of 10 per cent.

117. Nepal's commitments on domestic support and export subsidies for agricultural products are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/NPL/16/Add.1) annexed to Nepal's draft Protocol of Accession to the WTO.

### **Policies Affecting Foreign Trade in Other Sectors**

118. The representative of Nepal said that the Tea and Coffee Development Board, and the Dairy Development Board, which were composed of representatives of the public and private sectors, had the basic function to propose policies for the development of these activities in Nepal and to conduct product-related research. Budget allocations were to finance the activities of the Boards. No direct support is given to the farmers. Nepal was undertaking a Seeds Sectors Project, which aims to improve seed quality. The activities defined under this project are carried out by the Seeds Committee composed of representatives of the public and private sectors. Budget allocations were to finance the activities, mainly seed research and improvements of the Seeds Committee. There was no direct support to the farmers. The principal function of the Carpet and Wool Development Board was to make the necessary arrangements for the development of production and the quality of carpets in Nepal. The Board did not give any kind of financial assistance.

### **Textiles Regime**

119. The representative of Nepal confirmed that the quantitative restrictions on imports maintained by WTO Members on textiles and clothing products originating in Nepal that were in force on the date prior to the date of accession of Nepal to the WTO should be notified to the Textiles Monitoring Body (TMB) by the Members maintaining such restrictions and would be applied for the purposes of Article 2 of the Agreement on Textiles and Clothing. Thus, for the purposes of Nepal's accession to the WTO, the phrase "in force on the day before the entry into force of the WTO Agreement" contained in Article 2.1 of the Agreement on Textiles and Clothing shall be deemed to refer to the day prior to the date of accession of Nepal to the WTO. To these base levels the increase in growth rates

provided for in Article 2.13 and 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of Nepal's accession such base level and growth rate coming to an end upon the termination of the Agreement on Textiles and Clothing. The Working Party took note of these commitments.

## **Trade-Related Intellectual Property Rights (TRIPS)**

### **General**

#### **Industrial Property Protection**

120. The representative of Nepal said that the policy objective in the area of intellectual property was to provide effective and adequate protection to all categories of intellectual property in conformity with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Detailed information concerning the Check List of Issues for the Implementation of the TRIPS Agreement had been circulated in document WT/ACC/NPL/7. Intellectual property protection was provided by the Patent, Design, and Trademark Act, 1965. Nepal was preparing the new Industrial Property (Protection) Act, which would incorporate all the substantive provisions of the TRIPS Agreement. It would cover all categories of industrial property rights under Sections 2 through 7 of Part II of the Agreement, and would incorporate the basis for an adequate enforcement thereof, and be promulgated by December 2005. For the protection of copyright, Nepal had enacted the Copyright Act, 2002. This Act will be amended as necessary. Additional information concerning the implementation of the TRIPS Agreement is reproduced in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 and in the action plan circulated in document WT/ACC/NPL/14 and are described in this section of the Working Party Report.

#### **Agencies Responsible for Policy Formulation and Implementation**

121. The representative of Nepal said that the formulation of industrial property policy and necessary regulations was under the purview of the Ministry of Industry, Commerce and Supplies. The implementation and execution of policy and regulations was the responsibility of the Department of Industry (DOI) within the Ministry. The Office of the Copy-Right Registrar was the authorized agency for registering copyrights and hearing complaints. The decisions of the Registrar could be appealed to the Appellate Court.

#### **Membership in International Intellectual Property Conventions**

122. The representative of Nepal stated that Nepal had been a member of the World Intellectual Property Organization (WIPO) since 4 February 1997 and the Paris Convention since 22 June 2001. Nepal would join the Berne Convention, by December 2005, and join the Rome Convention and the Treaty on Intellectual Property by 2006. Nepal would also look at other WIPO and IP related Conventions, eg. Geneva Phonograms Convention, UPOV 1991, WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, in terms of national interest and explore the possibility of joining them in the future, as appropriate.

#### **Application of national and MFN treatment to foreign nationals**

123. The representative of Nepal said that national and MFN treatment was granted to all foreign nationals. National and foreign citizens had to register the brand, trademarks, patent and art with the responsible agency. A member noted that Section 13 of the Nepal Copyright Act, 2002 fails to provide protection for foreign copyright works, sound recordings or performers. The representative of Nepal committed to amending this provision so that the Copyright Act, 2002 would provide full national treatment and MFN treatment upon accession. Nepal also committed to amending its fee



schedule, described in paragraph 124 below, to remove any discrimination between domestic and foreign nationals for fees charged to applicants upon accession.

### **Fees and taxes**

124. The representative of Nepal said that there were no taxes on intellectual property. Fees were nominal but foreigners had to pay double the rates indicated below, except for penalty charges, in convertible foreign currency. A member noted that TRIPS national treatment obligations (TRIPS Article 3) prohibits discrimination between foreign and domestic applicants with regard to fees, and suggested that it would be permissible, however, to adopt a fee schedule that provided discounts to individual applicants, or even small and medium-sized enterprises (SMEs), as opposed to large corporations, so long as the discounts were not based on the nationality of the applicants.

**Table 9: Registration and Renewal Fees**

S. No.	Particulars of Fees	Patent (NRs.)	Design (NRs.)	Trademark (NRs.)
1.	Application	1,000	500	500
2.	Application Amendment	200	200	200
3.	Registration	5,000	2,000	1,500
4.	Transfer of Ownership	2,500	1,000	750
5.	Endorsement and Recording other than Transfer of Ownership	1,000	500	500
6.	Details of Registration	500	500	200
7.	Opposition and Case Filing	500	200	200
8.	Copy of Registration Certificate	1,000	500	500
9.	Renewal (Annual Rate)			
	a. For the First Term	2,000	400	-
	b. For the Second Term	4,000	800	-
	c. Perpetual Annual Rate	-	-	200

### **Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**

#### **Copyright protection**

125. The representative of Nepal said that the Copyright Act 2002 repealed the Copyright Act 1965 to comply with the provisions of the TRIPS Agreement and the Berne Convention. As noted in paragraph 120 above, if Nepal received the necessary technical assistance, a Copyright Information Center would be established in December 2004.

#### **Trademarks, including service marks**

126. The representative of Nepal said that in accordance with the Legislative Action Plan, in 2005 the Patent, Design and Trademark Act, 1965 amended in 1987, would be replaced by a new Industrial Property (Protection) Law consistent with the TRIPS Agreement. At present any person wishing to have trademark of his business registered should submit to the Department of Industry an application according to the specimen form indicated in Schedule I(c) of the Act, along with four copies of such trademark. After completing this process the department would register such trademark in the name of the applicant and then issue a trademark certificate. If the trademark filed for the registration was considered to hurt the prestige of any individual or institution, or adversely affect public conduct or morality, or undermine the national interest, or the reputation of the trademark of any other person, or

if the proposed trademark was found to have already been registered in the name of another person, the registration could be denied. Service marks were also subject to the same rule. The Act provides for exclusive rights for the person who has registered the trademark or service mark. Trademarks and service marks were initially registered for a period of seven years, and could be renewed for an indefinite number of years after every seven-year interval.

### **Geographical indications, including appellations of origin**

127. The representative of Nepal said that the present legislation did not cover geographical indications. In accordance with the action plan on the implementation of the TRIPS Agreement reproduced in Table 10 of this Report, the protection of geographical indications would be included when drafting the new Act.

### **Industrial designs**

128. The representative of Nepal said that the industrial designs were covered by the Patent, Design and Trademark Act, 1965. As indicated in the action plan on the implementation of the TRIPS Agreement, the Act would be brought into conformity with the provisions of the TRIPS Agreement by the Industrial Property (Protection) Act under preparation. Under the present legislation, any person wishing to protect the design of any article should submit an application to the Department of Industry, which would register the design in the name of applicant and issue a certificate. In case such design hurts the prestige of any individual or institution, or adversely affects public conduct or morality, or undermines the national interest, or in case such design had already been registered in the name of any other person, the registration could be denied. Industrial designs were originally registered for a period of five years and could be renewed for two more terms at an interval of five years.

### **Patents**

129. The representative of Nepal said that patents designs were covered by the Patent, Design and Trademark Act, 1965. As indicated in the action plan on the implementation of the TRIPS Agreement, the Act would be brought into conformity with the provisions of the TRIPS Agreement by the Industrial Property (Protection) Act under preparation. The representative of Nepal declared that, as a WTO Member, Nepal would be entitled to the flexibilities provided in the Doha Declaration on the TRIPS Agreement and Public Health. Under the present legislation, any person wishing to obtain exclusive rights over an invention should register a patent in the Department of Industry by filing an application. Upon its receipt, the Department would conduct investigations or studies to ascertain whether the subject matter mentioned in the application was an invention and thereafter decide whether or not to register a patent. Patents were available for all kinds of products and processes that fulfill the patentability requirements without any discrimination as to the technological field or invention. The title of the patentee to the patent registered under the Act remained valid for a period of seven years at a time, with a possibility of two renewal periods of seven years. The patent holder had the exclusive right to transfer or licence a patent and to request the third person to stop infringement, and could claim the compensation. The current legislation did not include provisions for the protection of prior user rights nor for compulsory licensing.

### **Plant variety protection**

130. The representative of Nepal said that the present legislation did not cover the protection of plant varieties. In accordance with the action plan on the implementation of the TRIPS Agreement, the protection of plant varieties would be included in the new Plant Variety Protection Act to be promulgated by December 2005. The drafting of the Plant Variety Protection Act was not yet

initiated, however it would be intended to protect the rights of related stakeholders in accordance with the needs of the country. This law would be a separate free-standing Act.

#### **Layout designs of integrated circuits**

131. The representative of Nepal said that the present legislation did not cover the protection of layout designs of integrated circuits. In accordance with the action plan on the implementation of the TRIPS Agreement, the protection of layout designs of integrated circuits would be included in the new Industrial Property (Protection) Act to be promulgated by December 2005.

#### **Requirements on undisclosed information, including trade secrets and test data**

132. The representative of Nepal said that the present legislation did not cover the protection of undisclosed information including trade secrets and test data. In accordance with the action plan on the implementation of the TRIPS Agreement, the protection of undisclosed information including trade secrets and test data would be included in the new Industrial Property (Protection) Act to be promulgated by December 2005.

#### **Enforcement**

133. The representative of Nepal recognized that amendments would have to be made to the enforcement regime concerning intellectual property rights to bring into conformity with the provisions of the TRIPS Agreement with respect to civil and judicial procedures and remedies, provisional measures, administrative procedures and remedies, special border measures, criminal procedures, etc. To this effect the Administration of Justice Act, 1991, Appellate Court Rules, 1972, Summary Procedures Act, 1972, and the Patent, Design and Trademark Act, 1965 and other legal texts would be modified to bring them into compliance with the WTO Agreement on TRIPS, as indicated in the action plan on the implementation of the TRIPS Agreement. As a first step, in 2004 the Ministry of Industry, Commerce and Supplies would organize the training of personnel, customs officials, police, judges and lawyers through technical assistance.

134. The representative of Nepal said that a timetable for the enactment of legislation that implements the WTO Agreement on TRIPS in Nepal's legal regime was provided in the Legislative Action Plan circulated in document WT/ACC/NPL/10/Rev.1 and in the TRIPS Implementation Action Plan circulated in document WT/ACC/NPL/14. New legislation or amendments with regard to legal texts such as the Plant Resources, the Access to Genetics Resources Act, and the Industrial Property Protection Act prepared during the period 2003-2005 would be submitted to the Council of Ministers. These amendments would be endorsed and adopted by the Council of Ministers in the period 2003-2005. Nepal would implement fully the provisions of the Agreement on TRIPS by 31 December 2006.

135. Having reviewed Nepal's Action Plan for compliance with the requirements of the TRIPS Agreement, a Member sought a realistic plan laying out the measures that Nepal would take over time to bring its regime into compliance with specific provisions of the TRIPS Agreement as soon as possible. The plan would constitute an understanding between Nepal and the Working Party on how Nepal would use the transition period, and form a blueprint for the technical assistance making compliance possible within the timeframe contemplated. Nepal should also provide specific assurances on its application of measures covered by the TRIPS Agreement during any transition period approved by the Working Party. TRIPS-consistent measures already in place should not be subject to transitions, and Articles 3, 4 and 5 of the TRIPS Agreement, providing for inter alia national treatment and MFN treatment, should apply from the date of accession. Moreover, Nepal should not allow production of goods or works inconsistent with the substantive provisions of the TRIPS Agreement during the transition period. Some members noted that a number of these

proposals would create implementation difficulties for Nepal during their transition period and did not share the views expressed above.

136. The representative of Nepal thanked the Working Party members for their support and for their pledges of technical assistance. For the reasons given above, the Government of Nepal requested that the WTO grant a transitional period to 31 December 2006 to obtain technical assistance and equip the administration to implement fully the obligations of the TRIPS Agreement. The representative of Nepal confirmed that should a transition be granted for the implementation of the WTO Agreement on TRIPS, his government was prepared to undertake the following commitments: During the transition periods in the Action Plan for full implementation of the TRIPS Agreement, Nepal will fully apply Articles 3, 4 and 5 of the Agreement that provide for, inter alia, national treatment and MFN treatment under current legislation in place. To this end, Nepal would amend the Copyright Act, 2002 and the fees charged to applicants to ensure full national and MFN treatment upon accession. Nepal will also ensure that any change made in its laws, regulations and practice during this period will not result in a lesser degree of consistency with the provisions of the TRIPS Agreement.

137. The representative of Nepal further confirmed that, should a transition be granted, his government would ensure that existing rates of infringement would not significantly increase and that any infringement of intellectual property rights would be addressed immediately in cooperation with the assistance from affected right holders. He added that Nepal would seek out all available technical assistance to ensure that its capacity to fully enforce its TRIPS-consistent legal regime upon expiration of the transition periods is assured and that Nepal would make available TRIPS legislation in draft and promulgated form to the WTO Secretariat for circulation to interested WTO Members. In response to requests from delegations for more specificity, the representative of Nepal presented an Action Plan in Table 10 setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step.

**Table 10: Action Plan for Implementation of the Agreement on Trade Related Aspects of Intellectual Property Protection**

Action	Implementation Date
Approved Legislation: --Copyright Act, 2002 --Patent, Design, and Trademark Act, 1965 --Administration of Justice Act, 1991 --Appellate Court Rules, 1972 --Summary Procedures Act, 1972  Participation in: -WIPO (since 1997) -Paris Convention (since 2001)	Completed
Establish MFN and national treatment in all areas covered by TRIPS, in particular in the following areas: -- extension in the Copyright Act, 2002 of protection to foreign works on a full national treatment basis; and -- the elimination of discrimination in fees charged foreign vs. domestic applicants.	Upon accession
Establishment and Strengthening Nepal Copyright Registrar Office	No later than 1 January 2005
Establishment of Trademark Information Centre/ Industrial Design Information Centre/ Industrial Patent Information Centre/ and Layout-designs Information Centre	No later than 1 July 2005

Action	Implementation Date
Approval of: Industrial Property (Protection) Act Approval of Plant Variety Protection Act Participation in: -Berne Convention -Rome Convention -Treaty on Intellectual Property in Respect of Integrated Circuits	No later than 1 January 2006
Training of personnel involved in copyrights protection, trademarks protection, protection of industrial design, protection of patents, protection of undisclosed information, customs officials and police  Orientation of judges and lawyers Computerization and networking of Patent Office  Computerization of Intellectual Property Office Reorganization and establishment of Intellectual Property Offices  Developing rules, regulations and work manuals  Enhancing public awareness on the protection of intellectual property rights  Full Implementation of the Agreement on Trade-related Intellectual Property Rights	No later than 1 January 2007

138. The representative of Nepal confirmed that Nepal would apply the Agreement on Trade-Related Intellectual Property Rights by no later than 1 January 2007 according to the action plan in Table 10 with the understanding that during this period protection for intellectual property rights listed in paragraphs 136 and 137 would be applied in Nepal. The Working Party took note of this commitment.

## **POLICIES AFFECTING TRADE IN SERVICES**

139. The representative of Nepal said that the services sector in Nepal had witnessed significant growth over the last two decades. It accounts for 32.3 per cent of GDP and provides employment to almost 18 per cent of the total labour force. During the last decade the average service exports of Nepal had represented approximately US\$200 million p.a. Nepal was a net service exporter. The introduction of open and liberal policies, combined with full convertibility on current account transactions, explains the significant growth of the service sector. Public services enterprises were available in Nepal in sectors such as business, transport and communications, distribution, educational, environmental, financial, health-related, social, tourism and travel related services, and recreational and sporting services. Due to the support given by the government to road development, transport services had grown significantly. Recently, the open and liberal policy had helped to transform the financial sector a leading services sector in Nepal. However, there still was a scarcity of statistical data pertaining to the nature, type, and size of the existing service sector in the country. In documents WT/ACC/NPL1 and Add.1, the representative of Nepal described the overall market and regulatory structure of the principal service sectors in Nepal and the relevant legal provisions. The legal framework was still under development, and a number of services sectors remained to be regulated. He noted that Nepal's legislation generally complied with the provisions of Articles II and XVII of the General Agreement on Trade in Services (GATS) concerning most favoured nation and national treatment, however, exceptions existed with regard to a number of activities under development as described under the services sectoral classification list. According to the Industrial Enterprises Act, 1992, the manpower required for any industry, including all services, shall have to be recruited from among Nepali citizens. Nevertheless, foreigners were permitted to work in Nepal on

technical grounds, and in accordance with the commitments made in Nepal's GATS schedule of specific commitments, annexed to the Protocol of Accession, in particular with regard to the transfer of technology. A work permit issued by the Government was required for foreigners to work in Nepal. A foreigner could not be employed for more than 10 years.

140. The representative of Nepal said that consultancy services such as management, accounting, engineering and legal services were not open to foreign investment under the Foreign Investment and Technology Transfer Act, 1992. The Nepal Bar Council Act, 1993 which regulates legal services, prohibits foreigners from practising law in Nepal except if authorized by the competent Nepalese Court to plead and represent a party to a case. The Nepal Medical Council Act, 1963 (as amended) was silent over the registration of a foreign medical practitioner in Nepal. The Statistics Act, 1969 which established the Central Bureau of Statistics provides that foreigners must obtain the authorization of the CBS to collect economic records and statistics for commercial purposes. The Telecommunications Act, 1997 and the Telecommunications Regulation, 1997 requires a licence from the Nepal Telecommunications Authority to operate telecommunications services and permits foreign investments in this sector. Licenses are issued for a maximum period of ten years renewable for up to twenty five years. The Foreign Investment and Technology Transfer Act, 1992 did not limit foreign equity participation in this sector. In accordance with the Nepal Agency Act, 1958 and Agency (Amendment and Consolidation) Regulation, 1962 agents, distributors, stockists, nominees or representatives of foreign or local firms must be registered. Nepalese citizens are given preference for getting registered as agents. With respect to financial services, the Insurance Act, 1992 established an Insurance Board and required inter alia a licence to operate an insurance business, to set an office in Nepal and to prove a paid capital of no less than NRs 250 million for life insurance and NRs 100 million for non-life insurance. With the deregulation of the sector, joint ventures had been initiated and some nine insurance companies were active in Nepal. Insurance services were regulated by the insurance-related legislation, while banking and non-banking institutions were regulated by the Nepal Rastra Bank, the Central Bank of the country, established under the Nepal Rastra Bank Act, 2002. Approval for establishing a commercial bank was granted in the conditions set out by the Central Bank and in accordance with the Commercial Bank Act, 1974 (as amended), and other accompanying legislation. In addition to the State owned banks and banks with limited State participation, there were in Nepal some nine private joint venture commercial banks, forty five finance companies and one hundred and thirty financial institutions. Tourism was one of the most important services sectors in Nepal. The contribution of tourism to GDP was approximately 3.8 per cent and provided 18 per cent of the total foreign exchange. Tourism was regulated by a whole set of general rules, laws, and industrial acts such as the Tourism Act, 2035 (1978) amended in 2053 (1997), by the Hotel, Lodges, Restaurants, Bar and Tourist Guide Regulation, 2038 (1981), the Travel and Trekking Agency Regulation, 2037 (1980), the Trekking and Rafting Regulation, 2044 (1985), and by the Mountaineering Rules, 2036 (1979). As provided by the Foreign Investment and Technology Transfer Act, 1992, no permission was granted for the establishment of foreign companies, or foreign investment in the Travel Agencies, Trekking Agencies, Water Rafting, Pony Trekking, Horse Riding, and Tourist Lodging. Foreign direct investment was permitted in the hotel industry subject to authorization as provided by FITTA, 1992. In view of the economically underdeveloped status of the country and the dependence of a large number of people for their livelihood on these sectors, Nepal called for the understanding of WTO Members in the opening of the services sector at this stage.

141. Some members asked the representative of Nepal to explain the conditions that Nepal imposes on foreign professionals working in Nepal under which they are required to acquire membership of relevant Nepalese professional associations. They asked Nepal to confirm that the criteria governing such membership were not applied in a manner that would act as a barrier to foreign professionals and that membership requirements were open and transparent. In response, the representative of Nepal explained that these requirements do not act as a barrier to foreign professionals seeking to work in Nepal. Architects and all types of engineers are required to be registered with Nepal Engineering Council. Lawyers who appear before courts in Nepal are required

to be registered with Nepal Bar Council. However, practitioners of third country and international law who do not appear before courts in Nepal are not required to join the Bar Council. Accountants are required to be registered with Nepal Chartered Accountants Institute, with requirements of the same nature as those for architects and engineers. The requirements for membership of these and other professional associations were not onerous and included the possession of professional qualifications from a recognised institution and the payment of a membership fee. There was an open and transparent mechanism for foreign institutions to obtain recognition for this purpose. These same requirements were applicable equally to Nepalese and foreigners and were applied in a fully non-discriminatory manner.

142. The representative of Nepal said that the authorities' decision affecting trade in services were subject to judicial review under the provision of each law governing such a service sector. There was also a provision of appeal in such cases under Administration of Justice Act, 1991. Generally the appeal lies with the Appellate Court which is an independent judicial body. Under Section 7 of the Foreign Investment and Technology Transfer Act, 1992 there is a provision for dispute settlement through arbitration in respect to disputes that may arise between a foreign investor, national investor or a concerning industry. The arbitration award may be appealed to the Appellate Court in accordance with the Arbitration Act, 1999.

143. The representative of Nepal referred to the Legislative Action Plan circulated in document WT/ACC/10/Rev.1 and reproduced in Annex II of this Report. He said that the Ministry of Industry, Commerce and Supplies would establish in June 2003 the enquiry point provided in Article III:4 GATS. Amendments to the Labour Act, 1991, the Company Act, 1997, the Nepal Bar Council Act, 1992, the Nepal Chartered Accountants (First Amendment) Act, 2002, the Insurance Act, 1992, the Securities and Exchange Act, 1982, the Bank and Finance Institutions Act, and a draft Bill of the Health Institutions Operating Act were being prepared by the Ministries of Labour, Industry, Commerce and Supplies, Finance, Law and Justice, Health and the Central Bank with a view to their submission to the Council of Ministers of Nepal in 2003. The expected date of approval of these amendments would be February 2004 except for draft bill of the Health Institutions Operating Act which would be endorsed by the Council of Ministers in September 2003.

144. Nepal's specific commitments on services are contained in the Schedule of Specific Commitments on Services (document WT/ACC/NPL/16/Add.2) annexed to Nepal's draft Protocol of Accession to the WTO.

### **Transparency**

#### **Publication of information on trade**

145. The representative of Nepal said that all trade measures and laws, regulations, and Governmental or Administrative rulings of general application were published in the Nepal Gazette, including multilateral Agreements or Treaties in which Nepal is a party. Judgements of the Supreme Courts are also published in the Nepal Law Journal by the Supreme Court of Nepal. Laws enter into force on the date of their publication unless another date is specified in the laws. Some of the transparency requirements of Article X of GATT 1994, Article III of the GATS, and other WTO Agreements were provided in Section 3 of the Statute of Interpretation Act, 1953, His Majesty's Government (Allocation of Business) Regulation, 2000, and Nepal Gazette of August 1955. It had been Nepal's practice to publish relevant acts, rules and regulations to give effect to these statutes.

146. He stated further that Nepal intended to establish or designate an official journal or web-site, published or updated on a regular basis and readily available to WTO Members, individuals and enterprises, dedicated to the publication of all regulations and other measures pertaining to or

affecting trade in goods, services, and TRIPS prior to implementation, and that Nepal intended to provide a reasonable period, e.g. no less than 15 days, for comment to the appropriate authorities of Nepal before such measures are implemented, except for those regulations and other measures of general application involving national emergency or security, or for which the publication would impede law enforcement or be otherwise contrary to the public interest or prejudice the commercial interests of particular enterprises, public or private. Nepal intended to implement this facility as soon as possible, and within the timeframe of its other WTO commitments.

147. The representative of Nepal confirmed that, as a Member of the WTO, Nepal would fulfill the transparency requirements established in Article X of GATT 1994, Article III of GATS and other WTO Agreements. Nepal confirmed that all laws, regulations or measures of general application pertaining to or affecting trade in goods, services or TRIPS would be published promptly in the Official Gazette or in the some single official source, and that no such law, regulation, etc. would become effective or be enforced prior to such publication. The publication of such laws, regulations and other measures of general application would include the effective date of these measures and list, where appropriate and possible, the products and services affected by the particular measure, identified for customs purposes by appropriate tariff line and classification. The Working Party took note of these commitments.

### **Notifications**

148. The representative of Nepal said that within 12 months, at the latest, upon entry into force of the Protocol of Accession, unless otherwise provided for in this Report, and in accordance with the commitments set out in the Legislative Action Plan in Annex II, Nepal would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Nepal which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement.

### **Trade Agreements**

149. The representative of Nepal said that Nepal had signed bilateral trade agreements with the following 17 countries. More recently a trade cooperation agreement had been signed with the European Union.

**Table 11: Trade Agreements**

	Country	Year
1.	Republic of Bangladesh	1976
2.	Republic of Bulgaria	1980
3.	People's Republic of China	1981
4.	Czechoslovak Socialist Republic	1992
5.	Arab Republic of Egypt	1975
6.	Republic of India	
	(a) Treaty of Transit	1991
	(b) Treaty of Trade	1991
	(c) Agreement of Co-operation	1991
7.	Democratic People's Republic of Korea	1970
8.	Republic of Korea	1971
9.	Mongolia	1992
10.	Islamic Republic of Pakistan	1982
11.	Republic of Poland	1992
12.	Republic of Romania	1984



	Country	Year
13.	Democratic Socialist Republic of Sri-Lanka	1979
14.	United Kingdom of Great Britain and Northern Ireland	1965
15.	United States of America	1947
16.	Union of Soviet Socialist Republics	1970
17.	Socialist Federal Republic of Yugoslavia	1965

150. The representative of Nepal said that these agreements provided most-favoured-nation treatment. They basically relate to trade in goods. As a landlocked country, Nepal was interested in maintaining good neighbourliness for transit and trade relations with India. Nepal considers that the treaties of transit and trade as well as the agreement of cooperation to control unauthorised trade signed in 1991 (as amended) provide a good basis for the development and diversification of trade. The two countries had signed these treaties with the aim of promoting trade, facilitating transit and controlling unauthorised trade. They accord each other unconditional most-favoured-nation treatment. They also exempt imports of certain primary products from duties or any form of quantitative restrictions on a reciprocal basis in the context of their trade. The treaty of trade also provides that India grants specially favourable (preferential) treatment to industrial products manufactured in Nepal on the basis of non-reciprocity in order to promote the industrial development of Nepal. With reference to Article IV of the Treaty of Trade between Nepal and India, following primary products would be eligible on a reciprocal basis to exempt from basic customs duty as well as from quantitative restrictions:

- Agriculture, horticulture and forest produce and minerals which have not undergone any processing
- Rice, pulses and flour
- Timber
- Jaggery(Gur and Shakhar)
- Animals, birds and Fish
- Bees, bees-wax and honey
- Raw wool, goat hair, and bones as are used in the manufacture of bone- meal
- Milk, home made products of milk and eggs
- Ghani- produced oil and oil cakes
- Ayurvedic and herbal medicines
- Articles produced by village artisans as are mainly use in villages
- Akara
- Yak tail
- Any other primary products which may be mutually agreed upon

With reference to Article V of the Treaty of Trade between Nepal and India, Government of India provided access to the Indian market free of custom duties and the quantitative restrictions for all articles with some restrictions on four products such as Vegetable Fats, Acrylic Yarn, Copper Products under Chapter 74 and heading 8544 of HS Code, Zinc Oxide, manufactured in Nepal on the basis of Certificate of Origin issued by the agency designated by His Majesty's Government of Nepal except the following articles:

- Alcoholic liquors/Beverages and their concentrates except Industrial spirits
- Perfumes and Cosmetics with non Nepalese/ non Indian brand names
- Cigarettes and Tobacco.

Nepal is a member of the South Asian Preferential Trade Arrangements (SAPTA). SAARC (South Asian Association for Regional Co-operation) had decided in principle to move from SAPTA to

SAFTA (South Asian Free Trade Area). Nepal is a member of SAARC which comprises seven countries of South Asia that are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. It is an association based on the consciousness that, in an increasingly interdependent world, the objectives of peace, freedom, social justice and economic prosperity are best achieved in the region by fostering mutual understanding and meaningful co-operation among its member states. At their first SAARC summit held in Dhaka on 7-8 December 1985, the heads of state or government adopted the charter formerly establishing the SAARC. The Agreement on SAARC Preferential Trading Arrangements (SAPTA) was signed on 11 April 1993, and entered into force on 7 December 1995. Nepal was the first country to ratify SAPTA in 1993. So far four rounds of trade negotiations have been completed. Each round contributed to increased product coverage and deepening of tariff concessions. Nepal has granted concessions on approximately 500 products under SAPTA. The percentage range of concessions granted by Nepal under SAPTA is 10-15 per cent of the applied rate. The tenth SAARC Summit decided to set up a Committee of Experts to draft a comprehensive treaty design to create a free-trade area within the region. The Committee has since been in the process of preparing a draft treaty for the consideration of SAARC. The Schedules of Nepal's commitments in SAARC under SAPTA Agreement were communicated to WTO in document WT/ACC/NPL/3/Add.1/Corr.1. A consolidated national schedule of concessions granted by Nepal under first, second, and third rounds of trade negotiations under SAPTA can be accessed on web site <http://www.saarc-sec.org>. Nepal confirms that at present Nepal is not a member of any Free Trade Area and Customs Union.

151. The representative of Nepal confirmed that Nepal would observe the relevant provisions of the WTO Agreement, including Article XXIV of the GATT 1994, the 1979 GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause) and Article V of the GATS, in trade agreements to which it belongs, and would ensure that the applicable provisions of these WTO Agreements for notification, consultation, and other requirements concerning free trade areas, customs unions or other preferential arrangements, as the case may be, of which Nepal is, or may become, a member were met from the date of accession. The Working Party took note of these commitments.

### **Technical Assistance**

152. The representative of Nepal said that as a least developed country with limited resources, infrastructure and institutional and technical capabilities, Nepal would face serious difficulties to implement the WTO Agreements expeditiously by its own means. In the Legislative Action Plan and in the various action plans reproduced in Tables 3, 5, 7 and 10, Nepal had identified the specific areas and projects where technical assistance would be welcome, and asked that specific offers of assistance in these areas would be forthcoming. In the view of Nepal it was of the utmost importance, that individual WTO Members, bilateral donors, international agencies and the WTO Secretariat coordinate their responses to the technical assistance requested as soon as possible. From Nepal's perspective, WTO Members clearly had an interest in working with Nepal to ensure that action plan timetables were met. He noted that a Member had offered to assist in the implementation of some aspects of the TRIPS Agreement. Another Member had offered to assist in the development of institutional capabilities concerning transparency, notifications and judicial review. Nepal believed that additional technical assistance would be required with respect to these and other areas of WTO implementation as noted in the action plans.

### **Conclusions**

153. The Working Party took note of the explanations and statements of Nepal concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by Nepal in relation to certain specific matters which are reproduced in paragraphs 20, 31, 36, 42, 44, 50, 53, 57, 64, 68, 71, 75, 79, 84, 88, 89, 98, 107, 109, 111, 112, 119, 138, 147 and 151 of this

Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Nepal to the WTO.

154. Having carried out the examination of the foreign trade regime of Nepal and in the light of the explanations, commitments and concessions made by the representative of Nepal, the Working Party reached the conclusion that Nepal be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of Nepal's Schedule of Concessions and Commitments on Goods (document WT/ACC/NPL/21/Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/NPL/21/Add.2) that are annexed to the draft Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Nepal which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Nepal to the Marrakesh Agreement Establishing the WTO.

155. Having regard to the Decision of 10 December 2002 on the accession of the LDCs, the Working Party agreed to propose that the General Council entrust the Sub-Committee on LDCs with the task of monitoring the implementation of the commitments subject to transitional arrangements.

## ANNEX I

### **LIST OF LAWS AND LEGAL ACTS**

1. Foreign Investment and Technology Transfer Act (1992)
2. Industrial Enterprises Act (1992)
3. Customs Act (1962)
4. Customs Regulation (1970)
5. Nepal Seeds Act, 2045 (1988)
6. The Seeds Regulation, 2054 (1997)
7. Company Act (1997)
8. Plant Protection Act, 2029
9. The Food Act (1966)
10. Export and Import Control Act (1957)
11. Export and Import Rules (1978)
12. Patent, Design and Trade-Mark Act (1965)
13. Food Regulation (1970)
14. Plants Protection Rules 2031 (1975)
15. Customs Act (1962) (amended 1997)
16. Summary Procedure Act (1972)
17. Customs Tariff (electronic format)
18. Treaty of Transit, Treaty of Trade and Agreement of Co-operation to Control Unauthorised Trade between His Majesty's Government of Nepal and the Government of India 1991 (as amended and updated 1999)
19. Schedules to Nepalese commitments in SAARC under SAPTA Agreement
20. Feed Act (Animal Concentrate) (1996)
21. Copyright Act (First Amendment) (1997)
22. Customs Tariff (electronic format)
23. First Amendment 2002 to the Nepal Chartered Accountant Act (1998)
24. Copyright Act (2002)

## **ANNEX II**

### **LEGISLATIVE ACTION PLAN**

The document is divided into three sections. The first section provides the synoptic picture of the progress in adoption of legislation. The second section provides revised agenda for enacting laws and/or adopting regulations/decrees for WTO conformity. The third section provides a calendar plan indicating priorities.

#### **Section I: Progress in Adoption of Legislation**

Since the submission of the Legislative Action Plan to the Working Party on the Accession of the Kingdom of Nepal on 21 May 2002, the following progress has taken place in adoption of legislation.

The following acts approved by the Parliament, have received royal seal and are in force:

- Copyright Act 2002;
- Special Court Act 2002;
- Nepal Chartered Accountant Act (First Amendment) 2002;
- Foreign Exchange (Regulation) Act 2002;
- Several Acts relating to Amending Court Management and Judicial Administration Act 2002; and
- Income Tax Act 2002.

The Department/Ministry has completed the following activities:

- Preparation of a preliminary draft of Law on Anti-dumping Measures;
- Preparation of a preliminary draft of Customs Act (Amendment) and Customs Regulation (Amendment);
- Preparation of a preliminary draft of Export Import Act and Export Import Regulations; and
- Preliminary draft of Industrial Policy Law.

The following bills/instruments were endorsed by the Councils of Ministers:

- Health Service (Regulation and Standard) Act 2002;
- Plant Resources Act 2002;
- Seeds (First Amendment) Act 2002; and
- Instruments of International Plant Protection Convention (IPPC).

## Section II: Revised Legislative Action Plan

*(Present Status of and Agenda for Nepal's Law-Making Process for WTO Conformity)*

No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
1.	Instrument of Ratification of WTO Agreement	Marrakech Agreement Establishing WTO 1994	Council of Ministers will consider submitting to the Parliament for ratification/accession of/to the WTO Agreement as soon as WTO approves membership to Nepal	
2.	Income Tax Act 2002	General	Approved by the Parliament, April 2002	In force
3.	Bankruptcy/Insolvency Act	General	Preparation of draft of the new Act by Ministry of Finance by December 2004  Endorsement by Council of Ministers by July 2005	September 2005
4.	Foreign Exchange (Regulating) Act 2002 (Amendment)	General	Approved by the Parliament, April 2002	In force
5.	Competition Act	General	Preparation of draft of the new Act by Ministry of Industry, Commerce and Supplies by November 2003  Endorsement by Council of Ministers by February 2004	July 2004
6.	Export Import (Control) Act 1957 (Amendment)	General Agreement on Tariffs and Trade 1994  Agreement on Agriculture  Agreement on Import Licensing Procedures.	Initial draft being prepared by Department of Commerce by August 2003  Submission by Ministry of Industry Commerce and Supplies to Council of Ministers by September 2003  Endorsement by Council of Ministers by October 2003	December 2003
7.	Export Import (Control) Regulations 1978 (Amendment)	General Agreement on Tariffs and Trade 1994  Agreement on Agriculture  Agreement on Import Licensing Procedures.	Initial draft prepared by Department of Commerce in December 2002  Submission by Ministry of Industry Commerce and Supplies to Council of Ministers by October 2003  Adoption by Council of Ministers by December 2003	December 2003

No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
8.	Customs Act, 1962 (Amendment)	Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)  Agreement on Rules of Origin.	Initial draft prepared by Department of Customs in December 2002  Submission by Ministry of Finance to the Council of Ministers by June 2003  Endorsement by Council of Ministers by September 2003	December 2003
9.	Customs Regulation, 1969 (Amendment)	Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)  Agreement on Rules of Origin.	Initial draft prepared by Department of Commerce in December 2002  Adoption by Ministry of Finance and submission to Council of Ministers by August 2003  Adoption by Council of Ministers by December 2003	December 2003
10.	Instruments of Ratification For United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)	General	Endorsement by Council of Ministers by March 2004	December 2005
11.	Law on Anti-dumping Measures	Agreement of Implementation of Article VI of the GATT 1994 (Anti- dumping)	Preparation of draft legislation by December 2003  Endorsement by Council of Ministers by March 2004	July 2004
12.	Nepal Standards (Certification Mark) Act, 1980 (Amendment)	Agreement on Technical Barriers to Trade	Preparation of draft amendment by June 2004  Endorsement by Council of Ministers by January 2005	April 2005
13.	Nepal Standards (Certification Mark) Regulations, 1982 (Amendment)	Agreement on Technical Barriers to Trade	Preparation of draft amendment by September 2005 Adoption by Council of Ministers by December 2005	December 2005
14.	Decision on the establishment of Inquiry Points	Agreement on Technical Barriers to Trade	Submission of proposal by WTO Division, Ministry of Industry, Commerce and Supplies by April 2003  Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003
15.	Plant Protection Act 1972 (Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Preparation of draft amendment by June 2004  Endorsement by Council of Ministers by January 2005	April 2005

No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
16.	Plant Protection Regulation 1975 (Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Preparation of draft amendment by September 2005 Adoption by Council of Ministers by December 2005	December 2005
17.	Instrument of International Plant Protection Convention (IPPC)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Endorsed by Council of Ministers in August 2002	December 2005
18.	Seed Act 1998 (First Amendment)	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Endorsed by Council of Ministers in August 2002	August 2004
19.	Decision on the establishment of Inquiry Points	Agreement on Sanitary and Phyto-Sanitary Measures General Agreement on Tariffs and Trade 1994	Submission of proposal by WTO Division, Ministry of Industry, Commerce and Supplies by April 2003 Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003
20.	Environment Act, 1997 (Amendment)	General	Preparation of draft amendment by Ministry of Population and Environment by December 2004 Endorsement by Council of Ministers by July 2005	September 2005
21.	Industrial Property (Protection) Act	Agreement on Trade-Related Aspects of Intellectual Property	Preparation of new draft legislation by the Department of Industry by December 2003 Adoption by Ministry of Industry, Commerce and Supplies by December 2004 Endorsement by Council of Ministers by July 2005	December 2005
22.	Copyright Act 2002 (Amendment)	Agreement on Trade-Related Aspects of Intellectual Property Rights	Approved by the Parliament in August 2002	In force
23.	Instrument of Ratification of Bern Convention for the Protection of Literary and Artistic Works 1971	Agreement on Trade-Related Aspects of Intellectual Property Rights	Endorsement by Council of Ministers by December 2003	December 2005
24.	Plant Resources Act	Agreement on Trade-Related Aspects of Intellectual Property Rights	Endorsed by Council of Ministers in 2002	December 2003
25.	Access to Genetic Resources Act	Agreement on Trade-Related Aspects of Intellectual Property Rights	Preparation of draft of the new legislation by Ministry of Forestry and Soil Conservation by June 2003 Endorsement by Council of Ministers by December 2003	April 2004



No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
26.	Pharmaceutical Act, 1978 (Amendment)	General	Preparation of draft amendment by Ministry of Health by December 2004 Endorsement by Council of Minister by April 2005	September 2005
27.	Cyber Act	General	Preparation of draft amendment by Ministry of Science and Technology by December 2004 Endorsement by Council of Ministers by April 2005	September 2005
28.	Foreign Investment and Technology Transfer Act, 1992. (Amendment)	General Agreement on Trade in Services (GATS)  Agreement on Trade Related Investment Measures.	Preparation of draft bill by Department of Industry by August 2003  Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by October 2003  Endorsement by Council of Ministers by December 2003	February 2004
29.	Foreign Investment and Technology Transfer Regulations	General Agreement on Trade in Services (GATS)  Agreement on Trade Related Investment Measures.	Preparation of draft regulation by Department of Industry by March 2004  Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by April 2004  Endorsement by Council of Ministers by May 2004	May 2004
30.	Industrial Enterprises Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS); Agreement on Trade Related Investment Measures; and Agreement on Subsidies.	Preparation of draft bill by Department of Industry by June 2003  Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by October 2003  Endorsement by Council of Ministers December 2003	February 2004
31.	Industrial Enterprises Regulations	General Agreement on Trade in Services (GATS)  Agreement on Trade Related Investment Measures  Agreement on Subsidies.	Preparation of draft regulations by Department of Industry by March 2004  Submission by Ministry of Industry, Commerce and Supplies to Council of Ministers by April 2004  Adoption by Council of Ministers by May 2004	May 2004

No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
32.	Industrial Policy, 1992 (Amendment)	General Agreement on Trade in Services (GATS)  Agreement on Trade Related Investment Measures  Agreement on Subsidies.	Preparation of draft policy by Department of Industry by August 2003  Adoption by Ministry of Industry Commerce and Supplies by September 2003	September 2003
33.	Foreign Investment and One Window Policy, 1992 (Amendments)	General Agreement on Trade in Services (GATS)  Agreement on Trade Related Investment Measures.	Preparation of draft Policy by Department of Industry by August 2003  Adoption by Ministry of Industry, Commerce and Supplies by September 2003	September 2003
34.	Labour Act, 1991 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Department of Labour by August 2003  Submission by Ministry of Labour by October 2003 Endorsement by Council of Ministers by December 2003	February 2004
35.	Company Act, 1997 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by the Office of Company Registrar by August 2003  Adoption by Ministry of Industry, Commerce and Supplies by October 2003  Endorsement by Council of Ministers by December 2003	February 2004
36.	Nepal Bar Council Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Ministry of Law and Justice by October 2003  Endorsement by Council of Ministers by December 2003	February 2004
37.	Nepal Chartered Accountants (First Amendment) Act, 2002	General Agreement on Trade in Services (GATS)	Approved by the Parliament in July 2002	In force
38.	Insurance Act, 1992 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft amendment by Ministry of Finance by October 2003  Endorsement by Council of Ministers by December 2003	February 2004
39.	Securities Exchange Act, 1982 (Amendment)	General Agreement on Trade in Services (GATS)	Preparation of draft bill by Ministry of Finance by October 2003  Endorsement by Council of Ministers by December 2003	February 2004

No.	Laws/Regulations/ Administrative Decisions	WTO Agreement	Status of Draft/Intended Actions	Expected Approval Date
40.	Bank and Finance Institution Act	General Agreement on Trade in Services (GATS)	Draft already submitted by Central Bank of Nepal to the Ministry of Finance  Adoption by Ministry of Finance by October 2003  Endorsement by Council of Ministers by December 2003	February 2004
41.	Health Institutions Operating Act	General Agreement on Trade in Services (GATS)	Endorsed by the Council of Ministers in August 2002	September 2003
42.	Decision on the establishment of Inquiry Points	General Agreement on Trade in Services (GATS)	Submission of proposal by WTO Division, Ministry of Industry Commerce and Supplies by April 2003  Adoption by Ministry of Industry, Commerce and Supplies by June 2003	June 2003

### Section III: Calendar Plan

2003 – Expected approval date:

- Decision on the Establishment of Inquiry Point on TBT, June;
- Decision on the Establishment of Inquiry Point on SPS, June;
- Decision on the Establishment of Inquiry Point on Services, June;
- Industrial Policy, 1992 (Amendment), September;
- Foreign Investment and One Window Policy, 1992 (Amendment), September;
- Health Institutions Operating Act, September;
- Export Import (Control) Act, 1957 (Amendment), December;
- Export Import (Control) Regulations, 1978 (Amendment), December;
- Customs Act, 1962 (Amendment), December;
- Customs Regulations, 1969 (Amendment), December; and
- Plant Resources Act, December.

2004 – Expected approval date:

- Industrial Enterprises Act, 1992 (Amendment), February;
- Labour Act, 1991 (Amendment), February;
- Company Act, 1997 (Amendment), February;
- Nepal Bar Council Act, 1992 (Amendment), February;
- Insurance Act, 1992 (Amendment), February;
- Securities Exchange Act, 1982 (Amendment), February;
- Bank and Finance Institution Act, February;
- Foreign Investment and Technology Transfer Act, February;
- Access to Genetic Resources Act, April;
- Foreign Investment and Technology Transfer Regulations, May;
- Industrial Enterprises Regulations, May;
- Law on Anti-Dumping Practices, July;
- Competition Act, July; and
- Seed Act, 1998 (First Amendment), August.

2005 – Expected approval date:

- Plant Protection Act, April;
- Nepal Standards (Certification Mark) Act, 1980, April;
- Bankruptcy/Insolvency Act, September;
- Environment Act, September;
- Pharmaceutical Act, 1978 (Amendment), September;
- Cyber Act, September;
- Nepal Standards (Certification Mark) Regulations, 1982, December;
- Plant Protection Regulation, 1975 (Amendment), December;
- Industrial Property (Protection) Act, December;
- Instrument of Ratification of Bern Convention, December;
- Instrument of International Plant Protection Convention (IPPC), December; and
- Instrument of Ratification for the UN Convention on Contracts for the International Sale of Good, December.

### ANNEX III

#### VAT Exemptions

Exempted from VAT:

1. Basic Agricultural Products
    - (a) Paddy rice, wheat, maize, millet, pulses, flour, and similar unprocessed food materials.
    - (b) Green and fresh vegetables, fresh fruits, fresh eggs and similar products.
    - (c) Unprocessed cereals, oil seeds (tobacco, sugar, cotton, cardamom, jute, soybean, ground nuts, linseed rape seed, sun flower and similar basic agricultural products to be used to make edible oil).
  2. Goods of Basic Needs
    - (a) Edible oil (produced through local oils mills).
    - (b) Piped water, including water supplied by tankers.
    - (c) Fuel wood and coal.
    - (d) Kerosene.
  3. Live Animals and Animal Products
    - (a) He goat, sheep, yak, he buffalo, bore, pigs, rabbit, and similar other animals; their fresh milk, and uncooked/unprocessed varieties.
    - (b) Cows, she buffalo and she goat.
    - (c) Ducks, hens, cocks, turkey and similar other birds, and their fresh meat, eggs, and similar uncooked varieties.
  4. Agricultural Inputs
    - (a) Seeds of any plants listed in Group 2.
    - (b) Manure, fertilizer and soil conditioners.
    - (c) Agricultural hand implements.
  5. Pesticides, made mainly for use on crops
- Medicine, Medical and Similar Health Services
- (a) Services provided by any hospital, clinics or other institutions approved by the Government in order to provide medical or surgical treatment.
  - (b) Professional services provided by medical practitioners (doctor, nurse, health assistance, etc.) individually or institutionally.
  - (c) Goods provided to the recipients in connection with the supply of services listed in group (a) and (b) above.
  - (d) Human blood and products derived from human blood.
  - (e) Human or animal organs or tissue for medical research.
  - (f) The supply of services by persons on the registry of veterinary surgeons and veterinary doctors.
  - (g) Medicine for the treatment of human being and animals.
  - (h) The supply of goods made for, and suitable only for the use of, disabled persons.

6. Education
  - a) The provision of research in a school or university.
  - b) The provision, otherwise than for profit, of professional or vocational training or refresher training.
  - c) The provision of education in a school or university and supply of goods made in connection with such services.
7. Books, Newspapers etc.
  - (a) Books, brochures and pamphlets.
  - (b) Newspapers, newsletters and periodicals.
  - (c) Maps, and charts.
  - (d) Covers, cases and other articles supplied with items (a) to (c) above if not separately charged.
  - (e) Radio and television transmissions.
8. Artistic and Cultural Goods and Services, Carving Services
  - (a) Cultural and artistic services (painting, carving and related services).
  - (b) Cultural programme.
  - (c) Admission to libraries, archaeology, museums, zoos and botanical gardens.
9. Passenger Transportation Services
  - The provision of services for the transport of person from one point in the Kingdom of Nepal to another point in the Kingdom of Nepal (except sightseeing trips).
10. Personal or Professional Service
  - Personal services rendered by lawyers, auditors, engineers, artists, actors, singers, dancers, sportsmen, authors, writers, designers, professional sportsmen, insurers, booksellers, translators and interpreters institutionally or individually.
11. Other Goods or Services
  - (a) Postal services (provided by Nepal only)
    - (i) The service of conveyance of letters, money and postal packets by the Post Office.
    - (ii) The supply by the Post Office of any service in connection with the conveyance of letters, money and postal packets.
    - (iii) Postage stamps.
  - (b) Financial and insurance services
    - Bank notes, and cheque books
    - (i) The printing and issue of bank notes.

- (ii) The supply of bank notes from outside the Kingdom of Nepal to the Kingdom of Nepal.
  - (iii) Cheque book.
- (c) Gold and silver
  - (i) Gold and gold coins (other than ornaments and goods made of gold).
  - (ii) Silver and silver coins (other than ornaments and goods made of silver).
- 12. Land and Building
  - Purchase and rent of land and buildings
- 13. Betting, Casinos, Lotteries
  - (a) The provision of any facilities for the placing of bets or the playing of games of chance.
  - (b) Lottery.

The following goods or services attract *zero rate* of value added tax:

1. Goods or services purchased or imported by His Majesty the King, Her Majesty the Queen, His Majesty the Crown Prince, and other members of the Royal Family.
2. Export of goods
  - (a) Goods exported outside the Kingdom of Nepal; or
  - (b) Goods shipped for use as stores on a flight to an eventual destination outside the Kingdom of Nepal; or
  - (c) Goods loaded for use as stores on aircraft to a destination outside the Kingdom of Nepal or as merchandise for sale by retail or supplied to persons in the course of such a flight.
3. Export of services
  - (a) A supply of services by a person resident in the Kingdom of Nepal to a person outside the Kingdom of Nepal and having no business establishment, agent, or legal representative acting on his behalf in the Kingdom of Nepal.
  - (b) Where goods are supplied on a hire or loan basis by a registered person resident in Nepal to a person resident outside the Kingdom of Nepal.
4. Imports of goods and services by accredited diplomats.

In accordance with Section 5 of the Value Added Tax Act, 1996, the exemptions to the VAT were equally available to imports and domestic products.

## ANNEX IV

Excise Taxes

S.No.	HS Code	Items	Excise duty
1.	1703.10	Can molasses	Rs. 25 per quintal
2.		Raw sugar in solid form	Rs. 55 per quintal
3.	2106.90.20	Betel/Areca (Pan Parag) nuts mixed with catechu and lime with or without nicotine	Rs. 165 per kg
4.	2206	Champagne, Perry mead etc.	Rs. 125 per litre
5	2204.29	Wine or fresh fruits not exceeding 17 per cent alcoholic content	Rs. 70 per litre
6.	2306.00	Cider	Rs. 70 per litre
7.	2203.00	Beer	Rs. 36 per litre
8.	2206.00	Chhyang	Rs. 15 per litre
9.	2207.20	Denatured spirits	Rs. 6 per litre
10.	2207.20	Thinner	Rs. 25 per litre
11.	2208.00	Industrial spirits with 57.38 to 80 per cent alcohol content by volume, to be used as raw material for spirituous drink	Rs. 70 per litre
12.	2207.10	Rectified spirit, silent spirit (ENA) used as raw material for alcoholic products with an alcoholic strength of 80 per cent or higher by volume	Rs. 25 per litre
13.	2208.20.90 2208.30.90 2208.50.90	<u>All alcoholic products</u> Up to strength of 40 UP Strength of 40 to 60 UP Strength 60 UP and higher (25 UP is equivalent to 43.04% 40 UP is equivalent to 34.43% 65 UP is equivalent to 20.08%)	Rs. 260 per LPL Rs. 150 per LPL Rs. 44 per LPL
14.	24.02.20	<u>All kinds of cigarette</u> i. Cigarettes up to 70 mm in length a) Without filter b) With filter ii. 70 mm to 75 mm (with filter) iii. 76 mm to 85 mm (with filter) iv. More than 85 mm (with filter)	Rs. 100 per M Rs. 285 per M Rs. 365 per M Rs. 500 per M Rs. 675 per M
15.	2402.10	All kinds of cigar	Rs. 2.25 per stick
16.	2403.10.10	Pipe tobacco	Rs. 350 per kg
17.	2403.99	Tobacco extracts and essences including chewing tobacco	Rs. 165 per kg
18.	2403.99	Raw chewing tobacco	Rs. 100 per kg
19.	2523	All kinds of cement	Rs. 100 per M.T.
20.	6901-5	All kinds of bricks	Rs. 500 per thousand (Equalizing duty)
21.	8702, 8703, 8704	<u>Motor Vehicles</u>  Car, jeep, vans Microbuses (11 to 14 seats) Double Cab Pick Up Three Wheeler Vehicles (Auto Rickshaw) Single Cab Pick Up Delivery Van Minibuses	32% 32% 32% 32% 15% 15% 4%
22.	3501	All kind of polythene bags	Rs. 15 per kg



**ANNEX V**

**Certification Chart**

Certification Chart No. of Quality Certification Mark issued for products	
Name of Product	No. of Industries
High Density Polythene Pipe	12
Biscuits	2
Ordinary Portland Cement	3
Mineral Water	3
Writing and Printing Paper	2
Toothpaste	1
Bitumen Emulsion	1
GI Wire	3
Deformed Steel Bar and Wires for Concrete Reinforcement	13
Paints 5 Types	2
Gun Metal Gate Valve	1
Soybean Oil and Vegetable Ghee – 2 types	8
Galvanized Mild Steel Pipe for Water Supply	3
PVC Cable	6
Instant Noodles	3
Hand Made Woollen Carpet	2
PVC Pipe for Drinking Water Supply	3
Dry Cell Battery	2
Beer	4
LPG Cylinder	1
Polythene Water Storage Tank	1
Textile	1
Tiles	1
Total	78

## ANNEX VI

**Export Duties as of July 2002**

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
15.07		Soyabean oil and its fractions, whether or not refined, but not chemically modified.	
	1507.10.00	-Crude oil, whether or not degummed	5
	1507.90.00	-Other	5
15.11		Palm oil and its fractions, whether or not refined, but not chemically modified.	
	1511.10.00	-Crude oil	5
	1511.90.00	-Other	5
15.13		Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.	
		-Coconut (copra) oil and its fractions:	
	1513.11.00	--Crude oil	2
	1513.19.00	--Other	2
		-Palm kernel or babassu oil and fractions thereof:	
	1513.21.00	--Crude oil	5
	1513.29.00	--Other	5
15.16		Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, reesterified or elaidinised, whether or not refined, but not further prepared.	
	1516.10.00	-Animal fats and oils and their fractions	5
	1516.20.00	-Vegetable fats and oils and their fractions	5
15.17		Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of Heading 15.16.	
	1517.90.00	-Other	5
17.03		Molasses resulting from the extraction or refining of sugar.	
	1703.10.00	-Cane molasses	5
	1703.90.00	-Other	5
25.05		Natural sands of all kinds, whether or not coloured, other than metal- bearing sands of Chapter 26.	
	2505.10.00	-Silica sand and quartz sands	Rs. 100 per cubic meter
	2505.90.00	-Other	Rs. 100 per cubic meter
25.16		Granite, porphyry, basalt, sandstone and other monumental or building stone, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.	
		-Granite:	
		--Crude or roughly trimmed	
	2516.21.10	-- Crushed stones and stone chips upto the size 2 inches for road building	Rs. 50 per cubic meter

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
	2516.21.20	-- Crushed stones and stone chips of a size more than 2 inches for road building	Rs. 100 per cubic meter
	2516.21.30	-- Boulders and uncrushed stones for road building	Rs. 300 per cubic meter
	2516.21.90	-- Mixture of sand and pebbles (chhary)	Rs. 100 per cubic meter
		--Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape:	
	2516.22.10	-- Crushed stones and stone chips upto the size 2 inches for road building	Rs. 50 per cubic meter
	2516.22.20	-- Crushed stones and stone chips of a size more than 2 inches for road building	Rs. 100 per cubic meter
	2516.22.90	-- Boulders and uncrushed stones for road building	Rs. 300 per cubic meter
25.17		Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling or for railway or other ballast, shingle and flint, whether or not heat-treated; macadam of slag, dross or similar industrial waste, whether or not incorporating the materials cited in the first part of the heading tarred macadam; granules, chippings and powder, of stones of Heading 25.15 or 25.16, whether or not heat-treated	
		-Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling or for railway or other ballast, shingle and flint, whether or not heat-treated :	
	2517.10.10	-- Crushed stones and stone chips upto the size 2 inches for road building	Rs. 50 per cubic meter
	2517.10.20	-- Crushed stones and stone chips of a size more than 2 inches for road building	Rs. 100 per cubic meter
	2517.10.90	-- Boulders and uncrushed stones for road building	Rs. 300 per cubic meter
		-Macadam of slag, dross or similar Industrial waste, whether or not incorporating the materials cited in Sub-heading 2517.10 :	
	2517.20.10	-- Crushed stones and stone chips upto the size 2 inches for road building	Rs. 50 per cubic meter
	2517.20.90	-- Crushed stones and stone chips of a size more than 2 inches for road building	Rs. 100 per cubic meter
	2517.30.00	-Tarred macadam	Rs. 50 per cubic meter
		-Granules, chippings and powder, of stones of Heading 25.15 or 25.16, whether or not heat-treated:	

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
	2517.41.00	--Of marble	6
	2517.49.00	--Other	6
25.19		Natural magnesium carbonate (magnesite); fused magnesia; dead-burned (sintered) magnesia, whether or not containing small quantities of other oxides added before sintering; other magnesium oxide, whether or not pure.	
	2519.10.00	-Natural magnesium carbonate (magnesite)	Rs. 200 per cubic meter
	2519.90.00	-Other	Rs. 200 per cubic meter
28.17	2817.00.00	Zinc oxide; zinc peroxide.	3
32.03		Colouring matter of vegetable or animal origin (including dyeing extracts but excluding animal black), whether or not chemically defined; preparations based on colouring matter of vegetable or animal origin as specified in note 3 to this Chapter:	
	3203.00.10	-- Cutch of acacia (Kachha)	Per Kg Rs. 2/-
	3203.00.20	-- Catechu of acacia (Kathas)	Per Kg Rs. 5/-
39.15		Waste, parings and scrap, of plastics.	
	3915.10.00	-Of polymers of ethylene	4
	3915.20.00	-Of polymers of styrene	4
	3915.30.00	-Of polymers of vinyl chloride	4
	3915.90.00	-Of other plastics	4
39.16		Monofilament of which any cross-sectional dimension exceeds 1mm, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked, of plastics.	
	3916.10.00	-Of polymers of ethylene	4
	3916.20.00	-Of polymers of vinyl chloride	4
	3916.90.00	-Of other plastics	4
39.17		Tubes, pipes and hoses, and fittings therefor (for example, joints, elbows, flanges), of plastics.	
	3917.10.00	-Artificial guts (sausage casings) of hardened rotein or of cellulosic materials	4
		-Tubes, pipes and hoses, rigid:	
	3917.21.00	--Of polymers of ethylene	4
	3917.22.00	--Of polymers of propylene	4
	3917.23.00	--Of polymers of vinyl chloride	4
	3917.29.00	--Of other plastics	4
		Other tubes, pipes and hoses:	
	3917.31.00	--Flexible tubes, pipes and hoses, having a minimum burst pressure of 27.6 Mpa.	4
	3917.32.00	--Other, not reinforced or otherwise combined with other materials, without fittings.	4
	3917.33.00	--Other, not reinforced or otherwise combined with other materials, with fittings.	4
	3917.39.00	--Other	4

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
	3917.40.00	-Fittings	4
39.18		Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in Note 9 to this Chapter.	
	3918.10.00	-Of polymers of vinyl chloride	4
	3918.90.00	-Of other plastics	4
39.19		Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.	
	3919.10.00	-In rolls of a width not exceeding 20 cm	4
	3919.90.00	-Other	4
39.20		Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.	
	3920.10.00	-Of polymers of ethylene	4
	3920.20.00	-Of polymers of propylene	4
	3920.30.00	-Of polymers of styrene	4
		-Of polymers of vinyl chloride:	
	3920.43.00	- Containing by weight not less than 6% of plasticiser	4
	3920.49.00	-- Other	4
		-Of acrylic polymers:	
	3920.51.00	--Of polymethyl methacrylate	4
	3920.59.00	--Other	4
		-Of polycarbonates, alkyd resins, polyallylestere or other polyesters:	
	3920.61.00	--Of polycarbonates	4
	3920.62.00	--Of polyethylene terephthalate	4
	3920.63.00	--Of unsaturated polyesters	4
	3920.69.00	--Of other polyesters	4
		-Of cellulose or its chemical derivatives:	
	3920.71.00	--Of regenerated cellulose	4
	3920.72.00	--Of vulcanised fibre	4
	3920.73.00	--Of cellulose acetate	4
	3920.79.00	--Of other cellulose derivatives	4
		-Of other plastics:	
	3920.91.00	--Of polyvinyl butyral	4
	3920.92.00	--Of polyamides	4
	3920.93.00	--Of amino-resins	4
	3920.94.00	--Of phenolic resins	4
	3920.99.00	--Of other plastics	4
39.21		Other plates, sheets, film, foil and strip, of plastics.	
		-Cellular:	
	3921.11.00	--Of polymers of styrene	4
	3921.12.00	--Of polymers of vinyl chloride	4
	3921.13.00	--Of polyurethanes	4
	3921.14.00	--Of regenerated cellulose	4
	3921.19.00	--Of other plastics	4
	3921.90.00	-Other	4
39.22		Baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics.	
	3922.10.00	-Baths, shower-baths and wash-basins	4

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
	3922.20.00	-Lavatory seats and covers	4
	3922.90.00	-Other	4
39.23		Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.	
	3923.10.00	-Boxes, cases, crates and similar articles	4
		-Sacks and bags (including cones):	
	3923.21.00	--Of polymers of ethylene	4
	3923.29.00	--Of other plastics	4
	3923.30.00	-Carboys, bottles, flasks and similar articles	4
		-Spools, cops, bobbins and similar supports:	
	3923.40.10	-- Video and audio cassettes without magnetic tape	4
	3923.40.90	-Other	4
	3923.50.00	-Stoppers, lids, caps and other closures	4
	3923.90.00	-Other	4
39.24		Tableware, kitchenware, other household articles and toilet articles, of plastics.	
		-Tableware and kitchenware:	
	3924.10.10	--Infant feeding bottles	4
	3924.10.90	--Other	4
	3924.90.00	-Other	4
39.25		Builders' wares of plastics, not elsewhere specified or included.	
	3925.10.00	-Reservoirs, tanks, vats and similar containers, of a capacity exceeding 300 L.	4
	3925.20.00	-Doors, windows and their frames and thresholds for doors	4
	3925.30.00	-Shutters, blinds (including venetian blinds) and similar articles and parts thereof	4
	3925.90.00	-Other	4
39.26		Other articles of plastics and articles of other materials or Headings 39.01 to 39.14.	
	3926.10.00	-Office or school supplies	4
	3926.20.00	-Articles of apparel and clothing accessories (including gloves)	4
	3926.30.00	-Fittings for furniture, coachwork or the like	4
	3926.40.00	-Statuettes and other ornamental articles	4
		-Other:	
	3926.90.10	--Bangles, tika, tikuli and beads	4
	3926.90.20	-- Plastic dye for shoe making	4
	3926.90.30	-- Plastic for laboratory equipment	4
	3926.90.40	-- Pet bottle (raw material for bottle)	4
	3926.90.90	--Other	4
44.01		Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs briquettes, pellets or similar forms.	
	4401.10.00	-Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs briquettes, pellets or similar forms.	200
		-Wood in chips or particles:	
	4401.21.00	--Coniferous	200

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
	4401.22.00	--Non-coniferous	200
	4401.30.00	-Sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	200
44.03		Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.	
	4403.10.00	-Treated with paint, stains, creosote or other preservatives	200
	4403.20.00	-Other coniferous	200
		-Other, of tropical woods specified In subheading Note 1 to this Chapter.	
	4403.41.00	-- Dark red meranti, light red meranti and meranti bakau	200
	4403.49.00	-- Other	200
		-Other:	
	4403.91.00	--Of oak ( <i>Quercus</i> spp.)	200
	4403.92.00	--Of beech ( <i>Fagus</i> spp.)	200
	4403.99.00	--Other	200
44.04		Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like; chipwood.	
	4404.10.00	-Coniferous	200
	4404.20.00	-Non-coniferous	200
44.05	4405.00.00	Wood wool; wood flour.	200
44.06		Railway or tramway sleepers (cross-ties) of wood.	
	4406.10.00	-Not impregnated	200
	4406.90.00	-Other	200
44.07		Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm.	
	4407.10.00	-Coniferous	200
		-Of tropical wood specified In subheading Note 1 to this Chapter:	
	4407.24.00	-- Virola, mahogany ( <i>swietenia</i> spp.), imbuia and balsa	200
	4407.25.00	-- Dark red meranti, right red meranti and meranti bakau	200
	4407.26.00	-- White lauan, white meranti, white seraya, yellow meranti and alan	200
	4407.29.00	-- Other	200
		-Other:	
	4407.91.00	--Of oak	200
	4407.92.00	--Of beech	200
	4407.99.00	--Other	200
44.08		Veneer sheets and sheets for plywood (whether or not spliced) and other wood sawn lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness not exceeding 6 mm.	
	4408.10.00	-Coniferous	70
		- Of tropical wood specified In subheading Note 1 to this Chapter:	
	4408.31.00	-- Dark red meranti, light red meranti and meranti bakau	70
	4408.39.00	-- Other	70
	4408.90.00	-Other	70
54.02		Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex.	
		-Other yarn, single, with a twist exceeding 50 turns per metre	

Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
		--Of nylon or other polyamides :	
	5402.51.10	-- Texturised yarn made by POY	2
	5402.51.90	-- Other	0.5
		--Of polyesters :	
	5402.52.10	-- Texturised yarn made by POY	2
	5402.52.90	-- Other	0.5
		--Other :	
	5402.59.10	-- Texturised yarn made by POY	2
	5402.59.90	-- Other	0.5
		-Other yarn, multiple (folded) or cabled:	
		--Of nylon or other polymides :	
	5402.61.10	-- Texturised yarn made by POY	2
	5402.61.90	-- Other	0.5
		--Of polyesters :	
	5402.62.10	-- Texturised yarn made by POY	2
	5402.62.90	-- Other	0.5
		-Other :	
	5402.69.10	-- Texturised yarn made by POY	2
	5402.69.90	-- Other	0.5
73.04		Tubes, pipes and hollow profiles, seamless or iron (other than cast iron) or steel.	
	7304.10.00	- Line pipe of a kind used for oil or gas pipelines	2
		- Casing, tubing and drill pipe, of a kind used in drilling for oil or gas:	
	7304.21.00	-- Drill pipe	2
	7304.29.00	-- Other	2
		- Other, of circular cross-section, or iron or non-alloy steel:	
	7304.31.00	-- Cold-drawn or cold-rolled (cold-reduced)	2
	7304.39.00	-- Other	2
		- Other, of circular cross-section, or iron or non-alloy of stainless steel:	
	7304.41.00	-- Cold-drawn or cold-rolled (cold-reduced)	2
	7304.49.00	-- Other	2
		- Other, of circular cross-section, of other alloy steel:	
	7304.51.00	-- Cold-drawn or cold-rolled (cold-reduced)	2
	7304.59.00	-- Other	2
	7304.90.00	- Other	2
73.05		Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, or iron or steel.	
		- Line pipe of a kind used for oil or gas pipelines:	
	7305.11.00	-- Longitudinally submerged arc welded	2
	7305.12.00	-- Other, longitudinally welded	2
	7305.19.00	-- Other	2
	7305.20.00	- Casing of a kind used in the drilling for oil or gas	2
		-Other, welded:	
	7305.31.00	-- Longitudinally welded	2
	7305.39.00	-- Other	2
	7305.90.00	- Other	2



Heading No.	Sub heading No.	Description of Article	Current Applied Rate (in %)
1	2	3	4
73.06		Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), or iron or steel.	
	7306.10.00	- Line pipe of a kind used for oil or gas pipelines	2
	7306.20.00	- Casing and tubing of a kind used in drilling for oil or gas	2
	7306.30.00	- Other, welded, of circular cross-section of iron or non-alloy steel	2
	7306.40.00	- Other, welded, of circular cross-section of stainless steel	2
	7306.50.00	- Other, welded, of circular cross-section of other alloy steel	2
	7306.60.00	- Other, welded, of non-circular cross-section	2
	7306.90.00	- Other	2
73.07		Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.	
		-Cast fittings:	
	7307.11.00	-- Of non-malleable cast iron	2
	7307.19.00	-- Other	2
		- Other of stainless steel:	
	7307.21.00	-- Flanges	2
	7307.22.00	-- Threaded elbows, bends and sleeves	2
	7307.23.00	-- Butt welding fittings	2
	7307.29.00	-- Other	2
		- Other:	
	7307.91.00	-- Flanges	2
	7307.92.00	-- Threaded elbows, bends and sleeves	2
	7307.93.00	-- Butt welding fittings	2
	7307.99.00	-- Other	2
74.08		Copper wire.	
		-Of refined copper:	
	7408.11.00	-- Of which the maximum cross-sectional dimension exceeds 6 mm	3
	7408.19.00	--Other	3
		- Of copper alloys:	
	7408.21.00	-- Of copper-zinc base alloys (brass)	3
	7408.22.00	-- Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver)	3
	7408.29.00	-- Other	3
94.03		Other furniture and parts thereof.	
	9403.70.00	- Furniture of plastics	4

[ DRAFT DECISION

ACCESSION OF THE KINGDOM OF NEPAL

*Decision of [...]*

The Ministerial Conference,

*Having regard to* paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), and the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93),

*Conducting* the functions of the Ministerial Conference pursuant to paragraph 1 of Article IV of the WTO Agreement,

*Taking note* of the application of the Kingdom of Nepal for accession to WTO Agreement dated 17 February 1997,

*Noting* the results of the negotiations directed toward the establishment of the terms of accession of the Kingdom of Nepal to the WTO Agreement and having prepared a Protocol on the Accession of the Kingdom of Nepal,

*Decides* as follows:

1. The Kingdom of Nepal may accede to the WTO Agreement on the terms and conditions set out in the Protocol annexed to this Decision.

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**DRAFT PROTOCOL**  
**ON THE ACCESSION OF THE KINGDOM OF NEPAL**

Preamble

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), and the Kingdom of Nepal,

Taking note of the Report of the Working Party on the Accession of the Kingdom of Nepal to the WTO Agreement reproduced in document WT/ACC/NPL/16, dated 28 August 2003 (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of the Kingdom of Nepal to the WTO Agreement,

Agree as follows:

**PART I - GENERAL**

1. Upon entry into force of this Protocol pursuant to paragraph 8, the Kingdom of Nepal accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which the Kingdom of Nepal accedes shall be the WTO Agreement, including the Explanatory Notes to that Agreement, as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 153 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph 153 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by the Kingdom of Nepal as if it had accepted that Agreement on the date of its entry into force.
4. The Kingdom of Nepal may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure was recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

**PART II - SCHEDULES**

5. The Schedules reproduced in Annex I to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to the Kingdom of Nepal. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

### PART III - FINAL PROVISIONS

7. This Protocol shall be open for acceptance, by signature or otherwise, by the Kingdom of Nepal until 31 March 2004.

8. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by the Kingdom of Nepal.

9. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance by the Kingdom of Nepal thereto pursuant to paragraph 7 to each Member of the WTO and to the Kingdom of Nepal.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at [place] this [... date ] of [.....month] two thousand and three, in a single copy in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one of these languages.

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ANNEX I

**SCHEDULE CLVII – THE KINGDOM OF NEPAL**

*Authentic only in the English language.*

*(Circulated in document WT/ACC/NPL/16/Add.1)*

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**SCHEDULE OF SPECIFIC COMMITMENTS ON SERVICES  
LIST OF ARTICLE II EXEMPTIONS**

*Authentic only in the English language.*

*(Circulated in document WT/ACC/NPL/16/Add.2)]*

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