

# **Compilation of Bilateral and Multilateral Treaties and Agreements on Trade and Trade Related Aspects**



**Compilation By**  
**Trade and Export Promotion Center**  
**Pulchowk, Lalitpur**  
**2025**

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**TRADE AND PAYMENTS AGREEMENTS BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

**(Trade and Payments and Transit Agreements with Protocol signed in Kathmandu on April 2, 1976  
with Immediate effect**

His Majesty's Government of Nepal and the Government of the people's Republic of Bangladesh  
(hereinafter referred to as the "Contracting Parties").

Being conscious of the need to promote and strengthen the trade and economic co-operation on the basis of  
equality and mutual benefit.

Being desirous of facilitating movements of goods to and from their respective countries, have agreed as  
follows:

**Article I**

The Contracting Parties shall take all measures necessary for developing trade between the two countries  
and agree to promote exchange of goods which one country needs from the other.

**Article II**

The two Contracting parties shall accord each other the most favoured nation treatment in respect of issue  
of licenses, customs formalities, customs duties and other taxes, storage and handling charges, fees and  
charges of any kind levied on export and import of goods to be exchanged between the two countries.

**Article III**

The provision of article II shall not, apply to the grant or continuance of any:

Advantage accorded by either Contracting Party to facilitate the border trade

- a. Preferences or advantages accorded by either Contracting Party to any third country before the  
date entry into force of this Agreement,
- b. Advantages resulting from any Custom union or from an Agreement on free trade zone or from  
regional or multilateral arrangements to which either Contracting Party is or may be the member.

**Article IV**

The two Contracting Parties shall conduct the exchange of goods in accordance with the schedules A and B  
annexed to this Agreement and within the framework of their respective laws, regulation and procedures  
relating to import and export of goods. This shall not, however, preclude the Contracting Parties to conduct  
the exchange of goods not enumerated in the said schedules.

**Article V**

Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such restrictions as are necessary for the purpose of:

- a. Protecting public morals
- b. Protecting human, animal and plant life.
- c. Safeguarding national treasures.
- d. Safeguarding the implementation of laws relating to the import and export of gold and silver bullion.
- e. Safeguarding such other interests as may be mutually agreed upon.

#### **Article VI**

All payments in connection with exportation or importation of goods as well as other payments shall be effected in any convertible currency unless otherwise agreed upon.

#### **Article VII**

The exchange of goods between the Contracting Parties shall take place through the means of transportation and routes as may be mutually agreed upon.

#### **Article VIII**

For facilitation the movement of goods, the two Contracting parties agree to provide necessary number and means of transportation, warehousing and handling facilities at point or points of entry, exit or breakpoints, on such terms as may be mutually agreed upon for the storage and speedy movement of trade cargo.

#### **Article IX**

The movement of goods between the two Contracting parties shall be governed by the procedures as laid down in the protocol hereto annexed. Except in case of failure to comply with the prescribed procedure goods to be exported to or imported from either Contracting Party shall not be subject to unnecessary delays or restriction.

#### **Article X**

The Contracting Parties shall consult with each other as and when necessary and also review the implementation of this Agreement.

For this purpose, representatives of the Contracting parties shall meet on request by either Party at a place and time to mutually agreed upon but not later than sixty days after the date of request.

#### **Article X**

This Agreement shall come into force from the date of its signing and shall remain valid for a period of three years. Thereafter, it shall to continue remain valid for further periods of three years subject to such modifications as may be mutually agreed upon, unless terminated by either Party by giving six months notice in writing to the other before the expiry of the extended period.

Done in Kathmandu on Twentieth day of Chaitra, Two Thousand Thirty-two Bikram Sambat corresponding to April Second, One Thousand Nine hundred and Seventy six in two original copies in English language.

On behalf of  
His Majesty's Government of  
Nepal  
S/d  
(Dr. Harka Bahadur Gurung)

On behalf of  
The Government of the People's  
Republic of Bangladesh  
S/d  
(Dr. Mirza Nurul Huda)

**SCHEDULE "A"**

**Exports from Nepal to Bangladesh**

**A. Primary Commodities**

- 1. Rice, Wheat and other cereals
- 2. Pulses
- 3. Mustard seeds and oil
- 4. Other oilseeds and oilcakes

**B. Semi-manufactures and manufactures**

- 5. Timber and Wood products
- 6. Boulders and Shingles
- 7. Catechu
- 8. Bidi and Tobacco [Image]
- 9. Big cardamom, ginger and chilies
- 10. Medicinal plants and herbs
- 11. Wool
- 12. Bristles
- 13. Cheese and ghee
- 14. Strawboard
- 15. Synthetic textiles
- 16. Stainless steel utensils
- 17. Woolen carpets
- 18. Curios and Handicrafts

**SCHEDULE "B"**

**Exports from Bangladesh to Nepal**

**A. Primary Commodities**

- 1. Raw Cotton
- 2. Tea
- 3. Fish-fresh, dried and salted

**B. Semi-manufactures and manufactures**

1. Cotton threads and textiles
2. Hosiery goods
3. Specialized textile and handlooms products such as bed cover, pillowcases, bed sheets etc.
4. Brass and copper sheets
5. Newsprint
6. Paper and paper board
7. Pharmaceuticals
8. Chemical
9. Soaps and cosmetics
10. Ware and cable
11. Electric goods and batteries
12. Tents and canvass
13. Cycle tire and tubes
14. Coir products
15. Jute Carpets
16. Feature films
17. Fertilizers and insecticides

**PROTOCOL TO THE TRADE AND PAYMENTS AGREEMENTS  
BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

With reference to Article VII and IX

With regard to the points of entry, exit procedures, storage and other related facilities for bilateral trade between Nepal and Bangladesh the points of entry, exit, procedure and facilities stipulated in the Protocol to the Transit Agreement signed between His Majesty's Government of Nepal and Government of the People's Republic of Bangladesh for Nepal trade with third countries shall apply mutatis mutandis.

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**TRANSIT AGREEMENT  
BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC BANGLADESH**

His Majesty's Government of Nepal and the Government of People's Republic of Bangladesh (hereinafter referred to as the "Contracting Parties").

Being desirous of promoting the trade between their two countries two countries and facilitating the transit of trade with third countries.

**Article I**

The Contracting Parties shall accord "traffic-in-transit" Freedom of transit across their respective territories through routes mutually agreed upon.

**Article II**

The term "traffic-in-transit" means the passage of goods including unaccompanied baggage across the territory of a Contracting Party when the passage in a portion of a complete journey which begins or terminates within the territory of the other contracting Party. The transshipment warehousing, breaking bulk and change in the mode of transport of such goods as well as the assembly, disassembly or reassembly of machinery and bulky goods shall not render the passage of goods outside the definition of "traffic-in-transit" provided any such operation is undertaken within the framework of mutually agreed procedure solely for the convenience of transportation.

**Article III**

Traffic-in-transit shall be exempt from customs duty and from all transit duties or other charges except reasonable charges for transportation and such other charges as are commensurate with the costs of services rendered in respect of such transit.

**Article IV**

For the convenience of traffic in transit Government of the People's Republic of Bangladesh agrees to provide the points of entry, exit or breakpoints as well as storage and port facilities including warehouses or transit sheds for the speedy movement of the transit cargo on such terms as may be mutually agreed upon.

**Article V**

The procedure to be followed for traffic-in-transit to or from third countries is laid down in the protocol hereto annexed. Except in case of failure to comply with the procedure prescribed such traffic-in transit shall not be subject to avoidable delays or restrictions.

**Article VI**

In order to enjoy the freedom of the High Seas, merchant ships sailing under the flag of Nepal shall be accorded, subject to Bangladesh laws and regulations, treatment no less favourable than that accorded to ships of any other foreign country in respect of matters relating to navigation, entry into and departure from the ports, use of ports and harbour facilities, as well as loading and unloading dues, taxes and other levies, except that provisions of this Article shall not extend to coastal trade.

**Article VII**

Nothing in this agreement shall prevent either Contracting Party from taking any measure which may be necessary for the protection of its essential security interests or in pursuance of general international convention, whether already in existence or concluded hereafter, to which it is a party.

**Article VIII**

The Contracting Parties shall take appropriate measures to ensure that the provisions of this Agreement are effectively and harmoniously implemented and the consult with each other periodically so that such difficulties as may arise in its implementation are resolved satisfactorily and speedily.

**Article IX**

This Agreement shall come into force from the date of its signing and shall remain valid for a period of five years. Thereafter, it shall be continue to remain valid for further periods of five years subjected to such modifications as may be mutually agreed upon, unless terminated by either Party by giving six months notice in writing to the other before the expiry of the extended period.

Done in Kathmandu on twentieth day of Chaitra two thousand thirty two Bikram Sambat corresponding to April second, one thousand nine hundred and seventy six in two original copies in English language.

On behalf of His Majesty's Government of Nepal	On behalf of The Government of the People's Republic of Bangladesh
S/D	S/D
(Dr. Harka Bahadur Gurung	(Dr. Mirza Nurul

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**PROTOCOL TO THE TRANSIT AGREEMENT  
BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

I. With reference to Article I:

1. It is agreed that the Government of the People's Republic of Bangladesh shall designate the following points of entry and exit for movement of traffic-in-transit through her ports and other territory, by all means transportation:

- a. Khulna-Chalna Port
- b. Chitagong Port
- c. Biral
- d. Banglabandh
- e. Chilhati
- f. Benapole

## **II. With reference to Article IV:**

1. The Government of the people's Republic of agrees to provide warehouses, transit sheds and open space at the ports and other agreed points of entry and exit referred to in clause I above for the storage, handling and breaking bulk of traffic-in-transit.

2. The above mentioned warehouses, transit sheds and open space shall be given on long term lease by the Government of the People's Republic of Bangladesh to His Majesty's Government of the People's Republic of Bangladesh to His Majesty's Government of Nepal on such terms and conditions as may be mutually agreed upon.

3. With regard to the points of entry and exit in Nepal for her trade with third countries through Bangladesh, His Majesty's Government of Nepal agrees to authorize all such points which she has been using to conduct her trade with third countries through India.

4. The Truck and other vehicles owned or hired by the owner of goods or his agent shall be allowed to carry the traffic-in-transit, other than those mutually agreed prohibited cargo, by road from the agreed point of entry to a port, transshipment or breaking point in Bangladesh and Previous.

5. The port facilities such as the free period of storage, port charges and clearance procedures in respect of traffic-in-transit at the port of Bangladesh shall not be less favorable than the prevailing rates and practices therein.

6. Transit Liaison Officers from Nepal shall be stationed, if necessary, at the major ports of Bangladesh for the convenience of the traffic-in-transit and to facilitate the smooth and speedy movement of traffic-in-transit.

## **III. With reference to Article V:**

A. Customs and other procedures in respect of goods entering Bangladesh for transit to Nepal by land.

1. On arrival of goods in Bangladesh the owner of the goods or his agent shall at the time of entering them at the Customs House:

- a. Declare that the goods are intended for transit to Nepal:
- b. Furnish in six copies the invoice of the goods as declared in prescribed form specifying therein the mode of transport and the exit point through which the goods are intended to be taken out of Bangladesh territory.
- c. On receipt of the invoice, the Bangladesh Customs shall allow the onward movement of the goods to Nepal after the necessary notings. The Bangladesh Customs shall retain the

original copy of the invoice and return the remaining five copies, duly certified by them, to the owner of the goods or his agent.

- d. The goods while transit shall not be subjected to the domestic laws of People's Republic of Bangladesh including customs duty, sales taxes and other local taxes or charges to the extent admissible under International law and practices in this regard. However, in case of any loss of the goods in transit, the Bangladesh Customs shall recover the customs duty and sales taxes from the carrier of the goods and may also take penal measures against the carrier where negligence or malafide intention is proved.
- e. The owner of the goods or his agent shall present the five certified copies of the invoice to a Customs Inspector In-charge of the jetty where the goods have been landed from the importing vessels. The Customs Inspector-In-Charge will identify the packages and allow the goods to be loaded under his supervision in railway wagons or trucks as the case may be. In case of railway transport, the wagons made available for the carriage of good in transit shall be sealed by the Customs and railway authorities. In case of road transport, the tarpaulin-covered trucks shall be sealed by the Customs authorities. Where heavy article such as machinery, iron and steel etc. are carried in open wagons or truck sealing may be dispensed with.
- f. If the Customs Inspector In-charge finds any package damaged, the content will be surveyed in the presence of the owner of the goods or his agent and the goods will be released for loading on trucks or railway wagons after the customs sealing of such packages. The damages or short landings will be noted in all the certified copies of invoices presented to the Customs Inspector In-charge.

2. Once the goods are loaded on railway wagons or trucks, the Customs Officer In-charge shall initial and return the five copies of the invoice to the owner of the goods or his agent who, in turn, would present them to the railway authorities or to the transport carrier operating the trucks as the case may be. The railway authorities or the transport carrier operating the trucks will make necessary endorsement in all the copies of the invoice in token of receipt of the goods, The duplicate and triplicate copies shall be carried in sealed cover by the guard of the train or the driver of the truck to be submitted to a Customs Officer at the point of exit. The remaining three copies shall be handed over to the owner of goods or his agent.

3. On arrival of the goods at the point of exit the customs authorities shall receive the sealed cover containing duplicate and triplicate copies from the guard of the train or driver of the trucks as well as the three copies of the invoice from the owner of the goods or his agent. The customs authorities shall check the customs seal on railway wagon or the truck on which the goods have been transported but where sealing has been dispensed with, check the identity of the goods. If customs seal are found intact. The wagons or truck will be cleared for onward journey beyond Bangladesh. Necessary entries shall be made in the five copies of the invoice by the customs authorities.

4. When the transit procedure is completed the customs authorities shall retain the quadruplicate of the invoice for its record and shall send Previous the triplicate copy by registered post to the Customs House at the point of goods to Nepal.

The Duplicate copy as well as he remaining two copies of the invoice shall be handed Previous after the necessary endorsement to the owner of the goods or his agent in order to facilitate the further movement of the transit goods to Nepal.

5. If there is transshipment en-route or change in the mode of transport e.g. rail to road or vice versa the seals on the wagons or trucks will be checked by the Customs Inspector and if found intact he will allow the transshipment in his presence. The wagons or trucks will be resealed and cleared for journey.

6. All the transshipment en-route or change in the mode of transport or during transit of goods by wagons or trucks if customs seals are not found intact physical examination of the entire broken or damaged cargo will be done and result recorded in the duplicate and triplicate copies carried by the guard of the train or driver of the truck under sealed cover. The goods will be allowed to move towards the point of exit only after resealing.

7. At the point of exit, in case any goods in transit are found in excess or short over the recorded quantity at the point of entry or transshipment or break points these goods shall be allowed to proceed further after necessary modification or remarks are made in all the copies of the invoice provided the customs seals are found intact.

In case the customs seals on wagons or trucks are found not intact at the points of exit, physical verification of the entire broken and damaged cargo shall be done and survey recorded in all the five copies of the invoice. Thereafter the goods shall be allowed to proceed further after resealing of the wagons or trucks.

B. Procedure in respect of goods from Nepal moving by land through Bangladesh in transit to third country. The provisions of Part III A above shall apply mutatis mutandis to goods arriving by land from Nepal and meant for onward transmission through Bangladesh to a third country.

C. Procedure in respect of goods entering Bangladesh for onward transmission to Nepal by air.

Where goods routed through Bangladesh to Nepal by air arrive at a customs airport for onward transmission such goods shall be transhipped to another aircraft under customs supervision. The owner of the goods or his agent shall not be required to comply with any further customs formalities other than those normally applicable in such cases.

1. Goods arriving in Bangladesh by land or by sea and meant for onward transmission to Nepal by air shall be forwarded from the place of entry to the airport of exit in accordance with the procedure set out in section A above. The requirement of sealing the railway wagons or trucks may be dispensed with in the case of such cargo subject to the condition that the individual packages are sealed with customs seals and moved from one mode of transport to another under customs supervision.

D. Procedure in respect of goods entering Bangladesh by air from Nepal for onward transmission to a third country. The provisions of part (c) above shall apply mutatis mutandis to goods entering Bangladesh by air from Nepal for onward transmission to a third country.

E. Procedure in respect of goods entering or leaving Bangladesh by Post Parcel or Railway Parcel.

The provisions of Part (c) and Part (d) above shall apply mutatis mutandis to transit goods entering or leaving Bangladesh by Post parcel or Railway Parcel or of Small Cargo Booking, for outwards transmission to third country or to Nepal.

F. Procedure in respect of payment for traffic-in-transit.

The procedures regulating to the payments in connection with the movement and port clearance of transit goods in Bangladesh may be mutually determined by the Central Banks of the two Countries, it necessary.

**TRADE AND PAYMENTS AGREEMENTS BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BUGARIA**

His Majesty's Government of Nepal and the Government of the People's Republic of Bulgaria (hereinafter referred to as the contracting parties).

Being desirous of promoting economic and commercial relations between Nepal and People's Republic of Bulgaria on the basis of equality and mutual benefit.

Have agreed as follows:

**Article I**

The two contracting parties shall take all appropriate measures to facilitate and develop the trade between their two countries and agree to promote the exchange of goods between them.

**Article II**

Trade between the two countries shall be based as far as possible on the principle of equilibrium and shall be carried out by their authorized juridical and physical persons.

**Article III**

The contracting parties shall grant to each other the most favoured nation treatment in all matters relating to the conduct of trade between them.

This provision however shall not apply to:

- a. Advantages which are or may hereafter be accorded by either contracting party to contiguous countries with the purpose of facilitating frontier trade;
- b. Advantage arising from customs unions or other agreements on customs free trade;
- c. Advantages accorded by multilateral economic agreements relating to international commerce.

**Article IV**

The exchange of goods between the two countries shall be conducted in accordance with Annexure "A" and Annexure "B" together with their values which may be mutually agreed upon as and when necessary. However this Agreement shall not preclude the trade in commodities other than those mentioned in aforesaid Annexure "A" and "B".

The trade between the two countries shall be conducted in accordance with their respective laws, regulations and procedures relating to importation and exportation of goods.

**Article V**

The contracting parties shall accord to each other necessary facilities in connection with the organization of or participation in trade exhibitions and fairs.

#### **Article VI**

All payments in connection with exportation and importation of goods between the two countries shall be affected in any freely convertible currency.

#### **Article VII**

The contracting parties to explore ways and means and take necessary steps for the most efficient and economical transportation of goods and commodities between the two countries.

#### **Article VIII**

Nothing in this agreement shall be constructed to prevent the adoption and enforcement by either party of measures necessary to protect public morals, human animal or plant life or health and for the security of its own territory.

#### **Article IX**

In order to further develop their economic and commercial relations, the contracting parties shall consult with each other on all such matters as are of mutual interests in the implementation of this Agreement. The consultation shall be held at such place and intervals as may be mutually agreed upon.

#### **Article X**

This Agreement shall be valid for a period of five years. It shall be extended thereafter for addition periods of two years unless either contracting party notifies the other of its intention to terminate this Agreement six months prior to the expiration of each period of two years.

#### **Article XI**

This Agreement shall come into force provisionally from the date of signature and finally from the day of the receipt of the exchange of note informing each other about its approval by the competent authorities of either contracting party.

#### **Article XII**

- A. This Agreement after its coming into force shall replace the Trade and Payments Agreement signed between the contracting parties on 8<sup>th</sup> October 1969.
- B. After the coming into force of this Agreement the outstanding balance remaining out of the agreement dated 8<sup>th</sup> Oct., 1969 between the contracting parties shall be settled according to the exchange of letters between them.

Done and signed at Kathmandu of Fourth Day of July one thousand nine hundred and eighty in two original texts in the English language, both text being equally authentic.



On behalf of  
His Majesty's Government of  
Nepal S/d  
**(Dr. Ram Prasad Rajbahak)**  
Minister of State  
For Industry and Commerce

On behalf of  
The Government of the People's  
Republic of Bulgaria Sd/  
**(Georgi Vutev)**  
First Deputy Minister  
For Foreign Trade

## LIST "A"

### Goods available for exports from Bulgaria to Nepal

1. Metal working machines and machine tools, Junctions and spare parts.
2. Forging and aggregate machines
3. Building and ceramic machines.
4. Bridge and tower cranes
5. Electric trucks, motor trucks, components and Junctions.
6. Mopeds and components.
7. Electric hoists, Junctions and components.
8. Internal combustion engines, component and ancillaries thereof
9. Tractors and earth cultivating machines.
10. Agricultural machines.
11. Water pumps, irrigation and sprinkling installations.
12. Tonga baling machines and tobacco fermentation lines.
13. Machines and equipment for the chemical industry.
14. Hydraulic and other generator sets.
15. Special power and measuring transformers.
16. Explosion-proof apparatus.
17. Special apparatus
18. Electric porcelain.
19. Electric insulation materials.
20. Computer.
21. Signal, electronic and laboratory apparatus.
22. TV. Sets.
23. Transistor radios and radio receivers.
24. Tape recorders.
25. Radio telephones.
26. Medical electric apparatus.
27. Technical laboratory appliances.
28. Dentist's equipment.
29. Operating and gynaecological tables.
30. Ball, ruler and conical bearings.
31. Cables and insulated conductors.
32. Steel; steel plates, forgings, bars, etc.
33. Zinc
34. Lead
35. Urea-fertilizer grade and other fertilizers.
36. Ammonium hydroxide

37. Sodium nitrate.
38. Potassium hydroxide.
39. Ammonium bicarbonate.
40. Light magnesium carbonate.
41. Litharge
42. Minium
43. Ammonium chloride.
44. Borax
45. Urotropin.
46. Gas sulphur
47. Polyethylene
48. Caprolactum, monomer and polymer chips.
49. Separators.
50. Peppermint oil
51. Menthol in crystals
52. Analgin
53. Tetracycline
54. Sodium benzoate
55. Oxytetracyclin
56. Phenacilin
57. Terpinol
58. Lavender oil
59. Medicines and other products
60. Tooth paste
61. Cosmetics and perfumery.
62. Aniline dyes and varnishes
63. Dyes intermediates
64. Photographic sensitive paper.
65. Cinematographic and scientific
66. Films exposed.
67. Books, pictures, postcards, slides, etc.
68. White cheese, khashkaval yellow cheese/cassein, etc
69. Hops
70. Pectin
71. Phenol
72. Acetone
73. Toluene
74. Salt of lemon
75. Liquid glucose
76. Haberdasher
77. Decorations, handicrafts, ceramics, wrought copper, bronze iron
78. Copper sheets
79. Brass sheets
80. Bronze sheets
81. Lorries

#### LIST "B"

## Goods available for export from the Kingdom of Nepal to the People's Republic of Bulgaria

1. Minerals
2. Manufactured products:
  - Jute goods
  - Stainless steel utensils
  - Synthetics fabrics
  - Carpets
  - Gorkha Knife (khukuri)
  - Straw board
  - Cigarettes
  - Curios
  - Handicrafts
3. Foodstuffs:
  - Dairy products (cheese)
  - Canned fruit)
  - Maize, Rice
  - Pulses, linseed, rape seed
4. Beverages:
  - Spirits
5. Other raw materials:
  - Raw jute
  - Wool
  - Timber
  - Medicinal herbs
  - Oil seeds
  - Sole leather
  - Mica
  - Skins
  - Bristle
  - Musk
6. Miscellaneous:
  - Readymade garments
  - Jute waste
  - Wool waste
  - Human hair
  - Yak hair and tails

**TRADE AND PAYMENTS AGREEMENTS BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA**

His Majesty's Government of Nepal and the government of the People's Republic of China (hereinafter referred to as the Contracting Parties) for the purpose of further developing the friendship between the two countries and strengthening the economic and trade relations between the countries, including the traditional trade relations between Nepal and Tibet Autonomous Region of China, have on the basis of equality and mutual benefit agreed as follows: -

**Article I**

The two Contracting Parties shall take all appropriate measures to develop the trade between their two countries and agree to promote the exchange of goods between them. The two Contracting Parties, in addition to trade overseas, shall provide each other all possible facilities for the further consolidation and development of the traditional trade overland between the two countries.

**Article II**

The exchange of goods between the two countries shall be conducted in accordance with their respective laws, regulations and procedures regarding import and export and foreign exchange regulations in force from time to time in the two countries.

**Article III**

The exchange of goods between the two countries shall be carried out according to List "A" (China's exports to Nepal) and List "B" (Nepal's exports to China) attached to this Agreement. However, this Agreement does not preclude the trade in commodities not mentioned in the annexed Lists "A" and "B" as referred to above. The two Contracting Parties shall provide each other facilities in respect of the issuance of import and export Article IV licences for the commodities traded between the two countries.

**Article IV**

The trade between the two countries shall be based and regulated as far as possible on the principle of equilibrium.

**Article V**

The trade between two countries may be conducted through the state trading organizations of Nepal and China, as well as other importers and exporters of the two countries.

**Article VI**

The two Contracting Parties shall grant to each other the most favoured nation treatment in all matters relating to customs duties and other taxes, fees and charges to be levied on exportation and importation of commodities and to the rules, formalities and charges of customs management.

This provision, however, shall not apply to:

1. advantages resulting from any customs union or other agreement on customs free trade to which wither contracting Parties is or may become in the future a party:
2. advantages accorded by multilateral economic agreement relating to international commerce.

#### **Article VII**

In order to develop the trade overland between the two countries the two Contracting Parties agree to utilize the following trading points along their frontier:

1. Kodari/Nyalam
2. Rasuwa/Kyerong
3. Yari (Humla)/Purang

#### **Article VIII**

With a view to improve the economic life of the border inhabitants, the two Contracting Parties agree that he border inhabitants of the two countries, may, within area of 30 Kilometers from the border, carry on the traditional trade on barter basis, which shall not be subjected to the limitation of the above-mentioned provisions.

#### **Article IX**

The trade overland between the two countries shall be on the basis of C & F at the point of transfer of the goods over the border between Nepal and the Tibet Autonomous Region of China, or such other places in the vicinity of the border as may be determined by the local authorities concerned.

#### **Article X**

The trade overseas between the two countries shall be, in the case of export from China, on the basis of C.I.F. Calcutta or other port on which both Parties have agreed, or of F.O.B. China's port; and in the case of export from Nepal, on the basis of F.O.B. Calcutta or other port on which both Parties have agreed, or of C.I.F. China's port.

#### **Article XI**

Nothing in this Agreement shall be construed to derogate from any obligations of either of the Contracting Parties under any international convention or agreement, resolution, including those relating to landlocked countries entered in to by either of the Contracting Parties, before or after the conclusion of this Agreement.

#### **Article XII**

At the request of either Contracting Party, their representative shall meet to supervise the implementation of this Agreement and settle problems which may arise there-from through friendly consultations.

#### **Article XIII**

The payments of trade overseas between the two countries shall be made in freely convertible currency.

The payments of the trade overland between the two countries shall remain to be made in the traditional customary way.

**Article XIV**

This Agreement, which shall replace the earlier Trade and Payments Agreements signed between the two Contracting Parties on 31<sup>st</sup> day of May 1974, remain in force for a period of three years. If neither party notifies the other in writing to terminate Agreement at least six months before its expiration, the validity shall be automatically extended for another three years and further extensions shall be effected in a similar manner.

The present Agreement is concluded in Kathmandu on 22<sup>nd</sup> day of November, 1981 in duplicate in the Nepalese, Chinese and English languages, all the three texts being equally authentic.

Sd  
For His Majesty's Government of  
Nepal

Sd  
For the Government of the  
People's Republic of China

**LIST "A"**

**CHINA'S EXPORTS TO NEPAL**

**China's overseas exports to Nepal.**

1. Textiles
2. Garments
3. Light industrial products
4. Food stuffs
5. Cement
6. Metals and steel products
7. Lubricant oil
8. Chemicals
9. Others

**Exports from the Tibet Autonomous Region of China to Nepal.**

1. Raw wool
2. Living sheep
3. Salt
4. Yak and Yak tails
5. Carpets
6. Others

**LIST "B"**

## NEPAL'S EXPORTS TO CHINA

### Nepal's Exports to China

1. Jute
2. Sugar
3. Timber
4. Tanned sole leather
5. Medicinal Herbs
6. Tea
7. Other

### Nepal's exports to the Tibet Autonomous Region of China

1. Food grains
2. Wheat Flour
3. Sugar
4. Jute bags and Jute cloth
5. Tobacco
6. Dried chillies
7. Candles
8. Dyestuffs
9. Soaps
10. Timber
11. Cross bred yak (male)
12. Others

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**AGREEMENT BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA  
ON  
TRADE AND OTHER RELATED MATTERS  
BETWEEN  
NEPAL AND THE TIBET AUTONOMOUS REGION OF CHINA**

His Majesty's Government of Nepal and the Government of the People's Republic of China (hereinafter referred to as the "two Parties");

Being desirous of further developing the friendly and good-neighborly relations between the two countries;

With a view to enhancing the traditional friendly relations between the peoples of the two countries, and particularly between the people of Nepal and the inhabitants of the Tibet Autonomous Region of China on the basis of the Five Principles of mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence;

After friendly consultations, have agreed on the following:

**Article I**

The two Parties agree that the movement of persons between Nepal and the Tibet Autonomous Region of China shall be governed by the following provisions:

1. Diplomatic personnel, civil servants and other nationals (except those covered by paragraphs 3, 5, and 6 of this Article and paragraph 3 of Article VII) of either country who wish to travel to the other country shall hold valid passports issued by their own country and visas issued by the other country. Nationals of either country entering Nepal or the Tibet Autonomous Region of China via a third country shall also hold valid passports issued by their own country and visas issued by the other country.
2. Traders of either country customarily and specially engaged in trade between Nepal and the Tibet Autonomous Region of China (other than those persons covered by paragraph 3 of this Article), their spouses, dependent children and attendants shall hold valid passports issued by their own country and visas issued by the other country. They may be given visas for a single, double, multiple entry valid for one year, depending on the situation and their needs.
3. Inhabitants of the border districts as specified by either Party (hereinafter referred to as "border inhabitants") who wish to travel to the border districts of the other country for border trade including small fairs or border trade in small volumes or petty trade, or for visiting relatives or friends shall hold exit-entry passes of the



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border districts (Details of such passes shall be determined by the two Parties through diplomatic channels and implemented duly) issued by the competent authorities and accept the check-up by the Frontier Inspection Station or Border Check-Post, or the first encountered duly authorized government agency before traveling to the border districts of the other country. They shall not go beyond the border districts into the interior of the country. However, the existing practices shall continue until such specification and the introduction of the new arrangement referred to in this Paragraph.

4. Border inhabitants who wish to travel beyond the border districts of the other country and other nationals of either country shall hold valid passports issued by their own country and visas issued by the other country.
5. Border inhabitants of either country who are religious believers may travel to the other country for the purpose of pilgrimage with exit-entry passes of the border districts, provided that they will not go beyond the border district of that country; border inhabitants of either country who wish to travel beyond the border districts of the other country and religious believers of either country who are not border inhabitants shall hold valid passports issued by their own country and visas issued by the other country or identity certificates of pilgrims affixed with the pictures of the holders, issued by the authorized agency of their own government and recognized by the other country, and accept the check-up by the Frontier Inspection Station or Border Check-Post or the first encountered duly authorized government agency of the other country at the entry and exit points. Those who hold the identity certificates of pilgrims shall enter into and exit from the other country only through the entry points agreed upon by the two sides and shall not stay in the border districts of the other country more than one month. Until such points are agreed upon, the existing entry-exit points shall continue to be utilized.
6. Porters, muleteers, drivers of motor vehicles and artisans of either country may not enter the border districts of the other country without an exit-entry pass of the border district and without accepting the check-up by the Frontier Inspection Station or the Border Check-Post or the first encountered duly authorized government agency and they shall not go beyond the specified areas. Motor vehicles of either country may, after obtaining permission of the other country, enter into appropriate places of the other country.
7. Border inhabitants of either country may travel to the other country for border trade, small fairs or border trade in small volumes or petty trade; for the purpose of pilgrimage or for visiting relatives or friends through the routes and entry points agreed upon by the authorities of the two Parties through consultations. Until such routes and entry points are specified, the existing routes and entry points shall continue to be utilized. Traders of either country who wish to travel to the other for trade in large volumes or in groups or delegations shall go through the routes and entry points opened by the two governments, i.e. Purang, Kyerong, Nyalam and Riwo on the Chinese side and Yari, Rasuwa, Kodari and Olangchung Gola on the Nepalese side and any other points as may be agreed upon between the two governments from time to time. However, the provisions of this paragraph shall in no way affect the facilities being enjoyed by the

inhabitants of border districts to carry on the traditional trade on barter basis under the provisions of Article 8 of the Trade and Payments Agreement of 1981. Further, such traditional trade on barter basis shall not be restricted by the provisions mentioned in this paragraph as regards routes and exit-entry points.

8. Government officials, pilgrims, businessmen and tourists of both countries shall have the facility of engaging the means of transport at normal and reasonable rates.
9. Notwithstanding the provisions of the foregoing paragraphs of this Article, either Party has the right to refuse entry into its territory of any persona non grata.
10. Nationals of either country who have entered the territory of the other country in accordance with the foregoing paragraphs of this Article may stay within the territory of the other country only after completing the procedures specified by the other country.

## Article II

The two Parties agree that pilgrimage contacts between Nepal and the Tibet Autonomous Region of China shall be maintained and for this purpose have agreed on the following provisions:

1. The competent local authorities of either country shall provide facilities for pilgrims to enter into and exit from its territory.
2. Pilgrims of either country shall complete the procedures specified in paragraph 5 of Article I of the present Agreement for their entry into and exit from the territory of the other.
3. The personal luggage and pilgrimage articles carried by pilgrims as stipulated by the laws of either country shall be exempted from duties.

## Article III

The two sides agree to make full use of the Lhasa-Kathmandu Highway on a reciprocal basis to transport passengers and cargo, and promote cooperation between the two countries in trade, tourism and other fields, according to the procedures agreed upon by the two Parties.

## Article IV

In order to ensure that the nationals of either country live and work in peace and contentment in the territory of the other and promote the development of friendship between the two countries, the two Parties have agreed on the following:

1. Either country shall protect the life, property and legitimate rights and interests of the nationals of the other country in its territory.
2. Unless otherwise agreed by the two Parties, nationals of either country shall not be allowed to engage without permission in such activities as herding, grazing, farming, hunting, felling trees and picking medicinal herbs in the territory of the other country. Any violation of this provision shall be handled by the host country according to its laws.
3. Nationals of either country in the territory of the other shall abide by the laws and regulations of the host country, pay taxes and respect the local customs.
4. All civil and criminal cases or disputes in the territory of either country involving nationals of the other country shall be handled by the Government or the judicial organs of the host country. If such a case comes up, the host country shall inform without undue delay the diplomatic or consular missions or local foreign affairs office, as the case may be, of the sending country.
5. Livestock, plants and their products of either country shall require duly certified quarantine certificates of the exporting country and the importing country shall recognize such certificates on a reciprocal basis.
6. The two Parties shall co-operate with each other in the conservation, promotion and development of the protected zones in the border areas of the two countries, and in prohibiting illegal export and import of specimens or products or any part of the dead or living wild animals, birds and plants. The two Parties have also undertaken to protect and conserve the animals and birds migrating across the border.

#### Article V

1. The two Parties shall encourage and support the development of economic and trade relations between Nepal and the Tibet Autonomous Region of China. The authorities concerned of either country shall protect the legitimate rights and interests of the traders of the other country in its territory and facilitate their business activities. The traders of either country in the territory of the other must abide by the laws and regulations of the host country and shall be subject to the jurisdiction of the authorities concerned of that country.
2. The two Parties shall promote traditional border trade between Nepal and the Tibet Autonomous Region of China. Border inhabitants and traders of either country shall enter into and exit from the other country through the entry points and routes designated by the competent local authorities of that country and shall do business in the designated places. The competent local authorities shall provide facilities and protection to the border inhabitants and traders of the other country who are engaged in barter trade, trade paid in cash or other forms of border trade.
3. The two Parties should encourage and support payment through banks for such trade, particularly by letters of credit. The two Parties shall take pragmatic attitude

and facilitate the border trade between border inhabitants and traders of the two sides when conditions are not ripe for trade by letters of credit. In case of any debt disputes arising from border trade, the local officials of the two Parties shall try to settle them through consultations.

#### Article VI

The two Parties shall encourage and support cooperation between Nepal and the Tibet Autonomous Region of China in tourism, economic development, technological innovation, trade promotion, and civil aviation service.

#### Article VII

1. In order to strengthen the friendship between the local officials of the two Parties and settle any disputes, which may arise from time to time, the local officials of the border districts of the two Parties may hold meetings and exchange information as and when necessary.
2. The level, time and venue and other matters concerning such meetings shall be decided through consultations between the local officials concerned of the two Parties.
3. Local officials of either country shall travel to the other country for such meetings with exit-entry passes of the border districts or identity certificates affixed with the pictures of the holders, issued by the authorized agency of their own government and recognized by the other government.

#### Article VIII

The two Parties may enter into specific arrangements for the purpose of implementing the provisions of this Agreement and make other arrangements independent of this Agreement.

#### Article IX

This Agreement shall come into force on the date of its signing and shall remain in force for a period of ten years and shall be renewed automatically for further periods of ten years unless it is terminated by either Party through a written notice to that effect six months before its expiration. Amendment to this Agreement shall be negotiated by the two Parties and confirmed through diplomatic channels if either Party proposes to amend the Agreement.

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Done at Beijing on the Tenth Day of the Month of July of the Year Two Thousand Two in duplicate in the Nepali, Chinese, and English Languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

**Signed**

For His Majesty's Government of Nepal

**Signed**

For the Government of the People's  
Republic of China

**AGREEMENT ON TRANSIT TRANSPORT BETWEEN  
THE GOVERNMENT OF NEPAL AND THE GOVERNMENT OF  
PEOPLE'S REPUBLIC OF CHINA**

The Government of Nepal and the Government of the People's Republic of China("the Contracting Parties"),

With the desire to maintain, develop and strengthen the existing friendly relations and cooperation between the two countries;

Noting the relevant international legal instruments, especially the 1982 United Nations Convention on the Law of the SEA, recognizing that Nepal, as a land-locked country, has the right to have permanent access to and from the sea, and the right of freedom of transit, and realizing the need to facilitate the transit transport through their territories ;

Considering the importance of the One Belt One Road Initiative proposed by the Government of the People's Republic of China,

Have agreed as follows:

**ARTICLE I**

The Contracting Parties shall provide each other with the freedom of transit across their respective territories through routes mutually agreed upon. Operational modalities including the utilization of ports, routes, conditions of transits, mode of transport and transfer of goods, customs and other necessary arrangements to facilitate transit transport shall be mutually agreed upon by competent authorities of the Contracting Parties and shall be laid down in the Protocol which shall be an integral part of this Agreement.

**ARTICLE II**

- i. Each Contracting Party shall have the right to take all indispensable measures to ensure that transit activities on its territory does not in any way infringe its



legitimate interests of any kind or facilitate any transnational crimes such as stowaways, money laundering and arms smuggling.

ii. Nothing in this Agreement shall prevent either Contracting Party from taking any measures which may be necessary for the protection of its essential security interests.

iii. While protecting legitimate interests under this Article, the Contracting Parties shall adopt least transit and trade restrictive measures.

### ARTICLE III

i. The term "transit transport" means traffic-in-transit which covers the passage of goods, including consigned baggage, across the territory (including territorial land, inland waters and territorial seas) of a Contracting party when the passage is a portion of a complete journey which begins or terminates within the territory of the other Contracting Party, with or without transshipment, warehousing, assembly, disassembly or change in the mode of transport. Nothing in this Article shall be construed as imposing an obligation on either Contracting Party to establish or permit the establishment of permanent facilities on its territory for such assembly, dis-assembly or reassembly.

ii. The Contracting Parties agree to use railway rolling stock and road vehicles, vessels and other transport means agreed upon by the Contracting Parties in transit transport.

### ARTICLE IV

The cargo and goods in transit transport shall be exempt from customs duties and from all transit duties, or deposits for the payments of these taxes of transit state if the customs and the relevant quarantine and inspection departments of the Contracting Parties are satisfied that the requirements for transit transport procedures are met, except reasonable charges for transportation and such other charges as are commensurate with the costs of services rendered in respect of such transit transport.

### ARTICLE V

For convenience of the transit transport, the Contracting Parties agree to provide at point or points of entry or exit, on such terms as may be mutually agreed upon by competent authorities and subject to the relevant laws and regulations prevailing in either country, warehouses or sheds, for the storage of transit goods awaiting customs clearance before onward transmission.

#### ARTICLE VI

Transit transport shall be subject to the procedures to be mutually agreed upon by competent authorities and subject to relevant laws and regulations prevailing in either country, as well as international treaties to which the Contracting Parties are signatories. Except in cases of failure to comply with the procedures prescribed, all appropriate measures should be taken by either Contracting Party to rule out avoidable delays or restrictions in such transit. Such procedures may be laid down in a protocol agreed upon by competent authorities of both sides.

#### ARTICLE VII

In order to enjoy the freedom of the high seas, merchant ships sailing under the flag of Nepal shall be accorded, subject to the laws of the People's Republic of China, treatment no less favorable than that accorded to ships from any other foreign country in respect of matters relating to navigation, entry into and departure from the ports of China, use of these ports and harbor facilities, except that the provisions of this Article shall not be extended to the coastal trade.

#### ARTICLE VIII

Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such measures or restrictions as are necessary for the purpose of:

- i. Protecting public morals;
- ii. Protecting human, animal and plant life, health and security;
- iii. Safeguarding implementation of laws relating to the import and export of gold and silver;
- iv. Safeguarding state security and political, economic and social stability;
- v. Preventing the smuggling of goods; and
- vi. Safeguarding such other interests as may be mutually agreed upon.

#### ARTICLE IX

Nothing in this Agreement shall prevent either Contracting Party from taking any measures which may be necessary in pursuance of general international conventions, whether the Contracting Party has signed or will sign hereafter, relating to transit transport, export or import of particular kinds of articles such as narcotics and psychotropic substances, animal and plant quarantine objects or in pursuance of general international conventions intended to prevent infringement of copyright or trademark right or relating to false marks, counterfeits or other methods of unfair competition.



#### ARTICLE X

i. In order to facilitate effective and smooth implementation of this Agreement, the Contracting Parties shall consult each other when necessary. This Agreement may be amended upon consensus reached by the Contracting Parties through consultations.

ii. The modalities, routes, conditions of transit, customs and other necessary arrangements may be reviewed and modified by the Contracting Parties to further facilitate the transit transport.

#### ARTICLE XI

Any dispute or difference which may arise in the application or interpretation of this Agreement shall be settled through consultations between the Contracting Parties.

#### ARTICLE XII

This Agreement shall come into force on the date of signature, remain valid for a period of ten years and be automatically renewed in every ten years unless either of the Contracting Party gives to the other a written notice, six months in advance, of its intention to terminate the Agreement.

Done in Beijing on March 21, 2016, in duplicate in the Nepalese, English and Chinese languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of Nepal

For the Government of the  
People's Republic of China

**PROTOCOL  
BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND  
THE GOVERNMENT OF NEPAL  
ON IMPLEMENTING AGREEMENT ON TRANSIT TRANSPORT BETWEEN THE  
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE  
GOVERNMENT OF NEPAL  
(Draft)**

The Government of the People's Republic of China (PR China) and the Government of Nepal (Nepal), hereinafter referred to as the "Contracting Parties",

Desiring to implement the "Agreement on Transit Transport between the Government of the People's Republic of China and the Government of Nepal" (hereinafter referred to as "the Agreement") signed on March 21, 2016, to develop transit transport between the two countries,

Have agreed as follows:

**Article 1  
Definitions**

In this Protocol:

1. "means of transport" refers to railway vehicles, road transport vehicles, ships<sup>1</sup>, vessels, and other means of transport agreed by the Contracting Parties.
2. "competent authority" refers to:
  - (a) Ministry of Transport, on the part of P.R. China
  - (b) Ministry of Industry, Commerce and Supplies, on the part of Nepal.

**Article 2**

**Ports and Routes**

1. The PR China allows Nepal to use open sea ports for handling its traffic-in-transit. The list of sea ports to be used by Nepal is attached in Appendix I which may be reviewed by the Joint Consultation Mechanism referred to in Article 14.
2. The PR China allows Nepal to use open dry ports for handling traffic-in-transit. The list of dry ports to be used by Nepal is attached in Appendix II which may be reviewed by the Joint Consultation Mechanism referred to in Article 14.
3. The border ports between Nepal and China for transit transport are attached in Appendix III.

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<sup>1</sup> including barges

4. The PR China allows the movements of vehicles registered in Nepal which hold the permits issued as per Article 6 to transport transit cargo between Nepal border points and Xigatse dry port.
5. The transit routes to be provided to China by Nepal are to be decided through future consultation between the two sides upon adequate development of transport infrastructure in Nepal.

### **Article 3 Means of Transport**

The means of transport for the movement of traffic-in-transit by road as defined in Paragraph 1 of Article 1 shall meet the conditions required by the competent authorities and hold the permits issued as per Article 6.

### **Article 4 Facilities**

The provision of transit facilities shall be in accordance with applicable international instruments, customs and agreements. Facilities for traffic-in-transit shall include railways; channels, berthing facilities and docks for cargo ships; multi-modal transport or transshipment; terminal handling equipment; warehouses or sheds for storages of transit goods awaiting Customs clearance before onward transmission.

### **Article 5 Contraband**

The contraband items prohibited from transportation by either party shall not be allowed in traffic-in-transit.

### **Article 6 Road Transit Transport**

1. Transit transport operators shall be any natural or legal person registered in the territory of either Contracting Party having acquired transit transport permit from the competent authority of the other contracting party to operate road transit transport in the territory of such Contracting Party.
2. The number of transit transport permits required for a year shall be determined by the competent authorities as per need of the relevant Contracting Party through consultation every year. The permits shall be exchanged between the two Competent Authorities and delivered to the transport operators by the Competent Authority of the Contracting Party or by a body designated by such Competent Authority.
3. The permits issued under this Protocol shall be used and remain valid for one (entry-exit) journey unless otherwise stated in the permit. The permits shall be valid until 31 January of the successive calendar year.



4. Transit transport permits are owned by the transit transport operators for which the permits are issued. The permits shall not be used by, and are not transferable to, other transport operators.

5. Cabotage is forbidden in the territory of the relevant Contracting Party other than those services, facilities, conditions and modalities specified in this protocol.

Provided that traffic-in-transit, during onward transport in the territory of relevant Contracting Party to the destination specified in the transit document and under the supervision of the Customs Agency, shall not be considered as cabotage.

6. Vehicles used for transit transport shall meet the applicable national standards of the relevant Contracting Party with respect to safety and environment. Vehicles for international transport operation shall have a national plate with identity of the country of registration.

7. The permissible maximum weight, axle weight and dimensions of vehicles must not exceed those stated in the relevant legal provisions and technical standards of the relevant Contracting Party. In case of exceeding the permissible limit in terms of weight and dimension due to the indivisibility of the load, an authorization is required from the competent authority of the relevant Contracting Party beforehand.

8. Transit transport operators of relevant Contracting Party transporting dangerous goods shall obtain special permits issued by the Competent Authority of the other Contracting Party and the routes must be specified in the permits. Vehicles carrying dangerous goods must be equipped in accordance with the requirements of the national legislations or applicable international conventions, and are required to be labelled with dangerous goods placards and marks.

9. Drivers engaged in transit transport operations shall possess valid driving license in accordance with the vehicle category and vehicle registration certificate and their translated documents into the official language of the Contracting Parties. The permits and all other documents specified in this Protocol shall be kept in the vehicle and be produced on demand by the competent authority of either Contracting Party.

#### **Article 7** **Other Modes of Transit Transport**

Transit transport operators from one Contracting Party may use railways, ports, inland water ways and other modes of transport in the territory of the other Contracting Party to carry out the movement of transit transport. Such transit transport shall be in accordance with the laws and regulations of the relevant Contracting Party.

#### **Article 8** **Costs and Fees**

The cargo and goods in transit transport shall be exempted from Customs duties and from all transit duties, or deposits for the payments of these taxes of transit state if the customs and the relevant quarantine and inspection departments of the Contracting Parties are satisfied that the requirements for transit transport procedures are met, except reasonable charges for

transportation and such other charges as are commensurate with the costs of services rendered in respect of such transit transport.

#### **Article 9** **Transit Transport Procedures**

Transit transport operators shall follow the transit transport procedures of the Customs agency of the relevant Contracting Party, in regard to submitting or transmitting of all necessary transit documents, including cargo lists, information/data of transport means, prior to arrival of the cargo.

#### **Article 10** **Customs Facilitation**

1. Customs facilitation for traffic-in-transit shall be extended between Customs authorities of the Contracting Parties, according to the laws and regulations of the Contracting Parties or the applicable international instruments.

2. Priority shall be given to traffic-in-transit containing animal and perishable goods in extending facilitation by Border Security, Customs, Transport Administration and Sanitary Agencies.

#### **Article 11** **Treatment to Traffic-in-transit**

1. No discrimination shall be made to traffic-in-transit of relevant Contracting Party by any mode of transport on the basis of flag of vessel, ownership of goods, ownership of vessels, place of origin, departure, entry, exit or destination or any other ground.

2. Exemption of technical standards and conformity assessment for traffic-in-transit shall be in accordance with laws and regulations of the relevant contracting party in conformity with the applicable international instruments.

#### **Article 12** **Application of Law**

Transit transport operators shall abide by traffic rules, compulsory insurance for traffic accident and other laws and regulations of the relevant Contracting Party and comply with applicable international instruments and other bilateral and multilateral agreements to which both Contracting Parties are party to.

#### **Article 13** **Punishment and Notification**

Transit transport operator of one contracting party violating the transit transport related laws and regulations of the other Contracting Party shall be liable to punishment as per the laws of such



Contracting Party. In such case, the Contracting Party shall notify the action taken to the other Contracting Party.

#### **Article 14** **Joint Consultation Mechanism**

1. A Joint Consultation Mechanism (JCM) at the level of Vice-Minister in the Ministry of Transport of PR China and the Secretary at the Ministry of Industry, Commerce and Supplies of the Government of Nepal shall be established to review the implementation status of the Agreement and this Protocol, to discuss and resolve the issues forwarded by the Joint Consultative Sub-Committee (JCSC) specified in Paragraph 2 of this Article, to mandate JCSC to work out on particular technical matter, and to conduct negotiations on other issues pertaining to the Agreement and this Protocol.

2. The JCSC shall be constituted at the level of Joint Secretary/Director General of the aforesaid Ministries of the two Governments with members from relevant Ministries/Agencies dealing with foreign affairs, Customs, public security/home affairs, transport, quarantine and so on. A local level mechanism shall be formed under the JCSC to deal with day-to-day issues regarding the implementation of this Protocol.

3. The JCSC shall review modalities, routes, conditions of transit, Customs and other necessary arrangements, conduct technical consultations, discuss transit transport related issues and recommend to the JCM for modifications and revisions of the agreement and this Protocol with a view to further facilitating transit transport.

4. The JCM and JCSC shall meet at least once a year or as deemed necessary, alternatively in Nepal and PR China. The JCSC shall schedule such meeting at least three months before the JCM meeting.

#### **Article 15** **Entry into Force and Duration of the Protocol**

1. This Protocol shall enter into force on the first day of the next month following the day of the receipt of the later notification in writing through diplomatic channel, by which the Contracting Parties shall notify each other on the completion of internal procedures necessary for entry into force of this Protocol.

2. This Protocol shall remain valid until the validity of the Agreement.

3. This Protocol does not affect the rights and obligations arising from the other international instruments to the Contracting Parties.

DONE in duplicate at ..... on the .....in Chinese, Nepali and English, each text being equally authentic. In case of any divergence in interpretation, the English version shall prevail.

For the Government of Nepal

For the Government of the People's Republic of China

## Appendix I

The list of sea ports in China to be used by Nepal is as follows:

1. Tianjin
2. Shenzhen
3. Lianyungang
4. Zhanjiang

## Appendix II

The list of dry ports in China to be used by Nepal for traffic-in-transit is as follows:

1. Lanzhou
2. Lhasa
3. Xigatse



### Appendix III

The border ports between Nepal and China for transit transport are as follows:

<u>Nepal side</u>	<u>PR China side</u>
Rasuwa	Jilong
Kodari	Zhangmu
Kimathanka	Chentang
Nechung	Lizi
Yari	Pulan
Olangchung Gola	Riwu





**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF NEPAL AND THE GOVERNMENT  
OF THE PEOPLE'S REPUBLIC OF CHINA  
ON  
MANAGEMENT OF PORTS IN  
NEPAL-CHINA BORDER AREAS**

The Government of Nepal and the Government of the People's Republic of China (hereinafter referred to as the "two Parties"), desiring to further consolidate and develop the traditional good neighbourly and friendly relations between the people of the two countries, and promote the bilateral trade and movement of people between the two countries, have agreed as follows based on the principle of equality and mutual benefit:

Article 1

In this Agreement, the two Parties use the terms as follows:

1. The term "Ports" means the designated regions that are located on the two sides of the Nepal-China border, supervised and managed by the designated authorities, and that serve as channels for entry and exit of people, vehicles, cargos and goods. Ports include bilateral Ports and international Ports.





Bilateral Ports are the Ports that allow entry and exit of people, vehicles, cargos and goods of the two Parties. International Ports are the Ports that allow entry and exit of people, vehicles, cargos and goods of the two Parties and third countries and regions.

2. The term "border areas" means counties or districts on the two sides of the Nepal-China border.
3. The term "border inhabitants" means permanent residents of either country living in the border areas.
4. The term "Force Majeure" means an event that is unforeseeable, inevitable, and insuperable and beyond the control of the two Parties, which may prevent a Party from complying with any of its obligations under this Agreement or may require a Party to make any other alternative arrangement to respond to the event.
5. The term "inspection offices at the Port" means border control, customs, inspection and quarantine departments of the Chinese side and customs, immigration, food inspection and quarantine offices and security agencies of the Nepalese side.

#### Article 2

1. The two Parties shall upgrade the following existing trading points into the Ports in Nepal-China border areas:

##### Chinese side

Pulan

Lizi

Jilong

Zhangmu

##### Nepalese side

Yari

Nechung

Rasuwa

Kodari





Riwu

Olangchung Gola

Chentang

Kimathanka

2. The location and type of the Ports listed in Paragraph 1 above shall be as defined in the Annex hereto. The two Parties shall agree, through exchange of diplomatic notes, when adequate infrastructures are in place and internal procedures are completed, on the full operationalisation of the above mentioned Ports which have not been fully operationalised yet. The opening duration and working hours of the Ports shall be agreed through consultations between the administrative authorities of the two Parties where the Ports are located or through the Ports contact mechanism, subject to confirmation by the two Parties.

3. The two Parties shall consult on the opening of new Ports or closing of existing Ports through exchange of diplomatic notes between the two Parties. Such notes shall be an integral part of this Agreement.

4. Changes in the location and type of the existing Ports shall be agreed through exchange of diplomatic notes between the two Parties. Such notes shall be an integral part of this Agreement. Changes in the opening duration and working hours of the Ports shall be agreed through consultation between the administrative authorities of the two Parties where the Ports are located or through the Ports contact mechanism, subject to confirmation by the two Parties.

5. In case of Force Majeure or other special needs, the two Parties may open temporary Ports. The opening of temporary Ports shall be agreed by the two Parties and confirmed through exchange of diplomatic notes. People, vehicles, cargos and goods waiting for entry or exit shall comply with





the procedures as required by the local laws or the bilateral agreements in force between the two Parties.

### Article 3

1. Citizens of either country who wish to travel through the Ports shall hold valid passports or other travel documents that are recognized by the two Parties, and abide by the agreements on international traveling between the two countries.

Citizens of a third country who wish to travel through the Ports shall hold valid passports or other valid travel documents, and comply with the regulations on international traveling of both countries and bilateral agreements or international treaties to which both the countries are parties.

2. Border inhabitants of the two Parties may enter or exit with exit-entry passes of Nepal-China border areas. The exit-entry passes of Nepal-China border areas shall be issued and used in accordance with the Agreement between the Government of the People's Republic of China and the Government of Nepal on Trade and Other Related Matters between the Tibet Autonomous Region of China and Nepal, signed in 2002.

### Article 4

During the working hours of the Ports, the inspection offices at the Ports of either Party shall exercise their power in accordance with the laws and regulations of their respective country. People, vehicles, cargos and goods shall be subject to inspection by the relevant departments, offices or agencies of the two Parties. The two Parties or the inspection offices at the Ports of the two Parties may agree on working arrangement for simplifying the inspection procedures as and when necessary.





#### Article 5

1. Ports that are officially opened in either side shall not be closed during the official holidays of either Party unless there is a special agreement otherwise.

2. In case one Party needs to open the Ports temporarily under special circumstances, it shall notify the other Party through diplomatic channels at least 5 days in advance, or no less than 24 hours in case of emergency, and reach agreement in this regard with the latter through consultation. Either Party shall notify the other Party through diplomatic channels of the closure of Ports that have been opened temporarily and get the other Party's confirmation in that regard.

3. In order to maintain social and public interests and safeguard national security, or as a result of Force Majeure, either Party may close Ports temporarily or limit passage through the Ports, but it shall notify the other Party 5 days, or 24 hours in emergency, in advance. Either Party shall notify the other Party through diplomatic channels of reopening of the Ports that have been closed temporarily or lifting restrictions on passage and get the other Party's confirmation in that regard.

4. Neither Party shall close Ports without the prior consent of the other Party, except in the situations prescribed in Paragraph 3 of this Article. If either Party closes Ports without the other Party's prior consent and such closure causes loss to the other Party, the two Parties shall settle their disputes through diplomatic channels.





#### Article 6

The two Parties shall strengthen the construction of infrastructure and inspection facilities of the Ports, improve the passage conditions and enhance the capacity of passage. The future development needs of the Ports shall be considered while designing and constructing the Port facilities.

#### Article 7

In order to ensure the effective implementation of this Agreement, the two Parties may establish the following mechanism:

(a) The competent authorities as designated by the two Parties or the local authorities/agencies may be the leading agencies of the cooperation mechanism. They shall coordinate with each other and work out, through study, measures to increase efficiency and carry out their implementation.

(b) The inspection offices at the Ports of the two Parties may create counterpart contact mechanism to hold meetings and communications.

#### Article 8

This Agreement shall not affect the rights and obligations of the two Parties arising from other international treaties that they have concluded and are still in force.

#### Article 9

The two Parties shall settle all differences that may arise concerning the interpretation or application of this Agreement through diplomatic channels.





#### Article 10

This Agreement may be amended or modified, during its period of validity, by mutual agreement of the two Parties.

#### Article 11

This Agreement shall enter into force on the date of signature, and remain in force for a period of 10 years.

This Agreement shall be renewed automatically every successive 10 years unless either Party requests its termination by serving the other Party a written notice 6 months prior to the date of expiration.

Done in Kathmandu on 14 January 2012, in duplicate in the Nepali, Chinese and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of  
Nepal

For the Government of  
the People's Republic of  
China

.....

.....





**Annex:**  
**The Location and Type**  
**of**  
**Nepal-China Ports**

**1. Pulan - Yari Port**

One side of the Port is Pulan Town, Pulan County, Tibet Autonomous Region of China, and the other side is Hillsa Village, Humla District of Nepal.

It is an international port.

**2. Jilong - Rasuwa Port**

One side of the Port is Jilong Town, Jilong County, Tibet Autonomous Region of China, and the other side is Rasuwagadhi Village, Rasuwa District of Nepal.

It is an international port.

**3. Zhangmu - Kodari Port**

One side of the Port is Zhangmu Town, Nielamu County, Tibet Autonomous Region of China, and the other side is Tatopani Village, Sindhupalchowk District of Nepal.

It is an international port.

**4. Riwu - Olangchung Gola Port**

One side of the Port is Riwu Town, Dingjie County, Tibet Autonomous Region of China, and the other side is Olangchung Gola Village, Taplejung District of Nepal.





It is a bilateral port.

5. Lizi - Nechung Port

One side of the Port is Zhongba County, Tibet Autonomous Region of China, and the other side is Lomangthang Village, Mustang District of Nepal.

It is a bilateral port.

6. Chentang – Kimathanka Port

One side of the Port is Chentang Town, Dingjie County, Tibet Autonomous Region of China, and the other side is Kimathanka Village, Sankhuwasabha District of Nepal.

It is a bilateral port.



(Trade and Payments Agreements Signed in Kathmandu 12<sup>th</sup> December, 1992.)

**TRADE AND PAYMENTS AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE CZECHOSLOVAK SOCIALIST REPUBLIC**

His Majesty's Government of Nepal and the Government of the Czechoslovak Socialist Republic (hereinafter referred to as the Contracting Parties).

Being desirous to develop and strengthen trade and economic relations between them in accordance with their development and trade needs and objectives on the basis of equality and mutual benefit.

Have agreed as follows:

**Article I**

The Contracting parties shall take all appropriate measures to promote the development of trade and economic relations between their two countries.

**Article II**

The Contracting Parties shall grant each other most favoured nation treatment in all matters relating to:

- a. Customs duties and charges of any kind, including the method of levying such duties and charges, imposed in or in connection with importation or exportation imposed on the transfer of payment for imports or exports;
- b. Rules and formalities connected with customs clearance
- c. All internal taxes or other internal charges of any kind imposed on or in connection with imported and exported goods, and
- d. Issuance of import and export licences.

**Article III**

The provisions of Article 2 shall not, however, apply to the grant or continuance of any;

- a. Advantages accorded by either Contracting Parties to contiguous countries with the purposes of facilitating frontier trade;
- b. Advantages resulting from customs unions or other agreements on customs free trade;
- c. Advantages accorded by virtue of multilateral economic agreement relating to the international commerce.

**Article IV**

The Contracting parties through the competent authorities of both countries shall issue the necessary licences for export and import of commodities mentioned in Schedule 'A' and 'B' annexed to this Agreement which are indicative and not exhaustive, in conformity with the laws, rules and regulations in force in their respective countries.

#### **Article V**

The trade between their two countries may be conducted through their Foreign Trade Organizations as well as other importers and exporters of their two countries.

#### **Article VI**

All payments between the Contracting Parties shall be made in any freely convertible currency subject to the laws, rules and regulations pertaining to the foreign trade and foreign exchange prevalent in either country.

#### **Article VII**

Any difference or dispute arising out of the transactions under this Agreement shall be settled by mutual consultation of the Contracting Parties.

#### **Article VIII**

The prices of goods supplied under this Agreement shall be fixed by mutual agreement between the exporters and importers of the two countries.

#### **Article IX**

1. The Contracting Parties shall facilitate each other's participation in trade fairs to be held in either country, and in arranging exhibitions of either country in the territory of the other, on terms to be agreed between their competent authorities.
2. The exemptions from customs duties and other similar charges of articles and intended for fairs and exhibitions, as well as their sale and disposition, shall be subject to the laws, rules and regulations of the country to where such fairs and exhibitions are held.

#### **Article X**

Nothing in this Agreement shall be construed to prevent the adoption and enforcement either Contracting Party of measures necessary to protect public morals, human, animal or plants life or health or industrial, literary or artistic property and the security of its own territory or in pursuance of general International Convention whether already in existence or concluded hereinafter to which it is a party.

#### **Article XI**

1. The Contracting Parties shall consult each other at the request of either of them on all matters of mutual interest, as well as on the necessary measures aiming at the expansion of mutual co-operation and trade relations concerning the implementation of present Agreement.
2. The meeting called at the request of either of either Party shall be held at a time and place mutually agreed upon but not later than ninety (90) days after the date of receipt of the request from other.

#### **Article XII**

Any amendment or modifications in the terms and conditions of this Agreement shall be made by the Contracting Parties in writing by their mutual agreement.

**Article XIII**

The provisions of this Agreement shall apply even after the expiry of its validity, to contracts concluded during the period of the validity of this Agreement but not fulfilled before its expiry.

**Article XIV**

This Agreement shall come into force from the date of the exchange of Diplomatic Notes confirming the approval or ratification of this Agreement by the Contracting Parties.

It shall remain valid for a period of three years and shall be renewed automatically by periods of one year each unless either Contracting Party gives three months notice in writing before the expiry of its validity of its intention to terminate this Agreement.

Done in Kathmandu on the 12<sup>th</sup> December 1982, in two original texts in the English language, one for each Contracting Party both being equally authentic.

S/D  
For His Majesty's Government of  
Nepal

S/D  
For the Government of the  
Czechoslovak Socialist Republic

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**Schedule "A"**

**GOODS AVAILABLE FOR EXPORT FROM THE KINGDOME OF NEPAL TO THE CZECHOSLOVAK  
SOCIALIST REPUBLIC**

- 1. Minerals
  - i. Marbles
  - ii. Lime
  - iii. Talc
  - iv. Slate
  - v. Chalks and Chalks Powder
  
- 2. Jute Products
  - i. Jute Products
  - ii. Twine
  - iii. Hessian
  - iv. Sacking

3. Manufactured Products
  - i. Synthetic Fabrics
  - ii. Carpets
  - iii. Gorkha Knives (Khukuri)
  - iv. Stainless Steel Utensils
  
4. Leather and Leather Products
  - i. Tanned skin and hides
  - ii. Other Leather Products
  - iii. Purses
  - iv. Bags
  
5. Other Raw Materials
  - i. Hides and Skins
  - ii. Oil Seeds
  - iii. Timber
  - iv. Raw Jute
  - v. Wool
  - vi. Britles
  - vii. Medicinal Herbs
  - viii. Sole Leather
  
6. Handicrafts and Artistic Goods
  
7. Sugar and Sugar Preparations
  - i. Sugar
  
8. Tobacco Products
  - i. Cigarettes
  
9. Forestry Products
  - i. Plywood
  - ii. Cardboard and other board
  - iii. Chip-board and Particle board
  - iv. Wooden Parquet
  - v. Bamboo Products
  - vi. Wooden Furniture

10. Grass and Straw Products

- i. Straw board
- ii. Other grass and straw products

11. Cereal and Flour Preparations

- i. Cornflakes
- ii. Malt
- iii. Noodles and spaghetti
- iv. Biscuits and other bakery product

12. Oil and Oil Extracts

- i. Canned Vegetables
- ii. Starch and Glucose
- iii. Chutney and pickles (canned and bottled)
- iv. Canned Soup

13. Fruit Products

- i. Bottled or Canned Fruits
- ii. Jam, Marmalade and fruits jellies
- iii. Fruit, juices, syrups and squashes

14. Dairy Products

- i. Ghee Canned
- ii. Butter (Package)
- iii. Cheese

15. Meat Preparations

- i. Tinned and Packed meat

16. Textiles

17. Beverages and Spirits

18. Miscellaneous
- i. Readymade Garments
  - ii. Yak Hair and Tails
  - iii. Cardamom (Big)
  - iv. Dry Ginger

#### **Schedule B**

### **GOODS AVAILABLE FOR EXPORT FROM THE CZECHOSLOVAK SOCIALIST REPUBLIC TO THE KINGDOM OF NEPAL**

- I. COMPLETE PLANTS AND EQUIPMENT FOR INDUSTRY
1. Coal and ore industry, foundry, rolling mills, equipment for chemical industry, cane sugar mills, distilleries, cooling plants, cement works, ceramic works, equipment for manufacture of diesel engines, machine tools, tractors, motorcycles, bicycles, equipment for light and heavy engineering industries, etc.
  2. Power plants
  3. Woodworking machinery
  4. Mining equipment and oil-well equipment
  5. Brick factories
  6. Crushing and sorting sets
  7. Flour mill equipment
  8. Dairy equipment, bottling equipment and other food stuff machinery.
- II. MACHINERY AND ENGINEERING PRODUCTS
1. Diesel engines, diesel-electric generating sets and spare parts
  2. Electric motors, generators and dynamos
  3. Charging sets
  4. Electric resistance furnaces
  5. Arc welding machines and resistance welding machines
  6. Transformers
  7. H.T. oil and pneumatic circuit breakers
  8. Switchgears
  9. Lightning arrestors
  10. Excavators
  11. Motor graders
  12. Motor and concrete mixers, vibrators
  13. Road rollers
  14. Road transport, building and road-making machines
  15. Freight and passenger ropeways
  16. Cranes, conveyors and transporters
  17. Lifting battery trucks
  18. Pulley blocks
  19. Mechanical shovel
  20. All kinds of pumps, pumping and filtration station



21. H.P. valves
22. Compressors and blowers
23. Electric and diesel-electric locomotives
24. Machine tools, accessories, spare parts and components
25. Power hammers and mechanical presses
26. Die-casting machines
27. Pneumatic tools and equipment
28. Precision instruments, gauges
29. Electric measuring devices
30. Laboratory testing equipment
31. Single and three-phase electricity meters and components
32. Electric and mechanical and electronic measuring instruments and components
33. Components of water meters
34. Complete installations for measurement and control in thermal engineering
35. Broadcasting studio equipment
36. Radio components and valves
37. Bulbs for industrial purposes and fluorescent tubes
38. Cigarette making machines
39. Tobacco cutting, weighing and packing machines
40. Timepiece components and spare parts
41. Automatic telephone exchanges
42. Broadcast and TV studios
43. X-ray equipment
44. Dental and surgical equipment
45. Designs and equipment for complete hospitals
46. Statistical and calculating machines
47. Typewriters and components
48. Printing and polygraphic machinery
49. Photo and cine equipment and components
50. Ball and roller bearings
51. Textile machinery and components
52. Shoe-making and leather finishing machinery, including rubber shoe machinery
53. Spare parts for passenger cars and trucks
54. Dumpers and mobile cranes
55. Garage service equipment and tools
56. Industrial chains
57. Electrical accessories for motor vehicles
58. Components for fuel injection equipment
59. Agricultural tractors, spare parts and components
60. Tractors trailers and implements
61. Aircrafts
62. Airport lighting equipment
63. Utility and special cars
64. Trucks, buses and trolley buses
65. Motorcycles, scooters, spare parts & Components

III. STEEL AND STEEL PRODUCTS

1. Steel structures of every description
2. Steel pilings
3. Iron and steel products including plates, wires, sheets, etc.
4. Tool, alloy and special steel
5. Steel forgings, castings and finished products
6. Seamless steel tubes for oil industry

IV. OTHER MANUFACTURED GOODS

1. Rubber convey or belting with textile insert or igelite belting
2. Rubber textile hoses of all types
3. Reclaimed rubber
4. Driving belts made of leather, igelite or rubber and canvas
5. Laundry equipments
6. Electrical and gas water heaters
7. Fire extinguishers and fire-alarm equipment
8. Portable electric hand tools
9. Steel gas cylinders
10. Asbestos cement pressure pipes
11. Insulating materials(glass and glasswool)
12. Insulators for high and low tension
13. Laboratory, porcelain
14. Abrasives
15. Ceramic cutting tools for metal working Refractories
16. Technical and laboratory glass
17. Pressed glass and jablonec crystal of all kinds
18. Industrial felts and technical cloth
19. Vaccum cleaners

V. CHEMICALS, PHARMACEUTICALS AND ALLIED PRODUCTS

1. Drugs, pharmaceutical chemicals and products
2. Sera and vaccines
3. Dye intermediates
4. Organic chemicals
5. Nitrocellulose
6. Pesticides
7. Inorganic chemicals including sodium formaldehyde
8. Ultramarine blue
9. Laboratory chemicals
10. Industrial explosives
11. Kaolin and ball-clay
12. Dyestuffs
13. Pyrotechnical materials

VI. MISCELLANEOUS

1. Books, periodicals and stamps
2. Photographic paper and photo chemicals
3. Hops and malt
4. Heel pins and shoe tacks
5. Slide fasteners
6. Rubber goods
7. Drawing instruments
8. Films cinematographic, exposed
9. Paper of all kinds including newsprint
10. Nuclennic and radiometric instruments
11. Radioisotopes
12. Sports and hunting firearms and ammunition
13. Tyres and tubes
14. Glazed wall tiles
15. Sanitary ceramics
16. China and earthenware
17. Plate glass
18. Chandeliers and illuminating glass of all kinds
19. Plushes
20. Silk and rayon fabrics
21. Semi-finished Gurkha hats
22. Stationery and office equipment
23. Jewellery including imitation pearls and imitation stones
24. Musical instruments

**TRADE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT**

His Majesty's Government of Nepal and Government of the Arab Republic of Egypt (hereinafter referred to as "The High Contracting Parties").

Moved by the desire to develop and strengthen their economic and commercial relations and with a view to promoting the trade between the two countries on basis of equality and mutual benefit, the two countries have agreed as follows: -

**Article I**

The High Contracting Parties shall take all appropriate measures to develop the trade between their two countries and agree to promote the exchange of goods and services between them.

**Article II**

The trade between the high Contracting Parties shall be conducted in accordance with their respective laws, regulations and procedures relating to import and export of goods and commodities.

**Article III**

The High Contracting Parties shall do their best to promote expand the volumes trade between the two countries in particular with regard goods and commodities mentioned in List "A" and "B" annexed hereto which form an integral part of this Agreement.

List "A" designates the List of exports from Nepal and List "B" designates the List of exports from the Arab Republic of Egypt.

The above mentioned lists shall not be construed as to preclude the exchange of goods and commodities not enumerated therein.

**Article IV**

The High Contracting parties shall grant each other the most favoured nation treatment in respect of issuance of licences, customs formalities, customs duties and taxes and other charges for the export of goods and commodities to be exchanged between the two countries.

These provisions, however, shall not apply to: -

1. Facilities to promote the frontier trade.
2. Advantages resulting from any Customs Union or other Agreement on Free Trade to which either High Contracting Party is or may become a member of a party.

**Article V**

Notwithstanding the foregoing provision, either High Contracting Party may maintain or introduce such restrictions are necessary for the purpose of: -

- a. Protecting public morals,
- b. Protecting human, animal and plant life
- c. Safeguarding national treasures.
- d. Safeguarding implementation of laws relating to the import and the export of gold and silver bullion.
- e. Safeguarding such other interests as may be mutually agreed upon.

#### **Article VI**

All payments in connection with exportation and importation of goods and commodities as well as other payment shall be effected in U.S. dollars or any other freely convertible currency unless otherwise agreed upon between the High Contracting Parties.

#### **Article VII**

Notwithstanding the foregoing provisions, the two High Contracting Parties agree to enter into, without restricting other mutual trade, such special arrangement as to provide for the special settlement or payment procedure in respect of the goods and commodities to be exchanged or such other preferential arrangement as may be considered, by them as necessary from time to time during the period of validity of this agreement to facilitate the exchange and movement of goods and commodities from one country to the other.

Such special arrangement may be based on consideration to effect payments either in Nepalese Rupees or in Egyptian Pounds as and when such arrangements could be adopted by both High Contracting parties.

#### **Article VIII**

In order to promote the mutual trade both the High Contracting Parties shall provide to each other facilities for holding of fairs, exhibitions and displays at the Trade Center subject to their respective laws and regulations.

#### **Article IX**

The High Contracting Parties shall accord each other in respect of capital investment, joint ventures and other forms of economic co-operation aimed at promotion of trade between the two countries, treatment not less favourable than that accorded to any third country.

#### **Article X**

The High Contracting Parties shall observe the convention on Transit Trade of Landlocked States signed in New York on July 8, 1965 as well as the relevant resolutions recommendation off UNCTAD on the same subject in so far as they facilitate the trade between the two countries.

#### **Article XI**

The High Contracting Parties agree to explore ways and means and take necessary steps for the most efficient and economical transportation of goods and commodities between the two countries.

**Article XII**

In order to facilitate the implementation of this agreement and to resolve the problems which may arise therefore both the High Contracting parties agree to consult with each other and form a Joint Committee which shall meet at the request of either High Contracting Party at the convenient date and venue.

**Article XIII**

This Agreement shall be valid for a period of five years and is subject to retification where needed. It shall however come into force provisionally from the date of its signature and finally from the date of receipt of instrument of ratification at Kathmandu. It shall be extended thereafter for additional period of five years each unless either High Contracting Party notifies the other of its intention to terminate this Agreement six months prior to the expiration of each period of five years.

Done and signed at Kathmandu on Tuesday Twenty Third Day of December Nineteen Hundred and Seventy Five in two original copies each in Nepali, Arabic and English Languages, all the three texts being equally authentic. In case of divergence, the English text shall prevail.

For His Majesty's Government of  
Nepal S/D  
(Devendra Raj Upadhya)

For the Government of Arab  
Republic of Egypt. S/D  
(Ahmed Talaat Shoukryol Nahal)

**List "A"**

**Nepal's Exports to Egypt**

1. Raw Jute
2. Jute goods
3. Handicrafts and Hand-loom products
4. Pulses including Lentils
5. Ginger
6. Edible oil
7. Cardamom(Large)
8. Spices
9. Medicinal Herbs.
10. Ghee (Clarified Butter)
11. Tea
12. Timber
13. Plywood
14. Mossaic Parquet
15. Straw Board
16. Hides and Skins

**LIST "B"**

**Egypt's Exports to Nepal**

1. Textiles
2. Crude oil and Petroleum Products
3. Electric appliances
4. Office appliances
5. Drugs and Pharmaceuticals
6. Raw Cotton
7. Cotton Carpets
8. Spices
9. Dried Fruits and Canned Food
10. Aluminium Products
11. Asbestos Sheets
12. Sewing Machines
13. Bicycle
14. Movie films and other educational materials.

17. Bristle
18. Tanned Leathers
19. Movie Films and other educational materials.

**TREATY OF TRADE BETWEEN  
THE GOVERNMENT OF NEPAL AND  
THE GOVERNMENT OF INDIA**

The Government of Nepal and the Government of India (hereinafter referred to as the Contracting Parties),

Being conscious of the need to fortify the traditional connection between the markets of the two countries,

Being animated by the desire to strengthen economic cooperation between them,

Impelled by the urge to develop their economies for their several and mutual benefit, and

Convinced of the benefits of mutual sharing of scientific and technical knowledge and experience to promote mutual trade,

Have resolved to conclude a Treaty of Trade in order to expand trade between their respective territories and encourage collaboration in economic development, and

Have for this purpose appointed as their Plenipotentiaries the following persons, namely,

( Rajendra Mahto )  
Minister of Commerce and Supplies  
For the Government of Nepal

( Anand Sharma )  
Minister of Commerce and Industry  
For the Government of India

Who, having exchanged their full powers and found them good and in due form, have agreed as follows:



## **ARTICLE I**

The Contracting Parties shall explore and undertake all measures, including technical cooperation, to promote, facilitate, expand and diversify trade between their two countries.

## **ARTICLE II**

The Contracting Parties shall endeavour to grant maximum facilities and to undertake all necessary measures for the free and unhampered flow of goods, needed by one country from the other, to and from their respective territories.

## **ARTICLE III**

Both the Contracting Parties shall accord unconditionally to each other treatment no less favourable than that accorded to any third country with respect to (a) customs duties and charges of any kind imposed on or in connection with importation and exportation, and (b) import regulations including quantitative restrictions.

## **ARTICLE IV**

The Contracting Parties agree, on a reciprocal basis, to exempt from basic customs duty as well as from quantitative restrictions the import of such primary products as may be mutually agreed upon, from each other.

## **ARTICLE V**

Notwithstanding the provisions of Article III and subject to such exceptions as may be made after consultation with the Government of Nepal, the Government of India agree to promote the industrial development of Nepal through the grant on the basis of non-reciprocity of specially favorable treatment to imports into India of industrial products manufactured in Nepal in respect of customs duty and quantitative restrictions normally applicable to them.

## **ARTICLE VI**

With a view to facilitating greater interchange of goods between the two countries, the Government of Nepal shall endeavour to exempt, wholly or partially, imports from India from customs duty and quantitative restrictions to the maximum extent compatible with their development needs and protection of their industries.

## **ARTICLE VII**

Payment for transactions between the two countries will continue to be made in accordance with their respective foreign exchange laws, rules and regulations. The Contracting Parties agree to consult each other in the event of either of them experiencing difficulties in their mutual transactions with a view to resolving such difficulties.

## **ARTICLE VIII**

The Contracting Parties agree to co-operate effectively with each other to prevent infringement and circumvention of the laws, rules and regulations of either country in regard to matters relating to foreign exchange and foreign trade.

## **ARTICLE IX**

Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such restrictions as are necessary for the purpose of:

- (a) Protecting public morals,
- (b) Protecting human, animal and plant life,
- (c) Safeguarding national treasures,
- (d) Safeguarding the implementation of laws relating to the import and export of gold and silver bullion, and
- (e) Safeguarding such other interests as may be mutually agreed upon.

## **ARTICLE X**

Nothing in this treaty shall prevent either Contracting Party from taking any measures which may be necessary for the protection of its essential security interests or in pursuance of general international conventions, whether already in existence or concluded hereafter, to which it is a party relating to transit, export or import of particular kinds of articles such as narcotics and psychotropic substances or in pursuance of general conventions intended to prevent infringement of industrial, literary or artistic property or relating to false marks, false indications of origin or other methods of unfair competition.

## **ARTICLE XI**

In order to facilitate effective and harmonious implementation of this Treaty, the Contracting Parties shall consult each other regularly.

## ARTICLE XII

- (a) This Treaty shall come into force on the date of its signature. It shall supersede the Treaty of Trade concluded between the Government of Nepal and the Government of India on 6<sup>th</sup> December 1991, as amended or modified from time to time.
- (b) This Treaty shall remain in force for a period of seven years and shall be automatically extended for further periods of seven years at a time, unless either of the parties gives to the other a written notice, three months in advance, of its intention to terminate the Treaty.
- (c) This Treaty may be amended or modified by mutual consent of the Contracting Parties.
- (d) The Protocol annexed to this Treaty shall constitute its integral part.

Done in duplicate in Hindi, Nepali and English languages, all the texts being equally authentic, at Kathmandu on 27<sup>th</sup> October 2009. In case of doubt, the English text will prevail.

( Rajendra Mahto )  
Minister of Commerce and Supplies  
For the Government of Nepal

( Anand Sharma )  
Minister of Commerce and Industry  
For the Government of India

## **Protocol to the Treaty of Trade**

### **I. With Reference to Article I**

1. It is understood that the trade between the two Contracting Parties shall be conducted through the mutually agreed routes as are mentioned in the Annexure A. Such mutually agreed routes would be subject to joint review as and when required.
2. It is further understood that the exports to and imports from each other of goods which are not subject to prohibitions or duties on exportation or importation shall continue to move through the traditional routes on the common border.
3. The Government of India, on request from the Government of Nepal, will make best endeavour to assist Nepal to increase its capacity to trade through improvement in technical standards, quarantine and testing facilities and related human resource capacities.
4. Both Contracting Parties will facilitate cross-border flow of trade through simplification, standardization and harmonization of customs, transport and other trade related procedures and development of border infrastructure.
5. The Contracting Parties shall undertake measures to reduce or eliminate non-tariff, para-tariff and other barriers that impede promotion of bilateral trade.
6. Both parties shall allow duty free , temporary importation of the used machinery and equipments into their territory for the purpose of repair and maintenance of such machinery and equipments ten years from the date of exportation subject to the following conditions:
  - (i) Goods are re-exported within six months of the date of re-importation.
  - (ii) The Customs is satisfied as regards to the proof of identity of the used machinery and equipments.
  - (iii) The importer at the time of importation executes a bond undertaking to:
    - (a) export the goods after repairs or reconditioning within the period as stipulated;
    - (b) pay on demand, in the event of its failure to comply with any of the aforesaid conditions the applicable customs duties.

7. Both parties shall take measures to exchange trade related data with each other from time to time, with a view to facilitate the flow of trade and transport.

## **II. With Reference to Article II**

1. It is understood that all goods of Indian or Nepalese origin shall be allowed to move unhampered to Nepal or India respectively without being subjected to any quantitative restrictions, licensing or permit system with the following exceptions:
  - (a) Goods restricted for export to third countries,
  - (b) Goods subject to control on price for distribution or movement within the domestic market, and
  - (c) Goods prohibited for export to each other's territories to prevent deflection to third countries.
2. In order to facilitate the smooth flow of goods across the border, the list of commodities subject to restrictions/prohibitions on exports to each other's territories shall be immediately communicated through diplomatic channels as and when such restrictions/prohibitions are imposed or relaxed.
3. It is further understood that when notifications regarding restrictions on exports to each other are issued, adequate provisions will be made therein to allow the export to each other of the goods which are already covered under the forward contract or by Letter of Credit or goods which are already in transit and/or booked through the railways or other public sector transport undertakings or goods which have already arrived at the border customs posts on the day of the notification.
4. In respect of goods falling under prohibited or restricted categories as mentioned in paragraph 1 above and where needed by one Contracting Party, the other shall authorise exports of such goods subject to specific annual quota allocations. Specific request list of such goods shall be furnished to each other by the end of November, and specific quota allocations for the following calendar year shall be made by the end of December with due regard to the supply availability and the overall need of the other Contracting Party. The quota list may be jointly reviewed as and when necessary.
5. The Contracting Parties shall take appropriate measures and co-operate with each other to prevent unauthorized import in excess of the quota of goods the export of which is prohibited or restricted from the territory of the other Contracting Party.
6. Both parties shall grant recognition to the Sanitary and Phytosanitary certificates (including health certificates) issued by the competent authority of the exporting country, based on assessment of their capabilities, in the area of food and agriculture product

( including primary, semi processed and processed) , and shall allow entry of these products into their markets on the basis of these certificates subject to meeting the mandatory requirement of the importing country.

### **III. With Reference to Article III**

1. The Government of India will allow the Government of Nepal payment of the excise and other duties collected by the Government of India on goods produced in India and exported to Nepal provided that:
  - (i) Such payment shall not exceed the import duties and like charges levied by the Government of Nepal on similar goods imported from any other country, and
  - (ii) The Government of Nepal shall not collect from the importer of the said Indian goods so much of the import duty and like charges as is equal to the payment allowed by the Government of India.

### **IV. With Reference to Article IV**

1. The following primary products would be eligible for preferential treatment:
  1. Agriculture, horticulture, floriculture and forest produce,
  2. Minerals which have not undergone any processing,
  3. Rice, pulses, flour, atta, bran and husk,
  4. Timber,
  5. Jaggery (gur and shakar),
  6. Livestock, poultry bird and fish,
  7. Bees, bees-wax and honey,
  8. Raw wool, goat hair, bristles and bones as are used in the manufacture of bone-meal,
  9. Milk, home made products of milk and eggs,
  10. Ghani-produced oil and oilcakes,
  11. Herbs, ayurvedic and herbal medicines, including essential oils and its extracts,
  12. Articles produced by village artisans as are mainly used in villages,
  13. Akara,
  14. Yak Tail,
  15. Stone aggregate, boulder, sand and gravel,
  16. Any other primary products, which may be mutually agreed upon.
2. It is understood that in the matter of internal taxes or charges the movement of primary products of either Contracting Party to any market destinations in the territory of the

other shall be accorded treatment no less favorable than that accorded to the movement of its own primary products within its territory.

3. It is also understood that the aforesaid provisions will not preclude a Contracting Party from taking any measures, which it may deem necessary on the exportation of primary products to the other.

#### **V. With Reference to Article V**

1. The Government of India will provide preferential access to the Indian market free of customs duties normally applicable and quantitative restrictions except as mentioned elsewhere, for all articles manufactured in Nepal, provided they fulfill the qualifying criteria given below:
  - (a) The articles are manufactured in Nepal wholly from Nepalese materials or Indian materials or Nepalese and Indian materials. In addition, the following products, but not limited to, shall be considered as wholly produced or manufactured.
    - (i) Raw materials or mineral products extracted from soil, water, riverbed or beneath the riverbed.
    - (ii) Products taken from the seabed, ocean floor or sub-soil thereof beyond the limits of national jurisdiction, provided it has the exclusive rights to exploit that seabed, ocean floor or sub-soil thereof, in accordance with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).
    - (iii) Used articles collected there, fit only for the recovery of raw materials.
    - (iv) Waste and scrap resulting from manufacturing operations conducted there.
  - (b)
    - (i) The articles involve a manufacturing process in Nepal that brings about a change in classification, at four digit level, of the Harmonized Commodities Description and Coding System, different from those, in which all the third country origin materials used in its manufacture are classified; and the manufacturing process is not limited to insufficient working or processing as indicated in Annexure "B", and
    - (ii) The total value of materials, parts or produce originating from non-Contracting Parties or of undetermined origin used does not exceed 70% (seventy percent) of the FOB price of the articles produced, and the final process of manufacturing is performed within the territory of Nepal.

**Note:**

The value of materials, parts or produce originating from non-Contracting Parties shall be the CIF value at the time of importation of materials, parts or produce, at the point of entry in Nepal, where this can be proven, or the earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Contracting Party where the working or processing takes place.

- (c) For Nepalese articles not fulfilling the conditions given in sub-para-1 (b) (i) above, but fulfilling the condition at sub-para-1 (b)(ii) above, preferential access may be given by the Government of India, on a case by case basis, after satisfying itself that such article has undergone a sufficient manufacturing process within Nepal.
  - (d) However, the import of Nepalese manufactured articles described in Annexure “C” which fulfill the criteria in sub-para-1 (a) or (b) (i) & (ii) above will be governed by the terms specified in this Annexure.
  - (e) In the case of other articles manufactured in Nepal which do not fulfill the qualifying criteria specified in sub-para-1 (a) or (b) (i) & (ii) above, the Government of India will provide normal access to the Indian market consistent with its MFN treatment. The Certificate of Origin for MFN export will be as prescribed in Annex D/II
2. Import of articles in accordance with the para-1 above shall be allowed by the Indian customs authorities on the basis of the Certificate of Origin to be issued by the agency designated for this purpose by the Government of Nepal in the format prescribed at Annexure – D/I for each consignment of articles exported from Nepal to India. Information regarding the basis of calculation for grant of such Certificates of Origin to the manufacturing facilities in Nepal will be provided to the Government of India on an annual basis. Preferential facility shall not be available for the articles listed at Annexure-“E”.
  3. On the basis of a Certificate issued, for each consignment of articles manufactured in the small-scale units in Nepal, by the Government of Nepal, that the relevant conditions applicable to the articles manufactured in similar Small Scale Industrial units in India for relief in the levy of applicable Excise Duty rates are fulfilled for such a parity, Government of India will extend parity in the levy of Additional Duty on such Nepalese articles equal to the treatment provided in the levy of effective Excise Duty on similar Indian articles under the Indian Customs and Central Excise Tariff. However, this facility will be applicable only to articles manufactured in Nepal in such small-scale units, which qualify as small-scale units under the Nepalese Industrial Policy as on 5<sup>th</sup> December 2001.
  4. The “Additional Duty” rates equal to the effective Indian excise duty rates applicable to similar Indian products under the Indian Customs & Central Excise Tariff will continue to be levied on the imports into India of products manufactured in the medium and large-scale units in Nepal.
  5. Whenever imports into India of products manufactured in the medium and large scale units of Nepal attract an “Additional Duty” over and above an Additional Duty equivalent to the effective duty of excise applicable to similar products produced or manufactured in India, Government of India shall, upon request from Government of Nepal, consider waiver of such additional duties on imports of products from Nepal.

Explanation: Additional Duty shall mean a duty levied under Section 3(5) of the Customs Tariff Act, 1975 of India.



6. In regard to additional duty collected by the Government of India in respect of manufactured articles other than those manufactured in “small” units; Wherever it is established that the cost of production of an article is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 per cent of the “additional duty” collected by the Government of India, will be paid to the Government of Nepal provided the Government of Nepal have given assistance to the same extent to the (manufacturers) exporters.
7. Export of consignments from Nepal accompanied by the Certificate of Origin will normally not be subjected to any detention/delays at the Indian customs border check posts and other places en route. However, in case of reasonable doubt about the authenticity of Certificate of Origin, the Indian Customs Authority may seek a clarification from the certifying agency, which will furnish the same within a period of thirty days. Meanwhile, the subject consignment will be allowed entry into India on provisional basis against a bond i.e. a legally binding undertaking as required. After examining the information so provided by the certifying agency, the Indian Customs Authority would take appropriate action to finalize the provisional assessment. Whenever considered necessary, request for a joint visit of the manufacturing facility may be made by the Indian Customs Authority, which would be facilitated by the concerned Nepalese authority within a period of thirty days.
8. Where for social and economic reasons, the import of an item into India is permitted only through public sector agencies or where the import of an item is prohibited under the Indian Trade control regulations, the Government of India will consider any request of the Government of Nepal for relaxation and may permit the import of such an item from Nepal in such a manner as may be found to be suitable.
9. For the purpose of calculation of import duties customs valuation procedures, as prescribed under the prevailing customs law, will be followed.

#### **VI. With reference to Article VI**

The Government of Nepal, with a view to continuing preferences given to Indian exports, will waive additional customs duty on all Indian exports during the validity of the Treaty.

#### **VII. With reference to Article VII**

Both Contracting Parties shall make provisions so that no discrimination will be made in respect of tax, including central excise, rebate and other benefits to exports merely on the basis of payment modality and currency of payment of trade. This would be made effective from the date to be mutually agreed to, after which the Protocol to Article III would become redundant.

Both Contracting Parties agreed to develop modalities for transition from the existing to the new system.

## VIII. With Reference to Article IX

In the event of imports under the Treaty, in such a manner or in such quantities as to cause or threaten to cause serious injury to the domestic industry relating to the article, an investigation for application of safeguard measures may be initiated. The following conditions and limitations shall apply to an investigation for application of safeguards measures.

- a. a Party shall immediately deliver written notice to the other Party upon:
  - (i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
  - (ii) making a finding of serious injury or threat thereof caused by increased imports; and
  - (iii) taking a decision to apply a safeguard measure;
- b. in making the notification referred to in paragraph (a), the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the goods involved and the proposed measure, proposed date of introduction and expected duration; the Party proposing to apply a measure is also obliged to provide any additional information which the Party considers pertinent;
- c. a Party proposing to apply a measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement. Such consultation shall take place at the Joint Committee meeting set up by the two governments. If the consultations in the Joint Committee fail to resolve the issue within a period of sixty days from the date of request for consultation, then the requesting government shall be free to take appropriate remedial measures. The Nepal-India Inter Governmental Committee (IGC) will review such measures.

Explanation: The terms “Domestic Industry” and “Serious Injury” shall be interpreted as defined in the WTO Agreement on Safeguards.

The determination of ‘Serious injury’ shall be as per the WTO Safeguard Agreement.

“Threat of injury” means a situation in which a substantial increase of imports under the Treaty is of a nature so as to cause injury to the domestic producers, and that such injury, although not yet existing is clearly imminent. A determination of threat of injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

**IX. With reference to Article XI**

1. In case of problems arising in clearance of goods at the land customs stations, provided that the quality of goods in questions would deteriorate or perishes due to delays, such problem shall be dealt at the joint meeting of the local authorities comprising of the followings:
  - a. Customs officers
  - b. Quarantine/ food test officers
  - c. Representatives of local chambers
  - d. Any other local officials nominated by the respective government.
2. Such consultation will be carried out with a view to resolving the issue in an expeditious manner and at facilitating trade through resolving the issues in situ. However the case will be referred to the respective government, if the resolution could not be settled through such consultation.
3. Issues on bilateral trade and other trade related matters will be referred to an Inter-Governmental Committee (IGC) led by Secretaries in the Ministry of Commerce of the two Governments. The Committee shall meet at least once in a six months alternatively in Kathmandu and New Delhi. An Inter-Governmental Sub-Committee (IGSC) shall be constituted at the level of Joint Secretaries of the Ministry of Commerce of the two countries, which shall meet at the interval of two IGC meetings. The Inter-governmental Sub-Committee shall be responsible for taking up extensive consultation and decisions on trade and trade related issues with a view to facilitating bilateral trade and making recommendation to Inter-governmental Committee, whenever necessary. The Sub-Committee shall also work as the Joint Committee as mentioned in Protocol with reference to Article IX above.

***AGREED ROUTES FOR MUTUAL TRADE***

1. Pashupatinagar/Sukhia Pokhari
2. Kakarbhatta/Naxalbari
3. Bhadrapur/Galgalia
4. Biratnagar/Jogbani
5. Setobandha/Bhimnagar
6. Rajbiraj/Kunauli
7. Siraha, Janakpur/Jayanagar
8. Jaleswar/Bhitamore (Sursand)
9. Malangawa/Sonabarsa
10. Gaur/Bairgania
11. Birgunj/Raxaul
12. Bhairahawa/Nautanwa
13. Taulihawa/Khunwa
14. Krishnanagar/Barhni
15. Koilabas/Jarwa
16. Nepalgunj/Nepalgunj Road
17. Rajapur/Katerniyaghat
18. Prithvipur/Sati (Kailali)/Tikonia
19. Dhangadhi/Gauriphanta
20. Mahendranagar/Banbasa
21. Mahakali/Jhulaghat (Pithoragarh)
22. Darchula/Dharchula
23. Maheshpur/Thutibari (Nawalparasi)
24. International Airports connected by Direct Flights between Nepal and India (Kathmandu/Delhi, Mumbai, Kolkatta and Chennai)
25. Sikta-Bhiswabazar
26. Laukha-Thadi
27. Guleria/Murtia

**ILLUSTRATIVE LIST OF  
INSUFFICIENT WORKING OR PROCESSING**

The following shall be considered as insufficient working or processing to confer the status of originating or manufactured or produced or made in Nepal, to an article, whether or not there is a change in heading classification at four digit level, of the Harmonized Commodities Description and Coding system, different from those in which all the third country origin materials used in its manufacture are classified: -

- a) Operations to ensure the preservation of articles in good condition during transport and storage (e.g., ventilation, spreading out, drawing, chilling, placing in salt, sulphur-dioxide or other aqueous solutions, removal of damaged parts and like operations);
- b) Operations consisting of removal of dust, shifting or screening, sorting, classifying, matching (including the making up of sets), washing, painting, cutting up;
- c) Changes of packing and breaking up and assembly of consignments;
- d) Slicing, cutting, slitting, re-packing, placing in bottles or flasks or bags or boxes or other containers, fixing on cards or boards, etc., and all other packing or re-packing operations;
- e) The affixing of marks, labels or other like distinguishing signs on articles or their packaging;
- f) Mixing of articles, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in para 1 (b) of Protocol to Article V of the Treaty to enable them to be considered as manufactured or produced or made in Nepal;
- g) Assembly of parts of an article to constitute a complete article;
- h) A combination of two or more operations specified in a) to g) above.

**Annexure “ C ”**

**Nepalese manufactured articles allowed entry into India  
free of customs duties on a fixed quota basis.**

<b>S.no.</b>	<b>Nepalese Article</b>	<b>Quantity in MT per year</b>
1.	Vegetable fats (Vanaspati)	100, 000 (One hundred thousand)
2.	Acrylic Yarn	10, 000 (Ten thousand)
3.	Copper products under Chapters 74.00 & Heading 85.44 of the H.S. Code	10,000 (Ten thousand)
4.	Zinc Oxide	2,500 (two thousand five hundred)

- a) Imports into India of the above four commodities for quantities in excess of the fixed quota mentioned above will be permitted under normal MFN rates of duty, notwithstanding any concession in any other preferential arrangement.
- b) Imports into India of the above commodities will be permitted through the Land Customs Stations (LCS) at Kakarbhitta/Naxalbari, Biratnagar/Jogbani, Birganj/Raxaul, Bhairahawa/Nautanwa, Nepalgunj/Nepalgunj Road and Mahendranagar/Banbasa.
- c) Modalities of operationalization of the fixed quota on vegetable fat (Vanaspati) shall be as agreed from time to time.
- d) The existing administrative arrangements for operationalization of the fixed quota of Sl. no 2, 3 and 4 shall be reviewed for further simplification, as required.

**CERTIFICATE OF ORIGIN  
FOR EXPORTS FREE OF CUSTOMS DUTIES  
UNDER THE TREATY OF TRADE BETWEEN  
THE GOVERNMENT OF NEPAL AND  
THE GOVERNMENT OF INDIA**

Reference No. \_\_\_\_\_

1. Articles consigned from (Exporter's business name, address)
2. Articles consigned to (Consignee's name, address)
3. Means of transport and route
4. Item Number (HS Tariff Line)
5. Marks and number of package
6. Description of Articles
7. Gross weight or other quantity
8. Number and date of Invoice together with value
9. FOB value of the articles manufactured in Nepal:
10.
  - (i) Whether articles are manufactured in Nepal under Para 1 (a) of the Protocol to Article V of the Treaty of Trade (Yes / No);
  - (ii) If articles are manufactured in Nepal under Para 1(b) (i) & (ii) of the Protocol to Article V of the Treaty of Trade;
    - (A) CIF value of materials, parts or produce originating from Non-Contracting Parties (i.e. other than Nepal & India) at the point of entry in Nepal: -
    - (B) Value of materials, parts or produce of undetermined origin.
11. Percentage of the sum of the value of col. 10 (ii) (A) & (B) to the value of col. 9:
12. Declaration by the exporter;

The undersigned hereby declares that the details furnished above are correct, that the articles are produced in Nepal and that they comply with the Rules of Origin specified in the Treaty of Trade between the Government of Nepal and the Government of India.

\_\_\_\_\_  
(Place & Date, Signature of authorized signatory).

13. Certification

It is certified that the articles herein referred to are eligible for preferential treatment as per provisions of the Treaty of Trade between the Government of Nepal and the Government of India. It is further certified that:

1. The articles have been manufactured in Nepal at a factory situated at

\_\_\_\_\_ (name of the place/district) by

M/s. \_\_\_\_\_  
(name of the company).

2. The articles involve manufacturing activity in Nepal and that the manufacturing activity satisfies the criteria given in the Protocol to Article V of the Treaty of Trade.

3. The articles in question are not products of third country origin\*.

For the Government of Nepal  
(Place and Date, Signature & Stamp of certifying authority)

14. For Official use of Indian Customs

The consignment has been examined and allowed to be imported into India as it complies with the provisions as stipulated under Article V of the Treaty of Trade between the Government of Nepal and the Government of India.

\_\_\_\_\_  
Signature & Seal of the  
Certifying authority

Dated:

Place:

---

\* For the purpose of the above item No.3, the articles which have undergone a manufacturing process in Nepal as defined in the Protocol to Article V of the Treaty will not be treated as product of third country origin.



**Certificate of Origin for export to India under MFN arrangement.**

1. Product Name:
2. HS Code:
3. Manufacturing Unit in Nepal:
4. Article consigned from (Exporter's business name, address):
5. Article consigned to (Importer's name and address):
6. Marks and number of packages:
7. Description of Articles:
8. Gross weight or other quantity:
9. Number and date of Invoice together with value:
10. Ex-factory price of the Articles:
11. Declaration by exporter:

The undersigned hereby declares that the details furnished above are true and correct and complies with the provisions of Nepal-India Trade Treaty.

-----  
Place and Date, Signature of authorized signatory.

12. Certification by the competent authority:

The above declarations are correct to my knowledge and hence recommend for export to India under MFN arrangement.

-----  
Signature and seal of certifying authority

*MFN LIST OF ARTICLES  
WHICH WILL NOT BE ALLOWED  
PREFERENTIAL ENTRY FROM NEPAL TO INDIA  
ON THE BASIS OF CERTIFICATE OF ORIGIN TO BE  
GIVEN BY AGENCY DESIGNATED BY  
THE GOVERNMENT OF NEPAL*

1. Alcoholic Liquors/Beverages (\*) and their concentrates except industrial spirits,
2. Perfumes and cosmetics with non-Nepalese/non-Indian Brand names,
3. Cigarettes and Tobacco.

Note: Government of India may, in consultation with the Government of Nepal modify the above list.

(\*) Nepalese beers can be imported into India on payment of the applicable liquor excise duty equal to the effective excise duty as levied in India on Indian beers under the relevant rules and regulations of India. (Nepalese beer has been exempted from the whole of the additional duty vide customs notification No. 178/2003-customs date 17.12.2003)

**TREATY OF TRANSIT  
BETWEEN  
THE GOVERNMENT OF INDIA  
AND  
HIS MAJESTY’S GOVERNMENT OF NEPAL**

The Government of India and His Majesty’s Government of Nepal (hereinafter also referred to as the Contracting Parties),

Animated by the desire to maintain, develop and strengthen the existing friendly relations and cooperation between the two countries,

Recognising that Nepal as a land-locked country needs freedom of transit, including permanent access to and from the sea, to promote its international trade,

And recognising the need to facilitate the traffic-in-transit through their territories,

Have resolved to extend the validity of the existing Treaty of Transit, with modifications mutually agreed upon, and

Have for this purpose appointed as their plenipotentiaries the following persons, namely,

For the Government of India

**Shri Ramakrishna Hegde**

Minister of Commerce

For His Majesty’s Government of Nepal

**Shri Purna Bahadur Khadka**

Minister of Commerce

Who, having exchanged their full powers, and found them good and in due form, have agreed as follows:

**ARTICLE I**

The Contracting Parties shall accord to “traffic-in-transit” freedom of transit across their respective territories through routes mutually agreed upon. No distinction shall be made which is based on flag of vessels, the places of origin, departure, entry, exit, destination, ownership of goods or vessels.

## **ARTICLE II**

- (a) Each Contracting Party shall have the right to take all indispensable measures to ensure that such freedom, accorded by it on its territory, does not in any way infringe its legitimate interests of any kind.
- (b) Nothing in this Treaty shall prevent either Contracting Party from taking any measures which may be necessary for the protection of its essential security interests.

## **ARTICLE III**

The term “traffic-in-transit” means the passage of goods, including unaccompanied baggage, across the territory of a Contracting Party when the passage is a portion of a complete journey which begins or terminates within the territory of the other Contracting Party. The transshipment, warehousing, breaking bulk and change in the mode of transport of such goods as well as the assembly, dis-assembly or re-assembly of machinery and bulky goods shall not render the passage of goods outside the definition of “traffic-in-transit” provided any such operation is undertaken solely for the convenience of transportation. Nothing in this Article shall be construed as imposing an obligation on either Contracting Party to establish or permit the establishment of permanent facilities on its territory for such assembly, dis-assembly or re-assembly.

## **ARTICLE IV**

Traffic-in-transit shall be exempt from customs duties and from all transit duties or other charges, except reasonable charges for transportation and such other charges, as are commensurate with the costs of services rendered in respect of such transit.

## **ARTICLE V**

For convenience of traffic-in-transit, the Contracting Parties agree to provide at point or points of entry or exit, on such terms as may be mutually agreed upon and subject to relevant laws and regulations prevailing in either country, warehouse or sheds, for the storage of traffic-in-transit awaiting customs clearance before onward transmission.

## **ARTICLE VI**

Traffic-in-transit shall be subject to the procedure laid down in the Protocol hereto annexed and as modified by mutual agreement. Except in cases of failure to comply with the procedure prescribed, such traffic-in-transit shall not be subject to avoidable delays or restrictions.

## **ARTICLE VII**

In order to enjoy the freedom of the high seas, merchant ships sailing under the flag of Nepal shall be accorded, subject to Indian laws and regulations, treatment no less favourable than that accorded to ships of any other foreign country in respect of matters relating to navigation, entry into and departure from the ports, use of ports and harbour facilities, as well as loading and unloading dues, taxes and other levies, except that the provisions of this Article shall not extend to coastal trade.

## **ARTICLE VIII**

Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such measures or restrictions as are necessary for the purpose of :

- i) Protecting public morals;
- ii) Protecting human, animal and plant life;
- iii) Safeguarding of national treasures;
- iv) Safeguarding the implementation of laws relating to the import and export of gold and silver bullion; and
- v) Safeguarding such other interests as may be mutually agreed upon

## **ARTICLE IX**

Nothing in this Treaty shall prevent either Contracting Party from taking any measures which may be necessary in pursuance of general international conventions, whether already in existence or concluded hereafter, to which it is a party, relating to transit, export or import of particular kinds of articles such as narcotics and psychotropic substances or in pursuance of general conventions intended to prevent infringement of industrial, literary or artistic property or relating to false marks, false indications of origin or other methods of unfair competition.

## **ARTICLE X**

In order to facilitate effective and harmonious implementation of this Treaty the Contracting Parties shall consult each other regularly.

## ARTICLE XI

The revalidated and modified Treaty shall enter into force on the 6<sup>th</sup> January, 1999. It shall remain in force upto the 5<sup>th</sup> January, 2006 and shall, thereafter, be automatically extended for a further period of seven (7) years at a time, unless either of the parties gives to the other a written notice, six months in advance, of its intention to terminate the Treaty provided further that the modalities, routes, conditions of transit and customs arrangement, as contained in the Protocol and Memorandum to the Treaty shall be reviewed and modified by the Contracting Parties every seven years, or earlier if warranted, to meet the changing conditions before the automatic renewal and such modifications shall be deemed to be the integral part of the Treaty.

This Treaty may be amended or modified by mutual consent of the Contracting Parties.

Done at Kathmandu on 5<sup>th</sup> January, 1999.

(RAMAKRISHNA HEGDE)  
Minister of Commerce  
For the Government of India

(PURNA BAHADUR KHADKA)  
Minister of Commerce  
for His Majesty's Government of Nepal

**PROTOCOL  
TO THE TREATY OF TRANSIT  
BETWEEN  
INDIA AND NEPAL**

**With Reference to Article V**

1. The following warehouses, sheds and open space, or such other warehouses, sheds and open space as the trustees of the Port of Calcutta may offer in lieu thereof, shall be made available for the storage of transit cargo (other than hazardous goods) meant for transit to and from Nepal through India in accordance with the procedure contained in the Memorandum to the Protocol:

(i) COVERED ACCOMMODATION

'A' Shed Kidderpore Docks (including 'A' Annex) Shed No. 27, Kidderpore	- Covering approximately 3135 sq. metres
	- Covering approximately 3700 sq. metres
Calcutta Jetty Shed No. 8	- Ground Floor

(ii) OPEN SPACE

Open land at Circular Garden Reach Road	- Covering approximately 4972 sq. metres
Residential cum office land space at Haldia	Covering approximately 2000.00 sq. metres
Open land space at Haldia dock interior zone	Covering approximately 6985.00 sq. metres

2. The above storage facilities shall be given on lease by the Trustees of the Port of Calcutta (hereinafter referred to as the Trustees) to an undertaking incorporated in accordance with the relevant Indian laws and designated by



His Majesty's Government of Nepal for this purpose (hereinafter referred to as the Lessee)

3. The terms of the leases to be entered into between the Trustees and the 'Lessee' shall conform to the 'Long-term Lease-Godown' and 'Commercial Lease-Land Long-term' of the Trustees. The leases will be for twenty-five years.
4. Kidderpore Docks berth No. 27 shall be assigned by Calcutta Port Trust as a preferential berth to the lessee on such terms as agreed upon from time to time to Shipping Lines of India if such a lease is finalised within six months of the renewal signing of the Treaty. If, however, this option is not exercised within this period, charter vessels carrying Traffic-in-transit of Nepal may be assigned to 27 K.P.D. berth on a priority basis, to the extent possible.
5. The lease rent shall be determined in accordance with the Schedules of Rent Charges as determined by the Trustees-in-meeting from time to time.
6. The transit cargo shall be subject to the levy of all charges by the Trustees in accordance with their Schedule of Charges in force from time to time.
7. The Lessee would be permitted to own / or operate a number of trucks and barges in the Port Area in connection with the storage of cargo in transit in the said areas, subject to compliance with the normal rules and regulations applicable to trucks and barges plying in the Port Area.
8. The Commissioner of Customs, Calcutta, in accordance with the relevant provisions of the laws and regulations, will provide the lessee for a customs house agent's licence for the clearance at the Port of Calcutta of Traffic-in-transit from and to Nepal. If a licence is also required from the Port of Calcutta for this work, Calcutta Port Trust will provide such licence in accordance with the relevant provisions of their bye-laws/regulations.
9. The owner of goods or the lessee, if authorised by owner, may under the supervision of the proper officer of the Indian Customs:
  - (i) Inspect the goods;
  - (ii) Separate damaged or deteriorated goods from the rest;
  - (iii) Sort the goods or change their containers for the purpose of preservation for onward transmission;
  - (iv) Deal with the goods and their containers in such a manner as may be necessary to prevent loss or deterioration or damage to the goods;
10. The warehouses shall function during the normal working hours under the supervision of officers to be provided by the Calcutta Customs House. Where, however, such functioning is necessary outside the office hours,

officers for supervision will be provided by the said Customs House on payment of the prescribed fees.

## **II. With Reference to Article VI**

### **1. Traffic in transit via Calcutta shall: -**

(i) pass only through one of the mutually agreed routes connecting the following entry / exit points:

(a)	Calcutta	Sukhia Pokhri
(b)	Calcutta	Naxalbari (Panitanki)
(c)	Calcutta	Galgalia
(d)	Calcutta	Jogbani
(e)	Calcutta	Bhimnagar
(f)	Calcutta	Jayanagar
(g)	Calcutta	Bhitamore (Sitamarhi)
(h)	Calcutta	Raxaul
(i)	Calcutta	Nautanwa (Sonauli)
(j)	Calcutta	Barhni
(k)	Calcutta	Jarwa
(l)	Calcutta	Nepalgunj Road
(m)	Calcutta	Tikonia
(n)	Calcutta	Gauri-Phanta
(o)	Calcutta	Banbasa

Note: Calcutta shall include Haldia.

Provided that:

- a) these routes may be discontinued or new ones added by mutual agreement;
  - b) the Traffic-in-Transit shall be allowed to move through alternative roads with prior permission of the nearest Indian customs Officer, not below the rank of Superintendent, if the specified roads become unserviceable / unusable due to unforeseen events; and
  - (c) bulk traffic, such as fertilizers, cement, etc. moving by rail shall pass through Calcutta -Raxaul route or any other agreed route, subject to prior intimation being given to Customs as and when such movements are anticipated,
- (ii) Comply with the procedure as set out in the memorandum annexed hereto; and
- (iii) Comply with any other detailed regulations, which may be prescribed through mutual consultation by the Contracting Parties in keeping with the nature of the commodity and the need for expeditious movement and the safety of transport.

2. Wherever en-route it becomes necessary to break bulk in respect of consignments in transit, such breaking shall be done only under the supervision of the appropriate officials of the Indian Customs.
3. All goods intended for removal in transit to Nepal while in the process of removal to or from the warehouses or other storage places that may be leased out in Calcutta Port for the storage of such goods and also while in storage or under the process of packing, sorting and separation etc., in such warehouses or places, shall be subject to relevant Indian laws and regulations.
4. The procedure in the foregoing sub-paragraphs shall apply mutatis mutandis to road transport with the following modifications:

- (a) Arms, ammunition and hazardous cargo shall not be allowed to be transported by road

NOTE:

1. With reference to hazardous cargo, exception could be permitted as shall be mutually agreed.
  2. Petroleum products, chemical fertilizers and industrial alcohol shall be allowed, as exceptions in terms of Note 1 above, to be transported by road, subject to compliance with the fire, safety and other statutory requirements.
- (b) Sensitive goods for imports, as specified by the Government of India from time to time, with prior intimation to His Majesty's Government of Nepal shall be permitted transit by marine container / pilfer-proof container trucks or rail at the option of the Nepalese importer.
  - (c) Bulk cargo such as boulders, fertilizer, cement, vegetable and fruits shall be permitted by open trucks also.
  - (d) Goods other than those mentioned at (a), (b) and (c) above shall be permitted transit by railway wagons or marine containers or pilfer-proof container trucks or any other trucks, capable of being sealed in a manner that will leave no visible traces of tampering, at the option of the importer.
  - (e) Pilfer-proof container truck shall conform to specifications mutually agreed upon and shall be capable of being locked and sealed. The containers shall be locked and sealed by the Indian Customs.
  - (f) Individual packages shall be sealed by Indian Customs provided that:

- (i) Sealing of individual packages may be dispensed with when they are imported packed in recognised containers, provided the entire contents of the container are consigned to the same person and the container is sealed and the provision of subparagraph (e) above is complied with;
    - (ii) Sealing of individual packages may also be dispensed with when consignments consigned to different consignees are imported packed in one single recognised container, provided the entire contents of the container are transported in one single sealed container (not trucks) and the provision of subparagraph (e) above is complied with.
  - (g) If the truck breaks down, the nearest customs officer shall be approached with least possible delay.
  - (h) The Contracting Parties may mutually agree to any other modifications that may be considered necessary from time to time.
5. Respecting each other's relevant laws, it is agreed that the Contracting Parties will take all steps to prevent deflection of their mutual trade to third countries and to ensure compliance with the procedure for the transit of goods across their territories.
6. In order to facilitate the movement of traffic-in-transit, additional means of transport and facilities, mutually agreed upon, may be added.

## **MEMORANDUM TO THE PROTOCOL TO THE TREATY OF TRANSIT BETWEEN INDIA AND NEPAL**

In pursuance of and subject to the provisions of the Protocol to the Treaty of Transit, His Majesty's Government of Nepal and the Government of India agree that the following detailed procedure shall apply to traffic-in-transit:

### **IMPORT PROCEDURE**

When goods are imported from third countries by Nepal in transit through India, the following procedure shall be observed: -

1. (a) Transit of Nepalese imports, shall be allowed against import licences issued by His Majesty's Government of Nepal wherever such licences are issued, and letters of credit opened through a commercial bank in Nepal.

(b) In case of Nepalese imports for which there is no requirement of import licence or letter of credit, the Royal Nepalese Consul General, Deputy Consul General or Consul at Calcutta shall furnish the following certificate on the Customs Transit Declaration:

"I have verified that the goods specified in this Declaration and of the quantity and value specified herein have been permitted to be imported by His Majesty's Government of Nepal without the requirement of import licence or letter of credit."

### **Signature & Seal**

**NOTE:** His Majesty's Government of Nepal shall arrange to supply through the Indian Embassy at Kathmandu or directly to the Commissioner of Customs, Calcutta, the specimen signature or signatures of official or officials who are authorised to sign import licenses issued by His Majesty's Government of Nepal. It shall also arrange to have a copy each of the import licences, wherever such licenses are issued by it for such goods, sent directly to the Commissioner of Customs, Calcutta.

2. At the Indian port of entry (hereinafter called the Custom House), the importer or his agent (hereinafter referred to as the importer) shall present a Customs Transit Declaration containing the following particulars:

- (a) Name of the ship, Rotation number and Line number,
- (b) Name and address of the importer,
- (c) Number, description, marks and serial numbers of the packages,
- (d) Country of consignment and country of origin, if different,
- (e) Description of goods,
- (f) Quantity of goods,
- (g) Value of goods,
- (h) Import licence number and date,
- (i) Letter of credit number, date and name and address of issuing bank
- (j) Route of transit (one of the mutually agreed routes); and
- (k) A declaration at the end in the following words:-

“I /We declare that the goods entered herein are for Nepal, in transit through India and shall not be diverted en-route to India, or retained in India.

I /We declare that all the entries made herein above are true and correct to the best of my/our knowledge and belief.”

Signature

3. The Customs Transit Declaration shall be made in sextuplicate. All copies along with the bill of lading, invoice, packing list and a copy of the import licence issued by His Majesty’s Government of Nepal, wherever issued, and a copy of the letter of credit, authenticated by the Royal Nepalese Consulate in Calcutta or the issuing bank, shall be presented to the Custom House. The copy of the import licence and the letter of credit so presented shall be examined by the Custom House against the copy of the import licence and/or the statement of particulars of the letter of credit received directly from His Majesty’s Government of Nepal. No other additional document may be asked for, except where considered necessary for clearance of specific goods.

4. Nepalese imports shall be removed to Nepal sheds within free time, if not already put in wagons or trucks. An authorisation with removal instructions of the owner for the purpose shall be necessary for removal.
5.
  - a) In respect of containerised cargo, the following examination procedure shall be followed:
    - i) On arrival of the Nepalese containerised cargo, the Indian customs officer posted at the seaport, shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorised by the shipping company. If found intact, the customs officer shall allow transportation of the containerised cargo, without examination, unless there are valid reasons to do otherwise.
    - ii) In case where the 'one-time-lock' on the container arriving at the seaport in India is found broken or defective, the Indian customs authorities shall make due verification of the goods to check whether the same are in accordance with the Customs Transit Declaration, put fresh 'one-time-lock' and allow the container to move to the destination. The serial number of the new 'one-time-lock' shall be endorsed in the Customs Transit Declaration.
  - b) In respect of non-containerised cargo, the Custom House shall make a selective percentage examination of the goods to check whether the goods are in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit. Goods for Nepal as covered by the said licence and/or the said letter of credit and also in accordance with the Customs Transit Declaration shall be approved for onward transmission. However, in making such examination, avoidable delays shall be curtailed to the utmost in order to expedite the traffic-in-transit.
- NOTE: The selective percentage examination referred to in sub-paragraph 5(b) shall mean that a percentage of the total packages in a consignment will be selected for examination and not that a percentage of the contents of each of the package comprised in the consignment will be examined.
6. Goods shall be transported from the customs port of entry to the border land customs station by the means of the transport provided in sub-paragraphs (a), (b), (c) and (d) of paragraph 4 of the Protocol with reference to Article VI of the Treaty of Transit and shall be locked and sealed in the manner provided in sub-paragraph



(e) of paragraph 4 of the Protocol with reference to Article VI of the Treaty of Transit after examination as mentioned above.

7. Where goods cannot be transported in closed wagons or pilfer-proof container trucks or sealed tarpaulin covered trucks and have to be transported in open wagons or flats or open trucks, detailed identifying particulars shall be recorded in the Customs Transit Declaration.
8. Small consignments of traffic-in-transit will be accepted for booking by railway from one of the agreed warehouses leased to Nepal Transit and Warehousing Company Ltd. provided the minimum load condition as applicable in Indian Railways is satisfied.
9. The sensitive goods, as specified by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be covered by an insurance policy or a bank guarantee and/or such legally binding undertaking to the satisfaction of the Commissioner of Customs, Calcutta, in the manner indicated below:-
  - a) Goods moving by rail up to the border shall be covered by an insurance policy or a bank guarantee, at the option of the importer, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the Commissioner of Customs, Calcutta, and the amount shall become payable to the Commissioner in the event of the goods not reaching Nepal.
  - (b) Goods moving by road in trucks belonging to Nepal Transit & Warehousing Company Ltd., or Nepal Transport Corporation shall be covered by an insurance policy or a bank guarantee, at the option of the importer, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the Commissioner of Customs, Calcutta, and the amount shall become payable to the Commissioner in the event of the goods not reaching Nepal. In addition, Nepal Transit and Warehousing Company Ltd., or the Nepal Transport Corporation, as the case may be, shall give an undertaking to the said Commissioner of Customs, Calcutta, to pay the difference between the market value of goods in India and their c.i.f. value plus Indian customs duties in the event of the goods not reaching Nepal.
  - (c) Goods moving by road in trucks other than those mentioned at sub-paragraph (b) above shall be covered by an insurance policy or a bank guarantee at the option of the importer, for an amount equal to the difference between the market value of the goods in India and their c.i.f. value. This insurance policy or a bank guarantee shall be assigned to the Commissioner of Customs, Calcutta and the amount shall become payable to the said Commissioner in the event of the goods not reaching Nepal.

(d) The insurance policy shall be obtained by the importer from an insurance company authorised to do business in India on such terms and conditions, to the satisfaction of the Commissioner of Customs, Calcutta, which would guarantee that the insured amount shall become payable forthwith to the Government of India on receipt of a notice to the insurance company from the Commissioner of Customs, Calcutta, after satisfying himself that the goods have not entered Nepal.

**NOTE:**

1. In respect of goods belonging and consigned to His Majesty's Government of Nepal under sub-paragraphs (a) and (b) above, no insurance or bank guarantee shall be required, provided an undertaking or a further undertaking, as the case may be, is given by Nepal Transit and Warehousing Company Ltd., or the Nepal Transport Corporation in lieu thereof.
  2. No such requirement will be necessary in respect of goods carried by air without transshipment en-route or in such cases as may be mutually agreed upon.
  3. In the event of goods carried by rail not reaching the booked destination, Indian Railways shall, where liable as carriers under the Indian Railways Act, pay the c.i.f. price to the importer.
  4. When the Customs Transit Declaration, duly authenticated, both by the border land customs stations in India and Nepal, is received at the entry port within the prescribed period, it will be accepted as an evidence that goods have reached Nepal.
  5. The words "Indian customs duties" wherever it appears in the Treaty, Protocol and Memorandum would mean such duties as are levied on import of goods into India.
- 9(A). For goods other than those specified as sensitive by the Government of India in terms of paragraph 9 above, the importer shall furnish, to the satisfaction of Commissioner of Customs, Calcutta, a legally-binding undertaking that the amount equal to the difference between the market value of the goods in India and their C.I.F value shall be paid, on demand, to the Commissioner of Customs, Calcutta, in the event of the goods not reaching Nepal.
- 9(B). The Commissioner of Customs, Calcutta, shall provide to the concerned Department of His Majesty's Government of Nepal, from

time to time, details of cases where the goods, including those goods which have not been insured, do not appear to have crossed into Nepal. His Majesty's Government of Nepal shall thereupon carry out enquiries and make all possible efforts to ensure that the concerned persons pay the dues to Government of India.

10. After the Custom House is satisfied as regards the checks contemplated in the preceding paragraphs, it shall endorse all the copies of the Customs Transit Declaration. The original copy shall be handed over to the importer. The duplicate and triplicate will be sent by post to the Indian border customs officer and the remaining copies shall be retained by the Custom House. In order to avoid delay in postal transmission, duplicate and triplicate copies of the Customs Transit Declaration, along with copy of the original railway receipt shall be handed over to the importer or his authorised representative in a sealed cover, if he so desires. This facility shall however be denied to the importer who defaults in the production of these documents within a reasonable time to the Indian border customs officer.
11. In case of any suspicion of pilferages, traffic-in-transit shall be subject to checks by the Indian Customs during the period that they are in transit, as may be necessary, particularly at the point of railway transshipment from broad-gauge to metre-gauge.
12. (a) On arrival of the containerised cargo at the border land customs station or at the border railway station, as the case may be, the following examination procedure will be followed:
  - i) On arrival of the Nepalese containerised cargo, the Indian customs authorities posted at the land customs station or the railway station shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorised by the shipping company or the Customs authorities at the sea port or during the transit and, if found intact, shall approve for onward transmission of the containerised cargo, without examination of the cargo unless there are valid reasons to do otherwise.
  - ii) In case where the 'one-time-lock' of the container is found broken or defective, the Indian customs authorities posted at the land customs station or the railway station, as the case may be, shall make due verification of the goods to check whether the goods are in accordance with the customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit.

- iii) If, on verification, the goods are found in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit, the Indian customs authorities posted at the border land customs station or the railway station shall put fresh 'one-time-lock' and approve for onward transmission of the container. The serial number of the new 'one-time-lock' shall be endorsed by the Indian customs authorities posted at the border land customs station or the railway station on the Customs Transit Declaration.
- (b) On arrival of the non-containerised cargo at the border land customs station or at the border railway station, as the case may be, the following examination procedure will be followed:
  - i) The sealed railway wagons or the sealed marine containers or the sealed pilfer-proof containerised trucks or the sealed tarpaulin covered trucks, as the case may be, shall be presented to the Indian customs authorities posted at the border land customs station or the railway station, who shall examine the seals and locks and, if satisfied, shall permit onward transmission, or the unloading or breaking of bulk, as the case may be, without examination of the cargo, unless there are valid reasons to do otherwise.
  - ii) In cases where seals and locks on the wagons or on the marine containers or on the pilfer-proof containerised trucks or on the tarpaulin covered trucks or on the packages are found broken or defective, or there is suspicion otherwise, the Indian customs authorities posted at the border land customs station or the railway station, as the case may be, shall examine the goods to check whether the goods are in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit. Goods for Nepal, as covered by the said licence, wherever such licence is issued, and the said letter of credit and also in accordance with the Customs Transit Declaration shall be approved for onward transmission through such escorts or supervision as may be necessary to ensure that the goods cross the border and reach Nepal. However, in making such examination, avoidable delays shall be curtailed to the utmost in order to expedite the traffic-in-transit.
- (c) On arrival of the traffic-in-transit in open trucks, or open railway wagons, the Indian customs authorities at the border land customs station shall carry out such selective percentage examination as is deemed necessary to ensure that goods are in accordance with the Customs Transit Declaration and conform to import licence, wherever such import licence is issued, and the letter of credit.
- 12A. On arrival of traffic-in-transit mentioned at sub-paragraphs (a), (b) and (c) above at the border land customs station or at the border railway station, as the case may be, the importer shall present the original copy of the Customs Transit Declaration duly endorsed by the Indian Custom House of entry, to the Indian customs officer at the border land customs station, who shall compare the original copy with the duplicate and triplicate received by him and will, after satisfying himself as regards the checks contemplated at sub-paragraphs (a), (b) and (c) above, endorse

all the copies of the Customs Transit Declaration. The goods in transit shall be allowed onward movement by road or by rail, as the case may be, only after clearance as above by the Indian customs officer at the land customs station or the railway station. The Indian customs officer shall, thereafter, through such escorts or supervision as may be necessary, ensure that the goods cross the border and reach Nepal. He, or in cases where there is an Indian customs officer posted right at the border, will certify on the copies of the Customs Transit Declaration that goods have crossed into Nepal. The Indian customs officer shall then hand over the original copy of the Customs Transit Declaration to the importer, send the duplicate to the Indian Custom House at the port of entry, send the triplicate to the Nepalese customs officer at the corresponding Nepalese post and after it is received back duly endorsed by the Nepalese customs officer, retain it for his records.

13. If a consignment in transit is received at destination in more than one lot, the separate lots of the consignment covered by one Customs Transit Declaration may be presented in separate lots and the Indian customs officer at the border shall release the goods so presented after necessary examination and check of relevant documents and goods and after making the necessary endorsement. In such a case, the Indian customs officer, at the border shall send the triplicate copy of Customs Transit Declaration to the Nepalese customs officer at the corresponding Nepalese post only after release of the entire consignment as covered by the Customs Transit Declaration.
14. In cases where the duplicate and triplicate copies of the Customs Transit Declaration are not received at the customs office of exit, the Indian customs office will, by telephonic or other quick means of communication with the customs office of entry, seek confirmation to ensure against delay and then on the basis of aforesaid confirmation allow despatch of goods.
15. The Nepalese Customs officer shall:
  - (i) endorse a Certificate over his signature and authenticate it under a Customs stamps on the original copy of the Nepalese Import Licence, if any / Letter of Credit, and the original and the triplicate copy of the Customs Transit Declaration that the packages correspond in all material respects with the particulars shown in the declaration and in all material respects with the particulars shown in the declaration and in all material respects with the Nepalese Import Licence / Letter of Credit wherever required or opened as the case may be and that the goods have been cleared from the Nepalese Customs custody for entry into Nepal.
  - (ii) hand over, under acknowledgement, duly endorsed original copy of the Customs Transit Declaration to the importer who will present it to the Indian Border Land Customs Station within 15 days of the date on which transit was allowed at the Indian port of importation or such extended time as the concerned Assistant Commissioner of Indian Customs may allow. For every week or part thereof delay in presenting the original Customs Transit Declaration duly certified as above the importer shall pay a sum of Re.1/- for

every Rs.1,000/- of the Indian market price of the goods to Assistant Commissioner of Customs of the concerned Indian Border Land Customs Station.

- (iii) send the triplicate copy of the Customs Transit Declaration duly endorsed directly to the concerned Indian Border Land Customs Station.
- (iv) Endeavour to send a telex/fax communication on a daily basis to the Commissioner of Customs, Calcutta giving the number and date of CTDs received by him on the day confirming that the goods covered by these CTDs have been received in Nepal. The fax/telex will be followed by a post copy in confirmation.

16. The Indian Customs Officer at the concerned Border Land Customs Station shall send fax/telex communication on a daily basis to the Commissioner of Customs, Calcutta giving details of the original copies of the Customs Transit Declarations received by them on a particular day from the importer duly endorsed by the Nepalese Customs Authorities that the goods have been received in Nepal. The fax/telex message will be followed by a post copy in confirmation. The Indian Border Land Customs Station will also forward the triplicate of the duly endorsed copy of the CTD on a daily basis to the Commissioner of Customs, Calcutta by Speed Post.

#### **EXPORT PROCEDURE:**

When goods from Nepal are cleared for export to third countries, in transit through India, the following procedure shall be observed:

1. The designated officer in charge of the Nepalese customs office at the border shall furnish the following certificate on the "Customs Transit Declaration":

"I have verified that the goods specified in this Declaration and of the quantity and value specified herein have been permitted to be exported under Licence Number..... dated ..... . (wherever issued) and under Letter of credit Number .....dated ..... issued by .....(name and address of the issuing bank)".

Signature & Seal

Note: The requirement of giving particulars of letter of credit in the above certificate will not apply in the case of goods for the exports of which from Nepal, no Letter of credit is required under the laws of His Majesty's Government of Nepal.

2. The exporter or his agent (hereinafter referred to as the exporter) shall present to the Indian customs officer at the border land custom station through which the goods are to enter India, a Customs Transit Declaration containing the following particulars:

- (a) Name and address of the exporter,
- (b) Number, description, marks and serial numbers of the packages,
- (c) Country to which consigned,
- (d) Description of goods,
- (e) Quantity of goods,
- (f) Value of goods,
- (g) Export Licence Number. and date,
- (h) Country of origin of the goods,
- (i) Letter of credit number, date and name and address of issuing bank,
- (j) Route of Transit (one of mutually agreed routes),
- (k) Indian customs office of entry from Nepal, and
- (l) A declaration at the end in the following words:-

"I /We declare that the goods entered herein are of Nepalese origin, are for export from Nepal to countries other than India and shall not be diverted en-route to India or retained in India.

I /We declare that all the entries made therein above are true and correct to the best of my/our knowledge and belief."

Signature

3. The Customs Transit Declaration shall be made in quadruplicate. All copies, along with invoice, packing list and a copy of the letter of credit, authenticated by the concerned Nepalese bank, shall be presented to the Indian customs officer at the entry point. No additional documents will be asked for by the Indian customs, except when considered necessary for the clearance of any specific goods.
4. (a) For the containerised goods, the Indian customs authorities at the point of entry into India shall observe the following procedures:



- (i) On arrival of the Nepalese containerised cargo, the Indian customs officer posted at border land customs station shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorized by the shipping company and if found intact, shall allow transportation of the containerised cargo, without examination, unless there are valid reasons to do otherwise.
  - (ii) In case where the 'one-time-lock' on the container arriving at border land customs stations in India is found broken or defective, the Indian customs authorities shall make due verification of the goods to check whether the goods are in accordance with the Customs Transit Declaration and shall put fresh 'one-time-lock' and allow the containers to move to the destination. The serial number of the new 'one-time-lock' shall be endorsed in the Customs Transit Declaration.
- (b) The Indian customs officer at the point of entry into India shall make such selective percentage examination of packages and contents as may be necessary to check whether:
- (i) the goods are in accordance with the Customs Transit Declaration,
  - (ii) the goods are such as have been specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, and/or
  - (iii) they are of origin as declared in the Customs Transit Declaration.

NOTE: The selective percentage examination referred to in sub-paragraph 4(b) shall mean that a percentage of the total packages in a consignment will be selected for examination and not that a percentage of the contents of each of the package comprised in the consignment will be examined.

- 5. The goods, as specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be transported from the Indian customs border post to Calcutta port in closed railway wagons or in pilfer-proof containers (to be provided by the exporter) which can be securely locked. The containers or wagons, as the case may be, shall be locked and duly sealed after the examination by the border customs officer.
- 6. Where goods cannot be transported in closed wagons, and have to be transported in open wagons or flats or open trucks, detailed identifying particulars shall be recorded in the Customs Transit Declaration.
- 7. After the Indian Customs authorities at the border land customs station are satisfied as regards the checks contemplated in the

preceding paragraphs, it shall endorse all the copies of the Customs Transit Declaration. The original copy shall be handed over to the exporter. The duplicate and triplicate will be sent by post to the Commissioner of Customs, Calcutta and the quadruplicate copy shall be retained. In order to avoid delay in postal transmission, duplicate and triplicate copies of the Customs Transit Declaration, along with copy of the original railway receipt, shall be handed over to the exporter or his authorised representative in a sealed cover, if he so desires. This facility shall, however, be denied to the exporter who defaults in the production of these documents within a reasonable time.

8. The sensitive goods for export, as specified by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be covered by an insurance policy or a bank guarantee and/or such legally binding undertaking to the satisfaction of the concerned Commissioner of Customs, in the manner indicated below: -
  - (a) Goods moving by rail up to the sea port shall be covered by an insurance policy or a bank guarantee, at the option of the exporter, for an amount equal to the Indian customs duties on such goods. This Insurance policy or bank guarantee shall be assigned to the concerned Commissioner of Customs, and the amount shall become payable to the Commissioner in the event of the goods not reaching Calcutta customs.
  - (b) Goods moving by road in trucks belonging to Nepal Transit & Warehousing Company Ltd., or Nepal Transport Corporation shall be covered by an insurance policy or a bank guarantee, at the option of the exporter, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the concerned Commissioner of Customs, and the amount shall become payable to the Commissioner in the event of the goods not reaching Calcutta customs. In addition, Nepal Transit and Warehousing Company Ltd., or the Nepal Transport Corporation, as the case may be, shall give an undertaking to the concerned Commissioner of Customs, to pay an amount equal to the difference between the market value of goods in India and their c.i.f. value plus Indian customs duties in the event of the goods not reaching Calcutta customs.
  - (c) Goods moving by road in trucks other than those mentioned at sub-paragraph (b) above shall be covered by an insurance policy or a bank guarantee at the option of the exporter, for an amount equal to the difference between the market value of the goods in India and their c.i.f. value. This insurance policy or a bank guarantee shall be assigned to the concerned Commissioner of

Customs, and the amount shall become payable to the said Commissioner in the event of the goods not reaching Calcutta customs.

- (d) The insurance policy shall be obtained by the exporter from an insurance company authorised to do business in India on such terms and conditions, to the satisfaction of the concerned Commissioner of Customs, which will guarantee that the insured amount shall become payable forthwith to the Government of India on receipt of a notice to the insurance company from the concerned Commissioner of Customs, after satisfying himself that the goods have not reached Calcutta customs.

**NOTE:**

1. In respect of goods belonging to and consigned by His Majesty's Government of Nepal under sub-paragraphs (a) and (b) above, no insurance or bank guarantee shall be required, provided an undertaking or a further undertaking, as the case may be, is given by Nepal Transport and Warehousing Corporation in lieu thereof.
  2. No such requirement will be necessary in respect of goods carried by air without transshipment en-route or in such cases as may be mutually agreed upon.
  3. In the event of goods carried by rail not reaching the booked destination, Indian Railways shall, where liable as carriers under the Indian Railways Act, pay the c.i.f. price to the exporter.
  4. When the Customs Transit Declaration, duly authenticated by the Calcutta Customs, is received at the concerned border land customs station within the prescribed period, it will be accepted as an evidence that goods have reached Calcutta Customs.
- 8A. For goods other than those specified by the Government of India in terms of paragraph 8 above, the exporter shall furnish, to the satisfaction of concerned Commissioner of Customs, a legally-binding undertaking that the amount equal to the difference between the market value of the goods in India and their c.i.f value shall be paid on demand to the concerned Commissioner of Customs, in the event of the goods not reaching Calcutta customs.
- 8B. The concerned Commissioner of Customs, shall provide to the concerned department of His Majesty's Government of Nepal, from time to time, details of cases where the goods, including those goods which have not been insured, do not appear to have reached Calcutta customs. His Majesty's Government of Nepal shall thereupon carry out enquiries and make all possible efforts to

ensure that the concerned persons pay the dues to the Government of India.

9. In case of any suspicion of pilferage, the goods as have been specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal shall while in transit through India, be subject to such checks by the Indian customs, as may be necessary, particularly at the point of railway transshipment from meter-gauge to broad-gauge.
10. On arrival of goods at Calcutta Port, the exporter shall present the original copy of the Customs Transit Declaration duly endorsed by the Indian border land customs station to the Custom House. This copy shall be compared by the Custom House with the duplicate and triplicate received by it from the border. In case of goods which have moved under seals and locks, the Custom House shall check the seals and locks and where there is suspicion that they have been tampered with, will examine the goods to identify them with the corresponding Customs Transit Declaration. After the verification as contemplated in this paragraph is completed by the Custom House, it shall permit the export of the goods and will in case of goods specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal ensure that these are duly shipped. After the goods have been shipped, the Custom House shall endorse all the copies of the Customs Transit Declaration, hand over the original to the exporter and send the triplicate copy to the Indian border land customs station and retain the duplicate.
11. Where export cargo is shut out, it will be removed to the warehouse leased out to Nepal Transit and Warehousing Company Ltd., on filing of such removal instructions by the exporter or his authorised agents.
12. The Nepalese export cargo not shipped due to valid reasons will be permitted to be returned to Nepal according to the procedure applicable for the Nepalese import cargo.

16<sup>th</sup> February, 1993  
Kathmandu

Excellency,

As per the understanding reached between the Rt.Hon'ble Mr.Girija Prasad Koirala, Prime Minister of Nepal, and His Excellency Mr.P.V.Narasimha Rao, Prime Minister of India, as reflected in the Joint Communique issued at the end of the official visit of His Excellency the Prime Minister of India to Nepal on October 21, 1992, it was agreed to replace the letter exchanged at the time of the signing of the Treaty of Transit on December 6, 1991, relating to the movement of goods from one part of Nepal to another through Indian territory, by a new provision which runs as follows:

In keeping with the provisions of the Treaty of Transit signed by two Governments on December 6, 1991, it was agreed that for the movement of goods and Nepalese vehicles from one part of Nepal to another through Indian territory, the procedure prescribed for export of goods from Nepal to third countries shall apply mutatis mutandis except that there will be no cash or bond system upon the necessary undertaking given by the Nepalese customs authorities. Further, as regards the movement of baggage accompanying a person travelling from one part of Nepal to another through Indian territory, the Government of India shall prescribe a simplified procedure in respect of such articles of baggage as the Government of India may specify as being likely to be retained in India having regard to the difference in prices in Nepal and India and other relevant factors. For other articles of baggage accompanying a passenger, movement shall be freely allowed.

I shall be grateful if you could kindly confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-  
( **Durga Prakash Panday** )  
Secretary  
Ministry of Commerce  
for His Majesty's Government of Nepal

His Excellency  
**Prof.Bimal Prasad**  
Ambassador Extraordinary & Plenipotentiary  
Embassy of India,  
KATHMANDU, NEPAL.

16<sup>th</sup> February, 1993  
Kathmandu

Excellency,

As per the understanding reached between the Rt.Hon'ble Mr.Girija Prasad Koirala, Prime Minister of Nepal, and His Excellency Mr.P.V.Narasimha Rao, Prime Minister of India, as reflected in the Joint Communiqué issued at the end of the official visit of His Excellency the Prime Minister of India to Nepal on October 21, 1992, it was agreed, in accordance with the Treaty of Transit signed between the two Governments on December 6, 1991, that the movement of Nepalese private commercial vehicles from the Nepalese border to Calcutta/ Haldia and back will be allowed on such vehicles being duly authorised by His Majesty's Government of Nepal or the Nepal Transit and Warehousing Company Ltd, or the Nepal Transport Corporation, and the necessary undertaking being given by them to the Indian customs authorities.

I shall be grateful if you could kindly confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-  
( **Durga Prakash Panday** )  
Secretary  
Ministry of Commerce  
for His Majesty's Government of Nepal

His Excellency  
**Prof.Bimal Prasad**  
Ambassador Extraordinary & Plenipotentiary  
Embassy of India,  
KATHMANDU, NEPAL.

Kathmandu  
January 5, 1999

Excellency,

I write to acknowledge the receipt of your letter of today's date which reads as follows:

"In course of the discussion that led to the renewal of the Treaty of Transit between our two Governments today, and in pursuance of Paragraph 1(i) of Section II of the Protocol, it was agreed that the Nepalese traffic-in-transit from Calcutta to the mutually agreed entry and exit points along the India-Nepal border vice-versa shall pass only through one of the mutually agreed routes as specified in the enclosed Annexure-A. The particulars of one of these mutually agreed routes, at the option of the importer or the exporter, as the case may be, shall be mentioned in the Customs Transit Declaration.

2. It was further agreed that the transit facilities through Phulbari route and Radhikapur route relating to Nepalese trade with and through Bangladesh would continue to be governed by the terms of existing separate arrangements concluded between the two Governments.

3. I shall be grateful if you could kindly confirm that the foregoing correctly sets out the understanding reached between our two Governments."

I confirm that the following correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-  
( **Purna Bahadur Khadka** )  
Minister of Commerce  
His Majesty's Government of Nepal

H.E.Shri Ramakrishna Hegde,  
Minister of Commerce  
Government of India.



## ANNEXURE 'A'

### SPECIFIED LAND ROUTES

- |    |                          |  |
|----|--------------------------|--|
| 1. | Sukhia Pokhari           | Road connecting Calcutta-Dunlop Bridge-Barrackpore-Krishna Nagar-Malda-Raiganj-Dalkola-Siliguri-Sukhia Pokhari   |
| 2. | Naxalbari<br>(Panitanki) | Road connecting Calcutta-Dunlop Bridge-Barrackpore-Krishna Nagar-Malda-Raiganj-Dalkola-Bagdogra-Panitanki  |
| 3. | Galgalia                 | Road connecting Calcutta-Dunlop Bridge-Barrackpore-Krishna Nagar-Malda-Raiganj-Dalkola-Kishanganj-Thakurganj-Galgalia.   |
| 4. | Jogbani                  | Road connecting Calcutta-Dunlop Bridge-Barrackpore-Krishna Nagar-Malda-Raiganj-Dalkola-Purnia-Araria-Forbesganj-Jogbani  |
| 5. | Bhimnagar                | Road connecting Calcutta-Dunlop Bridge-Barrackpore-Krishna Nagar-Malda-Raiganj-Dalkola-Purnia-Araria-Forbesganj-Bhimnagar  |
| 6. | Jayanagar                | Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Kulti-Jasidih-Kiul-Mokamah-Barauni-Musaari Garari-Samastipur-Darbhanga-Jayanagar. |

(or)

- |    |           |   |
|----|-----------|---|
|    |           | Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Kodarma-Nawadah-Biharsarif-Bakhtiyarpur-Gandhi Setu(Patna)-Hajipur-Musari-Garari-Samastipur-Dharbhanga-Jayanagar |
| 7. | Bhitamore | Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Kulti-Jasidih-Kiul-Mokamah-  |

Barauni-Muzaffarpur-Sitamarhi-Bhitamore.

(or)

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogar-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Kodarma-Nawadah-Biharsarif-Bakhtiyarpur-Gandhi Setu (Patna)-Hajipur-Muzaffarpur-Sitamarhi-Bhitamore.

8. Raxaul

Road connecting Calcutta-Vivekananda Bridge Dankuni-Mogra-Bardwan-Panagarh-Asansol-Kulti-Jasidih-Kiul-Mokamah-Barauni-Muzaffarpur-Motihari-Sugauli-Raxaul.

(or)

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Kodarma-Nawadah-Biharsarif-Bakhtiyarpur-Gandhi Setu (Patna)-Hajipur-Muzaffarpur-Motihari-Sugauli-Raxaul.

9. Nautanwa  
(Sonauli)

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Goarkhpur-Nautanwa-Sonauli.

10. Barhni

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Gorakhpur-Basti-Barhni

11. Jarwa

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagaarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Gorakhpur-Basti-Balrampur-Jarwa.

12. Nepalgunj Road      Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Jaunpur-Sultanpur-Lucknow-Baharaich-Nepalgunj Road.

(or)

13. Tikonía      Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Gorakhpur-Basti-Baharaich-Nepalgunj Road.  
Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Jaunpur-Sultanpur-Lucknow-Baharaich-Tikonía.

14. Gauriphanta      Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Jaunpur-Sultanpur-Lucknow-Baharaich-Gauriphanta.

(or)

15. Banbasa      Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Gorakhpur-Basti-Baharaich-Gauriphanta.  
Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Jaunpur-Sultanpur-Lucknow-Shahjahanpur-Bareilly-Pilibhit-Banbasa.

**NOTE:**

1. Roads passing through Calcutta Airport, Barasat and Raiganj may be provided as an alternative route out of Calcutta in respect of all routes specified above passing through Raiganj, with prior endorsement on the Customs Transit Declaration by the appropriate Customs authority.
2. Project cargo, heavy lift cargo and odd dimension cargo moving out of Calcutta may be allowed to go via Kharakpur and Dhanbad in respect of all routes passing through Dhanbad, with prior endorsement on the Customs Transit Declaration by the appropriate Customs authority.
3. Movement out of Calcutta through Vidhya Sagar Sethu may be permitted for all routes passing through Dankuni, with prior endorsement on the Customs Transit Declaration by the appropriate authority.

Kathmandu,  
January 5, 1999

Excellency,

I write to acknowledge the receipt of your letter of today's date which reads as follows:

"In the course of the discussions that led to the renewal of the Treaty of Transit between our two Governments today, it was agreed that the arrangements with the Trustees of the Port of Calcutta for increasing the free time for removal of Nepalese transit cargo, including containerised cargo, to seven days will continue, pending an assessment to be conducted on side as to whether continuation of this facility is still required in practical terms.

2. I shall be grateful if you could kindly confirm that the above sets out correctly the understanding reached between our two Governments."

I confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-  
( **Purna Bahadur Khadka** )  
Minister of Commerce  
His Majesty's Government of Nepal

H.E.Shri Ramakrishna Hegde,  
Minister of Commerce  
Government of India.

Kathmandu  
January 5, 1999

Excellency,

I write to acknowledge the receipt of your letter of today's date which reads as follows:

"Our two delegations have signed the Treaty of Trade, the Treaty of Transit and the Agreement on Co-operation between His Majesty's Government of Nepal and the Government of India to control unauthorised trade. The Treaty of Trade and the Agreement on Co-operation to Control Unauthorised Trade were renewed on 3<sup>rd</sup> December 1996 and the Treaty of Transit has been renewed today, i.e, January 5, 1999.

In the light of the provisions as envisaged in each of the Treaties and the Agreement, officials designated by the two Governments shall meet separately at the appropriate levels as and when necessary and determine procedures as may be appropriate to discuss and resolve any problem that may arise in the effective and harmonious implementation of the issues relating to trade, transit and unauthorised trade.

It is further agreed that there shall be an Inter-Governmental Committee consisting of the senior representatives of the two Governments to promote trade, facilitate transit and control unauthorised trade between the two countries as envisaged in the Treaties and the Agreement. The Committee shall meet at least once in six months alternatively in Kathmandu and New Delhi. If any questions remain unresolved in the meetings on the official groups referred to in the foregoing paragraph, they shall be referred to this Committee which will find solutions thereof. The Committee may also deal with any matter on its own in order to further the purpose envisaged in the said Treaties and the Agreement.

I shall be grateful if you would kindly confirm that the above sets out correctly the understanding reached between our two Governments."

I confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Sd/-  
( **Purna Bahadur Khadka** )  
Minister of Commerce  
His Majesty's Government of Nepal

H.E.Shri Ramakrishna Hegde,  
Minister of Commerce  
Government of India.

**AGREEMENT OF CO-OPERATION BETWEEN  
GOVERNMENT OF NEPAL AND  
THE GOVERNMENT OF INDIA TO CONTROL  
UNAUTHORIZED TRADE**

The Government of Nepal and the Government of India (hereinafter also referred to as the Contracting Parties).

KEEN to sustain the good neighbourliness through mutually beneficial measures at their common border which is free for movement of persons and goods.

Have agreed as follows:

**Article I**

The Contracting Parties, while recognizing that there is a long and open border between the two countries and there is free movement of persons and goods across the border and noting that they have the right to pursue independent foreign trade policies, agree that either of them would take all such measures as are necessary to ensure that the economic interests of the other party are not adversely affected through unauthorized trade between the two countries.

**Article II**

The Contracting Parties agree to co-operate effectively with each other, to prevent infringement and circumvention of the laws, rules and regulations of either country in regard to matters relating to Customs, Narcotics and Psychotropic Substances, Foreign Exchange and Foreign Trade and shall for this purpose assist each other in such matters as consultation, enquiries and exchange of information with regard to matters concerning such infringement or circumvention.

**Article III**

Subject to such exception as may be mutually agreed upon, each Contracting Party shall prohibit re-exports to the territory of the other Contracting Party of goods imported from third countries without manufacturing activity.

However, the above shall not be applicable in case of the export of Nepalese goods into India under the procedure set out in protocol V to the Treaty of Trade between Government of Nepal and the Government of India.

There will be no restriction on re-export from the territory of a Contracting Party to third countries of the goods imported from the other Contracting Party without manufacturing activity in the Contracting Party.

**Article IV**

Each Contracting Party will;

- (a) prohibit and take appropriate measures to prevent import from the territory of the other Contracting Party of goods liable to be re-exported to third countries from its territory and the export of which from the territory of the other Contracting Party to its territory is prohibited;



- (b) in order to avoid inducement towards diversion of imported goods to the other Contracting Party, take appropriate steps through necessary provisions relating to Baggage Rules, gifts and foreign exchange authorization for the import of goods from third countries.

#### **Article V**

The Contracting Parties shall compile and exchange with each other statistical and other information relating to unauthorized trade across the common border. They also agree to exchange with each other regularly the lists of goods the import and export of which are prohibited, or restricted or subject to control according to their respective laws and regulations.

#### **Article VI**

The respective heads of the Border Customs Offices of each country shall meet regularly with his counterpart of appropriate status at least once in two months alternately across the common border:

- (a) to co-operate with each other in the prevention of unauthorized trade;
- (b) to maintain the smooth and uninterrupted movement of goods across their territories;
- (c) to render assistance in resolving administrative difficulties as may arise at the field level.

#### **Article VII**

In order to facilitate effective and harmonious implementation of this Agreement, the Contracting Parties shall consult each other regularly.

#### **Article VIII**

- (a) This Agreement shall come into force on the date of its signature. It shall supersede the Agreement of Cooperation to Control Unauthorized Trade concluded between the Government of Nepal and the Government of India on 6<sup>th</sup> December 1991, as amended or modified from time to time.
- (b) This Agreement shall remain in force for a period of seven years. It may be renewed for further periods of seven years, at a time, by mutual consent subject to such modifications as may be agreed upon.
- (c) In witness whereof the undersigned being duly authorized by their respective governments have signed this Agreement.

Done in duplicate in Hindi, Nepali and English languages, all the texts being equally authentic, at Kathmandu on 27<sup>th</sup> October 2009. In case of doubt, the English text will prevail.

(Rajendra Mahto )  
Minister of Commerce and Supplies  
For the Government of Nepal

(Anand Sharma )  
Minister of Commerce and Industry  
For the Government of India

GOVERNMENT OF INDIA (भारत सरकार)  
MINISTRY OF RAILWAYS (रेल मंत्रालय)  
(RAILWAY BOARD/रेलवे बोर्ड)

\*\*\*\*\*

No.2019/TT-III(F)/72/NPL/04-Pt.

New Delhi, Dated : 29.06.2021

**OFFICE MEMORANDUM**

Sub: **Letter of Exchange (LoE) for Amendments to Rail Services Agreement (RSA) between India and Nepal**

Please find enclosed herewith the signed Letter of Exchange (LoE) dated 29.06.2021 on the amendments to India-Nepal Rail Services Agreement-2004, for further necessary action.

Encls : As above

(Dr. Manoj Singh)  
Exe. Director/Traffic Transportation(F)  
Ph : 23047303 Tele/Fax : 23383506  
Email : manoj.singh04@gov.in

The Joint Secretary (North)  
(Shri Anurag Srivastava)  
Ministry of External Affairs,  
South Block,  
New Delhi.

**Sushant Kumar Mishra,**  
**Additional Member (Traffic Transportation)**



भारत सरकार  
रेल मंत्रालय, (रेलवे बोर्ड)  
रेल भवन, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)  
RAIL BHAVAN, NEW DELHI-110001

New Delhi, 29<sup>th</sup> June, 2021.

### LETTER OF EXCHANGE

#### **Amendment to Rail Services Agreement between the Government of Nepal and the Government of India signed on 21<sup>st</sup> May, 2004**

**Excellency,**

I write to acknowledge the receipt of your letter dated 28<sup>th</sup> June, 2021 which reads as follows:

“I have the honour to refer to the understandings reached between the Government of Nepal and Government of India in the First, Second and Third Comprehensive Review Meetings of the Rail Services Agreement held (in New Delhi, 12-14 November, 2009, Kathmandu, 1-2 March, 2012 and New Delhi 6-7 June, 2019 respectively) pursuant to Article 1.4 of the India-Nepal Rail Services Agreement (“RSA”) signed on 21<sup>st</sup> May, 2004 for amendment in relevant Articles of Rail Services Agreement, as under:

**I. Replace Article 1.1 of the RSA with the following:**

**Article 1.1:** Ministry of Industry, Commerce and Supplies, Government of Nepal and Ministry of Railways, Government of India have entered into this Agreement for operating and managing the rail services between Kolkata/Haldia/Vishakhapatnam Port and any other agreed Ports in India under the Treaty of Transit between Nepal and India and Birgunj ICD and any other agreed operational ICD/ICP/Stations in Nepal for transit traffic and between stations on Indian Railways network and Birgunj ICD and any other agreed operational ICD/ICP/Stations in Nepal for bilateral traffic.

**II. Replace Article 1.4 of the RSA with the following:**

**Article 1.4:** This Agreement shall remain in force for a period of 10 years from the date of signing and shall, thereafter, be automatically extended for a period of five years at a time unless either of the Parties gives to the other a written notice, six months in advance, of its intention to terminate the Agreement. The provision of the Agreement shall be reviewed and may be modified by mutual consent.

**III. Article 1.6: Definitions:**

Delete the term “Four wheeler equivalent” and “ICD Birgunj” and their definitions and replace the definition of “ICD” with the following definition:



**ICD:** "Inland Clearance Depot for the purpose of this Agreement is a common user facility in Nepal with the rail link to stations on Indian Railways network having public authority status, equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers/bulk/break-bulk cargo carried under customs control and with customs and other agencies competent to clear goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export.

**IV.** Insert definition of the following terms in Article 1.6 of the RSA:

**Eight-wheeler Equivalent:** Indian Railways enumerate wagon population in terms of eight-wheeler equivalents by using a standard conversion formula for all types of wagons.

**GON:** Government of Nepal

**Reefer Container:** Reefer Container is a refrigerated container, used for transportation of temperature sensitive cargo. Reefer Container has an integral refrigeration unit which rely on external power from electrical power points at a land based site and generator car on container trains.

**Rolling Stock:** All types of covered wagons, tank wagons, flat wagons and open wagons owned by Indian Railways or any other authorized cargo train operators licensed by Indian Railways or privately-owned wagons approved by Indian Railways under any train operator or wagon investment schemes.

**DSO Container:** Containers including dwarf containers or any other containers for movement of domestic/bilateral traffic conforming to Maximum Moving Dimensions (MMD) of Indian Railways.

**Designated Ports:** A Port notified under the relevant provisions of Customs Act 1962 of India and designated for Nepal bound cargo, both inbound and outbound, as agreed between the Government of Nepal and the Government of India under the Treaty of Transit.

**Customs Office:** A Customs Office notified under the relevant provision of Customs Act 2007 of Nepal.

**Nepal Railway:** Nepal Railway Company established in Nepal and authorized by Government of Nepal for train operation.

**ICP:** Integrated Check Post (ICP) for the purpose of this Agreement is an integrated development of land border area for facilitation of transit trade and bilateral trade between India-Nepal as well as for movement of passengers across the border connected with the rail link to stations on Indian Railways network

having public authority status, systematically planned, properly inter-connected and efficiently managed border check-posts between Nepal and India.

**Designated Land Customs Station:** A Land Customs Station (LCS) notified under the relevant provisions of Customs Act, 1962 of India and designated for Nepal bound cargo, both inbound and outbound, as agreed between the Government of Nepal and Government of India.

**Station:** Station in context of Indian Railways includes all stations, goods sheds, sidings, Inland Container Depots, Container Freight Stations (CFS), Container terminals, private and public freight terminals located on or served by the Indian Railways network. Station in the context of Nepal includes all stations and goods sheds located in Nepal and served by Nepal Railway Company/GON.

**Locomotives:** All types of locomotives running on IR system can be used to haul rolling stock between India and Nepal.

**Authorised Cargo Train Operators:** Authorised Cargo Train Operators includes Container Train Operator(CTO), Automobile Freight Train Operator(AFTO), Special Freight Train Operator (SFTO) or any other operator authorized by Indian Railways.

- V. **Replace the term** “His Majesty’s Government of Nepal”, “HMGN” wherever it occurs in the RSA and the Annexure thereto, with the term “Government of Nepal”, “GON”.
- VI. Replace Article 2 in the RSA with the following:

**Article 2.1:** Broad gauge rail link between Raxaul (India) and Birgunj (Nepal) is operational between India and Nepal.

**Article 2.2:** Broad gauge rail links between Biratnagar (Nepal) and Jogbani (India), Bhairahawa (Nepal) and Nautanawa (India), and Inarwa (Nepal) and Jaynagar (India) shall be operational after completion notification.

- VII. Insert a new Article 3.3 as follows in the RSA immediately after Article 3.2:

**Article 3.3:** Interchange Station for running of trains between other border crossing points at Nepal-India border shall be notified by Indian Railways

- VIII. Replace Article 4.1 of RSA with the following:

**Article 4.1:** Rail linked ICD/ICP at Nepal-India border in Nepal side shall be operated and managed by a Terminal Management Company (TMC) appointed by the Government of Nepal. The TMC shall work in accordance with the provisions of this Agreement.



**IX.** Replace Article 10.1 and 10.2 with the following:

**Article 10.1:** Only ISO/DSO and Reefer containers of ISO specifications, dwarf containers or any other containers conforming to the MMD of Indian Railways in single stack, double stack or any other combination which is permitted on Indian Railways can be loaded on flat wagons owned by Indian Railways or any other authorized cargo train operators licensed by Indian Railways will be permitted for interchange between Nepal and India.

**Article 10.2:** All covered wagons, flat wagons, tank wagons and open wagons or any other type of wagons owned by Indian Railways or any other authorized cargo train operators licensed by Indian Railways or privately-owned wagons approved by Indian Railways under any train operator or wagon investment schemes shall be allowed in interchange between Nepal and India subject to provisions contained in Article 12.2 of this Agreement.

**X.** Replace Article 12.2 with following Articles:

**Article 12.2:** Provisions in respect of movement of rail traffic:

**Article 12.2.1:** Rail traffic between the two countries shall comprise of all types of cargo in all types of rolling stock which are permitted to move on the Indian Railway network including container/reefer container traffic moving in Flat wagons, break-bulk, bulk and bagged cargo in covered wagons, break-bulk cargo which cannot be handled manually such as HR coils and heavy equipment/machinery including over-dimensional cargo in flat wagons, bulk cargo such as Coal, Clinker etc. in open (BOXN) wagons and liquid/oils cargo in tank wagons, automobile traffic in flat and covered wagons and parcel traffic in parcel vans. Alcoholic Liquor/Beverages (including beer) and other concentrates, Perfumes, Cosmetics, Cigarettes, Tobaccos, and such other items as may be notified by the Government of India, in consultation with the Government of Nepal, shall not be loaded on flat wagons and open wagons.

**Article 12.2.1A:** The Nepal bound bulk cargo shall move by rail from the entry points in India or Stations from India to Stations in Nepal or railway stations in India on Indo-Nepal border such as to Jogbani or Nautanwa (Sunauli) or similar other stations and thereafter shall move by road following amendment in India-Nepal Treaty of Transit.

**Article 12.2.2:** Movement of Reefer containers shall be allowed subject to a minimum of 14 containers of forty feet (FEU) or equivalent twenty feet reefer containers (TEU) or a combination equivalent to minimum 14 FEUs. Such number of reefer containers should be offered for movement to any authorized cargo train operator licensed by Indian Railways for each destination at one time. However, if the authorized cargo operator wants to run less 14FEU or equivalent, they are permitted to run depending on operational and commercial

considerations to be decided by the operators themselves. The infrastructure required to handle this traffic at ICD/ICP in Nepal should be ensured

**Article 12.2.3:** Movement of open wagons (BOXN wagons) owned by Indian Railways or any other authorized cargo train operators licensed by Indian Railways or privately-owned wagons approved by Indian Railways under any train operator or wagon investment schemes will be permitted for Bilateral and Transit Trade such as Coal, Clinker, etc. to and from ICD/ICP/Stations to be constructed in Nepal for handling such cargo.

**XI.** Delete **Article 12.3** of the RSA.

**XII.** Replace **Article 14.1** in the RSA with the following:

**Article 14.1:** Indian Railways locomotive using wagons owned by Indian Railways or any other authorized cargo train operators licensed by Indian Railways or privately-owned wagons approved by Indian Railways under any train operator or wagon investment schemes will run all trains between India and Nepal.

**XIII.** Insert a new **Article 14.1A** as follows in the RSA immediately after Article 14.1:

**Article 14.1A:** The Government of India shall permit the Nepal Railway Company owned rail/wagon for cargo movement from Kolkata/Haldia up to Biratnagar/Birgunj routes and vice versa following the set procedures and standards of Indian Railways.

**XIV.** Replace Article 14.2 in the RSA with the following:

**Article 14.2:** Arrangements of crews for trains running from India to Nepal and Nepal to India will be decided mutually between Indian Railways and Nepal Railway Company/GON based on operational considerations.

**XV.** Replace Article 19.1 in the RSA with the following:

**Article 19.1:** Procedures for customs examination and clearance shall be in accordance with the provisions laid down in Annexure - 'A' and 'B' of this Agreement.

**XVI.** Insert a new **Article 19.3** as follows in the RSA immediately after Article 19.2

**Article 19.3:** Procedure for Transshipment/transit for the cargo moving from ICD Birgunj in Nepal to Kolkata/Haldia/Vishakhapatnam Ports or any other agreed Port in India under the Treaty of Transit between India and Nepal and vice-versa shall be in accordance with the provisions laid down in Annexures - 'F' and 'G' to this Agreement, which will be inserted by mutual consent at a



mutually agreed date. Till such time, the cargo will be moved as per the procedure laid down in Annexures - 'A' and 'B' of the RSA.

**XVII.** Replace Article 21.3(b) in the RSA with the following:

**Article 21.3(b):** For traffic originating at Kolkata/Haldia Ports/Vishakhapatnam Port/any other agreed Port in India under the Treaty of Transit between India and Nepal, freight charges from the point of origin to the international border between India and Nepal will be prepaid directly through Nepali commercial bank to respective account of railway operator held with commercial bank in India.

**XVIII.** Replace **Article 22:** Detention Charges with following articles:

**Article 22.1:** The agency designated for this purpose by MOICS in respect of ICDs/ICPs and Nepal Railway Company in respect of stations in Nepal will pay Detention/ Locomotive Hire charges in respect of locomotives of Indian Railways to the agency designated for this purpose by MOR for the duration of time spent at ICD/ICP/Station in Nepal after the lapse of the notified free time at scales of charge notified by MOR from time to time.

**Article 22.2 :** The agency designated for this purpose by MOICS in respect of ICDs/ICPs and Nepal Railway Company in respect of stations in Nepal will pay Detention/Wagon Hire charge in respect of wagons/flats of Indian Railways or any other authorized cargo train operators licensed by Indian Railways to the agency designated for this purpose by MOR for the duration of time spent at ICD/ICP/Stations in Nepal after the lapse of the notified free time at a scales of charge notified by MOR from time to time.

**XIX.** Replace the Title of Annexure 'A' of the RSA with the following:

IMPORT PROCEDURE FOR CUSTOMS EXAMINATION AND  
CLEARANCE OF TRANSIT CARGO

**XX.** Replace Para 9 of Annexure 'A' with the following:

**Para 9:** On arrival of the Nepali containerized cargo, the Indian customs officer stationed at the port of entry, shall affix a "One Time Lock" or an Electronic Cargo Tracking System as agreed by both GON and GOI on the container and shall allow transportation of the containerized cargo, without examination unless there are valid reasons to do otherwise.

**XXI.** Replace the Title of Annexure 'B' of the RSA with the following:

EXPORT PROCEDURE FOR CUSTOMS EXAMINATION AND  
CLEARANCE OF TRANSIT CARGO

**XXII.** Replace Paragraph 4.2 of Annexure 'C' of the RSA with the following:

**Para 4.2:** Unless the percentage charge has been paid, the liability of the Indian Railways will be as per prevailing rates of the Indian Railways.

**XXIII.** Replace Title of Annexure 'D' of the RSA with the following:

IMPORT PROCEDURE FOR CUSTOMS EXAMINATION AND  
CLEARANCE OF THE NEPAL-INDIA BILATERAL TRAFFIC FROM  
NEPAL TO INDIA

**XXIV.** Replace the term "flats/BOX wagons and/or break-bulk cargo" as occurred in the first sentence of Annexure 'D' with the term "flats/BOXN wagons/break-bulk cargo loaded in covered wagons".

**XXV.** Replace the term "flats/BOX wagons and/or break-bulk cargo loaded in covered wagons" as occurred in Paragraph 5 of Annexure 'D' with the term "container/break-bulk cargo traffic moving in flats/tank/covered wagons/reefer containers and Coal, Clinker, etc. in open wagons".

**XXVI.** Replace the Title of Annexure 'E' of the RSA with the following:

EXPORT PROCEDURE FOR CUSTOMS EXAMINATION AND  
CLEARANCE OF THE NEPAL-INDIA BILATERAL TRAFFIC FROM  
INDIA TO NEPAL.

**XXVII.** Replace the phrase - "as detailed in the Nepal Invoice Procedure (DRP) under Rules 18 & 19 of the Central Excise Rules, 2002" as occurred in the 2<sup>nd</sup> line of the paragraph 1 under the "Export Procedure from India to Nepal" with the phrase "as per rules and provisions applicable for export to Nepal." in Paragraph 1 of Annexure 'E' of the RSA.

**XXVIII.** Replace the term "flats/BOX wagons and/or break-bulk cargo loaded in covered wagons" as occurred in the second sentence under "Export Procedure from India to Nepal" of Annexure 'E' of the RSA, with the term "container/break-bulk cargo traffic moving in flats/tank/covered wagons/reefer containers and Coal, Clinker, etc. in open wagons".

**XXIX.** Replace the term "container/break-bulk cargo" as occurred in Paragraph 3 of Annexure 'E' of the RSA with the term "cargo".

**XXX.** Replace the term "1962" as occurred in Paragraph 9 (c) of Annexure 'E' of the RSA with the term "2007".

**XXXI.** Insert the terms "/Vishakhapatnam and any other agreed Ports in India under the Treaty of Transit between Nepal and India" after the terms "Kolkata/Haldia ports" wherever appearing in the RSA.



XXXII. Replace the terms "Container Corporation of India (CONCOR) or CONCOR" by "any authorized cargo train operators licensed by Indian Railways" wherever appearing in the RSA including Annexures.

XXXIII. Insert the terms "and any other agreed operational ICD/ICP/Stations in Nepal" after the terms "Birgunj ICD" wherever appearing in the RSA.

This letter and your Excellency's confirmation shall amend the Nepal-India Rail Services Agreement signed between Nepal and India-2004.

I shall be grateful if your Excellency could kindly confirm that the foregoing correctly sets out the understanding reached between our two Governments."

I confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Excellency, the assurances of my highest consideration.

Dated: 29<sup>th</sup> June, 2021.

(Sushant Kumar Mishra)  
Additional Member(Traffic Transportation),  
Ministry of Railways (Railway Board),  
Government of India,

**His Excellency**  
**Shri Dinesh Bhattarai**  
Secretary (Commerce and Supplies),  
Ministry of Industries, Commerce and Supplies,  
Government of Nepal,  
Kathmandhu, Nepal.

**TRADE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE REPUBLIC OF KOREA**

His Majesty's Government of Nepal and the Government of the Democratic People's Republic of Korea (hereinafter referred to as the Contracting parties) being desirous of promoting trade relations between the Kingdom of Nepal and Democratic People's Republic of Korea on the basis of equality and mutual benefit, have agree as follows: -

**Article I**

The two Contracting Parties shall take all measures necessary for promoting trade between the two countries as per lists;A" and;B" which are in integral part of this Agreement.

**Article II**

1. The two Contracting Parties shall grant each other the most-favoured-nation treatment in respect of issuance of licences, customs formalities, customs duties, taxes, storage charges and other charges for the export and the import of commodities to be transacted between the two countries.
2. The provision of Article 2 (1) shall not however, apply to the grant or continuance of any:-
  - a. Advantages accorded by either of the Contracting Parties to contiguous countries with the purpose of facilitating frontier frontier trade.
  - b. Advantages derived customs unions or other agreements of customs free trade to the Kingdom of Nepal.
  - c. Advantages accorded by multilateral economic agreement relating to international commerce to the Kingdom of Nepal.

**Article III**

The trade between the two countries shall be conducted in accordance with their respective laws, regulations and procedures relating to import and export of goods and on the basis of the contracts to be concluded between the juridical and physical persons of the Kingdom of Nepal and the foreign trade corporations of the Democratic people's Republic of Korea.

**Article IV**

The contracts concluded during the validity of this agreement shall remain effective even after the expiry or termination of this agreement.

**Article V**

1. all payment in connection with importation and exportation of the goods and commodities shall be effected in pound Sterling or any other convertible currency as may be mutually agreed upon.
2. In case of any change in the gold parity of pound Sterling (at present one Sterling pound is equal to 2.13281 gram of fine gold), all prices of the commodities to be exchanged under the Agreement shall be adjusted in proportion to the ratio of the change in gold parity on the day when such change is made.

3. For this effective implementation of this article the Nepal Rastra Bank and the Foreign Trade Bank of the Democratic people's Republic of Korea shall make necessary technical arrangement regarding payments.

## **Article VI**

The two Contracting parties agreed that the price for the goods and commodities to be exported or imported under this Agreement shall be fixed by mutual agreement between the physical and juridical person of the Kingdom of Nepal and the foreign trade corporation of the Democratic People's Republic of Korea. This Agreement shall come into force from the date of its signature and shall remain valid for a period of two years. In case neither of the Contracting parties shall have given the other party a written notice three months before the expiration of this Agreement to terminate this Agreement it shall continue in force for another period of two years. Done in Pyongyang on December 11, 1970 in Duplicate in Nepali, Korean and English languages all the texts being equally authentic, in case of any difference in interpretation the English text shall prevail.

SD/-  
Nayan Raj Panday  
For His Majesty's Government of  
Nepal

SD/-  
For the Government of the  
Democratic People's  
Republic of Korea

## **LIST "A"**

### **Commodities to be exported from the Kingdom of Nepal to the Democratic People's Republic of Korea**

1. Minerals
2. Manufactured products:
  - Jute goods
  - Stainless steel utensils
  - Synthetic fabrics
  - Carpets
  - Handicrafts
3. Foodstuffs:
  - Canned fruit and fruit preserve
  - Maize
  - Rice
  - Pulse, linseed, rapeseed
4. Other raw materials:
  - Wool
  - Timber
  - Medicinal Herbs
  - Oil seeds
  - Sole leather
  - Mica



- Skins
- Bristle
- \*Musk
- 5. Miscellaneous:
  - Readymade garments
  - Jute waste
  - Wool waste
  - Human hair
  - Yak hair and tails
  - \*\*Cow bezoards
  - Buffalo biles
- 6. Goods as may be mutually agreed upon from time to time

**\* Export banned, since October 1973**

**\*\*Export banned**

#### **LIST "B"**

#### **Commodities to be exported from the Democratic People's Republic of Korea To the Kingdom of Nepal**

1. Machinery and parts
2. Trucks, lorries, buses and their spare parts
3. Tractors, bulldozars, excavators and cranes
4. Hospital equipments and accessories
5. X-Ray plates
6. Water pipes of different dimension
7. Agricultural implements and tools
8. Metal products
9. Iron and steel
10. Chemical
11. Fertilizer, insecticide and pesticide
12. Cement
13. Cotton textiles
14. Milk powder and other baby food
15. Koryo Insam and Insam products
16. Raw materials
17. Goods as may be mutually agreed upon from time to time

**AGREEMENT WITH LIST OF COMMODITIES  
SIGNED AT SEOUL MAY 6,1971,ENTERED  
INTO FORCE MAY 6,1971**

His Majesty's Government of Nepal and Government of the Republic of Korea (hereinafter referred to as "the Contracting Parties"),

Being desirous of promoting trade between the Kingdom of Nepal and the Republic of Korea on the basis of equality and mutual benefit. Have agreed as follows.

**Article I**

1. The two Contracting Parties shall take all appropriate measures to promote trade between their two countries in particular with regard to the goods and commodities as mentioned in Schedules "A" and "B" attached to this Agreement.
2. The Schedules mentioned in paragraph I above will not be of limiting character. New items may be added from time to time by mutual consent of the two Contracting Parties.

**Article II**

1. The two Contracting Parties shall grant each other the most-favoured nation treatment in respect of issuance of licences, customs formalities, customs duties, taxes, storage charges and other charges for the export and import of goods and commodities to be transacted between two countries.
2. The provision of paragraph I above shall not, however apply or the grant to continuance of any:
  - a. Advantages accorded by either Party to contiguous countries;
  - b. preferences accorded by either Party to the goods and commodities which are imported under aid programmes extended to either Party by any member state of the United Nations, its specialized Agencies or Subsidiary organs;
  - c. Preferences or advantages accorded by either Party to any third country existing on the date of the entry into force of this Agreement;
  - d. Advantages resulting from any customs union or free trade zone or regional arrangements of which either country may become a member;
  - e. Advantages accorded by virtue of multilateral economic agreement designed to liberalise international commerce; and
  - f. Prohibitions or restrictions imposed for the protection of public health or preservation of public morals or for the protection of plants or animal against disease, degeneration or extinction.

**Article III**

The trade between the two countries shall be conducted in accordance with their respective laws, regulations and procedures relating to export and import of goods and commodities and on the basis of the contracts to be concluded between exporters and importers of the two countries.

**Article IV**

The two Contracting Parties agree that the price for the goods and commodities to be exported or imported under this agreement shall be fixed by mutual agreement between the exporters and importers of the two countries.

#### **Article V**

All payments in connection with exportation or importation of the goods and commodities as well as other payments shall be effected in United States dollars, Pounds Sterling or any such other convertible currencies as may be mutually agreed upon between the two Contracting Parties. **Article VI**

The two Contracting Parties agree to explore ways and means and take necessary steps for the most convenient and economical transportations of commodities between the two countries.

#### **Article VII**

Mercantile ship under the flag of either Contracting Party shall enjoy the most favoured nation treatment granted by their respective laws, rules and regulations to ship under any third country's flag. This principle shall not, however, apply to ship engaged in the coastal trade.

#### **Article VIII**

The two Contracting Parties shall accord to the other, in respect of capital investments, joint ventures and other forms of economic cooperation aimed at promotion trade between the two countries, treatment no less favourable than that accorded to any third country.

#### **Article IX**

The two Contracting Parties shall observe the convention on Transit Trade of Land Locked states, signed in New York on July 8, 1965, as well as the relevant resolutions and recommendations of UNCTAD Conference of the same subject, in so far as they facilitate the trade between the two countries and to the extent that they are not in conflict with the existing treaty and international obligations of either Contracting Party.

#### **Article X**

In order to facilitate the implementation of this Agreement the two Contracting Parties agree to consult each other at the request of either Contracting Party in as short time as possible, but not later than forty-five (45) days from the date of receipt of such request in respect of matters connected with trade and payment between the two countries.

#### **Article XI**

1. This Agreement shall come into force from the date of its signing and shall remain valid for a period of two (2) years after which it will be automatically extended for another period of two years until and unless one of Contracting Parties gives a written notice to the other Contracting Party ninety (90) days before expiry of the Agreement for termination.

2. The provisions of this Agreement shall be applied to all contracts concluded under this Agreement but not fully executed as for the date of its termination.

Done at Seoul on May 6, 1971 in duplicate in the Nepali, Korean and English languages, all texts being equally authentic. In case of any difference in interpretation, the English text shall prevail.

Pushker N. Pant  
For His Majesty's Government of  
Nepal

Suk Hyun Yun  
For the Government  
of the Republic of Korea

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## **Schedule "A"**

### **Exportable Commodities of the Republic of Korea**

- i. Fish and Fish preparations
  - 1. Canned fish
  - 2. Dried Sea products
- ii. Fruits and Vegetables
  - 1. Fresh fruits
  - 2. Canned fruits
- iii. Beverages
  - 1. Beer
- iv. Textiles, Textile Fibres and and their waste
  - 1. Raw Silk
  - 2. Cotton Textiles, Yarn
  - 3. Woolen textile, Yarn
  - 4. Nylon and other synthetic textiles and yarn
  - 5. Silk fabrics woven
  - 6. Knitted goods
  - 7. Apparel goods
- v. Fertilizers
  - 1. Urea fertilizer manufactured
  - 2. Nitrogenous fertilizer manufactured
  - 3. Crude fertilizer
- vi. Minerals and Metal Products
  - 1. Silver concentrated
  - 2. Lead concentrates
  - 3. Zinc concentrates
  - 4. Iron ore and concentrates
  - 5. Tungsten concentrates
  - 6. Molybdenite
  - 7. Amorphous graphite
  - 8. Pyrophyllite
  - 9. Talc
  - 10. Fluorite

11. Feldspar
12. Kaolm
13. Silica Stone
14. Silica Sand
15. The other metallic and non-metallic minerals
- vii. Petroleum and petroleum products
- viii. Fixed vegetable oil and fats
- ix. Chemical elements and compounds
  1. H 1. Menthol
  2. Salphonamides (O.T.S.A.)
  3. Dyeing tanning and colouring materials
- x. Medical and Pharmaceutical
  1. Ginseng and its products
  2. Medical and Pharmaceutical products
- xi. Rubber manufactures
  1. Rubber tyres and tubes for vehicles and aircrafts
  2. Rubber contraceptives
  3. Other rubber products
- xii. Wood and cord manufactures
  1. Plywood
- xiii. Paper, paperboard and manufactures there of
- xiv. Non-metallic mineral manufactures
  1. Glass products
  2. Ceramics
  3. Tiles
  4. Cement
- xv. Iron and Steel
  1. Bars, Rods, Tubes, Pipes, Fittings, etc. of Iron and Steel
  2. Galvanized iron sheets
  3. Plate
  4. Stainless steal sheets
- xvi. Articles of Aluminium
  1. Domestic Utensils
- xvii. Electrical Machinery, Apparatus and Appliances
  1. Refrigerator
  2. Watt Hour Meter
  3. TV sets
  4. Telephone
  5. Switch Board for telephone
  6. Radio and transistors
  7. Radio components
  8. Electric Fans
  9. Electric lamps
  10. Dry Battery
  11. Electric transformers
  12. Insulated Wire Cables
  13. Other electrical goods
- xviii. Transport equipments



1. Parts for motor vehicles
2. Bicycles and other cycles
- xix. Sanitary, Plumbing, heating and Lighting fixture and fittings
- xx. Machineries and engines
  1. Internal Combustion Engines other than for Aircrafts
  2. Textile machinery
  3. Sewing machines
- xxi. Clothings and footwears
  1. Stockings
  2. Outer-garments
  3. Under-garments
  4. Footwears such as Shoes etc.
- xxii. Office and Stationery supplies
  1. Pens and pencils
  2. Ball point pens
  3. Fountain pens
  4. Other office and stationery goods
- xxiii. Tobacco and Cigarettes
  1. Tobacco leaves
  2. Cigarettes
  3. Cigarettes filters
- xxiv. Sugar, Sugar preparations and honey
- xxv. Musical instruments
  1. Pipe and Reed organs
  2. Pianos
  3. Other musical instruments
- xxvi. Plastic Materials, regenerated cellulose and artificial resins
- xxvii. Manufactured goods other than the listed
  1. Clock and Watches, and parts there of
  2. Spectacles & their frames
  3. Telescope/Binoculars
  4. Taxi meters
  5. Brass Wares
  6. Umbrella
- xxviii. Handicrafts
- xxix. Agricultural products

#### **Schedule "B"**

#### **List of Exportable goods from Nepal to the Republic of Korea**

- i. Minerals
- ii. Manufactured products
  1. Jute goods
  2. Stainless Steel utensils
  3. Synthetic fabrics
  4. Carpets

- 5. Handicrafts
- iii. Foods stuff
  - 1. Canned fruit and fruit preserves
  - 2. Maize
  - 3. Pulse, Linseed, Rape seed
  - 4. Wheat flour
- iv. Other Raw Materials
  - 1. Wool
  - 2. Timber
  - 3. Medicinal Herbs
  - 4. Oil-Seeds
  - 5. Mica
  - 6. Skins
  - 7. \*Musk
- v. Miscellaneous
  - 1. Readymade garments
  - 2. Jute waste
  - 3. Wool Waste
  - 4. Human Hair
  - 5. \*\*Cow Bezoards
  - 6. Buffalo biles
- vi. Goods as may be mutually agreed upon from time to time

\* Export banned, since October 1973

\*\* Export banned

**Trade agreement between His Majesty's Government of Nepal  
and  
the Government of Mongolia**

His Majesty's Government of Nepal and the Government of Mongolia (hereinafter referred to as the "Contracting Parties")

Being desirous of promoting trade relations between the two countries on the basis of equality and mutual benefit. Have agreed as follows:-

**Article I**

The Contracting parties shall take all kinds of measures in order to expand and promote the trade between the two countries and encourage the exchange of goods and services on the basis of equality and mutual benefit.

**Article II**

The Contracting parties shall grant each other the most favoured nation treatment in respect of customs duties, charges of any kind, fees and the methods of levying such duties and charges as well as of rules and regulations on export and import of commodities.

**Article III**

The provisions of the Article 2 of the present Agreement shall not apply to the following:

- a. Advantage accorded by either Contracting Party to its adjacent countries in order to facilitate border trade;
- b. Favourable treatment or Preference, accorded under multilateral agreements, customs union, free trade area agreements as well as agreements on trade facilities, of which either Contracting Party is or may become a party.

**Article IV**

- a. The Contracting Parties shall encourage and render necessary assistance to their respective organizations, companies, firms and individuals in their efforts to have a trade, exchange of delegations, conclusion and implementation of trade agreements and contracts between the two countries.
- b. The export and import operations between the Contracting Parties shall be implemented on the basis of the contracts to be concluded between juridical bodies and individuals, authorized for external trade of the two countries and in accordance with the laws and regulations in effect in both countries.

**Article V**

The Contracting Parties shall facilitate to the extent possible each others participation in trade fairs to be held in either country, and in arranging trade exhibition of either country in the territory of the other on terms to be agreed between respective authorities.

**Article VI**

All payments between the two countries shall be effected in freely convertible currencies; if there is no other arrangement mutually agreed upon.

**Article VII**

The Contracting Parties shall take all necessary measures to expedite the transportation of their commodities in the most proper and cheapest way.

**Article VIII**

The Contracting Parties shall consult each other, if necessary, in order to generate the proposals, aimed at broadening the trade relations between themselves and to settle down issues, which may arise from implementation of the present Agreement.

**Article IX**

This agreement shall come into force from the date of its signing and shall remain valid for a period of five years. Unless either Contracting Party wishes to terminate this Agreement by giving a three months notice prior to its expiry in writing, the Agreement shall automatically continue in force for further periods of five years.

Done in Kathmandu on January 29<sup>th</sup>, 1992 in three originals in Nepali, Mongolian and English languages, all texts being equally authentic In case of any divergence, the English text shall prevail.

**(Durga Prakash Pandey)**  
Secretary,  
Ministry of Commerce  
For His Majestys Government of Nepal

**(Badam-Ochiryn Doljintseren)**  
Deputy Minister  
For External relations  
For the Government of Mongolia

**TRADE AGREEMENT BETWEEN THE GOVERNMENT OF ISLAMIC REPUBLIC OF PAKISTAN  
AND  
HIS MAJESTY'S GOVERNMENT OF NEPAL**

**(Islamic Republic of Pakistan Trade Agreement signed in Pakistan on July 28, 1982)**

The Government of Pakistan through the President of the Islamic Republic of Pakistan and His Majesty's Government of Nepal (hereinafter referred to as the "Contracting Parties")

Being desirous of further strengthening and promoting the trade and economic relations between Nepal and Islamic Republic of Pakistan on the basis of equality and mutual benefit.

Have agreed as follows:

**Article I**

The Contracting Parties shall take all appropriate measures to facilitate and develop the trade between their two countries and encourage the concerned enterprises and organizations to explore the possibilities of short term and long term trade agreements and to conclude such contracts as may be agreed upon.

**Article II**

The trade between the Contracting Parties shall be conducted in accordance with their respective laws, regulations and procedures.

**Article III**

3.1 The Contracting Parties shall grant each other the Most Favoured Nation Treatment with respect to customs duties and formalities, taxes, fees and charges of any kind levied on export and import of goods and commodities between their two countries.

3.2 The provision of paragraph above shall not apply to the grant or continuance of any,

- a. Privileges and facilities accorded by either Contracting Party to facilitate frontier trade,
- b. Privileges and facilities accorded by either Contracting Party to any third country prior to the 15th August 1947 or accorded in replacement thereof;
- c. Privileges, facilities and advantages resulting from any agreement on customs union or free trade zone or from any regional or multilateral agreements to which either Contracting Party is or may become the member

**Article IV**

Notwithstanding the foregoing provisions, either Contracting Party may maintaining or introduce such restrictions as are necessary for the purpose of;



- a. Protecting public morals,
- b. Protecting human, animal or plant life,
- c. Safeguarding the national treasures and artistic property,
- d. Protecting security interests,
- e. Protecting local industries and safeguarding domestic requirements,
- f. Safeguarding such other interests as may be deemed necessary

#### **Article V**

Each Contracting Party shall, subject to the law and regulations in force in their country, encourage and facilitate the visits of businessmen or trade delegations and also help in holding trade fairs and exhibitions by enterprises or organizations of the other Contracting Party.

#### **Article VI**

The goods and commodities to be exported under this Agreement shall be of either country's origin and shall not be re-exported to third country.

#### **Article VII**

The prices of goods and commodities to be exchanged under this Agreement shall be determined by mutual agreement between the trading parties.

#### **Article VIII**

8.1 The Contracting Parties shall explore the possibilities of improving trade relations between them.

8.2 The Contracting Parties shall explore the possibilities of operating chartered cargo flights between their two countries and accord to each other facilities within their competence to operate such flights.

8.3 The Government of Pakistan will allow use of warehousing facilities as available from time to time at Karachi port/airport of Nepalese cargo for movement to up-country in Pakistan and for trade with third country.

#### **Article IX**

All payments in connection with trade between the two countries shall be effected in freely convertible currency in accordance with the foreign exchange regulations in force from time to time in each country.

#### **Article X**

Subject to the laws and regulations in force, the Contracting Parties shall exempt the duties and charges on catalogues and other printed advertising materials related to goods and commodities which are subject to trade.

#### **Article XI**

Without restricting other mutual trade the Contracting Parties shall enter, by means protocols to this agreement, into such arrangements including lists of items to be imported or exported, banking, transportation etc. as may be considered by them to be necessary from time to time during the period of validity of this Agreement, to facilitate the movement of goods from one country to the other.

**Article XII**

The Contracting Parties shall consult each other and if necessary their representatives shall meet at the request of either Contracting Party at the convenient date and place for facilitating the smooth implementation of this Agreement and for settling any differences that may arise between them.

**Article XIII**

13.1 This Agreement shall replace the Trade Agreement between Pakistan and Nepal of 19th October, 1962 and come into force from the date of its signing and it shall remain in force for a period of 5 years and shall be renewable automatically for similar periods thereafter unless terminated by either Contracting Party giving three months written notice to the other.

13.2 This Agreement may be amended or altered by mutual consent of the Contracting Parties.  
Done in Islamabad on Twenty-eight day of July, Nineteen Hundred and Eighty two, in two original copies in the English two, in two original copies in the English language both the tests being equally authentic.

For and on Behalf of	For and on Behalf of
His Majesty's Government of	the Government Of the Islamic Republic of
Nepal	Pakistan
<b>(Govinda Prasad Lohani)</b>	<b>(szharul Haque)</b>
Ambassador Royal Nepalese	Secretary Ministry of Commerce
Embassy Islamabad.	Government of Islamic Republic of
	Pakistan.

**Trade Agreement Between His Majesty's Government of Nepal  
and  
The Government of the Republic Of Poland signed in Kathmandu (Nepal on the 12<sup>th</sup> of May 1992)**

His Majesty's Government of Nepal and the Government of the Republic of Poland, hereinafter referred to as the "Contracting Parties". Being desirous of expanding and developing trade relations between the two countries on the basis of equality and mutual benefit, Have agreed as follows:

**Article I**

The Contracting Parties shall, subject to the laws and regulations in force in their respective countries, take all appropriate measures to facilitate and develop trade between the two countries.

**Article II**

The Contracting Parties shall grant each other the most favoured nation treatment particularly with respect to duties/taxes and other charges as well as customs formalities in connection with the importation and exportation of goods from one country to another.

**Article III**

The provisions of article 2 shall not be applied to the advantages, exemptions and privileges, which the Contracting Parties grant or shall grant:

- a. to neighbouring countries in the border-trade;
- b. to countries participating with either Party in a customs union, a free trade area or a regional association for economic cooperation already in existence or which might be established in the future.

**Article IV**

Commercial transactions within the framework of this Agreement shall be concluded between the natural and juridical persons of both countries. The above mentioned natural and juridical persons shall carry out their commercial transactions on their own responsibility in every respect.

**Article V**

The Contracting Parties shall facilitate to the extent possible each other's participation in trade fairs to be held in either country, and in arranging trade exhibitions of either country in the territory of the other, on terms to be agreed between respective authorities.

**Article VI**

The Contracting Parties shall subject to the laws and regulations in force in their respective countries and on conditions agreed upon by the respective authorities of both parties, permit the importation and exportation,

free of customs duties, taxes and other similar levies or charges not related to the payment for services, the following:

- a. Samples of goods and publicity materials, required only for obtaining orders and for advertising purposes, which are not for sale and are of no commercial value,
- b. Goods imported temporarily for the purpose of trade fairs and exhibitions,
- c. Goods imported temporarily for experiments and research activities.
- d. Goods imported temporarily for repair.

#### **Article VII**

All payments for goods and services between natural and juridical persons of both countries shall be made in freely convertible currencies, in accordance with the foreign exchange regulations in force in each country.

#### **Article VIII**

The Contracting Parties will ensure mutually the recognition and enforcement of the awards of the arbitration tribunals agreed upon in commercial contracts concluded within the framework of the present Agreement between natural and juridical persons of both countries, in case of disputes related to these contracts

#### **Article IX**

Both Contracting Parties shall consult each other whenever necessary in order to recommend measures for expanding mutual or to overcome difficulties that might arise in connection with implementation of the provisions of this Agreement.

For this purpose a consultative meeting attended by representatives of both Parties may be held upon the request of either Contracting Party within a convenient term and at a place to be agreed upon by the Contracting Parties.

#### **Article X**

In the event of termination of this Agreement, its provisions shall continue to apply in respect of unfulfilled obligations of commercial contracts entered into during the period of validity of this Agreement.

#### **Article XI**

1. Each of the Contracting Parties shall notify to the other the completions of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force thirty days after the date of the notification.
2. This Agreement shall come into force provisionally from the date of signature pending the completion of formalities stipulated above.

3. This Agreement shall be valid for three years and shall automatically be extended for further periods of three years unless a written notice of termination is given by either Party six months prior to the expiry of this Agreement.
4. Any modification of and/or supplement to the present Agreement may be done only by written consent by both Contracting Parties thereto.

In witness whereof the undersigned, duly authorized by their respective Governments have signed this Agreement.

Done and signed in Kathmandu on the twelfth day of May 1992 in two originals in English language, both being equally authentic.

(On behalf of His Majesty's  
Government of Nepal)  
Durga Prakash Panday  
Secretary  
Ministry of Commerce

(On behalf of the  
Government of the Republic of Poland)  
(Juliusz Bialy)  
Ambassador  
Extraordinary and plenipotentiary of the  
Republic of Poland to the Kingdom of Nepal



**Trade and payment Agreement between  
His Majesty's Government of Nepal and The Government of the Socialist**

His Majesty's Government of Nepal and the Government of the Socialist Republic of Romania (hereinafter referred to as the "Contracting Parties"):

Being animate by the desire to develop the friendship and strengthen the trade and economic relations between the two countries on the basis of equality and mutual benefit:

Having in view the importance of ensuring of favourable conditions for the mutual access of national products of the other market of the Contracting Parties.

Desiring to contribute to the setting up of New International Economic Order: and

Being convinced of the importance and necessity for extension and diversification of trade relations and economic cooperation between the two countries:

Have agreed as follows:

**Article I**

The Contracting Parties shall take all appropriate measure to facilitate and develop trade between their two countries and agree to promote the exchange of goods between them.

**Article II**

The Contracting Parties shall accord upon importation and exportation of goods from one country to the other maximum facilities allowed by their respective laws; rules and regulations in force in each country. The said goods shall enjoy Most Favoured Nation Treatment with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation, with respect to the methods of levying such duties, and charges and to the applicable rules, formalities and charges in connection with customs clearing operations and to the application of internal taxes or other charges of any kind imposed on or in connection with imported goods.

The Contracting Parties agree also to negotiate the mutual extension of tariff and non-tariff facilities in keeping with the existing international understandings accepted by the two Contracting Parties.

**Article III**

According to the provisions of Article 2 of this agreement any advantages, favours privileges or immunities granted by either of the Contracting Parties to import or export of any product origination in the territory of a third country or destined for its territory shall be accorded immediately and un-conditionally to the like products originating in the territory of the either Contracting Party and destined to be imported into the territory of the other.

**Article IV**

The provisions of Article 2 and 3 shall not, however, apply to the grant or continuance of any of the following:

- a. Advantages accorded by either Contracting Party to contiguous countries with the purpose of facilitating frontier trade:
- b. Advantages derived from customs union or other agreements of free trade:
- c. Advantages accorded by virtue of preferential multilateral economic agreements relating to international commerce to which the other country is not Contracting Party.

#### **Article V**

The Contracting Parties shall not apply in their mutual trade quantitative restrictions and similar measures, excepting the cases when such restrictions are applied to similar goods of any third countries, under the same conditions.

#### **Article VI**

The Contracting Parties not to proceed through any consular formalities for the goods originating or destined to the territory of the other country.

#### **Article VII**

The exchange of goods between the two countries shall be conducted in accordance with the respective laws, regulations and procedures in force in each country relating to import and export of goods and on the basis of contracts being concluded between the juridical and physical persons of the Kingdom of Nepal juridical persons of the Socialist Republic of Romania, authorized to engage in foreign trade activities.

#### **Article VIII**

The Contracting Parties, through the competent authorities of both countries shall issue the necessary licences for export and import of commodities mentioned in Schedule "A" and "B" annexed to this agreement, which are indicative and not exhaustive in conformity with the laws, rules and regulations in force in their respective countries.

#### **Article IX**

The prices of goods supplies under this agreement shall be fixed mutual agreement between the exporters and importer of their two countries.

#### **Article X**

The following shall be exempted from the customs duty, taxes and other export and import charges in accordance with the laws and regulations in force in their respective countries.

- a. Materials and equipments imported under economic and technical co-operations to be used in governmental projects agreed by contracts or other understandings between the partners of the two countries:
- b. Goods temporarily imported for exhibitions and fairs:

- c. Tools and equipments required for assembly and construction purposes which are temporarily imported under special arrangements:
- d. Goods to be processed and/or finished, temporarily imported under special permits, provided that such goods are subsequently exports:
- e. Catalogues, leaflets and other advertising materials relating to goods which are the subject of trade between the two countries.

#### **Article XI**

In order to promote the object of this agreement, the Contracting Parties shall encourage and facilitate in:

- a. Fixing up commercial connection between the economic units, enterprises and firms or the two countries.
- b. Organizing and participating in general or specialized commercial fairs and exhibitions in the respective countries:
- c. Negotiating and conclusion of understanding, arrangements and commercial contracts, especially on long terms between economic units, enterprises and firms of the two countries:
- d. Exchange of commercial and industrial representatives and exports in relatives fields of the two countries:

#### **Article XII**

The goods imported by either of the two countries under this agreement shall not be re-exported to third countries, except with the prior consultation of the two Contracting Parties.

#### **Article XIII**

All payments in connection with exportation or importation of goods as well as other nature of payments between the two countries shall be effected in any freely convertible currency in accordance with foreign exchange rules and regulations of the respective countries.

#### **Article XIV**

The Contracting Parties agree to set up an intergovernmental committee in order to examine any issue that may arise in the course of the implementation of the provisions of this agreement and to find ways and means for the further expansion of trade and economic and technical co-operation between the two countries.

The Committee shall meet on request by either party at a place and time to be mutually agreed upon but not later than 45 days from the date of receipt of such request.

#### **Article XV**

Any eventual disputes in connection with the interpretation or application of the provisions of this agreement shall be settled by the two Contracting Parties on the occasion of meeting of the Nepalese-Romanian Intergovernmental Committee for foreign trade and economic and technical co-operation as well as by mutual consultation.

## **Article XVI**

No provision of this agreement shall be construed to prove the adoption and enforcement by either Contracting Party of measures necessary to protect public morals, human, animal or plants life of health or industrial, literary or artistic property and the security of its own territory or in pursuance of international conventions whether already in existence or concluded hereinafter in which it is a party.

## **Article XVII**

This agreement shall come into force provisionally on the date of its signature and finally from the date of the exchange of instruments of approval or ratification of this agreement by the Contracting Parties.

This agreement shall remain in force for a period of ten years.

If neither party shall have notified the other in writing to terminate this agreement at least six months before its expiry, the validity of this agreement shall be automatically extended for period of another five years and thus thereafter.

## **Article XVIII**

After the expiry of this agreement, its provisions shall be further applied in respect to all contracts concluded under this agreement, but not fully executed as on the date of the termination.

Done Kathmandu on January, 1984 in two original copies, in English and Romanian language, both texts being equally authentic.

For His Majesty's  
Government of Nepal

For the Government of  
The Socialist Republic of Romania

## **Schedule "A"**

### **Indicative List of Export from the Kingdom of Nepal to the Socialist Republic of Romania**

1. Jute and jute goods
2. Leather and leather products
3. Spices (including dry ginger, large cardamom, turmeric, etc.)
4. Tobacco
5. Oilseeds and oilcakes
6. Medicinal herbs
7. Readymade garments
8. Woolen carpets
9. Handicrafts
10. Tea
11. Pulses (lentils)
12. Straboard
13. Furniture and other wooden products

14. Minerals
15. Dairy products
16. Beverage and spirits
17. High grade rice
18. Canned fruits.

#### **Schedule "B"**

#### **Indicative list of Exports from the Socialist Republic of Romania to the Kingdom of Nepal**

1. Equipment for building and road building constructions including spare parts, other machinery including transport and spare parts there of.
2. Electrical, equipments including power transformers, substation equipments, conductors and cables, power generating sets, matering penels, pumps, refrigerators etc.
3. Tools and workshop equipments including hand tools, machine tools, woodworking machinery, welding converters etc.
4. Ball, roller and taper bearings.
5. Power electrical cables (insulated)
6. Automatic equipment and installations.
7. Telephone exchanges and telephone sets.
8. Machinery and equipments for light industry and wood processing industry.
9. Motor cars, four/wheel/drive cars, buses, utility vans.
10. Tractors and assembling line.
11. Fertilizers.
12. Chemical fibres and yarns.
13. Soda Ash.
14. Caustic soda.
15. Dyes, chemicals and paints including PVC.
16. Tyres and tubes.
17. Pharmaceutical products.
18. Mineral oils
19. Aluminium products.
20. Cotton and cotton mixed textiles



**TRADE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA  
(Trade Agreement Signed in Kathmandu April 3, 1979)**

His Majesty's Government of Nepal and the Government of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Contracting Parties.)

Being desirous of perpetuating the age-old bonds of friendship between the two Governments and the peoples of the two countries and of strengthening and further developing their economic, trade and cultural relations on the basis of equality and mutual benefit.

Have agreed as follows:

**Article I**

The Contracting Parties shall take all appropriate measures to develop and expand the trade between their two countries and agree to facilitate the exchange of goods between them.

**Article II**

1. The Contracting Parties agree to accord to each other in their trade relation treatment no less favourable than that which is accorded to any other country in respect of issuance of licenses, custom formalities, customs duties and taxes and other charges for the import and export of goods and commodities.

2. Provisions of para I shall not, however, apply to the grant or continuance of any:

3. advantages accorded by either of the Contracting Parties to contiguous countries in order to facilitate frontier trade;

- a. advantages resulting from any customs Union, clearing Union of Preference, Free Trade Area to which either of the Contracting Parties is or may become a party;
- b. advantages accorded by virtue of Multilateral Economic Agreements relating to International Commerce.

**Article III**

The Contracting Parties through the competent authorities of both countries shall issue the necessary licenses for export and import of commodities mentioned in schedule "A" and "B" annexed to this Agreement which are indicatives and not exhaustive, in conformity with the laws, rules and regulations in force in their respective countries.

**Article IV**

The trade between the two countries may be conducted through their State Trading Organizations as well as other importers and exporters of the two countries.

#### **Article V**

All payments between the Contracting Parties resulting from the deliveries of goods and services as well as any other payments shall be expressed and effected in any freely convertible currency mutually agreed upon between the Parties to any transaction in accordance with the laws, rules and regulations pertaining to foreign trade and force in either country.

#### **Article VI**

The prices of goods supplied under this Agreement shall be fixed by mutual agreement between the exporters and importers of the two countries.

#### **Article VII**

Aircraft and ships, their crews, passengers and cargoes of one Contracting Party shall be accorded in ports of internal sea water of the other Contracting Party treatment no less favourable than that accorded to any other country.

#### **Article VIII**

The provisions of Article VII shall not apply to coastal and inland shipping.

#### **Article IX**

The Contracting Parties agree to set up a Joint Committee in order to examine any issues that may arise in the course of the implementation of this Agreement and to find ways and means for the further expansion of trade between the two countries. The Joint Committee shall meet at mutually agreed dates in Sri Lanka and Nepal alternately upon the request of the either party.

#### **Article X**

The provision of this Agreement shall also apply after the expiry of its validity to contracts concluded during the periods of its validity but not fulfilled before its expiry.

#### **Article XI**

Amendments and Supplements to this Agreement shall require the consent of both Contracting Parties.

#### **Article XII**

This Agreements shall come into force provisionally on the date of its signature and finally from the date of the exchange of diplomatic not confirming the approval or ratification of this Agreement by the Contracting Parties.

It shall remain valid for a period of three years and shall be renewed automatically by periods of one year each unless either Contracting Party gives three months notice in writing before the expiry of its validity of its intention to terminate this Agreement.

Done and signed in Kathmandu on Tuesday Third Day of April Nineteen Hundred and Seventy Nine in two originals in the English language, both of which are equally authentic. The Nepalese and Sinhala text of this Agreement shall be exchanged through diplomatic channel within a period of three months. In case of divergence in the interpretation of this Agreement, the English text shall prevail.

For His Majesty's Government of Nepal,  
**(Shreebhadra Sharma)**  
Minister of State for Industry and Commerce.

For the Government of  
the Democratic Socialist Republic of Sri Lanka  
**(Lalith Athulathmudali)**  
Minister for Trade and Shipping.

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**SCHEDULE "A"**

**List of Exportable Items from Sri Lanka to Nepal**

1. Arecanuts
2. Betel Leaves
3. Spices including cardamoms, cloves and nutmegs
4. Tea including packeted tea
5. Rubber
6. Coconut Products
7. Cement
8. Textile including made-up garments of batkis, shirts etc.
9. Medicinal herbs including indigenous preparations
10. Footwear
11. Paper
12. Pharmaceuticals
13. Miscellaneous

**SCHEDULE "B"**

**List of Exportable Items from Nepal to Sri Lanka**

1. Rice
2. Sugar
3. Jute and Jute Products
4. Potatoes and other Vegetables
5. Ghee
6. Hide and Skins
7. Medicinal Herbs
8. Spices including dry ginger, chillies, turmeric
9. Lentils
10. Cheese and Butter
11. Wheat Flour

- 12. Timber and Wood products
- 13. Plywood
- 14. Miscellaneous

**Agreement on most favoured nation treatment  
Effected by exchange of notes signed at  
Kathmandu 1965**

Note No. 32  
1161/65

British Embassy  
Kathmandu  
May 7, 1965

Her Britannic Majesty's Embassy present their compliments to the Ministry of Foreign Affairs, and with reference to discussions which have taken place between the Embassy and departments of His Majesty's Government of Nepal have the honour to state that the United Kingdom Government is pleased to note that His Majesty's Government is willing to accord to British goods entering Nepal the treatment of the most favoured nation, save for the exceptional treatment given to India and Tibet. The United Kingdom Government will continue to accord to imports from Nepal the treatment of the most favoured nation, save for the special tariff reserved for members of the Commonwealth Preference Area and the European Free Trade Association.

Accordingly, the Embassy request the Ministry to confirm that the necessary action will be taken by the Nepalese authorities in regard to British goods entering Nepal.

Her Britannic Majesty's Embassy avail themselves of this opportunity of renewing to the Ministry of Foreign Affairs the assurance of their highest consideration.

Ministry of Foreign Affairs  
Singha Durbar, Kathmandu.

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1181/65  
Dear M. Rimal

British Embassy  
Kathmandu  
27 September, 1965

The Ambassador has asked me to write to you following on the discussions you had with him on 27 August about most favoured nations treatment for British imports into Nepal and Nepalese imports into the United Kingdom. In view of the difficulties inherent in attempting to accord to Nepalese imports into the United Kingdom the same treatment that accorded under Commonwealth preference to imports originating in Commonwealth countries, he suggests that you may wish to reconsider the suggestion contained in the Foreign Ministry Note K/11-3/317 of 20 August. Meanwhile we are taking no action to inform the British authorities of the Ministry's Note.

Yours Sincerely  
SD/-  
(G.F. Kinnear) First Secretary



Mr. Madhav Kumar Rimal:  
Ministry of Foreign Affairs,  
Singha Durbar, Kathmandu.

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IC/P 11-3/1972

Ministry of Foreign Affairs  
His Majesty's Government of Nepal  
Kathmandu.  
November 2, 1965

Dear Mr. Charge d'Affairs,

Kindly refer to your letter No. 1118/65 dated September 27, 1965, regarding the most favoured treatment between Nepal and United Kingdom.

I am glad to inform you that His Majesty's Government of Nepal has decided to accept your Government's proposal and to grant most favoured nation treatment to the goods coming from the United Kingdom to Nepal on a reciprocal basis. Accordingly necessary instruction has already been issued to the Department concerned to grant these facilities to the British goods entering Nepal.

I shall be grateful if you will kindly take necessary measures to provide the same facilities to the Nepalese goods entering the United Kingdom and let me know when this is done.

With kind regards,

Yours sincerely,  
(Govinda Raj Pandeya)  
Under Secretary

Mr. G.F. Kinnear,  
Charge d' Affairs a.i.,  
British Embassy  
Kathmandu.  
c.c. To: - The Department of Commerce.

1181/13

British Embassy  
Kathmandu  
4 November - 1965

Dear Mr. Pandeya

Thank you for your letter Lc/P. 113/1972 of 2 November from which I am pleased to note that His Majesty's Government of Nepal agreed to grant Most Favoured Nation treatment to goods coming from the United Kingdom to Nepal on a reciprocal basis.

As already advised in this Embassy's note No. 32 of 7 May the United Kingdom Government already accord to imports from Nepal the treatment of the Most Favoured Nation.

With kind regards,

Yours Sincerely

SD/  
(G.F. Kinnear)  
Charge d'Affairs

Shri Govinda Raj Pandeya,  
Under Secretary,  
Ministry of Foreign Affairs

Entered into force April 25, 1947.

**FRIENDSHIP AND COMMERCE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND  
THE KINGDOM OF NEPAL**

The Chief of the United States Special Diplomatic Mission  
To the Prime minister and Supreme  
Commander-in-Chief of Nepal

United States Special Diplomatic  
Mission to the Kingdom of Nepal,  
Kathmandu, April 25, 1947

Your Highness:

I have the honour to make the following statement of my Government's understanding of the agreement reached through recent conversations held at Kathmandu by representatives of the Government of United States of America and the Government of the Kingdom of Nepal with reference to diplomatic and consular representation, juridical protection, commerce and navigation. These two Governments, desiring to strengthen the friendly relations happily existing between the two countries, further mutually advantageous commercial relations between their peoples, and to maintain in most favoured-nation principle in its unconditional and unlimited form as the basis of their commercial relations agree to the following provisions:

1. The United States of America and the Kingdom of Nepal will establish diplomatic and consular relation at a date which shall be fixed by mutual agreement between the two Governments.
2. The diplomatic representatives of each party accredited to the Government of the other party shall enjoy in the territories of such other party the rights, privileges, exemptions and immunities accorded under generally recognized principles of international law. The consular officers each party who are assigned to the Government of the other Party, and are duly provided with exequaturs, shall be permitted to reside in the territories of such other party at the places where consular officers are permitted by the applicable laws to reside; they shall enjoy the honorary privileges and the immunities accorded to officers of their rank by general international usage; and they shall not, in any event, be treated in a manner less favourable than similar officers of any third country.
3. All furniture, equipment and supplies intended for official use in a consular or diplomatic office of the sending state shall be permitted entry into the territory of the receiving state free of all customs duties and internal revenue or other taxes whether imposed upon or by reason of importation.
4. The baggages and effects and other articles imported exclusively for the personal use of consular and diplomatic officers and employees and the members of their respective families and suites, who are national of the sending state and are not the nationals of the receiving state and are not engaged in any private occupation for gain in territory of the receiving state, shall be exempt from all customs duties and internal revenue or other taxes whether imposed upon or by reason of importation. Such exemption shall be granted with respect to property accompanying any person

entitled to claim and exemption under this paragraph on first arrival or on any subsequent arrival and with respect to property consigned to any such person during the period the consular or diplomatic officer or employees for through whom the exemption is claimed, is assigned to or is employed in the receiving state by the sending state.

5. It is understood, however, (a) that the exemptions provided by paragraph 4 of this Agreement shall be accorded in respect of employees in a consular office only when the names of such employees have been duly communicated to the appropriate authorities of the receiving state; (b) that in the case of the consignments to which paragraph of this Agreement refers, either state may, as condition to the granting of exemption provided, require that a notification of any such consignment be given in such manner as it may prescribe; (c) that nothing herein shall be construed to permit the entry into the territory of either state of any article the importation of which is specifically, prohibited by law.
6. Nationals of the Kingdom of Nepal in the United States of America and nationals of the United States of America in the Kingdom of Nepal shall be received and treated in accordance with the requirements and practices of generally recognized international law. In respect of their persons, possessions and rights, such nationals shall enjoy the fullest protection of the laws, and authorities of the country, and shall not be treated in any manner less favourable than the nationals of any third country.
7. In all matters relating to customs duties and charges of any kind imposed on or in connection with importation or exportation or otherwise affecting commerce and navigation, to the method of levying such duties, to all rules and formalities in connection with importation or exportation, and to transit, warehousing and other facilities, each Party shall accord unconditional and unrestricted most favoured nation treatment to article the growth, produce or manufacture of the other Party, from whatever place arriving, or to article destined for exportation to the territories of such other Party, by whatever route. Any advantage, favour, privilege or immunity with respect to any duty charge or regulations affecting commerce or navigation now or hereafter accorded by the United States of America or by the Kingdom of Nepal to any third country shall be accorded immediately and unconditionally to the commerce and navigation of the Kingdom of Nepal and of the United States of America, respectively.
8. There shall be expected from the provisions of paragraph 7 of this Agreement advantages now or hereafter accorded: (a) by virtues of a customs union of which either party may become a member: (b) to adjacent countries in order to facilitate frontier traffic: (c) to third countries which are parties to a multilateral economic agreement of general applicability, including a trade areas of substantial size, having as its objective the liberalization and promotion of international trade or international economic intercourse and open to adoption by all the United Nations., and (d) by the United States of America or its territories or possessions to one another, to the Republic of Cuba, to the Republic of the Philippines, or to the Panama Canal Zone. Clause (d) shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America or its territories or possessions to one another irrespective of any change in the political status of any such territories or possessions.
9. Nothing in this Agreement shall prevent the adoption or enforcement by either party: (a) of measures relating to fissionable materials, to the importation or exportation of gold and silver, to the traffic in arms, ammunition and implements of war, or to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment., (b) of measure necessary in

pursuance of obligations for the maintenance of international peace and security necessary for the protection of the essential interests of such Party in time of national emergency; or (c) of status in relation to immigration.

10. Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either party against the nations, commerce or navigation of the other Party in favour of the nations, commerce or navigation of any third country, the provisions of this Agreement shall not extend to prohibitions or restriction; (a) imposed on moral or humanitarian grounds, (b) designed to protect human, animal, or plant life or health, (c) relating to prison-made goods., or (d) relating to the enforcement of police or revenue laws.
11. The provisions of this Agreement shall apply to all territory under the sovereignty or authority of either of the parties except the Panama Canal Zone.
12. This Agreement shall continue in force until superseded by a more comprehensive commercial agreement or until 30 days from the date of a written notice of termination given by other Party to the other Party, whichever is the earlier. Moreover either Party may terminate paragraphs 7 and 8 on thirty days written notice.

If the above provisions are acceptable to the Government of the Kingdom of Nepal this note and the reply signifying assent there to shall if agreeable to the Government, be regarded as constituting an agreement between the two Governments which shall become effective on the date of such acceptance.

Please accept. You Highness, the renewed assurance of my highest consideration.

Joseph C. Satterthwaite

His Highness  
The Maharaja  
Padma Shum Shere Jung Bahadur Rana  
Prime Minister and Supreme Commander-in-chief  
Nepal

The Prime Minister and Supreme Commander-in-chief of Nepal to the Chief of the United States Special Diplomatic Mission.

Your Excellency,

I have the honour to acknowledge the receipt of your not dated 25<sup>th</sup> April 1947, in which there is set forth the understanding of your Government of the agreement reached through recent conversations held at Katmandu between the representatives of the Government of the United States of America and the representatives of the Government of Kingdom of Nepal, in the following terms.

The Government the United States of America and the Government of the Kingdom of Nepal, desiring to strengthen the friendly relations happily existing between the two countries, to further mutually advantageous commercial relations between their peoples, and to maintain the most-favoured-nation



principle in its unconditional and unlimited form as the basis of their commercial relations agree to the following provisions.

1. The United States of America and the Kingdom of Nepal will establish diplomatic and consular relations at a date which shall be fixed by mutual agreement between the two Governments.
2. The diplomatic representatives of each party accredited to the Government of the other party shall enjoy in the territories of such other party the rights. Privileges, exemptions and immunities accorded under generally recognized principles of international law. The consular officer of each Party who are assigned to the Government of the other party, and are duly provided which exequaturs, shall be permitted to reside in the territories of such other party at the places where consular officers are permitted by the applicable laws to reside: they shall enjoy the honorary privileges and the immunities accorded to officers of their rank by general international usage, and they shall not in any event, be treated in a manner less favourable than similar officers of any third country.
3. All furniture, equipment and supplies intended for official use in a consular or diplomatic office of the sending state shall be permitted entry into the territory of the receiving state free of all customs duties and internal revenue or other taxes whether imposed upon or by reason of importation.
4. The baggage and effects and other articles imported exclusively for the personal use of consular and diplomatic officers and employees and the member of their respective families and suits, who are national of the sending state and are not nationals of the receiving state, shall be exempt from all customs duties and internal revenue or other taxes whether imposed upon or by reason of importation. Such exemption shall be granted with respect to property accompanying any persons entitled to claim an exemption under this paragraph on first arrival or on any subsequent arrival and with respect to property consigned to any such person during the period the consular or diplomatic officer or employee, for or through whom the exemption is claimed, is assigned to or is employed in the receiving state by the sending state.
5. It is understood, however (a) that the exemptions provided by paragraph 4 of this Agreement shall be accorded in respect of employees in a consular office only when the names of such employees in a consular office only when the names of such employees have been duly communicated to the appropriate authorities of the receiving state: (b) that in the case of the consignment to which paragraph 4 of this Agreement refers, either state may, as a condition to the granting of the exemption provided, require that a notification of any such consignment be given in such manners as it may prescribe: and (c) that nothing herein shall be construed to permit the entry into the territory of either state of any article the importation of which is specifically prohibited by law.
6. Nationals of the Kingdom of Nepal in the United States of America and Nationals of the United States of America in the Kingdom of Nepal shall be received and treated in accordance with the requirements and practices of generally recognized international law. In respect of their persons, possessions and rights, such national shall enjoy the fullest protection of the laws and authorities of the country, and shall not be treated in any manner less favorable than the national of any third country.
7. In all matters relating to customs duties and charges of any kind imposed on or in connection with importation or exportation or otherwise effecting commerce and navigation, to the method of

levying such duties and charges and to all rules and formalities in connection with importation or exportation, and to transit, warehousing and other facilities each party shall occur unconditional and unrestricted most-favored-nation-treatment to articles the growth, produce or manufacture of the other party, from whatever place arriving, or to articles destined for exportation to the territories of such other party, by whatever route. Any advantages, favor, privilege or immunity with respect to any duty, charge or regulation, effecting commerce or navigation now or hereafter accorded by the United States of America or by the Kingdom of Nepal to any third country shall be accorded immediately and unconditionally to the commerce and navigation of the Kingdom of Nepal and of the United States of America, respectively.

8. There shall be excepted from the provisions of paragraph 7 of this Agreement advantages now or hereafter accorded., (a) by virtue of customs union of which either party may become a member., (b) to adjacent countries in order to facilitate frontier traffic., (c) to third countries which are parties to a multilateral economic agreement of general applicability, including a trade area of substantial size, having as its objective the liberalization and promotion of international trade or other international economic intercourse and open to adoption by all the United Nations and (d) by the United States of America or its territories or possessions to one another to the Republic of Cuba, to the Republic of the Philippines or to the Panama Canal Zone. Clause (e) shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America or its territories or possessions to one another irrespective of any change in the political status of any such territories or possession.
9. Nothing in this Agreement shall prevent the adoption or enforcement by either party; (a) of measure relating to fissionable materials, to the importation or exportation of gold and silver to the traffic in arms, ammunition and implements of war, or to such traffics in other goods and materials as is carried on for the purpose of supplying a military establishment; (b) of measure necessary in pursuance of obligations for the maintenance of international peace and security or necessary for the protection of the essential interests of such party in time of national emergency; or (c) of status in relation to immigration.
10. Subject to the requirement that under like circumstances and conditions there shall be no arbitrate discrimination by either party against the nationals, commerce or navigation of the other party in favour of the nationals, commerce or navigation of any third country, the provision of this agreement shall not extend to prohibitions or restrictions (a) imposed on moral or humanitarian grounds., (b) designed to protect human, animal or plant life or health., (c) relating to prison made goods., or (d) relating to the enforcement of police or revenue laws.
11. The provisions of this Agreement shall apply to all territory under the sovereignty or authority of either of the parties, except the Panama Canal Zone.
12. This Agreement shall continue in force until superseded by a more comprehensive commercial agreement, or until thirty days from the date of a written notice of termination given by either party to the other party, whichever is the earlier. Moreover either party may terminate paragraph 7 and 8 on 40 days written notice. The Government of the Kingdom of Nepal approves the above provisions and is prepared to give effect thereto beginning with the date of this reply note. Please accept your Excellency the renewed assurance of highest consideration with which I remain.

Your Excellency's sincerely

Padma Shumshere  
Jung B.R.

Dated Kathmandu  
The 25<sup>th</sup> April 1947.

To  
His Excellency  
The Hon'ble Mr. Joseph C. Stterthwaite  
Chief, United States Special Diplomatic  
Mission to the Kingdom of Nepal  
Kathmandu.

**TRADE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLIC**

His Majesty's Government of Nepal and the Government of the Union of Soviet Socialist Republics noting with satisfaction the successful development of economic relations between them and begin desirous of promoting trade between the Kingdom of Nepal and the Union of Soviet Socialist Republics, have on the basis of equality and mutual between agreed upon the following:

**Article I**

Both Contracting Parties shall take all appropriate measures to develop the trade between two countries. They shall study and with utmost goodwill take decisions on the suggestion which either of them would like to present for consideration of the other with the purpose of achieving closer relations.

**Article II**

The Contracting Parties shall accord upon importation and exportation of goods from one country to the other maximum facilities allowed by their respective laws, rules and regulations. In any case the said goods shall enjoy most favoured nation treatment with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation, with respect to the methods of levying such and charges and rules formalities and charges in connection with customs clearing operations, with respect to the application of internal taxes or other charges of any kind levied on imported goods or inconnection with import, and with respect to the treatment of imports and exports of goods and the issuance of import and export licences.

**Article III**

Any advantages, favour, privilege or immunity granted by either of the Contracting Parties to import or export of any product originating in the territory of a third country of destined for its territory, shall be accorded immediately and unconditionally to the like products originating in territory of the other Contracting Parties and destined to imported into the territory of the other.

The provision of Article 2 and 3 shall not, however, apply to the grant or continuance of any,

- a. Advantages accorded by either Government to contiguous countries with the purpose of facilitating frontier trade,
- b. Advantages resulting from customs union.

**Article IV**

Juridical and physical persons of either Contracting Party shall enjoy the most favoured nation treatment in respect of personal protection and protection of property when effecting commercial activities in the territory of the other Contracting Party provided that the enjoyment of this treatment shall be subject to the laws and regulations of such other Party which are generally applicable to all foreigners alike.

**Article V**

The Export of goods from Nepal to the USSR and from the USSR to Nepal during the validity of this Agreement will be carried out in accordance with the schedules as agreed upon between the two Governments from time to time.

#### **Article VI**

To exchange of Goods between the two countries shall be conducted in accordance with their respective laws, regulations and procedures relating to import and export goods and on the basis of the contracts being concluded between the Nepalese juridical and physical person, on the one part, and Soviet trade foreign organizations, on the other part.

#### **Article VII**

Both Contracting Parties agree that prices for the goods to be delivered under the present Agreement shall be fixed on the basis of the world prices, i.e., the prices of the main world markets for corresponding goods.

#### **Article VIII**

All payments in connection with exportation or importation of goods as well as the Payment non-commercial nature between Nepal and the USSR shall be effected in any freely convertible currency.

#### **Article IX**

The Contracting Parties shall consult with each other as and when necessary, in respect of matter connected with the implementation of this Agreement.

For this purpose representatives of both Parties will meet on request by either Party at a place and time to be mutually agreed upon but not later than thirty days after the date of requests.

#### **Article X**

This Agreement shall come into force from the date of signature but its provisions are retrospective and shall apply from the 13<sup>th</sup> of June, 1970.

The Agreement shall remain valid for a period of two years. If neither party shall have notified the other in writing to terminate this Agreement at least six months before, its expiry the validity of this Agreement shall be automatically extended for a further period of two years and thus there after.

After the expiration of the present Agreement its provisions shall apply to all the contracts concluded during its validity and not executed by the time of the expiration of the Agreement.

Done in Kathmandu on the Sixth Day of August 1970 in two original copies each in Nepalese, Russian and English languages, the three texts being equally authoritative.

By authorization of  
His Majesty's Government  
of Nepal.  
Nayan R. Pandey

By authorization of the Government  
of the Union of Soviet Socialist  
Republic  
Konstantin V. Bruzhes



**Agreement, with list of Commodities Signed at Kathmandu September 5, 1965;  
operative from September 5, 1965**

**Trade Agreement between  
His Majesty's Government of Nepal  
and  
The Government of the Socialist Federal Republic of Yugoslavia**

His Majesty's Government of Nepal and the Government of the Socialist Federal Republic of Yugoslavia, being animated by the desire of further developing and strengthening friendly relations between the two countries, resolved to establish, facilitate and promote trade relations between Nepal and Yugoslavia, have on the basis of equality and mutual benefit, agreed as follows: -

**Article I**

The Contracting Parties shall take all appropriate measures to develop the trade between their two countries, and agree to promote the exchange of goods between them.

**Article II**

The Contracting Parties shall facilitate transit of goods, by all means of transport, through their territories.

**Article III**

The Contracting Parties shall accord upon importation and exportation of goods from one country to the other maximum facilities allowed by their respective laws rules and regulations in force. In any case in the said goods shall enjoy full most-favoured-nation treatment with respect to customs duties and charges of any kind imposed on the imports or exports or in connection therewith, with respect to the methods of levying such duties and charges, with respect to the rules formalities and charges in connection with customs clearing operations and with respect to the application of internal taxes, or other charges of any kind imposed on or in connection with imported goods.

**Article IV**

Any advantage, favour, privileges or immunity granted by either by the Contracting Parties to import or export of any product originating in the territory of a third country or destined for its territory, shall be accorded immediately and unconditionally to the like products originating territory of either of the Contracting Parties and destined to be imported into the territory of the other.

**Article V**

The provision of Article III and IV shall not, however, apply to the grant or continuance of any;

- a. advantages which are or may be hereafter accorded by either Contracting Party to contiguous countries with the purpose of facilitating frontier trade;
- b. advantages derived from customs unions or other agreement on customs free trade;

- c. advantages accorded by multilateral economic agreement relating to international commerce;

#### **Article VI**

The following shall be exempt from the customs duty, taxes and other export and import charges.

- a. materials and equipments required for tests experiments as well as materials and equipments imported under the technical co-operation;
- b. goods temporarily imported for exhibition and fairs;
- c. tools and equipment required for assembly and construction purposes which are temporarily imported under special arrangements;
- d. goods to be processed and/or finished temporarily imported under special permits provided that such goods are subsequently exported;
- e. models and samples of non-commercial value, catalogues, advertisements and other papers relating to goods which are the subject of trade;

#### **Article VII**

The export of goods from Nepal to the Socialist Federal republic of Yugoslavia and from the Socialist Federal Republic of Yugoslavia to Nepal during the validity of this Agreement shall be carried out in accordance with the indicative schedules attached hereto or as may be agreed upon between the two Governments from time to time.

#### **Article VIII**

The exchange of goods between the two countries shall be conducted in accordance with their respective laws, regulations and procedures relating to import and export of goods and on the basis of the contracts being concluded between the juridical and physical persons of the two countries.

#### **Article IX**

Juridical and physical persons of either Contracting Parties shall enjoy the most-favoured-nation treatment in respect of personal protection of property when effecting commercial activities in the territory of the other Contracting Party provided that the enjoyment of this treatment shall be subject to the laws and regulations of such other Party which are generally applicable to all foreigners alike.

#### **Article X**

The trade between the two countries shall be based, as far as possible, on the principle of equilibrium. All payments accruing from trade exchange and services rendered pursuant provisions of this agreement shall be effected in convertible currency.

#### **Article XI**

In order to facilitate the implementation of this Agreement the two Contracting Parties shall consult each other as and when necessary and also review the working of this Agreement.

For this purpose representatives of both Parties shall meet on request by either Party at a place and time to be mutually agreed upon.

#### **Article XII**

Nothing in this Agreement shall be construed to prevent the adoption and enforcement by either Party of measures necessary to protect public morals, human, animal or plant life or health and for the security of its own territory.

#### **Article XIII**

After the expiration of the present Agreement its provision shall apply mutatis mutandis to all the contracts concluded during its validity and not executed by the time of the expiration of this Agreement.

#### **Article XIV**

This present Agreement shall come to force from the date of exchange of the instruments of ratification. It shall be, however provisionally applicable from the date of its signature. It shall remain in force for a period of two years and shall continue in force for further periods of one year thereafter, unless terminated by either party by giving at least three months notice in writing before the expiry of the said period of two years or the extended period

Done in two copies in the English language, both being equally authentic, at Kathmandu, on this fifth day of September, 1965.

Sd/  
Jharendra Narayan Singha  
For His Majesty's Government of Nepal

Sd/  
Dr. Radivojusalic  
For the Government of the Socialist Federal Republic  
of Yugoslavia

#### **COMMODITY LIST "A"**

**Indicative list of commodities to be exported from the Socialist Federal Republic of Yugoslavia to the Kingdom of Nepal**

1. Tool and equipment for workshop and services
2. Complete installation and individual machines for
3. Various industrial projects
4. Pumps and hydraulic installations
5. Steam-rollers
6. Lorries and heavy vehicles
7. Passenger cars
8. Diesels and petrol engines
9. Civil engineering equipment and tools
10. Electromotors and electric Installations and Equipments

11. Cables Conductors and Electric Installations and Equipment
12. Various instruments
13. Rolled and drawn steel products (Sheets, sections, wire, etc.)
14. Cast pipes and fittings
15. Asbestos, cement pipes and fittings
16. Agricultural machines, tools and implements
17. Tanning agents
18. Chemical products
19. Explosives
20. Medicaments and pharmaceutical raw materials
21. Paints and varnishes
22. Medical and veterinary equipment and instruments
23. Laboratory equipment
24. Plastic products
25. Products of paper industry (cigarette paper, writing paper, cardboard, etc.)
26. Textiles and textile products
27. Rubber products
28. Sanitary equipment and installations
29. Barbed and corrugated wire
30. Porcelain tableware
31. Electrical appliances for household and catering services
32. Wireless sets, phonographs and loudspeakers
33. PTT equipment
34. Spare parts for machines and vehicles
35. Grawler, tractors and other earth moving equipments
36. Photographic goods
37. Petroleum products, Roller Bearings
38. Electronics
39. Diesel generating sets
40. Ropeway
41. Mining and metalurgical equipments
42. Galvanized iron sheets and structural iron
43. Cement
44. Miscellaneous

#### **COMMODITY LIST "B"**

##### **Indicative list of commodities to be exported from the Kingdom of Nepal to the Socialist Federal Republic of Yugoslavia**

1. Jute and jute products
2. Hides and skins
3. Oil seeds and cakes-mustard, linseed and ground nut
4. Minerals and ores
5. Rice
6. Tea
7. Handicrafts-Brass and wood products

8. Medicinal Herbs
9. Footwear
10. Hard timber
11. Raw wool and woolen yarn
12. Crushed Bones
13. Dried Ginger

*Agreement between*  
*the Government of the Republic of Finland*  
*and*  
*the Government of Nepal*  
*on the Promotion and Protection of Investments*

The Government of the Republic of Finland and the Government of Nepal, hereinafter referred to as the "Contracting Parties",

RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment be accorded such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

AGREEING that a stable framework for investment will contribute to facilitating the effective utilisation of economic resources and improve living standards;

RECOGNISING that the development of economic and business ties can promote sustainable development;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

HAVE AGREED AS FOLLOWS:



## ARTICLE 1 DEFINITIONS

For the purpose of this Agreement:

1. The term "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:

- (a) movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;
- (b) reinvested returns;
- (c) shares in and stocks and debentures of a company or any other forms of participation in a company;
- (d) claims to money or to a performance under contract having an economic value;
- (e) industrial and intellectual property rights; and
- (f) concessions conferred by law or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party, but actually owned or controlled, directly or indirectly, by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change in the form in which assets are invested or reinvested does not affect their character as investments.

2. The term "returns" means the monetary amounts yielded by investments and shall in particular, though not exclusively, include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment.

3. The term "investor" means, for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in



accordance with the laws of the latter Contracting Party and the provisions of this Agreement:

- (a) any natural person who is a national of either Contracting Party in accordance with its laws; or
- (b) any legal entity such as company, corporation, firm, partnership, business association, institution or organisation, incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.

4. The term "territory" means:

- (a) in the case of Finland, the land territory, internal waters and territorial sea of the Republic of Finland and the airspace above, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Finland exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas; and
- (b) in the case of Nepal, the territory falling within the sovereignty and jurisdiction of Nepal under its law and international law.

## **ARTICLE 2**

### **PROMOTION AND PROTECTION OF INVESTMENTS**

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit such investments.
2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.
3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.



### **ARTICLE 3**

#### **TREATMENT OF INVESTMENTS**

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.
2. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments.
3. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments the better of the treatments required by paragraph 1 and paragraph 2 of this Article, whichever is the more favourable to the investors or investments.
4. Neither Contracting Party shall mandate or enforce in its territory measures on investments by investors of the other Contracting Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects. Such requirements do not include conditions for the receipt or continued receipt of an advantage.

### **ARTICLE 4**

#### **EXEMPTIONS**

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of any existing or future:

- (a) free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party, or
- (b) agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation, or
- (c) multilateral agreement relating wholly or mainly to investments.



## **ARTICLE 5 EXPROPRIATION**

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures, direct or indirect, having an effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for a purpose which is in the public interest, on a non-discriminatory basis, in accordance with due process of law, and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the value of the expropriated investment at the time immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The value shall be determined in accordance with generally accepted principles of valuation.

3. Compensation shall be fully realisable and shall be paid without any restriction or delay.

4. Where a Contracting Party expropriates the assets or a part thereof of a company, which has been incorporated or constituted in accordance with the law in force in its territory, in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor whose investments are expropriated shall have the right to prompt review of its case and of valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent authority of that Contracting Party.

## **ARTICLE 6 COMPENSATION FOR LOSSES**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting



Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is the more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of its investment or a part thereof by the latter's authorities, or

(b) destruction of its investment or a part thereof by the latter's authorities, which was not required by the necessity of the situation,

shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and with respect to compensation, shall be in accordance with Article 5 paragraphs 2-3 from the date of requisitioning or destruction until the date of actual payment.

#### **ARTICLE 7 FREE TRANSFER**

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments and transfer payments related to investments. Such payments shall include in particular, though not exclusively:

(a) principal and additional amounts to maintain, develop or increase the investment;

(b) returns;

(c) proceeds obtained from the total or partial sale or disposal of an investment, including the sale of shares;

(d) amounts required for the payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties, management fees, licence fees or other similar expenses;

(e) compensation payable pursuant to Articles 5, 6, 8 and 9;

(f) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.



2. Unless otherwise agreed to by the host Contracting Party and the investor concerned, transfers under paragraph 1 of this Article shall be ensured in the currency of the original investment or any other convertible currency agreed upon between the Contracting Party and the investor concerned. Such transfers shall be made at the prevailing market rate of exchange applicable on the date of transfer and shall be transferable without any restriction or delay.

3. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawing Rights.

#### **ARTICLE 8 SUBROGATION**

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such an investor to the former Contracting Party or its designated agency, and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

#### **ARTICLE 9 DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY**

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

2. If the dispute has not been settled within three (3) months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted to:

(a) the competent courts or arbitral or administrative bodies of the Contracting Party in whose territory the investment is made; or

(b) arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965



(hereinafter referred to as the "Centre"), provided that both Contracting Parties are parties to the said Convention, or if the Centre is available; or

(c) arbitration by the Additional Facility of the Centre, if the Centre is not available; or

(d) an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once the investor has submitted the dispute to the competent court or arbitral or administrative bodies of the host Contracting Party or to one of the arbitration procedures stipulated in paragraphs 2(b) to 2(d) of this Article, the choice of the procedure is final.

4. Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

6. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

7. The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by the date indicated in the award.



**ARTICLE 10**  
**DISPUTES BETWEEN THE CONTRACTING PARTIES**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six (6) months following the date on which either Contracting Party requested such negotiations, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.
3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.
4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.
6. Issues subject to dispute referred to in paragraph 1 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognised principles of international law.



## **ARTICLE 11 PERMITS**

1. Each Contracting Party shall, subject to its laws and regulations, treat favourably the applications relating to investments and grant expeditiously the necessary permits required in its territory in connection with investments by investors of the other Contracting Party.

2. Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party, and who are essential for the enterprise, as long as these persons continue to meet the requirements of this paragraph. Immediate family members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Contracting Party.

## **ARTICLE 12 APPLICATION OF OTHER RULES**

If the provisions of law of either Contracting Party or obligations under international law, existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

## **ARTICLE 13 APPLICATION OF THE AGREEMENT**

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force.



## **ARTICLE 14 GENERAL DEROGATIONS**

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations.
2. Provided, that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or a disguised investment restriction, nothing in this Agreement shall be construed as preventing the Contracting Parties from taking any measure necessary for the maintenance of public order.
3. The provisions of this Article shall not apply to Article 7 paragraph 1.(e) of this Agreement.

## **ARTICLE 15 TRANSPARENCY**

1. Each Contracting Party shall, in accordance with its procedures, publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.
2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, which would be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

## **ARTICLE 16 CONSULTATIONS**

The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the implementation or on any matter affecting the application of this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through appropriate channels.



**ARTICLE 17**  
**ENTRY INTO FORCE, DURATION AND TERMINATION**

1. The Contracting Parties shall notify each other when their constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.

2. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement. The termination shall become effective one year after the date of notification.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 16 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, being duly authorised thereto, have signed this Agreement.

Done in duplicate at Kathmandu on 3<sup>rd</sup> of February 2009 in the English language.

**Dr. Paavo Väyrynen**  
Minister,  
Foreign Trade and Development  
For the Government of  
the Republic of Finland

**Mr. Rameshore Prasad Khanal**  
Secretary,  
Ministry of Finance  
For the Government of  
Nepal



**TRADE AND INVESTMENT FRAMEWORK AGREEMENT BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND  
THE GOVERNMENT OF NEPAL**

The Government of the United States of America and the Government of the Nepal  
(individually a “Party” and collectively the “Parties”):

*Desiring* to enhance the bonds of friendship and spirit of cooperation, to expand trade, investment and technical cooperation, and to strengthen economic relations between the Parties;

*Recognizing* the importance of fostering an open and predictable environment for international trade and investment;

*Recognizing* the benefits the Parties can derive from increased international trade and investment, and that trade-distorting investment measures and protectionist trade barriers can reduce these benefits;

*Seeking* to promote transparency and to eliminate bribery and corruption in international trade and investment;

*Recognizing* the essential role of private investment, both domestic and foreign, in furthering growth, creating jobs, expanding trade, improving technology, and enhancing economic development;

*Recognizing* the increased importance of trade in services between their economies;

*Taking* into account the desirability of reducing trade barriers in order to facilitate increased trade among the Parties;

*Recognizing* the importance of providing adequate and effective protection and enforcement of intellectual property rights and of membership in and adherence to intellectual property rights conventions with policy flexibilities in view of the level of development of the Parties;

*Recognizing* the importance of adopting and maintaining in each Party’s law and practices the fundamental labor rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998), and of ensuring the effective enforcement of each Party’s labor laws;

*Recognizing* the importance of protecting and preserving the environment in accordance with each Party's environmental laws, and desiring to ensure that trade and environmental policies are mutually supportive in the furtherance of sustainable development;

*Desiring* to encourage and facilitate contacts between enterprises and other private sector groups in each other's territories;

*Acknowledging* the desirability of resolving trade and investment problems between them as expeditiously as possible;

*Desiring* that this Framework Agreement reinforce the multilateral trading system;

*Noting* that the Parties are Members of the WTO and affirming that this Agreement is without prejudice to the rights and obligations of these Parties under the agreements, understandings, and other instruments related to or concluded under the auspices of the WTO;

*Seeking* to create a mechanism for further dialogue on initiatives for expanding their trade through enhanced cooperation and more comprehensive agreements,

HAVE AGREED as follows:

## **ARTICLE ONE**

The Parties affirm their desire to promote an attractive investment climate and to expand and diversify trade in products and services between the Parties.

## **ARTICLE TWO**

1. The Parties hereby establish a United States-Nepal Council on Trade and Investment ("Council"), comprising representatives of each Party. The Nepalese side shall be chaired by the Ministry of Commerce and Supplies; and the United States' side shall be chaired by the Office of the U.S. Trade Representative ("USTR"). Both Parties may be assisted by officials of other government entities as circumstances require.

2. The Council shall meet at such times, in such places, and through such means as the Parties may agree. The Parties shall endeavor to meet no less than once a year.

### **ARTICLE THREE**

The Council shall:

1. monitor trade and investment relations between the Parties, identify opportunities for expanding trade and investment, and identify relevant issues, such as those related to the protection of intellectual property rights, worker rights, and the environment, that may be appropriate for negotiation in an appropriate forum;
2. consider specific trade and investment matters of interest to the Parties;
3. consider capacity building and technical assistance on matters of interest to the Parties, including with respect to promoting trade in services;
4. consider trade facilitation measures for the enhancement of bilateral trade;
5. identify and work to remove impediments to trade and investment between the Parties; and
6. seek the advice of the private sector and civil society, where appropriate, on matters related to the Council's work.

### **ARTICLE FOUR**

A Party may refer a specific trade or investment matter to the Council by delivering a written request to the other Party that includes a description of the matter concerned. The Council shall take up the matter promptly after the request is delivered unless the requesting Party agrees to postpone discussion of the matter. Each Party shall endeavor to provide an opportunity for the Council to consider a matter before taking actions that could adversely affect trade or investment interests of the other Party.

### **ARTICLE FIVE**

This Agreement shall be without prejudice to the law of either Party or to the rights and obligations of either Party under any other agreement.

### **ARTICLE SIX**

This Agreement shall enter into force on signature.

## ARTICLE SEVEN

Any Party may withdraw from this Agreement by providing written notice of withdrawal to the other Party. The withdrawal shall take effect on a date the Parties agree or, if the Parties cannot agree, 180 days after the date on which the notice of withdrawal is delivered.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington, D.C., this 15th day of April 2011.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF NEPAL:

Bharat Mohan Adhikari  
Deputy Prime Minister  
and Minister for Commerce and Supplies

Ron Kirk  
United States Trade Representative



# **TRADE AND INVESTMENT FRAMEWORK ARRANGEMENT**

## **BETWEEN**

### **THE GOVERNMENT OF AUSTRALIA**

## **AND**

### **THE GOVERNMENT OF NEPAL**

The Government of Australia and the Government of Nepal (hereinafter referred to as "the Participants"),

Desiring to promote and deepen their bilateral economic relations on the basis of mutual benefit and in accordance with the laws of both countries;

Recognising the benefits from increased trade and investment;

Reaffirming their commitment to the rules-based multilateral trading system, with the World Trade Organization at its core;

Desiring to foster an open and transparent environment for international trade and investment and economic cooperation;

Recognising that foreign investment confers net positive benefits on each Participant in the form of growth, job creation and enhancing economic development;

Desiring to encourage and facilitate private sector contacts between the two countries;

Have arrived at the following understandings:

## **PARAGRAPH ONE**

### **FACILITATION AND PROMOTION OF TRADE AND INVESTMENT**

1. The Participants will endeavour to encourage and facilitate trade and investment between them, including between their organisations, institutions and commercial entities, continue to afford each other the benefit of their respective WTO commitments, and put in place favourable conditions for the long-term development, economic resilience and diversification of trade and investment.

**PARAGRAPH TWO**  
**COMMITTEE ON TRADE AND INVESTMENT**

2. The Participants will establish an Australia-Nepal Committee on Trade and Investment (referred to as the "Joint Australia-Nepal Trade and Investment Committee"), comprising representatives of each Participant.
3. Australian participant representatives will be chaired by the Department of Foreign Affairs and Trade (DFAT), including the Australian Embassy in Kathmandu; the Nepali participant representatives will be chaired by the Ministry of Industry, Commerce and Supplies (MOICS), Government of Nepal, including the Nepal Embassy in Canberra. These agencies will be the focal points for the Participants and will be represented on all committees and bodies created under this Arrangement.
4. The Participants may encourage and facilitate participation by officials from relevant government agencies and key stakeholders, and may jointly work with them, including consideration of gender, inclusion and diversity principles, as determined by the Participants.
5. The Committee will meet at such time and place, as the Participants may jointly decide. The Participants will endeavour to meet every second year, alongside Senior Officials Talks, or at such time and place, as jointly determined by the Participants.
6. Unless the Participants decide otherwise, the Committee is to meet as soon as practicable, after the signing of this Arrangement and regularly thereafter as jointly determined by the Participants.
7. The Participants may facilitate consultations in areas of cooperation that may be determined by the Committee, as relevant, tailored to Participants' key economic needs.
8. The Committee will be responsible for:
  - (i) promotion of a range of bilateral cooperation and related activities, particularly economic cooperation, to strengthen trade and investment in key sectors of mutual interest;
  - (ii) development of trade and investment relations between the Participants, and to identify and promote relevant opportunities;
  - (iii) facilitate consultations on economic, trade and investment matters and relevant policy issues of mutual interest, including areas of concern that may arise;
  - (iv) jointly considering proposals under these Arrangements.



**PARAGRAPH THREE  
AREAS OF BILATERAL COOPERATION**

9. The Participants will seek to strengthen trade and investment through bilateral cooperation as mutually determined in mutually arranged sectors, including, but not limited to, the areas of Capacity Building and Technical Cooperation in relation to Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) measures.
10. As part of the "Joint Australia-Nepal Trade and Investment Committee" and related activities, Participants will promote economic reform and cooperation initiatives designed to encourage trade and investment, to foster greater opportunities for engagement between Nepali and Australian business.

**PARAGRAPH FOUR  
TRANSPARENCY**

11. The Participants recognise the importance of maintaining transparency in their laws, regulations and policies relating to trade and investment. Each Participant will, with a view to promoting the understanding of its laws, regulations and administrative rulings of general application that pertain to or affect trade or investment in its territory by investors of the other Participant, seek to make such laws, regulations and administrative rulings of general application public and readily accessible.

**PARAGRAPH FIVE  
STATUS OF THIS ARRANGEMENT**

12. For the sake of clarity, this Arrangement does not create legally-binding obligations for either of the Participants. It is entered into as an expression of a shared intention to strengthen economic relations between the Participants.

**PARAGRAPH SIX  
DISPUTES**

13. Any disputes about the interpretation or application of the Arrangement will be resolved by consultations between the Participants, and will not be referred to any national or international tribunal or third-party settlement for settlement.

**PARAGRAPH SEVEN  
TERMINATION AND AMENDMENT**

14. This Arrangement will take effect on the date of signing by the Participants and will remain in effect for five years. It will automatically be extended for the successive terms unless otherwise arranged.

15. Either Participant can terminate the Arrangement by giving a written notice of withdrawal to another Participant at least six months before the end of a term. The withdrawal will take effect on a date the Participants approve or, if the Participants cannot approve, 180 days after the date on which the notice of withdrawal is delivered.
16. This Arrangement may be added to, amended or terminated at any time by mutual consent of the Participants in writing.

SIGNED in duplicate at PERTH, this 9th day of the Month of February in the Year Two Thousand and Twenty Four.

FOR THE GOVERNMENT OF  
AUSTRALIA

FOR THE GOVERNMENT OF  
NEPAL

.....  
The Hon Tim Watts MP  
Assistant Minister for Foreign Affairs

.....  
H.E. Kailash Raj Pokharel,  
Ambassador of Nepal to Australia



Preamble	
Article I	Definitions
Article II	Fundamental principles
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Article XV	Amendments to Appendices I and II
Article XVI	Appendix III and Amendments thereto
Article XVII	Amendment of the Convention
Article XVIII	Resolution of Disputes
Article XIX	Signature
Article XX	Ratification, Acceptance, Approval
Article XXI	Accession
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Article XXIII	Reservations
Article XXIV	Denunciation
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**Convention on International Trade in Endangered Species  
of Wild Fauna and Flora**

*Signed at Washington, D.C., on 3 March 1973*

*Amended at Bonn, on 22 June 1979*

The Contracting States,

*Recognizing* that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

*Conscious* of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

*Recognizing* that peoples and States are and should be the best protectors of their own wild fauna and flora;

*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

*Convinced* of the urgency of taking appropriate measures to this end; *Have agreed* as follows:

**Article I  
Definitions**

For the purpose of the present Convention, unless the context otherwise requires:

- (a) "Species" means any species, subspecies, or geographically separate population thereof;
- (b) "Specimen" means:
  - (i) any animal or plant, whether alive or dead;

(ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and

(iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;

(c) "Trade" means export, re-export, import and introduction from the sea;

(d) "Re-export" means export of any specimen that has previously been imported;

(e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;

(f) "Scientific Authority" means a national scientific authority designated in accordance with Article IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX;

(h) "Party" means a State for which the present Convention has entered into force.

## **Article II**

### **Fundamental Principles**

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

## **Article III**

### **Regulation of Trade in Specimens of Species Included in Appendix I**

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

#### **Article IV**

##### **Regulation of Trade in Specimens of Species Included in Appendix II**

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

#### **Article V**

##### **Regulation of Trade in Specimens of Species Included in Appendix III**

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

## **Article VI**

### **Permits and Certificates**

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.

2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.

3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.

4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.

5. A separate permit or certificate shall be required for each consignment of specimens.

6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

## **Article VII**

### **Exemptions and Other Special Provisions Relating to Trade**

1. The provisions of Articles III, IV and V shall not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.

3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

(a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or

(b) in the case of specimens of species included in Appendix II:

(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens; unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:



- (a) the exporter or importer registers full details of such specimens with that Management Authority;
- (b) the specimens are in either of the categories specified in paragraph 2 or 5 of this Article; and
- (c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

**Article VIII**  
**Measures to Be Taken by the Parties**

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

- (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
- (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
- (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

- (a) the names and addresses of exporters and importers; and
- (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

- (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and
- (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

**Article IX**  
**Management and Scientific Authorities**

1. Each Party shall designate for the purposes of the present Convention:

- (a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and
- (b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2 of this Article shall, if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

#### **Article X**

##### **Trade with States not Party to the Convention**

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

#### **Article XI**

##### **Conference of the Parties**

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.
2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.
3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:
  - (a) make such provision as may be necessary to enable the Secretariat to carry out its duties, and adopt financial provisions;
  - (b) consider and adopt amendments to Appendices I and II in accordance with Article XV;
  - (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;
  - (d) receive and consider any reports presented by the Secretariat or by any Party; and
  - (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.
4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.
5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.
6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.
7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:
  - (a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
  - (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

#### **Article XII**

##### **The Secretariat**

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.
2. The functions of the Secretariat shall be:
  - (a) to arrange for and service meetings of the Parties;
  - (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
  - (c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
  - (d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;
  - (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;
  - (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices;
  - (g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;
  - (h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;
  - (i) to perform any other function as may be entrusted to it by the Parties.

**Article XIII**  
**International Measures**

1. When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.
2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.
3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

**Article XIV**  
**Effect on Domestic Legislation and International Conventions**

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:
  - (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
  - (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.
2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.
3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external Customs control and removing Customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.
4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.
5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.
6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

**Article XV**  
**Amendments to Appendices I and II**

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:
  - (a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.
  - (b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.
  - (c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.
2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:
  - (a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.
  - (b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.
  - (c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.
  - (d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraph (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.
  - (e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible. (f) If no objection to the

proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h) , (i) and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of objection has been received.

(i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (l) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.

#### **Article XVI**

##### **Appendix III and Amendments thereto**

1. Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any interpretations as they are adopted.

#### **Article XVII**

##### **Amendment of the Convention**

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

#### **Article XVIII**

##### **Resolution of Disputes**

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute can not be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

#### **Article XIX**

##### **Signature**

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

#### **Article XX**

##### **Ratification, Acceptance, Approval**

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

#### **Article XXI**

##### **Accession**

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

#### **Article XXII**

##### **Entry into Force**



1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.

2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article XXIII Reservations**

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.

2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:

(a) any species included in Appendix I, II or III; or

(b) any parts or derivatives specified in relation to a species included in Appendix III.

3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

#### **Article XXIV Denunciation**

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

#### **Article XXV Depositary**

1. The original of the present Convention, in the [Chinese](#), English, [French](#), [Russian](#) and [Spanish](#) languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.

2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.

3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

*In witness whereof* the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

*Done* at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

### **Bonn amendment to the text of the Convention**

The Conference of the Parties to CITES adopted an amendment to the text of the Convention on 22 June 1979. This amendment consists of inserting at the end of Article XI, paragraph 3. a), the words ", and adopt financial provisions" so that it reads as follows:

3. *At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:*

*(a) make such provision as may be necessary to enable the Secretariat to carry out its duties, and adopt financial provisions; ...*

In accordance with [Article XVII, paragraph 3](#), of the Convention, the Bonn amendment entered into force 60 days after 34 (two-thirds) of the 50 States that were party to CITES on 22 June 1979 deposited their instruments of acceptance, i.e. on 13 April 1987. At that time it entered into force only for those States that had accepted the amendment (no matter on what date they became party to the Convention.) However the amended text of the Convention applies automatically to any State that becomes a Party after the date of entry into force of the amendment.

There are currently [141 Parties](#) out of 175 that have accepted the Bonn amendment.

### **Gaborone amendment to the text of the Convention**

The Conference of the Parties to CITES held its second extraordinary meeting in Gaborone, Botswana, on 30 April 1983 (the last day of its fourth regular meeting), to consider a proposed amendment to Article XXI of the Convention to permit accession by regional economic integration organizations.

The Conference adopted the proposal with several changes, and the agreed amendment consists of the addition of five paragraphs (numbered from 2 to 6 below) to Article XXI as follows:

1. *The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.*
2. *This Convention shall be open for accession by regional economic integration organizations constituted by sovereign States which have competence in respect of the negotiation, conclusion and implementation of international agreements in matters transferred to them by their Member States and covered by this Convention.*
3. *In their instruments of accession, such organization shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary Government of any substantial modification in the extent of their competence. Notifications by regional economic integration organizations concerning their competence with respect to matters governed by this Convention and modifications thereto shall be distributed to the Parties by the Depositary Government.*
4. *In matters within their competence, such regional economic integration organizations shall exercise the rights and fulfil the obligations which this Convention attributes to their Member States, which are Parties to the Convention. In such cases the Member States of the organizations shall not be entitled to exercise such rights individually.*
5. *In the fields of their competence, regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention. Such organizations shall not exercise their right to vote if their Member States exercise theirs, and vice versa.*
6. *Any reference to "Party" in the sense used in Article 1(h) of this Convention, to "State"/"States" or to "State Party"/"State Parties" to the Convention shall be construed as including a reference to any regional economic integration organization having competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.*

In accordance with [Article XVII, paragraph 3](#), of the Convention, the Gaborone amendment shall enter into force 60 days after 54 of the 80 States that were party to CITES on 30 April 1983 (i.e. two-thirds of them) have deposited their instruments of acceptance. However, at that time it will enter into force only for those States that have accepted the amendment (no matter on what date they became party to the Convention.) The amended text of the Convention will apply automatically to any State that becomes a Party after the date of entry into force of the amendment. However, for States that became party to the Convention before that date and have not accepted the amendment, it will enter into force 60 days after they do accept it.

There are currently 47 Parties out of 80 that were party to CITES on 30 April 1983, and altogether [83 Parties](#) out of a total of 172, that have accepted the Gaborone amendment.



## **Framework Agreement on the BIMST-EC Free Trade Area**

### **PREAMBLE**

**THE GOVERNMENTS** of the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka and Thailand Economic Cooperation), hereinafter referred to collectively as “the Parties” and individually as “a Party”;

**TAKING NOTE** of the Agreed Conclusions of the BIMST-EC Economic Ministerial Retreat held in Bangkok, Thailand, on 7<sup>th</sup> August, 1998, that BIMST-EC should aim and strive to develop into a Free Trade Arrangement and should focus on activities that facilitate trade, increase investments and promote technical cooperation among member countries;

**MOTIVATED** by the need for strengthening economic cooperation in the region to fully realise the potential of trade and development for the benefit of their people;

**RECOGNIZING** the need to harmonize with the changing global economic environment and the catalytic role that regional trading arrangements can play towards accelerating global liberalization as building blocks in the framework of the multilateral trading system;

**CONVINCED** that a BIMST-EC Free Trade Area will act as a stimulus to the strengthening of economic cooperation among the Parties, lower costs, increase intra-regional trade and investment, increase economic efficiency, create a larger market with greater opportunities and larger economies of scale for the businesses of the Parties, and enhance the attractiveness of the Parties to capital and talent;

**REAFFIRMING** the rights, obligations and undertakings of the respective Parties under the World Trade Organization (WTO) and other multilateral, regional and bi-lateral agreements and arrangements; and

**RECOGNIZING** that the least developed countries in the region need to be accorded special and differential treatment commensurate with their development needs;

**HAVE AGREED AS FOLLOWS:**

#### **ARTICLE 1 Objectives**

The objectives of this Agreement are to:

- (a) strengthen and enhance economic, trade and investment cooperation among the Parties;
- (b) progressively liberalize and promote trade in goods and services, create a transparent, liberal and facilitative investment regime;
- (c) explore new areas and develop appropriate measures for closer cooperation among the Parties; and
- (d) facilitate the more effective economic integration of the least developed countries in the region, and bridge the development gap among the Parties.

#### **ARTICLE 2 Measures for Comprehensive Free Trade Area (FTA)**

The Parties agree to negotiate expeditiously in order to establish a BIMST-EC FTA to strengthen and enhance economic cooperation through the following:

- (a) progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods;
- (b) progressive liberalization of trade in services with substantial sectoral coverage;



- (c) establishing an open and competitive investment regime that facilitates and promotes investments within the BIMST-EC FTA;
- (d) provision for special and differential treatment and flexibility to the least developed countries in the region;
- (e) flexibility to the Parties in the BIMST-EC FTA negotiations to address their sensitive areas in the goods, services and investment sectors based on agreed principles of reciprocity and mutual benefits;
- (f) establishing effective trade and investment facilitating measures, including, but not limited to, simplification of customs procedures and development of mutual recognition arrangements;
- (g) expanding economic cooperation in areas as may be mutually agreed among the Parties that will complement the deepening of trade and investment links among the Parties and formulating action plans and programmes in the agreed sectors/areas of cooperation; and
- (h) establishing appropriate mechanisms for implementation of this Agreement.

### **ARTICLE 3**

#### **Trade in Goods**

1. The Parties agree to enter into negotiations for eliminating the tariffs and non-tariff barriers in substantially all trade in goods between the Parties, except, where necessary, those permitted under Article XXIV (8) (b) of the General Agreement on Tariffs and Trade (GATT) 1994.
2. The products, except those included in the Negative List, shall be subject to tariff reduction or elimination on the following two tracks:
  - (a) Fast Track: Products listed in the Fast Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

<b>Countries</b>	<b>For Developing Country Parties</b>	<b>For LDC Parties</b>
India, Sri Lanka & Thailand	1 July 2006 to 30 June 2009	1 July 2006 to 30 June 2007
Bhutan, Myanmar & Nepal	1 July 2006 to 30 June 2011	1 July 2006 to 30 June 2009

- (b) Normal Track: Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

<b>Countries</b>	<b>For Developing Country Parties</b>	<b>For LDC Parties</b>
India, Sri Lanka & Thailand	1 July 2007 to 30 June 2012	1 July 2007 to 30 June 2010
Bhutan, Myanmar & Nepal	1 July 2007 to 30 June 2017	1 July 2007 to 30 June 2015

- (c) The number of products in the Negative List shall be subject to a maximum ceiling to be mutually agreed among the Parties, with flexibility to the LDC Parties to seek derogation, in one form or the other, in respect of products of their export interest.

3. Negotiations among the Parties to establish the BIMST-EC FTA covering trade in goods shall also include, but not be limited to the following:

- (a) detailed modalities governing the tariff reduction or elimination programmes as well as any other related matter, including principles governing reciprocal commitments not provided for in the preceding paragraphs of this Article;
- (b) Rules of Origin;
- (c) Treatment of out-of-quota rates;
- (d) Modification of a Party's commitments under the agreement on trade in goods based on Article XXVIII of the GATT 1994;
- (e) Non-tariff measures/barriers imposed on any product covered under this Agreement; and
- (f) Detailed procedures for safeguards based on GATT principles;

#### **ARTICLE 4**

##### **Trade in Services**

With the view to expediting the expansion of trade in services, the Parties agree to enter into negotiations to progressively liberalise trade in services with substantial sectoral coverage through a positive list approach. Such negotiations shall be directed to:

- (a) progressive elimination of substantially all discrimination between or among the Parties and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, except for measures permitted under Article V(1)(b) of the WTO General Agreement on Trade in Services (GATS);
- (b) expansion in the depth and scope of liberalisation of trade in services beyond those undertaken by the Parties under the GATS;
- (c) enhance cooperation in services among the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties.

#### **ARTICLE 5**

##### **Investment**

To promote investments and to create a facilitative, transparent and competitive investment regime, the Parties agree to:

- (a) provide for the promotion and protection of investments;
- (b) strengthen cooperation in investment, facilitate investment and improve transparency of investment rules and regulations; and
- (c) enter into negotiations in order to progressively liberalise the investment regime through a positive list approach.

**ARTICLE 6**  
**Areas of Economic Cooperation**

1. The Parties agree to strengthen cooperation in the already identified sectors of technology, transportation and communication, energy, tourism and fisheries.

2. The Parties further agree to enhance trade facilitation in areas, including but not limited to, the following:

- (a) Mutual Recognition Arrangements (MRAs), conformity assessment, accreditation procedures, and standards & technical regulations;
- (b) Customs cooperation;
- (c) Trade finance;
- (d) E-commerce; and
- (e) Business visa and travel facilitation.

3. The Parties agree to implement capacity building programmes and technical assistance, particularly for the least developed countries of the BIMST-EC, in order to adjust their economic structure and expand their trade and investment with other Parties.

4. The Parties further agree to provide technical support, to the extent possible, to the LDC Parties in their efforts to comply with the SPS and TBT requirements of the BIMST-EC countries. For this purpose, bilateral negotiations for fast tracking the process of MRAs, conformity assessment, accreditation procedures or any other necessary arrangements will be carried out in parallel with negotiations for FTA in goods.



## **ARTICLE 7**

### **Timeframes**

1. The negotiations for tariff reduction/elimination and other matters as set out in Article 3 of this Agreement shall commence in July 2004 and be concluded by December 2005 .
2. For trade in services and investments, the negotiations on respective agreements shall commence in 2005 and be concluded by 2007. The identification, liberalisation, etc., of the sectors of services and investments shall be finalized for implementation subsequently in accordance with the timeframes to be mutually agreed; (a) taking into account the sensitive sectors of the Parties; and (b) with special and differential treatment and flexibility for the LDC Parties.
3. The Parties shall continue to build upon existing or agreed programmes, develop new economic cooperation programmes and conclude agreements on various areas of economic cooperation. The Parties shall do so expeditiously for early implementation in a manner and at a pace acceptable to all the Parties concerned.

## **ARTICLE 8**

### **General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between or among the Parties where the same conditions prevail, or a disguised restriction on trade within the BIMST-EC, nothing in this Agreement shall prevent any Party from taking action and adopting measures for the protection of its national security or the protection of articles of artistic, historic and archaeological value, or such other measures which it deems necessary for the protection of public morals, or for the protection of human, animal or plant life, health and conservation of exhaustible natural resources.



**ARTICLE 9**  
**Dispute Settlement Mechanism**

1. The Parties shall establish appropriate formal dispute settlement procedures and mechanism for the purpose of this Agreement by December 2005.
2. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 of this Article, any dispute arising between the Parties regarding the interpretation, application or implementation of this Agreement shall be settled amicably through mutual consultations.

**ARTICLE 10**  
**Institutional Arrangements**

1. BIMST-EC Trade Negotiating Committee (BIMST-EC TNC) shall be established to carry out the programme of negotiations as set out in this Agreement.
2. The BIMST-EC TNC may involve other experts or establish any working group as may be necessary to assist in their negotiations, as also to coordinate and implement any economic cooperation activities undertaken pursuant to this Agreement.
3. The BIMST-EC TNC shall regularly report to the BIMST-EC Trade/Economic Ministers through the Senior Trade and Economic Officials Meeting on the progress and outcome, of its negotiations.

**ARTICLE 11**  
**Amendments**

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Parties.

**ARTICLE 12**  
**Miscellaneous Provisions**

1. Any subsidiary agreement or arrangement, which may be concluded by the Parties pursuant to the provisions of this Agreement, shall form an integral part of this Agreement and be binding on the Parties.
2. Except as otherwise provided in this Agreement, any action taken under it shall not affect or nullify the rights and obligations of a Party under other agreements or arrangements to which it is a party.
3. The Parties shall endeavor to refrain from increasing restrictions or limitations that would affect the application of this Agreement.

**ARTICLE 13**  
**Withdrawal from the Agreement**

1. A Party may withdraw from the Agreement by giving a six months' notice in writing to the other Parties.
2. Subject to the dispute settlement procedures and mechanisms to be established pursuant to Article 9, the rights and obligations of a Party which has withdrawn from this Agreement shall cease to apply six months after the date of such notice.

**ARTICLE 14**  
**Accession**

1. This Agreement shall be open for accession to any member country of BIMST-EC which notifies its intention in writing to the Parties.
2. Accession shall be subject to acceptance by that country of all the rights and obligations accrued as on the date of accession, and such other terms and conditions as may be agreed by the Parties.
3. The acceding country may become a Party to this Agreement by submitting an instrument of accession through diplomatic channels to the Parties.

**ARTICLE 15**  
**Entry into Force**

1. This Agreement shall enter into force on 30<sup>th</sup> June 2004, by which time the Parties undertake to complete their internal procedures required for this purpose.

2. A Party shall, upon the completion of its internal procedures for entry into force of this Agreement, notify all other Parties in writing through diplomatic channels.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Framework Agreement on BIMST-EC Free Trade Area.

**Done in Phuket, Kingdom of Thailand, on 8<sup>th</sup> February 2004 in Six (6) originals in the English language.**

**For the Government of the Kingdom of Bhutan**

\_\_\_\_\_  
**(H.E. Lyonpo Chenkyab Dorji)**  
**Ambassador of Bhutan in Thailand**

**For the Government of Republic of India**

\_\_\_\_\_  
**(H.E. Mr. Arun Jaitley)**  
**Minister of Commerce and Industry**

**For the Government of Union of Myanmar**

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**(H.E. Brigadier General Ryi Sone)**  
**Minister of Commerce**

**For His Majesty's Government of Nepal**

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**(H.E. Dr. Bhekh B. Thapa)**  
**Ambassador-at-Large**

**For the Government of the Democratic Socialist Republic of Sri Lanka**

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**(H.E. Mr. Ravi Karunanayake)**  
**Minister of Commerce and Consumer Affairs**

**For the Government of the Kingdom of Thailand**

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**(H.E. Mr. Watana Muangsook)**  
**Minister of Commerce**

Tools and Instruments

HS Convention

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International Convention on the Harmonized System

(Done at Brussels on 14 June 1983)

(As amended by the Protocol of Amendment to the International Convention on the Harmonized Commodity Description and Coding System of 24 June 1986)

Preamble

The Contracting Parties to this Convention, established under the auspices of the Customs Co-operation Council,

Desiring to facilitate international trade,

Desiring to facilitate the collection, comparison and analysis of statistics, in particular those on international trade,

Desiring to reduce the expense incurred by re-describing, reclassifying and recoding goods as they move from one classification system to another in the course of international trade and to facilitate the standardization of trade documentation and the transmission of data,

Considering that changes in technology and the patterns of international trade require extensive modifications to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs, done at Brussels on 15 December 1950,

Considering also that the degree of detail required for Customs and statistical purposes by Governments and trade interests has increased far beyond that provided by the Nomenclature annexed to the above-mentioned Convention,

Considering the importance of accurate and comparable data for the purposes of international trade negotiations,

Considering that the Harmonized System is intended to be used for the purposes of freight tariffs and transport statistics of the various modes of transport,

Considering that the Harmonized System is intended to be incorporated into commercial commodity description and coding systems to the greatest extent possible,

Considering that the Harmonized System is intended to promote as close a correlation as possible between import and export trade statistics and production statistics,



Considering that a close correlation should be maintained between the Harmonized System and the Standard International Trade Classification (SITC) of the United Nations,

Considering the desirability of meeting the aforementioned needs through a combined tariff/statistical nomenclature, suitable for use by the various interests concerned with international trade,

Considering the importance of ensuring that the Harmonized System is kept up-to-date in the light of changes in technology or in patterns of international trade,

Having taken into consideration the work accomplished in this sphere by the Harmonized System Committee set up by the Customs Co-operation Council,

Considering that while the above-mentioned Nomenclature Convention has proved an effective instrument in the attainment of some of these objectives, the best way to achieve the desired results in this respect is to conclude a new international Convention,

Have agreed as follows:

#### [ARTICLE 1](#)

##### Definitions

For the purpose of this Convention:

(a) the "Harmonized Commodity Description and Coding System", hereinafter referred to as the "Harmonized System", means the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System, set out in the Annex to this Convention;

(b) "Customs tariff nomenclature" means the nomenclature established under the legislation of a Contracting Party for the purposes of levying duties of Customs on imported goods;

(c) "statistical nomenclatures" means goods nomenclatures established by a Contracting Party for the collection of data for import and export trade statistics;

(d) "combined tariff/statistical nomenclature" means a nomenclature, integrating Customs tariff and statistical nomenclatures, legally required by a Contracting Party for the declaration of goods at importation;

(e) "the Convention establishing the Council" means the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950;

(f) "the Council" means the Customs Co-operation Council referred to in paragraph (e) above;

(g) "the Secretary General" means the Secretary General of the Council;

(h) the term "ratification" means ratification, acceptance or approval.

#### [ARTICLE 2](#)

##### The Annex

The Annex to this Convention shall form an integral part thereof, and any reference to the Convention shall include a reference to the Annex.

#### [ARTICLE 3](#)

##### Obligations of Contracting Parties

1. Subject to the exceptions enumerated in Article 4 :

(a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in conformity with the Harmonized System. It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:

(i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;

(ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and

(iii) it shall follow the numerical sequence of the Harmonized System;

(b) Each Contracting Party shall also make publicly available its import and export trade statistics in conformity with the six-digit codes of the Harmonized System, or, on the initiative of the Contracting Party, beyond that level, to the extent that publication is not precluded for exceptional reasons such as commercial confidentiality or national security;

(c) Nothing in this Article shall require a Contracting Party to use the subheadings of the Harmonized System in its Customs tariff nomenclature provided that it meets the obligations at (a) (i), (a) (ii) and (a) (iii) above in a combined tariff/statistical nomenclature.

2. In complying with the undertakings at paragraph 1 (a) of this Article, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law.

3. Nothing in this Article shall prevent a Contracting Party from establishing, in its Customs tariff or statistical nomenclatures, subdivisions classifying goods beyond the level of the Harmonized System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical code set out in the Annex to this Convention.

#### [ARTICLE 4](#)

##### Partial application by developing countries

1. Any developing country Contracting Party may delay its application of some or all of the subheadings of the Harmonized System for such period as may be necessary, having regard to its pattern of international trade or its administrative resources.

2. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article agrees to make its best efforts towards the application of the full six-digit Harmonized System within five years of the date on which this Convention enters into force in respect of it or within such further period as it may consider necessary having regard to the provisions of paragraph 1 of this Article.

3. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article shall apply all or none of the two-dash subheadings of any one one-dash subheading or all or none of the one-dash subheadings of any one heading. In such cases of partial application, the sixth digit or the fifth and sixth digits of that part of the Harmonized System code not applied shall be replaced by "0" or "00" respectively.

4. A developing country which elects to apply the Harmonized System partially under the provisions of this Article shall on becoming a Contracting Party notify the Secretary General of those subheadings which it will not apply on the date when this Convention enters into force in respect of it and shall also notify the Secretary General of those subheadings which it applies thereafter.

5. Any developing country which elects to apply the Harmonized System partially under the provisions of this Article may on becoming a Contracting Party notify the Secretary General that it formally undertakes to apply the full six-digit Harmonized System within three years of the date when this Convention enters into force in respect of it.

6. Any developing country Contracting Party which partially applies the Harmonized System under the provisions of this Article shall be relieved from its obligations under Article 3 in relation to the subheadings not applied.

#### [ARTICLE 5](#)

##### Technical assistance for developing countries

Developed country Contracting Parties shall furnish to developing countries that so request, technical assistance on mutually agreed terms in respect of, inter alia, training of personnel, transposing their existing nomenclatures to the Harmonized System and advice on keeping their systems so transposed up-to-date with amendments to the Harmonized System or on applying the provisions of this Convention.

#### [ARTICLE 6](#)

##### Harmonized System Committee

1. There shall be established under this Convention a Committee to be known as the Harmonized System Committee, composed of representatives from each of the Contracting Parties.

2. It shall normally meet at least twice each year.

3. Its meetings shall be convened by the Secretary General and, unless the Contracting Parties otherwise decide, shall be held at the Headquarters of the Council.

4. In the Harmonized System Committee each Contracting Party shall have the right to one vote; nevertheless, for the purposes of this Convention and without prejudice to any future Convention, where a Customs or Economic Union as well as one or more of its Member States are Contracting Parties such Contracting Parties shall together exercise only one vote. Similarly, where all the Member States of a Customs or Economic Union which is eligible to become a Contracting Party under the provisions of Article 11 (b) become Contracting Parties, they shall together exercise only one vote.

5. The Harmonized System Committee shall elect its own Chairman and one or more Vice-Chairmen.

6. It shall draw up its own Rules of Procedure by decision taken by not less than two-thirds of the votes attributed to its members. The Rules of Procedure so drawn up shall be approved by the Council.

7. It shall invite such intergovernmental or other international organizations as it may consider appropriate to participate as observers in its work.

8. It shall set up Sub-Committees or Working Parties as needed, having regard, in particular, to the provisions of paragraph 1 (a) of Article 7, and it shall determine the membership, voting rights and Rules of Procedure for such Sub-Committees or Working Parties.

## [ARTICLE 7](#)

### Functions of the Committee

1. The Harmonized System Committee, having regard to the provisions of Article 8, shall have the following functions:

(a) to propose such amendments to this Convention as may be considered desirable, having regard, in particular, to the needs of users and to changes in technology or in patterns of international trade;

(b) to prepare Explanatory Notes, Classification Opinions or other advice as guides to the interpretation of the Harmonized System;

(c) to prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System;

(d) to collate and circulate information concerning the application of the Harmonized System;

(e) on its own initiative or on request, to furnish information or guidance on any matters concerning the classification of goods in the Harmonized System to Contracting Parties, to Members of the Council and to such intergovernmental or other international organizations as the Committee may consider appropriate;

(f) to present Reports to each Session of the Council concerning its activities, including proposed amendments, Explanatory Notes, Classification Opinions and other advice;

(g) to exercise such other powers and functions in relation to the Harmonized System as the Council or the Contracting Parties may deem necessary.

2. Administrative decisions of the Harmonized System Committee having budgetary implications shall be subject to approval by the Council.

## [ARTICLE 8](#)

### Role of the Council

1. The Council shall examine proposals for amendment of this Convention, prepared by the Harmonized System Committee, and recommend them to the Contracting Parties under the procedure of Article 16 unless any Council Member which is a Contracting Party to this Convention requests that the proposals or any part thereof be referred to the Committee for re-examination.

2. The Explanatory Notes, Classification Opinions, other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation and application of the Harmonized System, prepared during a session of the Harmonized System Committee under the provisions of paragraph 1 of Article 7, shall be deemed to be approved by the Council if, not later than the end of the second month following the month during which that session was closed, no Contracting Party to this Convention has notified the Secretary General that it requests that such matter be referred to the Council.

3. Where a matter is referred to the Council under the provisions of paragraph 2 of this Article, the Council shall approve such Explanatory Notes, Classification Opinions, other advice or recommendations, unless any Council Member which is a Contracting Party to this Convention requests that they be referred in whole or part to the Committee for re-examination.

## [ARTICLE 9](#)

### Rates of Customs duty

The Contracting Parties do not assume by this Convention any obligation in relation to rates of Customs duty.

## [ARTICLE 10](#)

### Settlement of disputes

1. Any dispute between Contracting Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them.

2. Any dispute which is not so settled shall be referred by the Parties to the dispute to the Harmonized System Committee which shall thereupon consider the dispute and make recommendations for its settlement.

3. If the Harmonized System Committee is unable to settle the dispute, it shall refer the matter to the Council which shall make recommendations in conformity with Article III (e) of the Convention establishing the Council.

4. The Parties to the dispute may agree in advance to accept the recommendations of the Committee or the Council as binding.

#### [ARTICLE 11](#)

Eligibility to become a Contracting Party

The following are eligible to become Contracting Parties to this Convention:

(a) Member States of the Council;

(b) Customs or Economic Unions to which competence has been transferred to enter into treaties in respect of some or all of the matters governed by this Convention; and any other State to which an invitation to that effect has been addressed by the Secretary General at the direction of the Council.

#### [ARTICLE 12](#)

Procedure for becoming a Contracting Party

1. Any eligible State or Customs or Economic Union may become a Contracting Party to this Convention:

(a) by signing it without reservation of ratification;

(b) by depositing an instrument of ratification after having signed the Convention subject to ratification; or

(c) by acceding to it after the Convention has ceased to be open for signature.

2. This Convention shall be open for signature until 31 December 1986 at the Headquarters of the Council in Brussels by the States and Customs or Economic Unions referred to in Article 11. Thereafter, it shall be open for their accession.

3. The instruments of ratification or accession shall be deposited with the Secretary General.

#### [ARTICLE 13](#)

Entry into force

1. This Convention shall enter into force on the earliest first of January which falls at least three months after a minimum of seventeen States or Customs or Economic Unions referred to in Article 11 above have signed it without reservation of ratification or have deposited their instruments of ratification or accession, but not before 1 January 1988.

2. For any State or Customs or Economic Union signing without reservation of ratification, ratifying or acceding to this Convention after the minimum number specified in paragraph 1 of this Article is reached, this Convention shall enter into force on the first of January which falls at least twelve months but not more than twenty-four months after it has signed the Convention without reservation of ratification or has deposited its instrument of ratification or accession, unless it specifies an earlier date. However, the date of entry into force under the provisions of this paragraph shall not be earlier than the date of entry into force provided for in paragraph 1 of this Article.

#### [ARTICLE 14](#)

Application by dependent territories

1. Any State may, at the time of becoming a Contracting Party to this Convention, or at any time thereafter, declare by notification given to the Secretary General that the Convention shall extend to all or any of the territories for whose international relations it is responsible, named in its notification. Such notification shall take effect on the first of January which falls at least twelve months but not more than twenty-four months after the date of the receipt thereof by the Secretary General, unless an earlier date is specified in the notification. However, this Convention shall not apply to such territories before it has entered into force for the State concerned.

2. This Convention shall cease to have effect for a named territory on the date when the Contracting Party ceases to be responsible for the international relations of that territory or on such earlier date as may be notified to the Secretary General under the procedure of Article 15.

#### [ARTICLE 15](#)

##### Denunciation

This Convention is of unlimited duration. Nevertheless any Contracting Party may denounce it and such denunciation shall take effect one year after the receipt of the instrument of denunciation by the Secretary General, unless a later date is specified therein.

#### [ARTICLE 16](#)

##### Amendment procedure

1. The Council may recommend amendments to this Convention to the Contracting Parties.
2. Any Contracting Party may notify the Secretary General of an objection to a recommended amendment and may subsequently withdraw such objection within the period specified in paragraph 3 of this Article.
3. Any recommended amendment shall be deemed to be accepted six months after the date of its notification by the Secretary General provided that there is no objection outstanding at the end of this period.
4. Accepted amendments shall enter into force for all Contracting Parties on one of the following dates:
  - (a) where the recommended amendment is notified before 1 April, the date shall be the first of January of the second year following the date of such notification,
  - or
  - (b) where the recommended amendment is notified on or after 1 April, the date shall be the first of January of the third year following the date of such notification.
5. The statistical nomenclatures of each Contracting Party and its Customs tariff nomenclature or, in the case provided for under paragraph 1 (c) of Article 3, its combined tariff/statistical nomenclature, shall be brought into conformity with the amended Harmonized System on the date specified in paragraph 4 of this Article.
6. Any State or Customs or Economic Union signing without reservation of ratification, ratifying or acceding to this Convention shall be deemed to have accepted any amendments thereto which, at the date when it becomes a Contracting Party, have entered into force or have been accepted under the provisions of paragraph 3 of this Article.

#### [ARTICLE 17](#)

##### Rights of Contracting Parties in respect of the Harmonized System

On any matter affecting the Harmonized System, paragraph 4 of Article 6, Article 8 and paragraph 2 of Article 16 shall confer rights on a Contracting Party :

- (a) in respect of all parts of the Harmonized System which it applies under the provisions of this Convention; or
- (b) until the date when this Convention enters into force in respect of it in accordance with the provisions of Article 13, in respect of all parts of the Harmonized System which it is obligated to apply at that date under the provisions of this Convention; or
- (c) in respect of all parts of the Harmonized System, provided that it has formally undertaken to apply the full six-digit Harmonized System within the period of three years referred to in paragraph 5 of Article 4 and until the expiration of that period.

#### [ARTICLE 18](#)

##### Reservations

No reservations to this Convention shall be permitted.

#### [ARTICLE 19](#)

##### Notifications by the Secretary General

The Secretary General shall notify Contracting Parties, other signatory States, Member States of the Council which are not Contracting Parties to this Convention, and the Secretary General of the United Nations, of the following :

- (a) Notifications under Article 4;



- (b) Signatures, ratifications and accessions as referred to in Article 12;
- (c) The date on which the Convention shall enter into force in accordance with Article 13;
- (d) Notifications under Article 14;
- (e) Denunciations under Article 15;
- (f) Amendments to the Convention recommended under Article 16;
- (g) Objections in respect of recommended amendments under Article 16, and, where appropriate, their withdrawal; and
- (h) Amendments accepted under Article 16, and the date of their entry into force.

#### [ARTICLE 20](#)

##### Registration with the United Nations

This Convention shall be registered with the Secretariat of the United Nations in accordance with the provisions of Article 102 of the Charter of the United Nations at the request of the Secretary General of the Council.

In witness thereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Brussels on the 14th day of June 1983 in the English and French languages, both texts being equally authentic, in a single original which shall be deposited with the Secretary General of the Council who shall transmit certified copies thereof to all the States and Customs or Economic Unions referred to in Article 11.



## **Framework Agreement on the BIMST-EC Free Trade Area**

### **PREAMBLE**

**THE GOVERNMENTS** of the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka and Thailand Economic Cooperation), hereinafter referred to collectively as “the Parties” and individually as “a Party”;

**TAKING NOTE** of the Agreed Conclusions of the BIMST-EC Economic Ministerial Retreat held in Bangkok, Thailand, on 7<sup>th</sup> August, 1998, that BIMST-EC should aim and strive to develop into a Free Trade Arrangement and should focus on activities that facilitate trade, increase investments and promote technical cooperation among member countries;

**MOTIVATED** by the need for strengthening economic cooperation in the region to fully realise the potential of trade and development for the benefit of their people;

**RECOGNIZING** the need to harmonize with the changing global economic environment and the catalytic role that regional trading arrangements can play towards accelerating global liberalization as building blocks in the framework of the multilateral trading system;

**CONVINCED** that a BIMST-EC Free Trade Area will act as a stimulus to the strengthening of economic cooperation among the Parties, lower costs, increase intra-regional trade and investment, increase economic efficiency, create a larger market with greater opportunities and larger economies of scale for the businesses of the Parties, and enhance the attractiveness of the Parties to capital and talent;



**REAFFIRMING** the rights, obligations and undertakings of the respective Parties under the World Trade Organization (WTO) and other multilateral, regional and bi-lateral agreements and arrangements; and

**RECOGNIZING** that the least developed countries in the region need to be accorded special and differential treatment commensurate with their development needs;

**HAVE AGREED AS FOLLOWS:**

#### **ARTICLE 1** **Objectives**

The objectives of this Agreement are to:

- (a) strengthen and enhance economic, trade and investment cooperation among the Parties;
- (b) progressively liberalize and promote trade in goods and services, create a transparent, liberal and facilitative investment regime;
- (c) explore new areas and develop appropriate measures for closer cooperation among the Parties; and
- (d) facilitate the more effective economic integration of the least developed countries in the region, and bridge the development gap among the Parties.

#### **ARTICLE 2** **Measures for Comprehensive Free Trade Area (FTA)**

The Parties agree to negotiate expeditiously in order to establish a BIMST-EC FTA to strengthen and enhance economic cooperation through the following:

- (a) progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods;
- (b) progressive liberalization of trade in services with substantial sectoral coverage;



- (c) establishing an open and competitive investment regime that facilitates and promotes investments within the BIMST-EC FTA;
- (d) provision for special and differential treatment and flexibility to the least developed countries in the region;
- (e) flexibility to the Parties in the BIMST-EC FTA negotiations to address their sensitive areas in the goods, services and investment sectors based on agreed principles of reciprocity and mutual benefits;
- (f) establishing effective trade and investment facilitating measures, including, but not limited to, simplification of customs procedures and development of mutual recognition arrangements;
- (g) expanding economic cooperation in areas as may be mutually agreed among the Parties that will complement the deepening of trade and investment links among the Parties and formulating action plans and programmes in the agreed sectors/areas of cooperation; and
- (h) establishing appropriate mechanisms for implementation of this Agreement.

### **ARTICLE 3**

#### **Trade in Goods**

1. The Parties agree to enter into negotiations for eliminating the tariffs and non-tariff barriers in substantially all trade in goods between the Parties, except, where necessary, those permitted under Article XXIV (8) (b) of the General Agreement on Tariffs and Trade (GATT) 1994.
2. The products, except those included in the Negative List, shall be subject to tariff reduction or elimination on the following two tracks:
  - (a) Fast Track: Products listed in the Fast Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:



<b>Countries</b>	<b>For Developing Country Parties</b>	<b>For LDC Parties</b>
India, Sri Lanka & Thailand	1 July 2006 to 30 June 2009	1 July 2006 to 30 June 2007
Bhutan, Myanmar & Nepal	1 July 2006 to 30 June 2011	1 July 2006 to 30 June 2009

- (b) Normal Track: Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

<b>Countries</b>	<b>For Developing Country Parties</b>	<b>For LDC Parties</b>
India, Sri Lanka & Thailand	1 July 2007 to 30 June 2012	1 July 2007 to 30 June 2010
Bhutan, Myanmar & Nepal	1 July 2007 to 30 June 2017	1 July 2007 to 30 June 2015

- (c) The number of products in the Negative List shall be subject to a maximum ceiling to be mutually agreed among the Parties, with flexibility to the LDC Parties to seek derogation, in one form or the other, in respect of products of their export interest.

3. Negotiations among the Parties to establish the BIMST-EC FTA covering trade in goods shall also include, but not be limited to the following:

- (a) detailed modalities governing the tariff reduction or elimination programmes as well as any other related matter, including principles governing reciprocal commitments not provided for in the preceding paragraphs of this Article;
- (b) Rules of Origin;
- (c) Treatment of out-of-quota rates;
- (d) Modification of a Party's commitments under the agreement on trade in goods based on Article XXVIII of the GATT 1994;
- (e) Non-tariff measures/barriers imposed on any product covered under this Agreement; and
- (f) Detailed procedures for safeguards based on GATT principles;



#### **ARTICLE 4**

##### **Trade in Services**

With the view to expediting the expansion of trade in services, the Parties agree to enter into negotiations to progressively liberalise trade in services with substantial sectoral coverage through a positive list approach. Such negotiations shall be directed to:

- (a) progressive elimination of substantially all discrimination between or among the Parties and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, except for measures permitted under Article V(1)(b) of the WTO General Agreement on Trade in Services (GATS);
- (b) expansion in the depth and scope of liberalisation of trade in services beyond those undertaken by the Parties under the GATS;
- (c) enhance cooperation in services among the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties.

#### **ARTICLE 5**

##### **Investment**

To promote investments and to create a facilitative, transparent and competitive investment regime, the Parties agree to:

- (a) provide for the promotion and protection of investments;
- (b) strengthen cooperation in investment, facilitate investment and improve transparency of investment rules and regulations; and
- (c) enter into negotiations in order to progressively liberalise the investment regime through a positive list approach.



**ARTICLE 6**  
**Areas of Economic Cooperation**

1. The Parties agree to strengthen cooperation in the already identified sectors of technology, transportation and communication, energy, tourism and fisheries.

2. The Parties further agree to enhance trade facilitation in areas, including but not limited to, the following:

- (a) Mutual Recognition Arrangements (MRAs), conformity assessment, accreditation procedures, and standards & technical regulations;
- (b) Customs cooperation;
- (c) Trade finance;
- (d) E-commerce; and
- (e) Business visa and travel facilitation.

3. The Parties agree to implement capacity building programmes and technical assistance, particularly for the least developed countries of the BIMST-EC, in order to adjust their economic structure and expand their trade and investment with other Parties.

4. The Parties further agree to provide technical support, to the extent possible, to the LDC Parties in their efforts to comply with the SPS and TBT requirements of the BIMST-EC countries. For this purpose, bilateral negotiations for fast tracking the process of MRAs, conformity assessment, accreditation procedures or any other necessary arrangements will be carried out in parallel with negotiations for FTA in goods.



## **ARTICLE 7**

### **Timeframes**

1. The negotiations for tariff reduction/elimination and other matters as set out in Article 3 of this Agreement shall commence in July 2004 and be concluded by December 2005 .

2. For trade in services and investments, the negotiations on respective agreements shall commence in 2005 and be concluded by 2007. The identification, liberalisation, etc., of the sectors of services and investments shall be finalized for implementation subsequently in accordance with the timeframes to be mutually agreed; (a) taking into account the sensitive sectors of the Parties; and (b) with special and differential treatment and flexibility for the LDC Parties.

3. The Parties shall continue to build upon existing or agreed programmes, develop new economic cooperation programmes and conclude agreements on various areas of economic cooperation. The Parties shall do so expeditiously for early implementation in a manner and at a pace acceptable to all the Parties concerned.

## **ARTICLE 8**

### **General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between or among the Parties where the same conditions prevail, or a disguised restriction on trade within the BIMST-EC, nothing in this Agreement shall prevent any Party from taking action and adopting measures for the protection of its national security or the protection of articles of artistic, historic and archaeological value, or such other measures which it deems necessary for the protection of public morals, or for the protection of human, animal or plant life, health and conservation of exhaustible natural resources.



**ARTICLE 9**  
**Dispute Settlement Mechanism**

1. The Parties shall establish appropriate formal dispute settlement procedures and mechanism for the purpose of this Agreement by December 2005.
2. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 of this Article, any dispute arising between the Parties regarding the interpretation, application or implementation of this Agreement shall be settled amicably through mutual consultations.

**ARTICLE 10**  
**Institutional Arrangements**

1. BIMST-EC Trade Negotiating Committee (BIMST-EC TNC) shall be established to carry out the programme of negotiations as set out in this Agreement.
2. The BIMST-EC TNC may involve other experts or establish any working group as may be necessary to assist in their negotiations, as also to coordinate and implement any economic cooperation activities undertaken pursuant to this Agreement.
3. The BIMST-EC TNC shall regularly report to the BIMST-EC Trade/Economic Ministers through the Senior Trade and Economic Officials Meeting on the progress and outcome of its negotiations.

**ARTICLE 11**  
**Amendments**

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Parties.



**ARTICLE 12**  
**Miscellaneous Provisions**

1. Any subsidiary agreement or arrangement, which may be concluded by the Parties pursuant to the provisions of this Agreement, shall form an integral part of this Agreement and be binding on the Parties.
2. Except as otherwise provided in this Agreement, any action taken under it shall not affect or nullify the rights and obligations of a Party under other agreements or arrangements to which it is a party.
3. The Parties shall endeavor to refrain from increasing restrictions or limitations that would affect the application of this Agreement.

**ARTICLE 13**  
**Withdrawal from the Agreement**

1. A Party may withdraw from the Agreement by giving a six months' notice in writing to the other Parties.
2. Subject to the dispute settlement procedures and mechanisms to be established pursuant to Article 9, the rights and obligations of a Party which has withdrawn from this Agreement shall cease to apply six months after the date of such notice.

**ARTICLE 14**  
**Accession**

1. This Agreement shall be open for accession to any member country of BIMST-EC which notifies its intention in writing to the Parties.
2. Accession shall be subject to acceptance by that country of all the rights and obligations accrued as on the date of accession, and such other terms and conditions as may be agreed by the Parties.
3. The acceding country may become a Party to this Agreement by submitting an instrument of accession through diplomatic channels to the Parties.



**ARTICLE 15**  
**Entry into Force**

1. This Agreement shall enter into force on 30<sup>th</sup> June 2004, by which time the Parties undertake to complete their internal procedures required for this purpose.

2. A Party shall, upon the completion of its internal procedures for entry into force of this Agreement, notify all other Parties in writing through diplomatic channels.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Framework Agreement on BIMST-EC Free Trade Area.

**Done in Phuket, Kingdom of Thailand, on 8<sup>th</sup> February 2004 in Six (6) originals in the English language.**

**For the Government of the Kingdom of Bhutan**

---

**(H.E. Lyonpo Chenkyab Dorji)**  
**Ambassador of Bhutan in Thailand**

**For the Government of Republic of India**

---

**(H.E. Mr. Arun Jaitley)**  
**Minister of Commerce and Industry**



**For the Government of Union of Myanmar**

---

**(H.E. Brigadier General Pyi Sone)**  
**Minister of Commerce**

**For His Majesty's Government of Nepal**

---

**(H.E. Dr. Bhekh B. Thapa)**  
**Ambassador-at-Large**

**For the Government of the Democratic Socialist Republic of Sri Lanka**

---

**(H.E. Mr. Ravi Karunanayake)**  
**Minister of Commerce and Consumer Affairs**

**For the Government of the Kingdom of Thailand**

---

**(H.E. Mr. Watana Muangsook)**  
**Minister of Commerce**





**PROTOCOL  
TO  
THE FRAMEWORK AGREEMENT  
ON  
BIMST-EC FREE TRADE AREA**

**WHEREAS** the Governments of the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand are Parties to the Framework Agreement on BIMST-EC Free Trade Area (hereinafter referred to as “the Framework Agreement”) signed on 8<sup>th</sup> February, 2004 in Phuket, Thailand;

**WHEREAS** the Government of the People’s Republic of Bangladesh is a member of the BIMST-EC;

**WHEREAS** the Government of the People’s Republic of Bangladesh had been participating in the negotiations of the Framework Agreement;

**WHEREAS** the Government of the People’s Republic of Bangladesh has expressed the desire in becoming a Party to the Framework Agreement as a Founding Member; and

**WHEREAS** Article 11 of the Framework Agreement provides that the Framework Agreement may be modified through amendments mutually agreed upon in writing by the Parties;

**NOW THEREFORE**, the Governments of the People’s Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand hereby agree as follows:

1. The Government of the People’s Republic of Bangladesh shall accept all the rights and obligations under the Framework Agreement as accrued on the date of entry into force of this Protocol.



2. The Government of the People's Republic of Bangladesh shall be considered as a Founding Member and shall be a Party to the Framework Agreement;

3. A certified copy of the Framework Agreement shall be provided to the Government of the People's Republic of Bangladesh.

4. Preamble paragraph 1 of the Framework Agreement shall be amended as follows:

"THE GOVERNMENTS of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of BIMST-EC, hereinafter referred to collectively as "the Parties" and individually as "a Party";"

5. Article 3 paragraph 2 (a) and (b) of the Framework Agreement shall be amended as follows:

"(a) Fast Track: Products listed in the Fast Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
India, Sri Lanka & Thailand	1 July 2006 to 30 June 2009	1 July 2006 to 30 June 2007
Bangladesh, Bhutan, Myanmar & Nepal	1 July 2006 to 30 June 2011	1 July 2006 to 30 June 2009

(b) Normal Track: Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
India, Sri Lanka & Thailand	1 July 2007 to 30 June 2012	1 July 2007 to 30 June 2010
Bangladesh, Bhutan, Myanmar & Nepal	1 July 2007 to 30 June 2017	1 July 2007 to 30 June 2015

”



6. This Protocol shall enter into force on the date of its signing.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

**DONE** at Bangkok, the Kingdom of Thailand, this 25<sup>th</sup> day of June, 2004 in seven originals in the English language.

**FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

\_\_\_\_\_  
(H.E. Mr. Shahed Akhtar)  
Ambassador of Bangladesh to Thailand

**FOR THE GOVERNMENT OF THE KINGDOM OF BHUTAN**

\_\_\_\_\_  
(H.E. Lyonpo Chenkyab Dorji)  
Ambassador of Bhutan to Thailand

**FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA**

\_\_\_\_\_  
(H.E. Mrs. Leela Krishnamurthy Ponnappa)  
Ambassador of India to Thailand



**FOR THE GOVERNMENT OF THE UNION OF MYANMAR**

\_\_\_\_\_  
(H.E. U Kyaw Thu)  
Deputy Minister of Foreign Affairs of Myanmar

**FOR HIS MAJESTY'S GOVERNMENT OF NEPAL**

\_\_\_\_\_  
(H.E. Mr. Yadav Khanal)  
Charge' d' Affairs a.i., Royal Nepalese Embassy, Bangkok

**FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

\_\_\_\_\_  
(H.E. Mr. J.D.A. Wijewardena)  
Ambassador of Sri Lanka to Thailand

**FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND**

\_\_\_\_\_  
(H.E. Mr. Watana Muangsook)  
Minister of Commerce of Thailand



**PROTOCOL  
TO  
THE FRAMEWORK AGREEMENT  
ON  
BIMST-EC FREE TRADE AREA**

**WHEREAS** the Governments of the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand are Parties to the Framework Agreement on BIMST-EC Free Trade Area (hereinafter referred to as "the Framework Agreement") signed on 8<sup>th</sup> February, 2004 in Phuket, Thailand;

**WHEREAS** the Government of the People's Republic of Bangladesh is a member of the BIMST-EC;

**WHEREAS** the Government of the People's Republic of Bangladesh had been participating in the negotiations of the Framework Agreement;

**WHEREAS** the Government of the People's Republic of Bangladesh has expressed the desire in becoming a Party to the Framework Agreement as a Founding Member; and

**WHEREAS** Article 11 of the Framework Agreement provides that the Framework Agreement may be modified through amendments mutually agreed upon in writing by the Parties;

**NOW THEREFORE**, the Governments of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand hereby agree as follows:

1. The Government of the People's Republic of Bangladesh shall accept all the rights and obligations under the Framework Agreement as accrued on the date of entry into force of this Protocol.



2. The Government of the People's Republic of Bangladesh shall be considered as a Founding Member and shall be a Party to the Framework Agreement;

3. A certified copy of the Framework Agreement shall be provided to the Government of the People's Republic of Bangladesh.

4. Preamble paragraph 1 of the Framework Agreement shall be amended as follows:

"THE GOVERNMENTS of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Kingdom of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of BIMST-EC, hereinafter referred to collectively as "the Parties" and individually as "a Party";"

5. Article 3 paragraph 2 (a) and (b) of the Framework Agreement shall be amended as follows:

"(a) Fast Track: Products listed in the Fast Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
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Bangladesh, Bhutan, Myanmar & Nepal	1 July 2006 to 30 June 2011	1 July 2006 to 30 June 2009

(b) Normal Track: Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced/eliminated in accordance with specified rates to be mutually agreed by the Parties, within the following timeframe:

Countries	For Developing Country Parties	For LDC Parties
India, Sri Lanka & Thailand	1 July 2007 to 30 June 2012	1 July 2007 to 30 June 2010
Bangladesh, Bhutan, Myanmar & Nepal	1 July 2007 to 30 June 2017	1 July 2007 to 30 June 2015

6. This Protocol shall enter into force on the date of its signing.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Bangkok, the Kingdom of Thailand, this 25<sup>th</sup> day of June, 2004 in seven originals in the English language.

**FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF  
BANGLADESH**

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(H.E. Mr. Shahed Akhtar)  
Ambassador of Bangladesh to Thailand

**FOR THE GOVERNMENT OF THE KINGDOM OF BHUTAN**

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(H.E. Lyonpo Chenkyab Dorji)  
Ambassador of Bhutan to Thailand

**FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA**

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(H.E. Mrs. Leela Krishnamurthy Ponappa)  
Ambassador of India to Thailand

**FOR THE GOVERNMENT OF THE UNION OF MYANMAR**

---

(H.E. U Kyaw Thu)  
Deputy Minister of Foreign Affairs of Myanmar

**FOR HIS MAJESTY'S GOVERNMENT OF NEPAL**

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(H.E. Mr. Yadav Khanal)  
Charge' d' Affairs a.i., Royal Nepalese Embassy, Bangkok

**FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

---

(H.E. Mr. D.A. Wijewardena)  
Ambassador of Sri Lanka to Thailand

**FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND**

---

(H.E. Mr. Warana 'Muangsook)  
Minister of Commerce of Thailand



## AGREEMENT ON SOUTH ASIAN FREE TRADE AREA (SAFTA)

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to as "Contracting States"

**Motivated** by the commitment to strengthen intra-SAARC economic cooperation to maximise the realization of the region's potential for trade and development for the benefit of their people, in a spirit of mutual accommodation, with full respect for the principles of sovereign equality, independence and territorial integrity of all States;

**Noting** that the Agreement on SAARC Preferential Trading Arrangement (SAPTA) signed in Dhaka on the 11th of April 1993 provides for the adoption of various instruments of trade liberalization on a preferential basis;

**Convinced** that preferential trading arrangements among SAARC Member States will act as a stimulus to the strengthening of national and SAARC economic resilience, and the development of the national economies of the Contracting States by expanding investment and production opportunities, trade, and foreign exchange earnings as well as the development of economic and technological cooperation;

**Aware** that a number of regions are entering into such arrangements to enhance trade through the free movement of goods;

**Recognizing** that Least Developed Countries in the region need to be accorded special and differential treatment commensurate with their development needs; and

**Recognizing** that it is necessary to progress beyond a Preferential Trading Arrangement to move towards higher levels of trade and economic cooperation in the region by removing barriers to cross-border flow of goods;

**Have agreed as follows:**

### Article - 1

#### **Definitions**

For the purposes of this Agreement:

1. **Concessions** mean tariff, para-tariff and non-tariff concessions agreed under the Trade Liberalisation Programme;
2. **Direct Trade Measures** mean measures conducive to promoting mutual trade of Contracting States such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement;
3. **Least Developed Contracting State** refers to a Contracting State which is designated as a "Least Developed Country" by the United Nations;
4. **Margin of Preference** means percentage of tariff by which tariffs are reduced on products imported from one Contracting State to another as a result of preferential treatment.
5. **Non-Tariff Measures** include any measure, regulation, or practice, other than "tariffs" and "paratariffs".
6. **Para-Tariffs** mean border charges and fees, other than "tariffs", on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to



specific services rendered are not considered as para-tariff measures;

7. **Products** mean all products including manufactures and commodities in their raw, semi-processed and processed forms;
8. **SAPTA** means Agreement on SAARC Preferential Trading Arrangement signed in Dhaka on the 11th of April 1993;
9. **Serious injury** means a significant impairment of the domestic industry of like or directly competitive products due to a surge in preferential imports causing substantial losses in terms of earnings, production or employment unsustainable in the short term;
10. **Tariffs** mean customs duties included in the national tariff schedules of the Contracting States;
11. **Threat of serious injury** means a situation in which a substantial increase of preferential imports is of a nature to cause "serious injury" to domestic producers, and that such injury, although not yet existing, is clearly imminent. A determination of threat of serious injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

## Article - 2

### ***Establishment***

The Contracting States hereby establish the South Asian Free Trade Area (SAFTA) to promote and enhance mutual trade and economic cooperation among the Contracting States, through exchanging concessions in accordance with this Agreement.

## Article - 3

### **Objectives and Principles**

1. The Objectives of this Agreement are to promote and enhance mutual trade and economic cooperation among Contracting States by, inter-alia:
  - a) eliminating barriers to trade in, and facilitating the cross-border movement of goods between the territories of the Contracting States;
  - b) promoting conditions of fair competition in the free trade area, and ensuring equitable benefits to all Contracting States, taking into account their respective levels and pattern of economic development;
  - c) creating effective mechanism for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
  - d) establishing a framework for further regional cooperation to expand and enhance the mutual benefits of this Agreement.
2. SAFTA shall be governed in accordance with the following principles:
  - a) SAFTA will be governed by the provisions of this Agreement and also by the rules, regulations, decisions, understandings and protocols to be agreed upon within its framework by the Contracting States;
  - b) The Contracting States affirm their existing rights and obligations with respect to each other under Marrakesh Agreement Establishing the World Trade Organization and other Treaties/Agreements to which such Contracting States are signatories;
  - c) SAFTA shall be based and applied on the principles of overall reciprocity and mutuality of advantages in such a way as to benefit equitably all Contracting States, taking into account their respective levels of economic and industrial development, the pattern of

their external trade and tariff policies and systems;

- d) SAFTA shall involve the free movement of goods, between countries through, inter alia, the elimination of tariffs, para tariffs and non-tariff restrictions on the movement of goods, and any other equivalent measures;
- e) SAFTA shall entail adoption of trade facilitation and other measures, and the progressive harmonization of legislations by the Contracting States in the relevant areas; and
- f) The special needs of the Least Developed Contracting States shall be clearly recognized by adopting concrete preferential measures in their favour on a non-reciprocal basis.

#### **Article - 4**

##### ***Instruments***

The SAFTA Agreement will be implemented through the following instruments:-

1. Trade Liberalisation Programme
2. Rules of Origin
3. Institutional Arrangements
4. Consultations and Dispute Settlement Procedures
5. Safeguard Measures
6. Any other instrument that may be agreed upon.

#### **Article - 5**

##### ***National Treatment***

Each Contracting State shall accord national treatment to the products of other Contracting States in accordance with the provisions of Article III of GATT 1994.

#### **Article - 6**

##### ***Components***

SAFTA may, inter-alia, consist of arrangements relating to:

- a) tariffs;
- b) para-tariffs;
- c) non-tariff measures;
- d) direct trade measures.

#### **Article - 7**

## **Trade Liberalisation Programme**

1. Contracting States agree to the following schedule of tariff reductions:
  - a) The tariff reduction by the Non-Least Developed Contracting States from existing tariff rates to 20% shall be done within a time frame of 2 years, from the date of coming into force of the Agreement. Contracting States are encouraged to adopt reductions in equal annual installments. If actual tariff rates after the coming into force of the Agreement are below 20%, there shall be an annual reduction on a Margin of Preference basis of 10% on actual tariff rates for each of the two years.
  - b) The tariff reduction by the Least Developed Contracting States from existing tariff rates will be to 30% within the time frame of 2 years from the date of coming into force of the Agreement. If actual tariff rates on the date of coming into force of the Agreement are below 30%, there will be an annual reduction on a Margin of Preference basis of 5 % on actual tariff rates for each of the two years.
  - c) The subsequent tariff reduction by Non-Least Developed Contracting States from 20% or below to 0-5% shall be done within a second time frame of 5 years, beginning from the third year from the date of coming into force of the Agreement. However, the period of subsequent tariff reduction by Sri Lanka shall be six years. Contracting States are encouraged to adopt reductions in equal annual installments, but not less than 15% annually.
  - d) The subsequent tariff reduction by the Least Developed Contracting States from 30% or below to 0-5% shall be done within a second time frame of 8 years beginning from the third year from the date of coming into force of the Agreement. The Least Developed Contracting States are encouraged to adopt reductions in equal annual installments, not less than 10% annually.
2. The above schedules of tariff reductions will not prevent Contracting States from immediately reducing their tariffs to 0-5% or from following an accelerated schedule of tariff reduction.
3.
  - a) Contracting States may not apply the Trade Liberalisation Programme as in paragraph 1 above, to the tariff lines included in the Sensitive Lists which shall be negotiated by the Contracting States (for LDCs and Non-LDCs) and incorporated in this Agreement as an integral part. The number of products in the Sensitive Lists shall be subject to maximum ceiling to be mutually agreed among the Contracting States with flexibility to Least Developed Contracting States to seek derogation in respect of the products of their export interest; and
  - b) The Sensitive List shall be reviewed after every four years or earlier as may be decided by SAFTA Ministerial Council (SMC), established under Article 10, with a view to reducing the number of items in the Sensitive List.
4. The Contracting States shall notify the SAARC Secretariat all non-tariff and para-tariff measures to their trade on an annual basis. The notified measures shall be reviewed by the Committee of Experts, established under Article 10, in its regular meetings to examine their compatibility with relevant WTO provisions. The Committee of Experts shall recommend the elimination or implementation of the measure in the least trade restrictive manner in order to facilitate intraSAARC trade<sup>1</sup>.
5. Contracting Parties shall eliminate all quantitative restrictions, except otherwise permitted under GATT 1994, in respect of products included in the Trade Liberalisation Programme.
6. Notwithstanding the provisions contained in paragraph 1 of this Article, the Non-Least Developed Contracting States shall reduce their tariff to 0-5% for the products of Least Developed Contracting States within a timeframe of three years beginning from the date of coming into force of the Agreement.

## **Article - 8**

### **Additional Measures**

Contracting States agree to consider, in addition to the measures set out in Article 7, the adoption of trade facilitation and other measures to support and complement SAFTA for mutual benefit. These may include, among others: -

- a) harmonization of standards, reciprocal recognition of tests and accreditation of testing laboratories of Contracting States and certification of products;
- b) simplification and harmonization of customs clearance procedure;
- c) harmonization of national customs classification based on HS coding system;
- d) Customs cooperation to resolve dispute at customs entry points;
- e) simplification and harmonization of import licensing and registration procedures;
- f) simplification of banking procedures for import financing;
- g) transit facilities for efficient intra-SAARC trade, especially for the land-locked Contracting States;
- h) removal of barriers to intra-SAARC investments;
- i) macroeconomic consultations;
- j) rules for fair competition and the promotion of venture capital;
- k) development of communication systems and transport infrastructure;
- l) making exceptions to their foreign exchange restrictions, if any, relating to payments for products under the SAFTA scheme, as well as repatriation of such payments without prejudice to their rights under Article XVIII of the General Agreement on Tariffs and Trade (GATT) and the relevant provisions of Articles of Treaty of the International Monetary Fund (IMF); and
- m) Simplification of procedures for business visas.

## **Article - 9**

### ***Extension of Negotiated Concessions***

Concessions agreed to, other than those made exclusively to the Least Developed Contracting States, shall be extended unconditionally to all Contracting States.

## **Article - 10**

### ***Institutional Arrangements***

1. The Contracting States hereby establish the SAFTA Ministerial Council (hereinafter referred to as SMC).
2. The SMC shall be the highest decision-making body of SAFTA and shall be responsible for the administration and implementation of this Agreement and all decisions and arrangements made within its legal framework.
3. The SMC shall consist of the Ministers of Commerce/Trade of the Contracting States.
4. The SMC shall meet at least once every year or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the SMC for a period of one year on rotational basis in alphabetical order.
5. The SMC shall be supported by a Committee of Experts (hereinafter referred to as COE), with one nominee from each Contracting State at the level of a Senior Economic Official, with expertise in trade matters.
6. The COE shall monitor, review and facilitate implementation of the provisions of this Agreement and undertake any task assigned to it by the SMC. The COE shall submit its report to SMC every six months.
7. The COE will also act as Dispute Settlement Body under this Agreement.
8. The COE shall meet at least once every six months or more often as and when considered necessary by the Contracting States. Each Contracting State shall chair the COE for a period of



one year on rotational basis in alphabetical order.

9. The SAARC Secretariat shall provide secretarial support to the SMC and COE in the discharge of their functions.
10. The SMC and COE will adopt their own rules of procedure.

### **Article - 11**

#### ***Special and Differential Treatment for the Least Developed Contracting States***

In addition to other provisions of this Agreement, all Contracting States shall provide special and more favorable treatment exclusively to the Least Developed Contracting States as set out in the following sub-paragraphs:

- a) The Contracting States shall give special regard to the situation of the Least Developed Contracting States when considering the application of anti-dumping and/or countervailing measures. In this regard, the Contracting States shall provide an opportunity to Least Developed Contracting States for consultations. The Contracting States shall, to the extent practical, favourably consider accepting price undertakings offered by exporters from Least Developed Contracting States. These constructive remedies shall be available until the trade liberalisation programme has been completed by all Contracting States.
- b) Greater flexibility in continuation of quantitative or other restrictions provisionally and without discrimination in critical circumstances by the Least Developed Contracting States on imports from other Contracting States.
- c) Contracting States shall also consider, where practical, taking direct trade measures with a view to enhancing sustainable exports from Least Developed Contracting States, such as long and medium-term contracts containing import and supply commitments in respect of specific products, buy-back arrangements, state trading operations, and government and public procurement.
- d) Special consideration shall be given by Contracting States to requests from Least Developed Contracting States for technical assistance and cooperation arrangements designed to assist them in expanding their trade with other Contracting States and in taking advantage of the potential benefits of SAFTA. A list of possible areas for such technical assistance shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.
- e) The Contracting States recognize that the Least Developed Contracting States may face loss of customs revenue due to the implementation of the Trade Liberalisation Programme under this Agreement. Until alternative domestic arrangements are formulated to address this situation, the Contracting States agree to establish an appropriate mechanism to compensate the Least Developed Contracting States for their loss of customs revenue. This mechanism and its rules and regulations shall be established prior to the commencement of the Trade Liberalisation Programme (TLP).

### **Article - 12**

#### ***Special Provision for Maldives***

Notwithstanding the potential or actual graduation of Maldives from the status of a Least Developed Country, it shall be accorded in this Agreement and in any subsequent contractual undertakings thereof treatment no less favourable than that provided for the Least Developed Contracting States.

### **Article - 13**

#### ***Non-application***

Notwithstanding the measures as set out in this Agreement its provisions shall not apply in relation to preferences already granted or to be granted by any Contracting State to other Contracting States outside the framework of this Agreement, and to third countries through bilateral, plurilateral and multilateral trade agreements and similar arrangements.

### **Article - 14**

#### ***General Exceptions***

- a) Nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of its national security.
- b) Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the similar conditions prevail, or a disguised restriction on intra-regional trade, nothing in this Agreement shall be construed to prevent any Contracting State from taking action and adopting measures which it considers necessary for the protection of :
  - (i) public morals;
  - (ii) human, animal or plant life and health; and
  - (iii) articles of artistic, historic and archaeological value.

### **Article - 15**

#### ***Balance of Payments Measures***

1. Notwithstanding the provisions of this Agreement, any Contracting State facing serious balance of payments difficulties may suspend provisionally the concessions extended under this Agreement.
2. Any such measure taken pursuant to paragraph 1 of this Article shall be immediately notified to the Committee of Experts.
3. The Committee of Experts shall periodically review the measures taken pursuant to paragraph 1 of this Article.
4. Any Contracting State which takes action pursuant to paragraph I of this Article shall afford, upon request from any other Contracting State, adequate opportunities for consultations with a view to preserving the stability of concessions under SAFTA.
5. If no satisfactory adjustment is effected between the Contracting States concerned within 30 days of the beginning of such consultations, to be extended by another 30 days through mutual consent, the matter may be referred to the Committee of Experts.
6. Any such measures taken pursuant to paragraph 1 of this Article shall be phased out soon after the Committee of Experts comes to the conclusion that the balance of payments situation of the Contracting State concerned has improved.

## **Article - 16**

### ***Safeguard Measures***

1. If any product, which is the subject of a concession under this Agreement, is imported into the territory of a Contracting State in such a manner or in such quantities as to cause, or threaten to cause, serious injury to producers of like or directly competitive products in the importing Contracting State, the importing Contracting State may, pursuant to an investigation by the competent authorities of that Contracting State conducted in accordance with the provisions set out in this Article, suspend temporarily the concessions granted under the provisions of this Agreement. The examination of the impact on the domestic industry concerned shall include an evaluation of all other relevant economic factors and indices having a bearing on the state of the domestic industry of the product and a causal relationship must be clearly established between "serious injury" and imports from within the SAARC region, to the exclusion of all such other factors.
2. Such suspension shall only be for such time and to the extent as may be necessary to prevent or remedy such injury and in no case, will such suspension be for duration of more than 3 years.
3. No safeguard measure shall be applied again by a Contracting State to the import of a product which has been subject to such a measure during the period of implementation of Trade Liberalization Programme by the Contracting States, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.
4. All investigation procedures for resorting to safeguard measures under this Article shall be consistent with Article XIX of GATT 1994 and WTO Agreement on Safeguards
5. Safeguard action under this Article shall be non-discriminatory and applicable to the product imported from all other Contracting States subject to the provisions of paragraph 8 of this Article.
6. When safeguard provisions are used in accordance with this Article, the Contracting State invoking such measures shall immediately notify the exporting Contracting State(s) and the Committee of Experts.
7. In critical circumstances where delay would cause damage which it would be difficult to repair, a Contracting State may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during this period the pertinent requirements of this Article shall be met.
8. Notwithstanding any of the provisions of this Article, safeguard measures under this article shall not be applied against a product originating in a Least Developed Contracting State as long as its share of imports of the product concerned in the importing Contracting State does not exceed 5 per cent, provided Least Developed Contracting States with less than 5% import share collectively account for not more than 15% of total imports of the product concerned.

## **Article - 17**

### ***Maintenance of the Value of Concessions***

Any of the concessions agreed upon under this Agreement shall not be diminished or nullified, by the application of any measures restricting trade by the Contracting States, except under the provisions of other articles of this Agreement.

## **Article - 18**

### ***Rules of Origin***

Rules of Origin shall be negotiated by the Contracting States and incorporated in this Agreement as an integral part.

#### **Article - 19**

##### ***Consultations***

1. Each Contracting State shall accord sympathetic consideration to and will afford adequate opportunity for consultations regarding representations made by another Contracting State with respect to any matter affecting the operation of this Agreement.
2. The Committee of Experts may, at the request of a Contracting State, consult with any Contracting State in respect of any matter for which it has not been possible to find a satisfactory solution through consultations under paragraph 1.

#### **Article - 20**

##### ***Dispute Settlement Mechanism***

1. Any dispute that may arise among the Contracting States regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework concerning the rights and obligations of the Contracting States will be amicably settled among the parties concerned through a process initiated by a request for bilateral consultations.
2. Any Contracting State may request consultations in accordance with paragraph 1 of this Article with other Contracting State in writing stating the reasons for the request including identification of the measures at issue. All such requests should be notified to the Committee of Experts, through the SAARC Secretariat with an indication of the legal basis for the complaint.
3. If a request for consultations is made pursuant to this Article, the Contracting State to which the request is made shall, unless otherwise mutually agreed, reply to the request within 15 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
4. If the Contracting State does not respond within 15 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Contracting State that requested the holding of consultations may proceed to request the Committee of Experts to settle the dispute in accordance with working procedures to be drawn up by the Committee.
5. Consultations shall be confidential, and without prejudice to the rights of any Contracting State in any further proceedings.
6. If the consultations fail to settle a dispute within 30 days after the date of receipt of the request for consultations, to be extended by a further period of 30 days through mutual consent, the complaining Contracting State may request the Committee of Experts to settle the dispute. The complaining Contracting State may request the Committee of Experts to settle the dispute during the 60-day period if the consulting Contracting States jointly consider that consultations have failed to settle the dispute.
7. The Committee of Experts shall promptly investigate the matter referred to it and make recommendations on the matter within a period of 60 days from the date of referral.
8. The Committee of Experts may request a specialist from a Contracting State not party to the dispute selected from a panel of specialists to be established by the Committee within one year from the date of entry into force of the Agreement for peer review of the matter referred to it. Such review shall be submitted to the Committee within a period of 30 days from the date of referral of the matter to the specialist.



9. Any Contracting State, which is a party to the dispute, may appeal the recommendations of the Committee of Experts to the SMC. The SMC shall review the matter within the period of 60 days from date of submission of request for appeal. The SMC may uphold, modify or reverse the recommendations of the Committee of Experts.
10. Where the Committee of Experts or SMC concludes that the measure subject to dispute is inconsistent with any of the provisions of this Agreement, it shall recommend that the Contracting State concerned bring the measure into conformity with this Agreement. In addition to its recommendations, the Committee of Experts or SMC may suggest ways in which the Contracting State concerned could implement the recommendations.
11. The Contracting State to which the Committee's or SMC's recommendations are addressed shall within 30 days from the date of adoption of the recommendations by the Committee or SMC, inform the Committee of Experts of its intentions regarding implementation of the recommendations. Should the said Contracting State fail to implement the recommendations within 90 days from the date of adoption of the recommendations by the Committee, the Committee of Experts may authorize other interested Contracting States to withdraw concessions having trade effects equivalent to those of the measure in dispute.

### **Article - 21**

#### ***Withdrawal***

1. Any Contracting State may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective on expiry of six months from the date on which a written notice thereof is received by the Secretary-General of SAARC, the depositary of this Agreement. That Contracting State shall simultaneously inform the Committee of Experts of the action it has taken.
2. The rights and obligations of a Contracting State which has withdrawn from this Agreement shall cease to apply as of that effective date.
3. Following the withdrawal by any Contracting State, the Committee shall meet within 30 days to consider action subsequent to withdrawal.

### **Article - 22**

#### ***Entry into Force***

1. This Agreement shall enter into force on 1st January 2006 upon completion of formalities, including ratification by all Contracting States and issuance of a notification thereof by the SAARC Secretariat. This Agreement shall supercede the Agreement on SAARC Preferential Trading Arrangement (SAPTA).
2. Notwithstanding the supercession of SAPTA by this Agreement, the concessions granted under the SAPTA Framework shall remain available to the Contracting States until the completion of the Trade Liberalisation Programme.

### **Article - 23**

#### ***Reservations***

This Agreement shall not be signed with reservations, nor will reservations be admitted at the time of notification to the SAARC Secretariat of the completion of formalities.

## **Article - 24**

### ***Amendments***

This Agreement may be amended by consensus in the SAFTA Ministerial Council. Any such amendment will become effective upon the deposit of instruments of acceptance with the Secretary General of SAARC by all Contracting States.

## **Article - 25**

### ***Depository***

This Agreement will be deposited with the Secretary General of SAARC, who will promptly furnish a certified copy thereof to each Contracting State.

**IN WITNESS WHEREOF** the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

**DONE** in ISLAMABAD, PAKISTAN, On This The Sixth Day Of the Year Two Thousand Four, In Nine Originals In The English Language All Texts Being Equally Authentic.

M. MORSHED KHAN  
Minister for Foreign Affairs  
People's Republic of Bangladesh

NADO RINCHHEN  
Officiating Minister for  
Foreign Affairs  
Kingdom of Bhutan

YASHWANT SINHA  
Minister of External Affairs  
Republic of India

FATHULLA JAMEEL  
Minister of Foreign Affairs  
Republic of Maldives

DR. BHEKH B. THAPA  
Ambassador-at-large  
for Foreign Affairs  
His Majesty's Government of Nepal

KHURSHID M. KASURI  
Minister of Foreign Affairs  
Islamic Republic of Pakistan

TYRONNE FERNANDO  
Minister of Foreign Affairs  
Democratic Socialist Republic of Sri Lanka

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<sup>1</sup>The initial notification shall be made within three months from the date of coming into force of the Agreement and the COE shall review the notification in its first meeting and take appropriate decisions.



## SAARC AGREEMENT ON IMPLEMENTATION OF REGIONAL STANDARDS

### PREAMBLE

The Governments of SAARC Member States

**Appreciating** the importance of Standardization with reference to trade within and outside the Member States;

**Recognising** the need to improve cooperation and coordination amongst Member States in implementation of SAARC Standards in respect of products and/or processes;

**Aspiring** to facilitate intra-Regional trade within Member States; and

**Desiring** to enhance their access to the Global markets.

**Have agreed as follows:**

#### **Article 1 Terms and Definitions**

The terms used in this agreement shall have the same meaning as given in the definitions contained in the Agreement on the Establishment of South Asian Regional Standards Organisation (SARSO). For the terms which are not defined in the SARSO Agreement, the definitions shall be the same as given in ISO/IEC Guide 2.

#### **Article 2 Objective**

The objective of this agreement is to provide the framework as well as the guiding principles for implementation of the SAARC Standards.

#### **Article 3 General Provisions**

- 3.1 The National Standards Bodies of the Member States will follow the Code of Good Practice for preparation, development, adoption and application of Standards as given in the Annex 3 of the WTO Agreement on the Technical Barriers to Trade.
- 3.2 For SAARC to emerge as a single market and to strengthen the trade position of the region with reference to the global supply chain, the Member States shall take either or both the following measures:



- a) Harmonize the National Standards with the relevant SAARC Standards, subject to Article 4.3, on priority.
- b) Participate actively in the development of those International Standards that are related to the products and/or processes having trade implications for the Member States.

#### **Article 4** **Adoption of SAARC Standards**

- 4.1 While preparing a new standard or revising an existing National Standard, the Member States shall adopt the relevant SAARC Standard, in case it is available.
- 4.2 Latest version of ISO/IEC Guide 21-1: Regional or National Adoption of International Standards or other International Deliverables - Part 1: Adoption of International Standards, shall be the basis for harmonization of the existing National Standards with the SAARC Standards.
- 4.3 To fulfill legitimate objectives which may include *inter alia* national security requirements, prevention of deceptive practices, protection of human health and safety, animal or plant life or health, or the environment, the National Standards can differ from the relevant SAARC Standards, but in such an eventuality, the concerned Member State shall provide to the other Member States the details of such differences along with the reasons thereof.
- 4.4 The Member States shall ensure that:
  - a) No modification is made in any National Standard so that it becomes more stringent than the corresponding SAARC Standard and thus creating technical barriers to trade.
  - b) The National Standards that differ from the SAARC Standards are not more restrictive than necessary to fulfil legitimate objectives.

#### **Article 5** **Implementation of SAARC Standards**

- 5.1 SAARC Standards are formulated by the South Asian Regional Standards Organisation (SARSO). They constitute a collective contribution by the Member States to harmonize National Standards amongst themselves on the basis of consensus.
- 5.2 SAARC Standards are "Regional Standards" within the sense of the ISO/IEC Guide 2 definition.
- 5.3 SAARC Standards exist in their own right and are issued in the operational language, English.
- 5.4 The SARSO Secretariat shall be the guardian of the authoritative versions of the SAARC Standards and shall be responsible for keeping master texts of SAARC Standards, both in hard and soft form.

- 5.5 The SARSO Secretariat shall be responsible for making SAARC Standards available to the Member States, countries other than the SAARC Member States and international and regional standards organizations, etc.
- 5.6 Member States shall be responsible for making SAARC Standards available for sale, distribution, etc, at the national level.
- 5.7 Member States shall be responsible for implementing the SAARC Standards.
- 5.8 Approval of a SAARC Standard implies that Member States have an obligation to give it the status of a National Standard.
- 5.8.1 If a Member State is prevented from implementing a SAARC Standard by regulations or in any other situation outside its competence, it shall try to bring about such changes necessary to allow implementation of the SAARC Standard.
- 5.8.2 In urgent cases relating to safety, health, etc, if a Member State publishes an amendment to an existing national Standard, it shall notify this action to SARSO Secretariat immediately.
- 5.9 SARSO Secretariat shall arrange for taking actions to provide technical assistance for implementation of SAARC Standards amongst the Member States.
- 5.10 For implementation of the SAARC Standards through Conformity Assessment, the SAARC Agreement on Multilateral Arrangement on Recognition of Conformity Assessment shall be referred.

#### **Article 6 Official Language**

English shall be the official language for operation of this Agreement.

#### **Article 7 Entry into Force of the Agreement**

This Agreement shall enter into force on completion of formalities, including ratification, by all Member States and upon issuance of notification thereof by the SAARC Secretariat.

#### **Article 8 Depositary**

This Agreement shall be deposited with the Secretary General of SAARC.

#### **Article 9 Reservations**

This Agreement shall not be subject to reservations either at the time of signature or at the time of notification to the SAARC Secretariat of the completion of formalities.



**Article 10  
Amendment**

This Agreement may be amended by consensus amongst the Member States on the recommendation of the SARSO Governing Board. Any Member State proposing amendment(s) shall notify the other Member States through the SAARC Secretariat. Such amendment(s) shall become effective upon the notification issued by the SAARC Secretariat on completion of formalities, including ratification, by all the Member States.

**IN WITNESS WHEREOF**, the undersigned being duly authorized thereto by their respective Governments have signed this Agreement on Implementation of Regional Standards.

**Done in Addu, Maldives On This Eleventh Day of November Two Thousand Eleven in Ten Originals In The English Language, All Texts Being Equally Authentic.**

**Dr. Zalmi Rassoul**  
Minister of Foreign Affairs  
Islamic Republic of Afghanistan

**Dr. Dipu Moni, MP**  
Minister for Foreign Affairs  
People's Republic of Bangladesh

**Khandu Wangchuk**  
Minister-in-Charge of Foreign Affairs  
Kingdom of Bhutan

**S.M. Krishna**  
Minister of External Affairs  
Republic of India

**Ahmed Naseem**  
Minister of Foreign Affairs  
Republic of Maldives

**Narayan Kaji Shrestha 'Prakash'**  
Deputy Prime Minister and  
Minister for Foreign Affairs  
Nepal

**Hina Rahbani Khar**  
Minister for Foreign Affairs  
Islamic Republic of Pakistan

**Prof. Gamini Lakshman Peiris**  
Minister of External Affairs  
Democratic Socialist Republic of Sri Lanka

## **Vienna Convention on Diplomatic Relations** 1961

Done at Vienna on 18 April 1961. Entered into force on 24 April 1964.  
United Nations, *Treaty Series*, vol. 500, p. 95.



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2005



**Vienna Convention on Diplomatic Relations**  
**Done at Vienna on 18 April 1961**

*The States Parties to the present Convention,*

*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

*Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

*Have agreed* as follows:

*Article 1*

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) The “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;
- (b) The “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) The “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) The “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;
- (e) A “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;
- (f) The “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) The “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;

(h) A “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) The “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

#### *Article 2*

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

#### *Article 3*

1. The functions of a diplomatic mission consist, inter alia, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

#### *Article 4*

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

#### *Article 5*

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a chargé d'affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

#### *Article 6*

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

#### *Article 7*

Subject to the provisions of articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

#### *Article 8*

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

#### *Article 9*

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2.If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.

#### *Article 10*

1.The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) The appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) The arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2.Where possible, prior notification of arrival and final departure shall also be given.

#### *Article 11*

1.In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2.The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

#### *Article 12*

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

#### *Article 13*

1.The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other



ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

#### *Article 14*

1. Heads of mission are divided into three classes, namely:

- (a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) That of envoys, ministers and internuncios accredited to Heads of State;
- (c) That of chargés d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

#### *Article 15*

The class to which the heads of their missions are to be assigned shall be agreed between States.

#### *Article 16*

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

#### *Article 17*

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

#### *Article 18*

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

#### *Article 19*

1.If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2.In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

#### *Article 20*

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

#### *Article 21*

1.The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2.It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

#### *Article 22*

1.The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2.The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3.The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### *Article 23*

1.The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

#### *Article 24*

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

#### *Article 25*

The receiving State shall accord full facilities for the performance of the functions of the mission.

#### *Article 26*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

#### *Article 27*

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy person inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of

packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

*Article 28*

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

*Article 29*

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

*Article 30*

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability.

*Article 31*

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.



### *Article 32*

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

### *Article 33*

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

- (a) That they are not nationals of or permanently resident in the receiving State; and
- (b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

### *Article 34*

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;
- (d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) Charges levied for specific services rendered;
- (f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23.

#### *Article 35*

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### *Article 36*

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) Articles for the official use of the mission;
- (b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

#### *Article 37*

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or

permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### *Article 38*

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### *Article 39*

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

#### *Article 40*

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

#### *Article 41*

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.



*Article 42*

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

*Article 43*

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) On notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) On notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 9, it refuses to recognize the diplomatic agent as a member of the mission.

*Article 44*

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

*Article 45*

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

*Article 46*

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

#### *Article 47*

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) Where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) Where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

#### *Article 48*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

#### *Article 49*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 50*

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 51*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### *Article 52*

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 48:

(a) Of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 48, 49 and 50;

(b) Of the date on which the present Convention will enter into force, in accordance with article 51.

*Article 53*

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this eighteenth day of April one thousand nine hundred and sixty-one.

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## ARTICLE-VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

### *Valuation for Customs Purposes*

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall upon a request by another contracting party review the operation of any of their laws or regulations relating to value for Customs purposes in the light of these principles. The contracting parties may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of notional origin or on arbitrary or fictitious values.

(b) "Actual value" should be the price at which at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favorable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for Customs purposes should be based on the nearest ascertainable equivalent of such value.

3. The value for Customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

4. (a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of Paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

(b) Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

(c) The contracting parties, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by Contracting Parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Article of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of Paragraph 2 of this Article as an alternative to the use of par values.



Until such rules are adopted by the contracting parties, any Contracting Party may employ, in respect of any such foreign currency, rules of conversion for the purposes of Paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

(d) Nothing in this paragraph shall be construed to require any Contracting Party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.

5. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

### **Note to Article VII**

#### *Paragraph 1*

The expression “or other charges” is not to be regarded as including internal taxes or equivalent charges imposed on or in connection with imported products.

#### *Paragraph 2*

1. It would be in conformity with Article VII to presume that “actual value” may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of “actual value” and plus any abnormal discount or other reduction from the ordinary competitive price.

2. It would be in conformity with Article VII, paragraph 2(b), for a Contracting Party to construe the phrase “in the ordinary course of trade....under fully competitive conditions”, as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

3. The standard of “fully competitive conditions” permits a contracting party to exclude from consideration prices involving special discounts limited to exclusive agents.

4. The wording of sub-paragraphs (a) and (b) permits a contracting party to determine the value for customs purposes uniformly either (1) on the basis of a particular exporter’s prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

## AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE, 1994

### GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for Customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, *inter alia*, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for Customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the Customs value whenever it cannot be determined under the provisions of Article 1.

2. Where the Customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the Customs administration and importer with a view to arriving at a basis or value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the Customs value of identical or similar imported goods which is not immediately available to the Customs administration in the port of importation. On the other hand, the Customs administration may have information about the Customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for Customs purposes.

3. Articles 5 and 6 provide two bases for determining the Customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar goods. Under Paragraph 1 of Article 5 the Customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the Customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

4. Article 7 sets out how to determine the Customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

*Members,*

*Having regard to the Multilateral Trade Negotiations,*

*Desiring to further the objectives of GATT, 1994 and to secure additional benefits for the international trade of developing countries;*

*Recognizing the importance of the provisions of Article VII of GATT, 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;*

*Recognizing* the need for a fair, uniform and neutral system for the valuation of goods for Customs purposes that precludes the use of arbitrary or fictitious Customs values;

*Recognizing* that the basis for valuation of goods for Customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

*Recognizing* that Customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

*Recognizing* that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

## PART I

### RULES ON CUSTOMS VALUATION

#### Article 1

1. The Customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which;
  - (i) are imposed or required by law or by the public authorities in the country of importation;
  - (ii) limit the geographical area in which the goods may be resold; or
  - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for Customs purposes under the provisions of Paragraph 2.

2 "(a) In determining whether the transaction value is acceptable for the purposes of Paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 5 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the Customs administration has grounds for considering that the relationship

influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing."

- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of Paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
  - (ii) the Customs value of identical or similar goods as determined under the provisions of Article 5;
  - (iii) the Customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related

- (c) "The tests set forth in Paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of Paragraph 2(b)

## Article 2

1. (a) If the Customs value of the imported goods cannot be determined under the provisions of Article 1, the Customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about same time as the goods being valued.  
  
(b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the Customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.
2. Where the costs and charges referred to in Paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.



3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the Customs value of the imported goods.

#### Article 3

1. (a) If the Customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the Customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.  
  
(b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine Customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/c different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in Paragraph 2 of Article 8 included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the Customs value of the imported goods.

#### Article 4

If the Customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the Customs value shall be determined under the provisions of Article 5 or, when the Customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

#### Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the Customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
  - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
  - (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;

- (iii) where appropriate, the costs and charges referred to in Paragraph 2 of Article 8; and
- (iv) the Customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the Customs value shall, subject otherwise to the provisions of Paragraph 1(a) be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the Customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in Paragraph 1(a).

#### Article 6

1. The Customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:
  - (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
  - (b) an amount for profit and general expenses equal to the usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
  - (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under Paragraph 2 of Article 8.
2. No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However information supplied by the producer of the goods for the purposes of determining the Customs value under the provisions of this Article may be verified in another country by the authorities of the country of import with the agreement of the producer and provided they give sufficient advance notice to the Government of the country in question and the latter does not object to the investigation

#### Article 7

1. If the Customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the Customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT, 1994 and on the basis of data available in the country of importation.

2. No Customs value shall be determined under the provisions of this Article on the basis of:
  - (a) the selling price in the country of importation of goods produced in such country;
  - (b) a system which provides for the acceptance for Customs purposes of the higher of two alternative values;
  - (c) the price of goods on the domestic market of the country of exportation;
  - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
  - (e) the price of the goods for export to a country other than the country of importation;
  - (f) minimum Customs values; or
  - (g) arbitrary or fictitious values.
3. If the importer so requests, the importer shall be informed in writing of the Customs value determined under the provisions of this Article and the method used to determine such value.

#### Article 8

1. In determining the Customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:
  - (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
    - i. commissions and brokerage, except buying commissions;
    - ii. the cost of containers which are treated as being one for Customs purposes with the goods in question;
    - iii. the cost of packing whether for labour or materials;
  - (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
    - i. materials, components, parts and similar items incorporated in the imported goods;
    - ii. tools, dies, moulds and similar items used in the production of the imported goods;
    - iii. materials consumed in the production of the imported goods;
    - iv. engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the Customs value, in whole or in part of the following:

(a) the cost of transport of the imported goods to the port or place of importation;

(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and

(c) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the Customs value except as provided in this Article.

#### Article 9

1. Where the conversion of currency is necessary for the determination of the Customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

#### Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of Customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or Government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

#### Article 11

1. The legislation of each Member shall provide in regard to a determination of Customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.



2. An initial right of appeal without penalty may be to an authority within the Customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

#### Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT, 1994 by the country of importation concerned.

#### Article 13

If, in the course of determining the Customs value of imported goods, it becomes necessary to delay the final determination of such Customs value, the importer shall nevertheless be able to withdraw them from Customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of Customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

#### Article 14

The notes at Annex. I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

#### Article 15

1. In this Agreement:
  - (a) "Customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of Customs on imported goods;
  - (b) "country of importation" means country or Customs territory of importation;  
and
  - (c) "produced" includes grown, manufactured and mined.
2. In this Agreement
  - (a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
  - (b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods,

their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

- (c) the terms “identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;
  - (d) goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country the goods being valued;
  - (e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
3. In this Agreement “goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
4. For the purposes of this Agreement, persons shall be deemed to related only if:
- (a) they are officers or directors of one another’s businesses;
  - (b) they are legally recognized partners in business;
  - (c) they are employer and employee;
  - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
  - (e) one of them directly or indirectly controls the other;
  - (f) both of them are directly or indirectly controlled by a third person;
  - (g) together they directly or indirectly control a third persons; or
  - (h) they are members of the same family.
5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of Paragraph 4.

#### Article 16

Upon written request, the importer shall have the right to an explanation in writing from the Customs administration of the country of importation as to how the Customs value of the importer’s goods was determined.

#### Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of Customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for Customs valuation purposed.

## PART II

### ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT

#### Article 18

##### Institutions

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the Customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the Secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex. II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

#### Article 19

##### Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.

3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.

4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event the Technical Committee is

unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.

5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

### PART III

#### SPECIAL AND DIFFERENTIAL TREATMENT

##### Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April, 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.

2. In addition to Paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April, 1979 may delay application of Paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.

3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programs of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to source of information regarding Customs valuation methodology, and advice on the application of the provisions of this Agreement.

### PART IV

#### FINAL PROVISIONS

##### Article 21

##### Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

##### Article 22

##### National Legislation



1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

## Article 23

### Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

## Article 24

### Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

## ANNEX I

### INTERPRETATIVE NOTES

#### General Note

#### ***Sequential application of valuation methods***

1. Articles 1 to 7, inclusive, define how the Customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for Customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the Customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the Customs value can be determined. Except as provided in Article 4, it is only when the Customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the Customs value under the provisions of Article 6, the Customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the Customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

### ***Use of generally accepted accounting principles***

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the Customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1(b) (ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

### **Note to Article 1**

### ***Price actually paid or payable***

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the Customs value.

3. The Customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) the cost of transport after importation;
- (c) duties and taxes of the country of importation.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the Customs value.

***Paragraph 1(a) (iii)***

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

***Paragraph 1(b)***

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for Customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specific quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the Customs value nor shall such activities result in rejection of the transaction value.

***Paragraph 2***

1. Paragraphs 2 (a) and 2 (b) provide different means of establishing the establishing the acceptability of a transaction value.

2. Paragraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the Customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the Customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the Customs administration may have previously examined the relationship, or it may

already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the Customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the Customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class and kind, this would demonstrate that the price had not been influenced.;

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the Customs administration and is therefore acceptable under the provisions of Article 1. Where a test under Paragraph 2(b) is met, it is not necessary to examine the question of influence under Paragraph 2(a). If the Customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in Paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In Paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

#### ***Paragraph 2(b)***

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable to determining whether the transaction value closely approximates to the "test" values set forth in Article 1.2(b).

#### **Note to Article 2**

"1. In applying Article 2, the Customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.



2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression “and/or” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a Customs value, adjusted as provided for in Paragraphs 1 (b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustments because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a Customs value under the provisions of Article 2 is not appropriate.

### **Note to Article 3**

1. In applying Article 3, the Customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression “and/or” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a Customs value, adjusted as provided for in Paragraphs 1(b) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial level or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods For which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a Customs value under the provisions of Article 3 is not appropriate.

**Note to Article 5**

1. The term “unit price at which ... goods are sold in the greatest aggregate quantity” means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an grants favourable example of this, goods are sold from a price list which unit prices for purchases made in larger quantities.

<i>Sale quantity</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
1-10 units	100	10sales of 5 units 5 sales in 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

<i>Sale quantity</i>	<i>Unit price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	100
35 units	90
5 units	100

(b) Totals

<i>Total quantity sold</i>	<i>Unit price</i>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in Paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8.1(b), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that “profit and general expenses” referred to in Article 5.1 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer’s figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The “general expenses” include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 5.1(a) (iv) shall be deducted under the provisions of Article 5.1(a) (i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 5.1, the question whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, “goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of Article 5.1 (b), the “earliest date” shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in Article 5.2 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in Article 5.2 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

### **Note to Article 6**

1. As a general rule, Customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The “cost or value” referred to in Article 6.1(a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “cost or value” shall include the cost of elements specified in Article 8.1(a) (ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in Article 8.1 (b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Article 8.1(b) (iv) which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “amount for profit and general expenses” referred to in Article 6.1(b) is to be determined on the basis of information supplied by or on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the “amount for profit and general expenses” has to be taken as a whole. It follows that if, in any particular case, the producer’s profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation



might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in Article 6.1(b) covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 6.1(a).

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

#### **Note to Article 7**

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined Customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

- (a) *Identical goods* — the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for Customs valuation; Customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.
- (b) *Similar goods* — the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted;

similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for Customs valuation; Customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.

- (c) *Deductive method* — the requirement that the goods shall have been sold in the “condition as imported” in Article 5.1(a) could be flexibly interpreted; the “ninety days” requirement could be administered flexibly.

### **Note to Article 8**

#### *Paragraph 1(a) (i)*

The term “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

#### *Paragraph 1(b) (ii)*

1. There are two factors involved in the apportionment of the elements specified in Article 8.1(b) (ii) to the imported goods — the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the Customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

#### *Paragraph 1(b) (iv)*

1. Additions for the elements specified in Article 8.1(b) (iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and Customs administration

in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

#### *Paragraph 1(c)*

1. The royalties and licence fees referred to in Article 8.1(c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the Customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

#### *Paragraph 3*

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if

the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

#### **Note to Article 9**

For the purposes of Article 9, "time of importation" may include the time of entry for Customs purposes.

#### **Note to Article 11**

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the Customs administration for the goods being valued. Appeal may first be to a higher level in the Customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Party from requiring full payment of assessed Customs duties prior to an appeal.



## **Note to Article 15**

### *Paragraph 4*

For the purposes of this Article, the term “persons” includes legal persons, where appropriate.

### *Paragraph 4(e)*

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

## **ANNEX II**

### **TECHNICAL COMMITTEE ON CUSTOMS VALUATION**

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Co-operation Council with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

- (a) to examine specific technical problems arising in the day-to-day administration of the Customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
- (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
- (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
- (e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;
- (f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and
- (g) to exercise such other responsibilities as the Committee may assign to it.

### *General*

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in Paragraph 4 of Article 19, a panel shall set a specific time period for receipt

of a report of the Technical Committee and the Technical Committee shall provide its report within that period.

4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat.

#### *Representation*

5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is referred to in this Annex as a “member of the Technical Committee”. Representatives of members of the Technical Committee may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.

6. Members of the CCC who are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as “the Secretary-General”) may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

#### *Technical Committee Meetings*

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under Paragraphs 6 and 7 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

#### *Agenda*

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under Paragraphs 6 and 7 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its

preceding session, all items included by the Chairman on the Chairman's own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

#### *Officers and Conduct of Business*

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. The mandate of a Chairman or Vice-Chairman who no longer represents a member of the Technical Committee shall terminate automatically.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if the speaker's remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state a ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.

19. The Secretary-General, or officers of the CCC Secretariat designated by the Secretary-General, shall perform the secretarial work of meetings of the Technical Committee.

#### *Quorum and Voting*

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

#### *Languages and Records*

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or a designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

### **ANNEX III**

1. The five-year delay in the application of the provisions of the agreement by developing country Members provided for in Paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in Paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

“The Government of ..... reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the Customs authorities agree to the request to reverse the order of Article 5 to 6.”

**If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.**

4. Developing countries may wish to make a reservation with respect to Paragraph 2 of Article 5 of the Agreement in the following terms:

“The Government of reserves the right to provide that Paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.”

**If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.**

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members



applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, Customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for Customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to Customs in connection with a determination of Customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.

7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

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**General Council****PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING  
THE WORLD TRADE ORGANIZATION**

DECISION OF 27 NOVEMBER 2014

The General Council;

*Having regard* to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Recalling* the General Council Decision to commence negotiations on the basis of the modalities set out in Annex D to that decision, adopted on 1 August 2004, as well as the Ministerial Decision of 7 December 2013 to draw up a Protocol of Amendment to insert the Agreement on Trade Facilitation into Annex 1A of the WTO Agreement (the "Protocol");

*Recalling* paragraph 47 of the Doha Ministerial Declaration of 20 November 2001;

*Recalling* paragraphs 2 and 3 of the Doha Ministerial Declaration, Annex D of the General Council Decision of August 2004 and Article 13.2 of the Agreement on Trade Facilitation on the importance of the provision of assistance and support for capacity building to help developing and least-developed countries to implement the provisions of the Agreement on Trade Facilitation;

*Welcoming* the Director General's announcement setting up, within the existing WTO structures, a Trade Facilitation Agreement Facility to manage support that Members volunteer to provide to the WTO in furtherance of supplementary assistance to implement the provisions of the Trade Facilitation Agreement and to facilitate coherence of assistance with the Annex D plus agencies;

*Having* considered the Agreement submitted by the Preparatory Committee on Trade Facilitation (WT/L/931);

*Noting* the consensus to submit this proposed amendment to the Members for acceptance;

*Decides* as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
  2. The Protocol shall hereby be open for acceptance by Members.
  3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
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**PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING  
THE WORLD TRADE ORGANIZATION**

Members of the World Trade Organization;

*Referring to the Agreement on Trade Facilitation;*

*Having regard to the Decision of the General Council in document WT/L/940, adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");*

*Hereby agree as follows:*

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Trade Facilitation, as set out in the Annex to this Protocol, to be placed after the Agreement on Safeguards.
2. Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.<sup>1</sup>
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done at Geneva this twenty-seventh day of November two thousand and fourteen, in a single copy in the English, French and Spanish languages, each text being authentic.*

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<sup>1</sup> For the purposes of calculation of acceptances under Article X.3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

**ANNEX TO THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT  
ESTABLISHING THE WORLD TRADE ORGANIZATION**

**AGREEMENT ON TRADE FACILITATION**

**Preamble**

*Members,*

*Having regard to* the negotiations launched under the Doha Ministerial Declaration;

*Recalling and reaffirming* the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1) and in Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004 (WT/L/579), as well as in paragraph 33 of and Annex E to the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC);

*Desiring to* clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

*Recognizing* the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

*Recognizing* the need for effective cooperation among Members on trade facilitation and customs compliance issues;

Hereby agree as follows:

**SECTION I**

**ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION**

**1 Publication**

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;
- (g) penalty provisions for breaches of import, export, or transit formalities;
- (h) procedures for appeal or review;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and



- (j) procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

## **2 Information Available Through Internet**

2.1 Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

- (a) a description<sup>1</sup> of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- (c) contact information on its enquiry point(s).

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

## **3 Enquiry Points**

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

## **4 Notification**

Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the "Committee") of:

- (a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;
- (b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and
- (c) the contact information of the enquiry points referred to in paragraph 3.1.

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<sup>1</sup> Each Member has the discretion to state on its website the legal limitations of this description.

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**ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS****1 Opportunity to Comment and Information before Entry into Force**

1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.

1.2 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.

**2 Consultations**

Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

**ARTICLE 3: ADVANCE RULINGS**

1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or
- (b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

6. Each Member shall publish, at a minimum:

- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
- (b) the time period by which it will issue an advance ruling; and

- (c) the length of time for which the advance ruling is valid.
7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.<sup>2</sup>
8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.
9. Definitions and scope:
- (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
- (i) the good's tariff classification; and
  - (ii) the origin of the good.<sup>3</sup>
- (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:
- (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
  - (ii) the applicability of the Member's requirements for relief or exemption from customs duties;
  - (iii) the application of the Member's requirements for quotas, including tariff quotas; and
  - (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.
- (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
- (d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

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<sup>2</sup> Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

<sup>3</sup> It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

#### **ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW**

1. Each Member shall provide that any person to whom customs issues an administrative decision<sup>4</sup> has the right, within its territory, to:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;
- and/or
- (b) a judicial appeal or review of the decision.

2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

- (a) within set periods as specified in its laws or regulations; or
- (b) without undue delay

the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.<sup>5</sup>

5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.

6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

#### **ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

##### **1 Notifications for enhanced controls or inspections**

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:

- (a) the Member may, as appropriate, issue the notification or guidance based on risk;
- (b) the Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply;

<sup>4</sup> An administrative decision in this Article means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

<sup>5</sup> Nothing in this paragraph shall prevent a Member from recognizing administrative silence on appeal or review as a decision in favor of the petitioner in accordance with its laws and regulations.



- (c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner; and
- (d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

## **2 Detention**

A Member shall promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority.

## **3 Test Procedures**

3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.

3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

# **ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES**

## **1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

## **2 Specific disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation**

Fees and charges for customs processing:

- (i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- (ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

### **3 Penalty Disciplines**

3.1 For the purpose of paragraph 3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.

3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4 Each Member shall ensure that it maintains measures to avoid:

- (a) conflicts of interest in the assessment and collection of penalties and duties; and
- (b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

## **ARTICLE 7: RELEASE AND CLEARANCE OF GOODS**

### **1 Pre-arrival Processing**

1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

### **2 Electronic Payment**

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

### **3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges**

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

- (a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or
- (b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

#### **4 Risk Management**

4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

4.3 Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

#### **5 Post-clearance Audit**

5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

## 6 Establishment and Publication of Average Release Times

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the Time Release Study of the World Customs Organization (referred to in this Agreement as the "WCO").<sup>6</sup>

6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

## 7 Trade Facilitation Measures for Authorized Operators

7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

- (a) Such criteria, which shall be published, may include:
  - (i) an appropriate record of compliance with customs and other related laws and regulations;
  - (ii) a system of managing records to allow for necessary internal controls;
  - (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
  - (iv) supply chain security.
- (b) Such criteria shall not:
  - (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
  - (ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:<sup>7</sup>

- (a) low documentary and data requirements, as appropriate;
- (b) low rate of physical inspections and examinations, as appropriate;
- (c) rapid release time, as appropriate;
- (d) deferred payment of duties, taxes, fees, and charges;

<sup>6</sup> Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

<sup>7</sup> A measure listed in subparagraphs 7.3 (a) to (g) will be deemed to be provided to authorized operators if it is generally available to all operators.



- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

## **8 Expedited Shipments**

8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control.<sup>8</sup> If a Member employs criteria<sup>9</sup> limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

- (a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;
- (b) submit in advance of the arrival of an expedited shipment the information necessary for the release;
- (c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;
- (d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- (e) provide expedited shipment from pick-up to delivery;
- (f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;
- (g) have a good record of compliance with customs and other related laws and regulations;
- (h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

- (a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;

<sup>8</sup> In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision does not require that Member to introduce separate expedited release procedures.

<sup>9</sup> Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

- (b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- (c) endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and
- (d) provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

## 9 Perishable Goods<sup>10</sup>

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

## ARTICLE 8: BORDER AGENCY COOPERATION

1. Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

<sup>10</sup> For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

- (a) alignment of working days and hours;
- (b) alignment of procedures and formalities;
- (c) development and sharing of common facilities;
- (d) joint controls;
- (e) establishment of one stop border post control.

## **ARTICLE 9: MOVEMENT OF GOODS INTENDED FOR IMPORT UNDER CUSTOMS CONTROL**

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

## **ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT**

### **1 Formalities and Documentation Requirements**

1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

- (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- (d) not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

### **2 Acceptance of Copies**

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.<sup>11</sup>

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<sup>11</sup> Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

### **3 Use of International Standards**

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate.

The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

### **4 Single Window**

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

### **5 Preshipment Inspection**

5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.<sup>12</sup>

### **6 Use of Customs Brokers**

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

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<sup>12</sup> This paragraph refers to preshipment inspections covered by the Agreement on Preshipment Inspection, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.



## **7 Common Border Procedures and Uniform Documentation Requirements**

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

- (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- (b) differentiating its procedures and documentation requirements for goods based on risk management;
- (c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- (d) applying electronic filing or processing; or
- (e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

## **8 Rejected Goods**

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2 When such an option under paragraph 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

## **9 Temporary Admission of Goods and Inward and Outward Processing**

### **9.1 Temporary Admission of Goods**

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

### **9.2 Inward and Outward Processing**

- (a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.
- (b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.
- (c) For the purposes of this Article, the term "outward processing" means the customs procedure under which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

**ARTICLE 11: FREEDOM OF TRANSIT**

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not be:
  - (a) maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner;
  - (b) applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take, or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport, consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:
  - (a) identify the goods; and
  - (b) ensure fulfilment of transit requirements.
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.
8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.
9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
10. Once traffic in transit has reached the customs office where it exits the territory of a Member, that office shall promptly terminate the transit operation if transit requirements have been met.
11. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary<sup>13</sup> instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

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<sup>13</sup> Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the means of transport can be used as a guarantee for traffic in transit.

12. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

13. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

14. Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

15. Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

16. Members shall endeavour to cooperate and coordinate with one another with a view to enhancing freedom of transit. Such cooperation and coordination may include, but is not limited to, an understanding on:

- (a) charges;
- (b) formalities and legal requirements; and
- (c) the practical operation of transit regimes.

17. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

## **ARTICLE 12: CUSTOMS COOPERATION**

### **1 Measures Promoting Compliance and Cooperation**

1.1 Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.<sup>14</sup>

1.2 Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.

### **2 Exchange of Information**

2.1 Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2 Each Member shall notify the Committee of the details of its contact point for the exchange of this information.

### **3 Verification**

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

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<sup>14</sup> Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

#### **4 Request**

4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:

- (a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;
- (b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;
- (c) where required by the requested Member, confirmation<sup>15</sup> of the verification where appropriate;
- (d) the specific information or documents requested;
- (e) the identity of the originating office making the request;
- (f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

4.2 If the requesting Member is not in a position to comply with any of the subparagraphs of paragraph 4.1, it shall specify this in the request.

#### **5 Protection and Confidentiality**

5.1 The requesting Member shall, subject to paragraph 5.2:

- (a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);
- (b) provide information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- (c) not disclose the information or documents without the specific written permission of the requested Member;
- (d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- (e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- (f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2 A requesting Member may be unable under its domestic law and legal system to comply with any of the subparagraphs of paragraph 5.1. If so, the requesting Member shall specify this in the request.

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<sup>15</sup> This may include pertinent information on the verification conducted under paragraph 3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.



5.3 The requested Member shall treat any request and verification information received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested Member to its own similar information.

## **6 Provision of Information**

6.1 Subject to the provisions of this Article, the requested Member shall promptly:

- (a) respond in writing, through paper or electronic means;
- (b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- (c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
- (d) confirm that the documents provided are true copies;
- (e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

## **7 Postponement or Refusal of a Request**

7.1 A requested Member may postpone or refuse part or all of a request to provide information, and shall inform the requesting Member of the reasons for doing so, where:

- (a) it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member;
- (b) its domestic law and legal system prevents the release of the information. In such a case it shall provide the requesting Member with a copy of the relevant, specific reference;
- (c) the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding;
- (d) the consent of the importer or exporter is required by its domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or
- (e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2 In the circumstances of paragraphs 4.2, 5.2, or 6.2, execution of such a request shall be at the discretion of the requested Member.

## **8 Reciprocity**

If the requesting Member is of the opinion that it would be unable to comply with a similar request if it was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

## **9 Administrative Burden**

9.1 The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2 If a requested Member receives an unmanageable number of requests for information or a request for information of unmanageable scope from one or more requesting Member(s) and is unable to meet such requests within a reasonable time, it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

## **10 Limitations**

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);
- (c) initiate enquiries to obtain the information;
- (d) modify the period of retention of such information;
- (e) introduce paper documentation where electronic format has already been introduced;
- (f) translate the information;
- (g) verify the accuracy of the information; or
- (h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **11 Unauthorized Use or Disclosure**

11.1 In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information and:

- (a) take necessary measures to remedy the breach;
- (b) take necessary measures to prevent any future breach; and
- (c) notify the requested Member of the measures taken under subparagraphs (a) and (b).

11.2 The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

## **12 Bilateral and Regional Agreements**

12.1 Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2 Nothing in this Article shall be construed as altering or affecting a Member's rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.

## **SECTION II**

### **SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST-DEVELOPED COUNTRY MEMBERS**

#### **ARTICLE 13: GENERAL PRINCIPLES**

1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least-developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and in paragraph 33 of and Annex E to the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

2. Assistance and support for capacity building<sup>16</sup> should be provided to help developing and least-developed country Members implement the provisions of this Agreement, in accordance with their nature and scope. The extent and the timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed country Members. Where a developing or least-developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

4. These principles shall be applied through the provisions set out in Section II.

#### **ARTICLE 14: CATEGORIES OF PROVISIONS**

1. There are three categories of provisions:

- (a) Category A contains provisions that a developing country Member or a least-developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least-developed country Member within one year after entry into force, as provided in Article 15.
- (b) Category B contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in Article 16.
- (c) Category C contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in Article 16.

<sup>16</sup> For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

2. Each developing country and least-developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

#### **ARTICLE 15: NOTIFICATION AND IMPLEMENTATION OF CATEGORY A**

1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

2. A least-developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least-developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

#### **ARTICLE 16: NOTIFICATION OF DEFINITIVE DATES FOR IMPLEMENTATION OF CATEGORY B AND CATEGORY C**

1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this Article.

##### **Developing Country Member Category B**

- (a) Upon entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category B and their corresponding indicative dates for implementation.<sup>17</sup>
- (b) No later than one year after entry into force of this Agreement, each developing country Member shall notify the Committee of its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

##### **Developing Country Member Category C**

- (c) Upon entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category C and their corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.<sup>18</sup>
- (d) Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 1 of Article 22 and information submitted pursuant to subparagraph (c) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.<sup>19</sup> The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.

<sup>17</sup> Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency or entity responsible for implementation.

<sup>18</sup> Members may also include information on national trade facilitation implementation plans or projects, the domestic agency or entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

<sup>19</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 3 of Article 21.



- (e) Within 18 months from the date of the provision of the information stipulated in subparagraph (d), donor Members and respective developing country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

2. With respect to those provisions that a least-developed country Member has not designated under Category A, least-developed country Members may delay implementation in accordance with the process set forth in this Article.

#### Least-Developed Country Member Category B

- (a) No later than one year after entry into force of this Agreement, a least-developed country Member shall notify the Committee of its Category B provisions and may notify their corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least-developed country Members.
- (b) No later than two years after the notification date stipulated under subparagraph (a) above, each least-developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least-developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

#### Least-Developed Country Member Category C

- (c) For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement, each least-developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least-developed country Members.
- (d) One year after the date stipulated in subparagraph (c) above, least-developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.<sup>20</sup>
- (e) No later than two years after the notification under subparagraph (d) above, least-developed country Members and relevant donor Members, taking into account information submitted pursuant to subparagraph (d) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.<sup>21</sup> The participating least-developed country Member shall promptly inform the Committee of such arrangements. The least-developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance and support arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- (f) No later than 18 months from the date of the provision of the information stipulated in subparagraph (e), relevant donor Members and respective least-developed country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each least-developed country Member shall, at the same time, notify the Committee of its list of definitive dates for implementation.

3. Developing country Members and least-developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 1 and 2 because of the lack of donor support or lack of progress in the provision of assistance and

<sup>20</sup> Members may also include information on national trade facilitation implementation plans or projects, the domestic agency or entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

<sup>21</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 3 of Article 21.

support for capacity building should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

4. Three months before the deadline stipulated in subparagraphs 1(b) or (e), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 3, or in the case of a developing country Member subparagraph 1(b), or in the case of a least-developed country Member subparagraph 2(b), to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in subparagraphs 1(b) or (e), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), or extended by paragraph 3.

5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C provisions in accordance with paragraphs 1, 2, or 3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4, thereby making these annexes an integral part of this Agreement.

#### **ARTICLE 17: EARLY WARNING MECHANISM: EXTENSION OF IMPLEMENTATION DATES FOR PROVISIONS IN CATEGORIES B AND C**

1.

- (a) A developing country Member or least-developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under subparagraphs 1(b) or (e) of Article 16, or in the case of a least-developed country Member subparagraphs 2(b) or (f) of Article 16, should notify the Committee. Developing country Members shall notify the Committee no later than 120 days before the expiration of the implementation date. Least-developed country Members shall notify the Committee no later than 90 days before such date.
- (b) The notification to the Committee shall indicate the new date by which the developing country Member or least-developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance and support for capacity building not earlier anticipated or additional assistance and support to help build capacity.

2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least-developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

3. Where a developing country or least-developed country Member considers that it requires a first extension longer than that provided for in paragraph 2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in subparagraph 1(b) no later than 120 days in respect of a developing country Member and 90 days in respect of a least-developed country Member before the expiration of the original definitive implementation date or that date as subsequently extended.

4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance and support for capacity building.

**ARTICLE 18: IMPLEMENTATION OF CATEGORY B AND CATEGORY C**

1. In accordance with paragraph 2 of Article 13, if a developing country Member or a least-developed country Member, having fulfilled the procedures set forth in paragraphs 1 or 2 of Article 16 and in Article 17, and where an extension requested has not been granted or where the developing country Member or least-developed country Member otherwise experiences unforeseen circumstances that prevent an extension being granted under Article 17, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.
2. The Committee shall establish an Expert Group immediately, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least-developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.
3. The Expert Group shall be composed of five independent persons that are highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least-developed country Member is involved, the Expert Group shall include at least one national from a least-developed country Member. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.
4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Committee. When considering the Expert Group's recommendation concerning a least-developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.
5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For a least-developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply to the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the date of the first Committee meeting set out above, whichever is earlier.
6. Where a least-developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in this Article.

**ARTICLE 19: SHIFTING BETWEEN CATEGORIES B AND C**

1. Developing country Members and least-developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to Category C, the Member shall provide information on the assistance and support required to build capacity.
2. In the event that additional time is required to implement a provision shifted from Category B to Category C, the Member may:
  - (a) use the provisions of Article 17, including the opportunity for an automatic extension; or
  - (b) request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under Article 18; or

- (c) in the case of a least-developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least-developed country Member shall continue to have recourse to Article 17. It is understood that assistance and support for capacity building is required for a least-developed country Member so shifting.

#### **ARTICLE 20: GRACE PERIOD FOR THE APPLICATION OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES**

1. For a period of two years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.
2. For a period of six years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least-developed country Member concerning any provision that the Member has designated in Category A.
3. For a period of eight years after implementation of a provision under Category B or C by a least-developed country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least-developed country Member concerning that provision.
4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to Articles XXII or XXIII of GATT 1994, and at all stages of dispute settlement procedures with regard to a measure of a least-developed country Member, a Member shall give particular consideration to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least-developed country Members.
5. Each Member shall, upon request, during the grace period allowed under this Article, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

#### **ARTICLE 21: PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING**

1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country Members on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least-developed country Members to implement the provisions of Section I of this Agreement.
2. Given the special needs of least-developed country Members, targeted assistance and support should be provided to the least-developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and consistent with the principles of technical assistance and support for capacity building as referred to in paragraph 3, development partners shall endeavour to provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.
3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:



- 
- (a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
  - (b) include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
  - (c) ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
  - (d) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
    - (i) coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors and among bilateral and multilateral donors should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
    - (ii) for least-developed country Members, the Enhanced Integrated Framework for trade-related assistance for the least-developed countries should be a part of this coordination process; and
    - (iii) Members should also promote internal coordination between their trade and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance.
  - (e) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
  - (f) encourage developing country Members to provide capacity building to other developing and least-developed country Members and consider supporting such activities, where possible.
4. The Committee shall hold at least one dedicated session per year to:
- (a) discuss any problems regarding implementation of provisions or sub-parts of provisions of this Agreement;
  - (b) review progress in the provision of assistance and support for capacity building to support the implementation of the Agreement, including any developing or least-developed country Members not receiving adequate assistance and support for capacity building;
  - (c) share experiences and information on ongoing assistance and support for capacity building and implementation programs, including challenges and successes;
  - (d) review donor notifications as set forth in Article 22; and
  - (e) review the operation of paragraph 2.

#### **ARTICLE 22: INFORMATION ON ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING TO BE SUBMITTED TO THE COMMITTEE**

1. To provide transparency to developing country Members and least-developed country Members on the provision of assistance and support for capacity building for implementation of Section I, each donor Member assisting developing country Members and least-developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of this Agreement and annually thereafter, the following information on its assistance and

support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months<sup>22</sup>:

- (a) a description of the assistance and support for capacity building;
- (b) the status and amount committed/disbursed;
- (c) procedures for disbursement of the assistance and support;
- (d) the beneficiary Member or, where necessary, the region; and
- (e) the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of Organisation for Economic Co-operation and Development (referred to in this Agreement as the "OECD") Members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support for capacity building are encouraged to provide the information above.

2. Donor Members assisting developing country Members and least-developed country Members shall submit to the Committee:

- (a) contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and
- (b) information on the process and mechanisms for requesting assistance and support for capacity building.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

3. Developing country Members and least-developed country Members intending to avail themselves of trade facilitation-related assistance and support for capacity building shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

4. Members may provide the information referred to in paragraphs 2 and 3 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.

5. The Committee shall invite relevant international and regional organizations (such as the International Monetary Fund, the OECD, the United Nations Conference on Trade and Development, the WCO, United Nations Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 1, 2, and 4.

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<sup>22</sup> The information provided will reflect the demand driven nature of the provision of assistance and support for capacity building.

**SECTION III****INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS****ARTICLE 23: INSTITUTIONAL ARRANGEMENTS****1 Committee on Trade Facilitation**

1.1 A Committee on Trade Facilitation is hereby established.

1.2 The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3 The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4 The Committee shall develop procedures for the sharing by Members of relevant information and best practices as appropriate.

1.5 The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the WCO, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- (a) attend meetings of the Committee; and
- (b) discuss specific matters related to the implementation of this Agreement.

1.6 The Committee shall review the operation and implementation of this Agreement four years from its entry into force, and periodically thereafter.

1.7 Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8 The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement with a view to reaching a mutually satisfactory solution promptly.

**2 National Committee on Trade Facilitation**

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

**ARTICLE 24: FINAL PROVISIONS**

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.

2. All provisions of this Agreement are binding on all Members.

3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least-developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.
4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.
5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under this Agreement including through the establishment and use of regional bodies.
6. Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.
7. All exceptions and exemptions<sup>23</sup> under the GATT 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement Establishing the World Trade Organization and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.
8. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.
9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
10. The Category A commitments of developing country Members and least-developed country Members annexed to this Agreement in accordance with paragraphs 1 and 2 of Article 15 shall constitute an integral part of this Agreement.
11. The Category B and C commitments of developing country Members and least-developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 5 of Article 16 shall constitute an integral part of this Agreement.

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<sup>23</sup> This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.



**ANNEX 1: FORMAT FOR NOTIFICATION UNDER PARAGRAPH 1 OF ARTICLE 22**

Donor Member:  
Period covered by the notification:

	Description of the technical and financial assistance and capacity building resources	Status and amount committed/disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance
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## नेपाल सन्धि ऐन, २०४७

लालमोहर र प्रकाशन मिति

२०४७।८।१

संशोधन गर्ने ऐन

प्रमाणीकरण र प्रकाशन मिति

◆ १. गणतन्त्र सुदृढीकरण तथा केही नेपाल

कानून संशोधन गर्ने ऐन, २०६६

२०६६।१०।७

२. केही नेपाल ऐन संशोधन गर्ने ऐन, २०७२

२०७२।११।१३

२०४७ सालको ऐन नं. १६

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### सन्धि सम्बन्धी कार्यविधिको व्यवस्था गर्न बनेको ऐन

प्रस्तावना : नेपाल »..... वा नेपाल सरकार पक्ष हुने सन्धि वा सम्झौताको हस्ताक्षर, अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन सम्बन्धी कार्यविधि तथा त्यस्तो सन्धि वा सम्झौताको कार्यान्वयनको सम्बन्धमा कानुनी व्यवस्था गर्न वाञ्छनीय भएकोले,

श्री ५ महाराजाधिराज वीरेन्द्र वीर विक्रम शाहदेवबाट संविधानको धारा १२९ बमोजिम मन्त्रिपरिषद्को सल्लाह र सम्मतिले बनाईबक्सको छ ।

१. संक्षिप्त नाम, विस्तार र प्रारम्भ : (१) यस ऐनको नाम “नेपाल सन्धि ऐन, २०४७” रहेको छ ।

(२) यो ऐन २०४७ साल कार्तिक २३ गतेदेखि प्रारम्भ भएको मानिनेछ ।

(३) यो ऐन <sup>१</sup>संवत् २०४७ साल कार्तिक २३ गतेपछि नेपाल वा नेपाल सरकार पक्ष हुने सन्धिको सम्बन्धमा लागू हुनेछ ।

२. परिभाषा : विषय वा प्रसङ्गले अर्को अर्थ नलागेमा यस ऐनमा,-

(क) “सन्धि” भन्नाले दुई वा दुई भन्दा बढी राज्यहरू वा कुनै राज्य र अन्तर सरकारी सङ्गठन बीच लिखित रूपमा सम्पन्न भएको सम्झौता सम्झनु पर्छ र सो शब्दले यसै प्रकृतिको जुनसुकै नामाकरण गरिएको लिखत समेतलाई जनाउनेछ ।

◆ यो ऐन संवत् २०६५ साल जेठ १५ गतेदेखि लागू भएको ।

» गणतन्त्र सुदृढीकरण तथा केही नेपाल कानून संशोधन गर्ने ऐन, २०६६ द्वारा झिकिएको ।

» गणतन्त्र सुदृढीकरण तथा केही नेपाल कानून संशोधन गर्ने ऐन, २०६६ द्वारा संशोधित ।

- (ख) “पूर्णाधिकार” भन्नाले सन्धि वार्ता गर्न वा सन्धिको अन्तिम मस्यौदा वा प्रामाणिक प्रति स्वीकार गर्न वा सन्धिमा हस्ताक्षर गर्न अख्तियारी दिई नेपाल सरकारले जारी गरेको अधिकार पत्र सम्झनु पर्छ र सो शब्दले त्यस्तो सन्धि वार्ता गर्दा वा सन्धि हस्ताक्षर गर्दा आरक्षण राख्न वा त्यस्तो सन्धि सम्बन्धमा अन्य कुनै काम गर्न प्रदान गरेको अख्तियारी समेतलाई जनाउनेछ ।
- (ग) “आरक्षण” भन्नाले बहुपक्षीय सन्धिलाई हस्ताक्षर गर्दा वा त्यस्तो सन्धिको अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन गर्दा कुनै पक्षले सो सन्धिको कुनै प्रावधान आफूलाई लागू नहुने भनी गरेको घोषणा सम्झनु पर्छ र सो शब्दले त्यस्तो प्रावधानको व्याख्या कुनै पक्षले आफ्नो हकमा स्पष्ट गरी गरेको घोषणा समेतलाई जनाउनेछ ।
- (घ) “सन्धि परित्याग” भन्नाले सन्धिमा उल्लेख भएको रीत पुन्याई सन्धि समाप्त गर्न गरेको घोषणा सम्झनु पर्छ ।
- \*(ङ) “संविधान” भन्नाले नेपालको संविधान सम्झनु पर्छ ।

३. सन्धि सम्पन्न गर्ने अधिकार : (१) राष्ट्रपति, प्रधान मन्त्री वा परराष्ट्र मन्त्री बाहेक अरु कसैले पूर्णाधिकार बिना नेपाल वा नेपाल सरकारको तर्फबाट कुनै पनि सन्धिको सम्बन्धमा वार्ता गर्न, सन्धिको अन्तिम मस्यौदा वा प्रामाणिक प्रति स्वीकार गर्न, त्यस्तो सन्धिमा हस्ताक्षर गर्न वा आरक्षण राख्न वा तत्सम्बन्धी अन्य कुनै काम गर्न हुँदैन ।

(२) उपदफा (१) मा जुनसुकै कुरा लेखिएको भएतापनि कुनै विदेशी राज्य वा अन्तरसरकारी सङ्गठनमा नेपालको प्रतिनिधित्व गर्ने नेपाली राजदूत वा नियोग प्रमुखले त्यस्तो राज्य वा अन्तरसरकारी सङ्गठनसँग गर्ने जुनसुकै विषयको सन्धि सम्बन्धमा र कुनै अन्तर्राष्ट्रिय सम्मेलनमा भाग लिने प्रतिनिधिमण्डलका नेताबाट सो सम्मेलनमा गरिने सन्धिको सम्बन्धमा वार्ता गर्न वा सन्धिको अन्तिम मस्यौदा वा प्रामाणिक प्रति स्वीकार गर्न सक्नेछ ।

४. सन्धिको अनुमोदन तथा सम्मिलनको कार्यविधि : (१) \*संविधानको धारा २७९ को उपधारा (२) मा उल्लेख भएका विषयका सन्धि बाहेक अन्य विषयका सन्धिहरू मध्ये अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन गर्नु पर्ने भनी व्यवस्था

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भएको सन्धिलाई अनुमोदन, स्वीकृति वा समर्थन गर्नु परेमा वा कुनै सन्धिमा सम्मिलित हुन चाहेमा सो सम्बन्धी प्रस्ताव नेपाल सरकारले “व्यवस्थापिका-संसद्मा पेश गर्नु पर्दछ” ।

(२) उपदफा (१) बमोजिम पेश भएको सन्धिको अनुमोदन, स्वीकृति, समर्थन वा सम्मिलन सम्बन्धी प्रस्ताव “व्यवस्थापिका-संसद्मा” उपस्थित सदस्य संख्याको बहुमतबाट पारित हुनु पर्नेछ ।

(३) उपदफा (२) बमोजिम “व्यवस्थापिका-संसद्बाट” प्रस्ताव पारित भएपछि नेपाल सरकारले सो सन्धिमा भएको व्यवस्था बमोजिम अनुमोदन, स्वीकृति, समर्थन वा सम्मिलनको सूचना सम्बन्धित पक्ष वा अधिकारीलाई दिनेछ ।

(४) कुनै अन्तर सरकारी संगठनको स्थापना गर्ने वा त्यस्तो कुनै सङ्गठनको सदस्यता प्राप्त गर्ने सन्धि वा प्रचलित कानूनको प्रतिकूल हुने सन्धिको हकमा त्यस्तो सन्धिमा अनुमोदन, सम्मिलन, स्वीकृति वा समर्थनको व्यवस्था नगरिएको भए तापनि “व्यवस्थापिका-संसद्बाट” प्रस्ताव पारित नभएसम्म नेपाल “..... वा नेपाल सरकार त्यस्तो सन्धिको पक्ष हुन सक्ने छैन” ।

५. केही खास सन्धिको अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन : (१) “संविधानको धारा २७९ को उपधारा (२) मा उल्लेख भएका विषयका सन्धिको अनुमोदन, स्वीकृति वा समर्थन गराउनु पर्दा वा त्यस्तो सन्धिमा सम्मिलित हुने अनुमति प्राप्त गर्नु पर्दा नेपाल सरकारले यस सम्बन्धमा व्यवस्थापिका-संसद्मा प्रस्ताव पेश गर्नु पर्नेछ” ।

(२) उपदफा (१) बमोजिम पेश भएको सन्धिको सम्बन्धमा “संविधानको धारा २७९ को उपधारा (२) बमोजिम व्यवस्थापिका-संसद्बाट” प्रस्ताव पारित भएपछि त्यस्तो सन्धिको अनुमोदन, सम्मिलन, स्वीकृति वा समर्थनको सूचना नेपाल सरकारले सो सन्धिमा उल्लेख भएको व्यवस्था अनुसार सम्बन्धित पक्ष वा अधिकारीलाई दिनेछ ।

६. नेपाल सरकारले हस्ताक्षर गरी सन्धि लागू गर्न सक्ने : दफा ४ वा “संविधानको धारा २७९ को उपधारा (२) मा उल्लेख भएका विषयका सन्धिहरू बाहेक अन्य जुनसुकै विषयका सन्धिमा नेपाल सरकारको निर्णयबाट हस्ताक्षर गरिसकेपछि

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त्यस्तो सन्धिमा नेपाल "..... वा नेपाल सरकार पक्ष भएको र त्यस्तो सन्धि स्वीकृत भएको मानिनेछ ।

७. सन्धिको परित्याग वा निलम्बन गर्न सकिने : नेपाल ".....वा नेपाल सरकार पक्ष भएको सन्धिमा अन्यथा व्यवस्था भएकोमा बाहेक त्यस्तो सन्धिलाई परित्याग गर्ने वा आंशिक वा पूरै निलम्बन गर्ने वा निलम्बन फुकुवा गर्ने अधिकार नेपाल सरकारलाई हुनेछ र त्यस्तो सन्धि दफा ४ वा <sup>७</sup>संविधानको धारा २७९ को उपधारा (२) मा उल्लेख भएको सन्धिसँग सम्बन्धित रहेछ भने सो सम्बन्धी जानकारी <sup>७</sup>व्यवस्थापिका-संसदलाई दिनु पर्नेछ ।
८. सन्धि पश्चातदर्शी नहुने : सन्धिमा अन्यथा व्यवस्था भएकोमा बाहेक सन्धिलाई पश्चातदर्शी प्रभाव दिने गरी लागू गरिने छैन ।
९. सन्धि व्यवस्था कानून सरह लागू हुने : <sup>७</sup>व्यवस्थापिका-संसदबाट अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन भई नेपाल "..... वा नेपाल सरकार पक्ष भएको कुनै सन्धिको कुरा प्रचलित कानूनसँग बाझिएमा सो सन्धिको प्रयोजनको लागि बाझिएको हदसम्म प्रचलित कानून अमान्य हुनेछ र तत्सम्बन्धमा सन्धिको व्यवस्था नेपाल कानून सरह लागू हुनेछ ।

(२) <sup>७</sup>व्यवस्थापिका-संसदबाट अनुमोदन, स्वीकृति वा समर्थन नभएको वा सम्मिलनको स्वीकृति नपाएको तर नेपाल "..... वा नेपाल सरकार पक्ष भएको कुनै सन्धिबाट नेपाल ".....वा नेपाल सरकार उपर कुनै थप दायित्व वा भार पर्न जाने र त्यसको कार्यान्वयनको लागि कानूनी व्यवस्था गर्नु पर्ने रहेछ भने त्यस्तो सन्धि कार्यान्वयनको लागि नेपाल सरकारले यथासम्भव चाँडो कानून बनाउने कारवाही चलाउनु पर्दछ ।

१०. व्यवस्थापिका-संसद समक्ष पेश गर्नुपर्ने : दफा ६ बमोजिम नेपाल सरकारले स्वीकार गरेका सन्धिहरूको सूचना <sup>७</sup> व्यवस्थापिका-संसदको बैठक बसेको एक महीना भित्र जानकारीको लागि <sup>७</sup> व्यवस्थापिका-संसदमा पेश गर्नु पर्नेछ ।
११. सन्धि दर्ता गर्ने : नेपाल "..... वा नेपाल सरकार पक्ष भएका सन्धिहरू मध्ये नेपाल सरकारले उपयुक्त ठहराएका सन्धिहरू सम्बन्धित अन्तर्राष्ट्रिय संगठन वा संयुक्त राष्ट्र संघको सचिवालयमा दर्ता गराउन सक्नेछ ।

७ गणतन्त्र सुदृढीकरण तथा केही नेपाल कानून संशोधन गर्ने ऐन, २०६६ द्वारा झिकिएको ।

७ केही नेपाल ऐन संशोधन गर्ने ऐन, २०७२ द्वारा संशोधित ।

१२. सन्धि प्रकाशन गर्नु पर्ने : नेपाल "....." वा नेपाल सरकार पक्ष भएका सन्धिहरू मध्ये नेपाल सरकारले उचित ठहराएका सन्धिहरूको प्रामाणिक प्रति नेपाल राजपत्रमा प्रकाशित गरिनेछ ।

तर <sup>७</sup>व्यवस्थापिका-संसद् बाट अनुमोदन, स्वीकृति वा समर्थन भएका सन्धिहरू र <sup>८</sup>व्यवस्थापिका-संसदको निर्णयबमोजिम नेपाल "....." वा नेपाल सरकार सम्मिलित भएका सन्धिहरू त्यसरी अनुमोदन, सम्मिलन, स्वीकृति वा समर्थन भएको मितिले साठी दिन भित्र अनिवार्य रूपले नेपाल राजपत्रमा प्रकाशित गर्नु पर्नेछ ।

१३. नियम बनाउने अधिकार : यस ऐनको उद्देश्य कार्यान्वयन गर्नको लागि नेपाल सरकारले आवश्यक नियमहरू बनाउन सक्नेछ ।

१४. ✂ .....

७ केही नेपाल ऐन संशोधन गर्ने ऐन, २०७२ द्वारा संशोधित ।

८ गणतन्त्र सुदृढीकरण तथा केही नेपाल कानून संशोधन गर्ने ऐन, २०६६ द्वारा झिकिएको ।

✂ गणतन्त्र सुदृढीकरण तथा केही नेपाल कानून संशोधन गर्ने ऐन, २०६६ द्वारा खारेज ।

द्रष्टव्य :- (१) केही नेपाल कानून संशोधन गर्ने ऐन, २०६३ द्वारा रुपान्तर भएका शब्दहरू :-

“श्री ५ सरकार” को सट्टा “नेपाल सरकार” ।

(२) व्यवस्थापिका-संसदको सट्टा हाल संघीय संसद भएको ।

