

ACCESSION OF NEPAL

Additional Questions and Replies

Additional questions submitted by Members on the replies thereto provided by the authorities of the Kingdom of Nepal are reproduced hereunder. The annexes mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation and upon request in electronic format from accessions@wto.org.

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Annex II – Schedule – 1 (relating to Rule 3).

Annex III – Schedule – 2 (relating to sub-rule (1) of Rule 4) (Importation for Commercial Purpose).

Annex IV – Schedule – 2 (relating to sub-rule (1) of Rule 4) (Importation for Industrial Purpose).

Annex V – Schedule – 2 (relating to sub-rule (1) of Rule 4) (Importation by Office, Corporation etc.).

Annex VI – Nepal Standards (Certification Mark) Act, 1980.

Annex VII – Standard Weights and Measures Act, 1968.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

Economic Policies

Foreign and domestic investment policy

Question 1.

Nepal has stated that the current industry policy allows for development of almost all industrial ventures without licence. However Nepal's response to Question 6 states "as per the Foreign Investment and Technology Transfer Act of 1992, Article 3, permission from the Department of Industries is required for all Foreign Investment" and that "the specific requirements to get the permission are not detailed in either of these acts." Given that the specific requirements are not detailed in the Foreign Investment and Technology Transfer and Industrial Enterprises Acts of 1992, would Nepal please advise the criteria used in assessing proposals by Foreign Investors and where these criteria are published?

Answer:

Sections 2, 3 and the annex of the Foreign Investment and Technology Transfer Act, 1992 are relevant for all foreign investment and cover the major criteria for the permission of foreign investment. Accordingly, the Department of Industry has issued a Form which has to be completed by all Foreign Investors. This Form, in effect, includes the criteria (specific requirements) and the proposals are assessed accordingly. The said Form is attached herewith (please see Annex-I) and is available at the Department of Industry.

HMG/Nepal assumes existing practices of evaluating foreign investment to be transparent one. Nonetheless, Nepal is examining to publish the criteria through appropriate instrument such as administrative decree of enactment of rules/regulations.

Question 2.

With regard to Question 32 of WT/ACC/NPL/3, Nepal explains that investments by foreign-owned companies, or joint companies with foreign participation, are required to obtain permission by the Ministry of Industry. Which laws states the criteria for such permission?

Answer:

Section 2 & 3 of the Foreign Investment and Technology Transfer Act, 1992 prescribe major criteria for the permission of investment by foreign-owned companies. The Department of Industry prescribes other detail requirements for this purpose under an application Form issued by it. HMG/Nepal assumes existing practices of evaluating foreign investment to be transparent one. Nonetheless, Nepal is examining to publish the criteria through appropriate instrument such as administrative decree of enactment of rules/regulations.

Question 3.

The response to Question 23 on restrictions on Foreign Enterprises refers to the answer to Question 3 which states "The Privatization Act 1992, in general, does not discriminate between national and foreign investors. However, while evaluating proposals, if the proposals of two or more investors are found to be identical, priority shall be given to the national investor or the group of national investors". Could Nepal advise what mechanisms are in place to ensure transparency in the process and what review/appeal/recourse mechanisms are available to unsuccessful foreign investor tenders?

Answer:

The provision under Section 6 of the Privatization Act, 1992 states that the Government, if it thinks appropriate to privatize any Government Corporation, shall publish a notice in respect to the privatization of such a Government Corporation in Nepal Gazette. The Act makes it mandatory for the Government to initiate the privatization process only after the publication of a notice in the Gazette. Under Section 7 of the Privatization Act, 1992, the Government may form a team of experts for the evaluation of the Corporation in this respect. Section 8 of the same Act has given alternatives of the privatization process to the Government, i.e., converting shares or selling intact to private buyers or giving on lease etc. In accordance to Section 9 of the same Act the Government must call for public tender for privatization by publishing a notice which has to be in accordance with international practice. Section 10 of the same Act describes the basis of evaluation of tender and the privatization committee evaluates the proposals received from the private parties accordingly. In accordance to the Section 11(4) of the same Act, the terms and conditions mentioned in the Agreement in respect to privatization must be published to inform the public.

Besides, the concerning party may ask for attested copy of relevant documents under number 17 of "kagaz jach ko mahal" (Chapter with respect to paper examination) of the Muluki Ain (Civil Code). Likewise Article 16 of the Constitution of the Kingdom of Nepal provides a right to seek and get information in respect to matters of public importance. Nepal is also ready to adopt a better mechanism in regard to transparency in the concerning Act.

The Privatization Act, 1992 as such is silent on the mechanism of review or appeal regarding any unsuccessful tenders by investors whether national or foreign. Nevertheless, the unsuccessful tender participant, in principle, may approach the Court of Appeal under the Justice Administration Act, 1991.

Question 4.

1. **We understand that the World Bank and the IMF have advised you to streamline your regulatory framework for foreign direct investment. What is the status of these plans?**

Answer:

The recommendations of studies conducted so far by FIAS and World Bank have already been incorporated in the amendments of Industrial Enterprises Act, 1992 and the Foreign Investment and Technology Transfer Act, 1992.

(f) Privatization Policy

Question 5.

WT/ACC/NPL/3 states that Nepal has completed privatization of a number of previously government-owned firms. Please describe how the firms listed in the response to question 21 were privatized, e.g., were they sold intact to private buyers, converted to shares that were sold or otherwise distributed, or dismantled and sold piece by piece? Approximately what portion of Nepal's GDP is currently accounted for by the sales of remaining State-owned firms?

Answer:

Nepal has completed privatization of a number of previously government owned enterprises. The methods of privatization and other information are given below. The net (book value) worth of the remaining state-owned enterprises account for about 15 percent of Nepal's GDP.

General description of privatized enterprises

S.No.	Name of the Company	Year of Privatization	Method of Privatization	Sales Proceeds (Rs. '000) [#]	Proportionate Share		
					Mg t	Em p	Publ ic
1.	Bhrikuti Paper Mills (BPM)	Oct. 1992	Asset and business sale	229,800	70	5	25
2.	Harisidhi Brick and Tile Factory (HBTF)	Oct. 1992	Asset and business sale	226,900	72	5	23
3.	Bansbari Leather and Shoe Factory	Mar. 1992	Asset and business sale	22,400	75	5	25
4.	Nepal Film Development Company (NFDC)	Nov. 1993	Share sale	64,662	51	5	44
5.	Balaju Textile Industry Ltd. (BTI)	Dec. 1993	Share sale	17,716	70	5	25
6.	Raw Hide Collection and Development Corporation Ltd. (RHCDC)	Dec. 1993	Share sale	3,990	--	--	100
7.	Nepal Bitumen and Barrel Udhog Ltd. (NBBU)	Jan. (1994)	Share sale	11,640	65	5	30
8.	Nepal Lube Oil Ltd. (NLO)	Jan. 1994	Share sale	30,424	40	5	33 [*]
9.	Nepal Jute Trade and Development Company	1993	Liquidation	Liquidation	--	--	--
10.	Tobacco Development Company	1994	Liquidation	Liquidation	--	--	--
11.	Nepal Foundry Industry (NFI)	Mar. 1996	Share sale	14,473	51	5	44
12.	Shri Raghupati Jute Mills (SRJM)	Aug. 1996	Share sale	82,204	65	5	30
13.	Biratnagar Jute Mills (BJM) ¹	Dec. 1996	Management contract	Business contract	--	--	--
14.	Nepal Bank Ltd. (NBL) ²	Mar. 1997	Share sale	125,140	--	5	54 [^]
15.	Agriculture Tools Factory (ATF)	May 1997	Share sale	95,100	65	5	30
16.	Bhaktapur Bricks Factory (BBF)	Aug. 1997	Lease	20,300 (10 years, lease)	--	--	100 HM GN

[#] It includes the price of management share only.

^{*} Rest of the shares are in the name of other corporations

¹ BJM is a semi-government enterprise in which private sector has majority shares. The decision to contracting out was taken by the company's board and all the procedures were taken accordingly.

² In this bank the government had majority shares. The government decided to sell some of its shares in the market, so that the private sector could become the majority shareholder. So it floated 10% of the shares in the share market. Now the government is a minority shareholder i.e. it holds only 39% of the total shares.

[^] HMGN owns 39% shares

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES

1. Power of the Executive, Legislative and Judicial Branches of the Government

Question 6.

What internal procedures will be necessary to ratify the WTO Agreement in Nepal? What will be its position in the hierarchy of laws once ratified?

Answer:

His Majesty's Government of Nepal (HMG/N) shall table the resolution for the ratification in the House of Representatives. The resolution concerning the ratification must be passed by a majority of the members present in the House of Representatives. After the resolution is passed by the House of Representatives, HMG shall notify the WTO Secretariat about the ratification of the treaty.

The position of the WTO Agreement in the hierarchy of Nepalese laws after ratification shall be as an international treaty in conformity with Article 26 and 27 of the Vienna Convention on the Law of Treaties.

Question 7.

Please describe the process that Nepal's Government will use to ratify the accession package approved by WTO Members, and indicate about how long it should take.

Answer:

After the accession package approved by WTO Members, HMG/N shall table a resolution for ratification in the House of Representatives (Lower House of the parliament). The resolution concerning the accession must be passed by a majority of the members present in the House of Representatives. HMG/N shall notify the WTO Secretariat and the UN Secretariat about the ratification after a resolution is passed by the House of Representatives.

The ratification process may take about six months.

Question 8.

Please describe how Nepal will adopt WTO provisions in its laws, as called for in Article XVI:4 of the Agreement Establishing the WTO, and how Nepal's terms of accession contained in the accession package adopted by the WTO General Council will be accepted or ratified. Please outline the existing hierarchy of laws, i.e., which types of legislative instruments supercede others where there are inconsistencies in two or more laws.

Answer:

Nepal will adopt the spirit of the WTO provisions in its laws by enactment of new laws and regulations, and amendments of existing Acts, regulations and administrative procedures.

Nepal's terms of accession contained in the accession package adopted by the WTO General Council will be accepted by enacting laws, making necessary amendments in laws or in Government

decisions to fulfil its obligations. The details of the legislative action plan are provided in a separate document.

Regarding the hierarchy of laws, the constitution shall be the Fundamental Law of the land and in case the provisions of the constitution conflict with the provisions of current laws, the latter shall be held invalid to the extent of such conflicts in accordance with the Constitution of the Kingdom of Nepal. Likewise the Provisions of Acts supersede the Provisions of Regulations (by-laws), and provisions of Acts and Regulations supersede the provisions of Government decisions or Directives where there are inconsistencies.

Question 9.

What will be the legal status of the WTO Agreements in Nepal after it becomes a member, e.g., will the Agreements automatically supersede existing laws and regulations?

Answer:

The legal status of the WTO Agreements in Nepal, after Nepal becomes a member, will be that of an "international treaty". (Please see Answer to question 6.) Although Section 9 of the Nepal Treaty Act, 1990 states that in case the provisions of a treaty conflict with the provisions of current laws, the latter shall be held invalid to the extent of such conflict for the purpose of that treaty, the provisions of the WTO Agreements shall come into effect only after the enactment/amendments of national laws.

Question 10.

Article X of the GATT states that all "laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions, or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them." Please address how Nepal intends to meet these requirements after accession.

Question 11.

Are all legal acts of the executive, legislature, and judiciary published in the same place prior to entry into force? If not there, then where? Is it required that they be published to come into force?

Question 12.

What provision of law provides for publication of laws and other legislative instruments prior to entry into force? Does Nepal's current legislation cover the provisions of Article X and the other WTO transparency requirements?

Answers to Questions 10-12:

All trade measures and laws, regulations, and Governmental or Administrative rulings of general application are published in the Nepal Gazette, including Agreements or Treaties in which Nepal is a party. Judgements of the Supreme Courts are also published in the Nepal Law Journal by the Supreme Court of Nepal. Laws enter into force on the date of their publication unless another date is specified in the laws.

Some of the transparency requirements of Article X of GATT 1994 and other WTO Agreements are provided in Section 3 of the Statute of Interpretation Act, 1953, the Division of Work of His Majesty's Government Regulation, 2000, and Nepal Gazette of August 1955. However, it has been the practice to publish relevant acts/rules/regulations to give this effect. HMG/Nepal gives positive consideration to legislate these existing practices.

As a Member of the WTO, Nepal will fulfill transparency requirements as per Article X of GATT 1994 and other WTO Agreements.

6. Description of Judicial, Arbitral or Administrative Tribunals or Procedures, If Any

Question 13.

Is there any appeal system in areas other than that of the IPRs where any person has the right to appeal decisions made by the Department of Industry? In particular, Article 11.2 of the Customs Valuation Agreement stipulates that the legislation of each Member shall provide for the right of appeal with regard to the determination of a customs value. Does Nepal intend to introduce such an appeal system relating to customs valuation?

Answer:

There is a provision of appeal against the decisions taken by Department of Industry under Article 18 of Industrial Enterprise Act, 1992 to the Industrial Promotion Board.

The importer has the right to appeal to the Revenue Tribunal over the decision of customs officials in respect to the determination of customs value under Section 37 of Custom Act, 1962.

Question 14.

The response to Question 30 of WT/ACC/NPL/3 addresses the issue of Nepal's current arrangements for dealing with judicial appeals from administrative rulings on customs matters, as provided for in Article X of the GATT. It reports that there is a permanent Revenue Tribunal to adjudicate and resolve revenue disputes, including decisions related to custom duties, and that the Custom Act of 1962 as amended, provides for appeal against orders of custom duty assessment or punishment issued by customs to the Revenue Tribunal. We appreciate Nepal's statement in the response to question 30 that it will examine the compatibility of its current procedures with Article X:3(b) and (c) of GATT 1994. We understand this to mean that Nepal is examining whether currently established institutions provide for the right of appeal to an independent tribunal for the "prompt review and correction of administrative action relating to customs matters," and that Nepal intends to establish such an institution if the review indicates that it does not currently exist. Can Nepal confirm that understanding to be correct? We suggest that, during this examination, Nepal also take into account the requirements of other WTO Agreements that provide for the right of appeal, e.g., the Agreements on Customs Valuation, TBT, SPS, Import Licensing and TRIPS. We look forward to the results of this review.

Answer:

Please see Answer number 13.

Nepal is currently examining to establish an independent administrative tribunal to review the decision of customs authority regarding customs valuation. The decision of administrative tribunal could be appealed to the revenue tribunal. Nepal assumes that such institutional system would

provided prompt review and correction of administrative action relating to customs matters in accordance to the Article X:3(b) and (c) of GATT 1994.

The Nepalese legislation provides right to appeal to the affected party on the decision of the authorities on the matters related to technical barriers to trade, sanitary and phyto-sanitary measures, import licensing, copyrights, trademarks, patent and design. Please also refer to WT/ACC/NPL/5, WT/ACC/NPL/6 and WT/ACC/NPL/7.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

Registration requirements for engaging in importing

Question 15.

Please provide in writing the details of the requirements necessary for obtaining the registration to engage in business.

Answer:

The Nepalese legislation provides different procedures for the registration of a private firm and a company. Private Firm Registration Act, 1956 governs the registration of a private firm- defined as any firm, a company or a concern set up by any person – to engage in the business of export or import and the act of running a private firm without registration is prohibited. The Department of Commerce registers the firm relating to commerce whereas Department of Industry is the concerned department for the firms relating to industry. Any individual desiring to register a private firm may submit the form as prescribed by the Private Firm Registration Regulation 1978 Rule 3. Schedule-1 along with the prescribed application fees to the concerned department (Please refer Annex II). If the concerning Department finds the statement of the application to be true and reasonable to register, it will register the private firm and issue a certificate of registration accordingly.

The registration of a company is governed by the Company Act, 1997. An application with a Memorandum of Association and an Article of Association of the proposed company along with application fee has to be submitted to the Office of the Company Registrar (Section : 4). The Registrar, with necessary inquiries, registers the company and issues a certificate of incorporation within 15 days (Section 5). The Registrar has the authority to reject the application if the proposed name of the company is already registered, or the proposed name is against public moral or the objective of the company is contradictory to the existing laws, or the conditions required to incorporate company under this Act is not fulfilled (Section 6). However, the Registrar gives due notice and the reasons for rejection to the applicant.

The registration of entity with respect to trade in services is governed by other laws, e.g., Nepal Agency Act, 1958, Partnership Act, 1964.

Question 16.

The response to Question 33 of WT/ACC/NPL/3 states that "all companies, national or foreign, have to be registered with the competent authority to engage in business in Nepal." This includes export and import activities. Limited liability companies, including joint venture agencies, sole proprietor and partnerships, business undertakings for industrial ventures, register at the Ministry of Industry. But agencies, sole proprietor undertakings and partnership businesses for trading are required to register at the Department of Commerce.

- Please confirm if this means that manufacturing firms and service firms other than for international trade register with the Ministry of Industry and that international trading firms register with the Department of Commerce.
- Are the registration requirements in the two agencies the same? Please describe how businesses register and indicate any differences. Are the criteria for registration published officially?
- Please describe any limitations on individuals or firms seeking to register for the right to import or export.
- What is the purpose of the registration fees?
- Please confirm that any fees, charges or taxes levied for registration are in conformity with WTO obligations, that their rate is based on the cost of the service rendered, that they do not burden imports, and that the fees are not more onerous for those registering for importation and exportation than for firms that produce domestic goods.

In document WT/ACC/NPL/3, Nepal states that preference is given to nationals when obtaining a licence to work as an agent for the delivery of goods, and the response to question 64 states that in the "issuance of licenses... preference may be given to nationals."

- Please expand the information provided on this point, noting how preference is given, the purpose, and any legal restrictions on foreigners attempting to be agents for the delivery of goods or obtaining import licenses.

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

Answer:

The application fee and the registration fee of different kinds of legal entities are very nominal, non-discriminatory and are not related to the value/ volume of export and import.

HMG/Nepal would appreciate if the Working Party points out which Article of GATT or GATS are referred to wherein registration fees are mentioned.

Nepal believes that agency business is covered by GATS and its market access conditions will be governed by the schedule of specific commitments on services sector. Upon accession, Nepal commits not to adopt any restriction on the right of individuals and enterprises to import and export goods except as provided for WTO Agreements.

Please see Answer number 15 for other information.

(b) Characteristics of national tariff

Question 17.

Is "country beer" (Chhyang) produced in Nepal? Is it taxed differently than "beer"? Does Nepal consider this practice consistent with Article III GATT? If not, what does Nepal intend to do to eliminate the discrimination?

Answer:

The "Chhyang" is not "beer" but is a home made drink produced in a small scale by indigenous peoples with indigenous traditional knowledge and is related to their religion and social custom. Chhyang and beer are not identical or similar goods.

Question 18.

The responses to questions 35 and 38 of WT/ACC/NPL/3 appear to state that for domestic products subject to the excise tax, an "equalizing duty" of the same level is applied to similar imported goods in lieu of a customs tariff.

- **Can Nepal confirm that imported goods to which the "equalizing tax" is applied are not subject to additional customs duties, i.e., that the "equalizing duty", which is applied at the same level as the excise tax on similar domestic goods, acts as the customs tariff on these goods?**
- **Can Nepal clarify what taxes and charges are applied (a) to domestic goods generally, e.g., the VAT; (b) to imports generally, e.g., the customs tariff and the VAT; (c) to domestic and imported goods that are subject to the excise tax and the "equalizing duty".**

Answer:

Nepal imposes "equalizing duty" equal to the excise tax for corresponding domestic products in a non-discriminatory manner above the customs tariff. Equalizing duty is an excise tax which is applied just once and is collected at the custom office for convenience.

Domestic goods are subject to VAT, in general, and excise tax on specified goods. Imported goods are subject to custom duty, VAT, equalizing duty (on specified goods) equal to excise tax imposed on domestically produced similar goods and the local development fee replacing previous octroi tax.

(d) Other duties and charges, specifying any charges for services rendered

Question 19.

Please reply to Question 48 of WT/ACC/NPL/3.

Answer:

Nepal intends to change the import licence fee to the system of determining the fee based on the flat rate or the *ad valorem* rates, whichever is lower. Nepal reserves the right to introduce customs

processing/customs fee equivalent to the cost of services rendered for the items not requiring import licence.

Question 20.

Please confirm that Nepal charges no customs processing or other customs fees on imports or exports, except for the 1 percent licensing fee on imports or exports that require a licence or that lack an opened letter of credit in customs documentation.

Answer:

Please see Answer number 19.

(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 21.

Why is the importation of liquor above 60 degrees banned when their national production is allowed? How does Nepal intend to eliminate this discrimination?

Answer:

Nepal has not allowed to produce liquor above 60 degrees for commercial purposes.

Question 22.

The response to question 50 in WT/ACC/NPL/3 states that quota system described operates only for those goods subject to export restrictions or price controls in one of the Parties to the Trade Agreement. Are the quotas applied to the products listed actually set by India's export quotas?

Answer:

The quota system described operates only for those goods subject to export restriction or price control in one of the parties to the Trade Agreement (answer 50 in WT/ACC/NPL/3). Based on the consumption requirement of Nepal, such quotas are mutually decided by the governments of Nepal and India and have no direct link with overall India's export quotas.

Question 23.

Concerning licenses required for the importation of products listed in Annex 3.2:

- **Which of the products listed are banned for import?**
- **What products listed in Annex 3.2 are restricted for import?**
- **What procedures must be followed to obtain approval for importation of restricted products?**

Answer:

Following products listed in Annex 3.2 (WT/ACC/NPL/3) are banned for import:

- a. Narcotic drugs like opium and morphine.
- b. Liquor containing more than 60 per cent alcohol.

c. Beef and beef products.

Following products listed in Annex 3.2 (WT/ACC/NPL/3) are restricted for import:

- a. Materials used in the production of arms and ammunition.
- b. Guns and cartridges.
- c. Capes without paper.
- d. Arms and ammunition, and other explosives.
- e. Wireless, walkie talkie and other similar audio communication equipments.
- f. Valuable metals and precious stones.

The restricted products can be imported under import licence. Regarding the procedures to obtain an import licence please refer to the answer to question number 27.

Question 24.

WT/ACC/NPL/3 states that Nepalese producers do not manufacture any of the banned or restricted items listed in WT/ACC/NPL/2/Add.1 Annex 3.2 except jewelry and home-made liquor. What restrictions, if any, are placed on domestic producers of these products? Article XX(c) was intended to address the flow of gold and silver for monetary purposes, not restrictions on commerce in jewelry. Are the restrictions on imported jewelry a form of protection for domestic production? If not, please elaborate on why these items are not imported for commercial sale.

Answer:

Products injurious to health e.g. narcotic drugs; and beef and beef products are banned to produce domestically whereas other products listed in Annex 3.2 of NPL/2/Add.1 could be produced domestically under government licence.

Currently, Nepal does not restrict importation of jewelry made of valuable metals but there is restriction on the importation of gold, silver and other valuable metals and precious stones. However, maximum of 10 kg. of gold and 150 kg of silver are allowed to be imported by paying custom duties under personal baggage provisions.

(f) Licensing procedures

Question 25.

Nepal's documentation appears to indicate that the current laws governing import licensing have not been revised since 1978.

- i. **What steps is Nepal taking to review its system to assess to what extent it will have to be amended to make it WTO compliant?**
- ii. **What administrative or other objectives does the Government of Nepal have that require the submission of an application or other documentation (other than that required for customs purposes) to various relevant administrative bodies as a prior condition for importation into the customs territory of Nepal, whether or not they are considered import licensing procedures?**

- iii. **How are the rules and all other information concerning procedures for the submission of applications for import licenses published? Does such publication take place at least 21 days prior to the effective date of the requirement?**
- iv. **Please provide the list of products subject to import licensing by HS number and description, and indicate what provision of the WTO Agreement and its annexes justifies the requirement. Please list all Governmental agencies that must be approached to get the licence.**

Answer:

- i. The import licensing system of Nepal is governed by Export Import (Control) Act, 1957 and Export Import Regulation, 1978. Section 6 of the Export Import (Control) Act, 1957. Rule 16 of the Export Import Regulation, 1978 provide a provision of appeal. All related notices under these laws are published in Nepal Gazette. The Export Import Regulation 1978 describes in detail about the authority to grant export/import licence, process of application, format of application, fees of application and licence, grounds of cancellation of licence, etc. However, it is felt to examine the Provision of Section 3 of the Export Import (Control) Act, 1957 which authorizes the government to prohibit export and/ or import of any goods during the review of relevant laws and regulations in order to make WTO compatible.
- ii. The importer does not need to submit any other administrative or other documentation for importation except as prescribed by Import Export (Control) Act, 1957 and Import Export Regulation, 1978.
- iii. The laws and other information concerning procedures for the submission of applications for import licenses are published in the Gazette. Such publications take place before it comes into effect. However, the regulation is silent in regard to prior notification and thus, the government may, publish, whenever practicable, such information 21 days prior to the date of enforcement.
- iv. The following is the list of products subject to import licensing:

HS Number	Description	Justifying Provision of WTO
85.28	All types of radio communication system with the frequency range of 30 Khz to 300 Khz.	Article XXI of GATT 1994
85.28	Radio transmitter and transceiver	
85.29	Television transmitter, FM radio transmitter	
85.25	Wireless transceiver	
85.25	Walkie talkies	
85.17	Cordless telephone	
85.29	Video sender	
85.28	Amateur radio	
85.17	Inmarsat terminal (portable satellite hand set)	
85.17	Satellite communications equipment	
85.17	Radio paging system-paging transmitter, pager	
85.17	Communication equipment-cellular telecommunication base station, cellular hand set.	
85.28	Satellite broadcast receiver.	
85.28	Satellite receiver (other than broadcast)	
85.17	Radio repeater station	
85.17	Radio navigation, transmitter/transceiver	

HS Number	Description	Justifying Provision of WTO
85.17	Radio determination transceiver, receivers	
93.05	Materials used in the production of arms and ammunition.	
93.01-93.04	Guns and cartridges	
93.06	Capes without paper	
93.07	Arms and ammunition and other explosives	
Chapter 71	Valuable metals and precious stones	Article XX(c) of GATT 1994

- iv. The licence issuing authority for all products listed above is the Department of Commerce. The Department issues licence on the basis of the recommendation of the concerned ministries e.g. Ministry of Information for telecommunication equipment and Ministry of Home for arms ammunition and explosives.

Question 26.

In document WT/ACC/NPL/2/Add.1, Nepal states that personal baggage exceeding the "allowance" is subject to import licensing. What is the personal baggage allowance and why is personal baggage subject to an import licence?

Answer:

The personal baggage of an air traveller as defined by a Notice in the Nepal Gazette, includes accompanied personal goods of the traveller, i.e., clothes, medicine, watch, etc. and is not subject to an import licence. Importation of goods in excess of the personal baggage, are subject to custom duties and in case of banned or restricted items the goods are liable to be forfeited and the persons to be punished.

Question 27.

In document WT/ACC/NPL/2/Add.1, Nepal identifies the purposes for which an import licence can be issued and states that there are different applications needed depending on the purpose such as a commercial purpose licence. Please provide all of the procedures and documentation necessary to get an import licence for all purposes.

Answer:

Export Import Regulations 1978 governs the procedures and the requirement of documentation to obtain an import licence.

An application in the format prescribed in Schedule-2 of the Export Import Regulation 1978 (the prescribed Schedule-2 is attached herewith – Annex III, IV and V) should be submitted to the Director General of the Department of Commerce. The applicant is required to provide information and documents as specified in the prescribed application form. The applicant is also required to pay the prescribed application fee and the licence fee.

The import licence may be issued for different purposes: importation by the government office, corporations, committees or project, importation by social institutions, importation for commercial and industrial purposes, importation for private use or for the use of professional firms/companies and institutions for specimen purposes.

The import licence for commercial purposes shall be issued only to registered firms or companies or government corporations (Rule: 7).

On examination of application forms and the information and documents provided thereof, the authority issues the import licence, if deemed appropriate.

Question 28.

In document WT/ACC/NPL/2/Add.1, Nepal states that import licenses are valid for six months and in special situations valid for one year. What are the special situations for getting a licence that is valid for more than six months?

Answer:

If an importer is unable to import goods within six months of the issuance of the licence due to external factors beyond his control and requests the authority for the extension of the import licence, the authority after examining the case based on the nature of goods and the prevailing situation may extend the licence up to another six months at a time.

Question 29.

Concerning automatic import licenses:

WT/ACC/NPL/2/Add.1 indicates that all products being imported or exported to/from Nepal are subject to licensing and use the same licensing procedures. Both WT/ACC/NPL/2/Add.1 and NPL/3 indicate, however, that only the banned or restricted items listed in Annex 3.1 and 3.2 are actually subject to the licensing system since Nepal has "relaxed" its enforcement of the automatic licensing system. Please clarify.

- **Please confirm that if a letter of credit opened for imports or exports is presented with customs documentation, no import or export licence is necessary, except for the goods listed in Annex 3.1 and 3.2. Is this provided for in regulation or law?**
- **Why does a firm have to present a letter of credit opened for import in order to avoid paying the one per cent import licensing fee? Is the Government of Nepal considering other documents, such as a bill of lading, as alternatives to requiring the presentation of a letter of credit?**
- **Alternatively, if specific automatic licensing requirements remain, please identify the products covered, including HS number. What would be the purpose of such licensing? Would such licenses require payment of the one percent import licensing fee? How long does it take to process automatic licence applications?**

Answer:

HMG/Nepal confirms that if a letter of credit opened for imports or exports is presented with customs documentation no import or export licence is necessary except for goods listed in Annex 3.1 and 3.2. Such a Governmental order was published in accordance to Section 3 of Export Import Control Act, 1957 in the Gazette.

The purpose of requiring the presentation of a letter of credit for import is not to avoid paying import licensing fee (licensing fee is not charged in such situations) but to get information about the goods to be imported and to ensure that the import transaction takes place. HMG/Nepal does not have any plan to introduce alternative documents to the letter of credit. Since an import licence is required only for restricted products, the import licensing system of Nepal as we understand is more liberal than the automatic licensing system pursuant to Agreement on Import Licensing Procedures.

Nevertheless, HMG/Nepal reserves the right to adopt a system consistent with the Agreement on Import Licensing Procedures.

Please see Answer to Question number 25 for the list of products subject to import licensing.

Question 30.

Import and Export Licensing Fee:

WT/ACC/NPL/2/Add.1 and WT/ACC/NPL/3 state that Nepal applies an import and export licensing fee of one percent of the invoice value of the goods. It also states that there are other nominal application fees associated with importing, including an additional fee if any alterations are made to the licence.

Article VIII of the WTO states that all "fees and charges of whatever character (other than import and export duties ...), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." A GATT Panel has ruled that *ad valorem* fees are a violation of Article VIII of the GATT. Article VIII:3 also prohibits penalties for mistakes on customs documentation that are easily rectifiable, which would appear to conflict with Nepal's practice of charging additional fees for minor licence application changes

- **Please describe the steps that Nepal intends to take to bring its *ad valorem* import licensing fee into line with Article VIII of the GATT, i.e., relate the fee to the cost of the service of issuing the licence, not to the value of the import.**
- **We seek Nepal's cooperation in addressing the WTO-consistency of applying additional fees for alterations of the licence.**
- **Please provide a list of all licensing fees, the level of their application, and describe how and when they are applied to imports.**
- **Please describe how Nepal intends to change the import licence charge to approximate the cost of services rendered, in accordance with GATT Article VIII.**

Answer:

Nepal is examining the total cost of services provided in the context of import. After the revelation of the cost of services, Nepal will charge import licence fee approximately equivalent to the cost of services rendered in line with Article VIII of the GATT. Nepal will apply WTO consistency additional fees for alterations of the licence by the time Nepal becomes Member of WTO.

As per the Rule 8(1) of the Export Import Regulation 1978, the application fee for import licence is NRs 10/-. Regarding import licence fee, Rule 8(4) of the Export Import Regulations 1978 has given power to the Government to fix the fee of import licence. Accordingly, Government has issued a notice in the Nepal Gazette and has fixed 1 per cent of the total price of imported goods as import licensing fee.

The applicant requires to submit an application fee and licence fee at the time of submission of application. In case the licence is not issued, the licence fee will be refunded.

Customs Valuation

Question 31.

We have reviewed Nepal's documentation on Customs Valuation, including the Customs Act of 1997, and appreciate Nepal's acknowledgment that its current legal provisions for the valuation of imports are not in conformity with the WTO Valuation Agreement. In particular, in addition to lacking the procedural requirements of the Agreement, Nepal apparently uses local prices and reference prices when it doubts that the invoice price corresponds to the price actually paid or payable. Valuation based on the value of local goods and on reference prices is contrary to the WTO Valuation Agreement. Provisions are lacking to implement the valuation methods in Articles 5 and 6 of the Agreement, and we can find no reference to prohibited methods of valuation or provisions for determining related parties. We have provided Nepal with detailed comments on these points and others identified deficiencies that we hope will assist in the development of the necessary legal provisions to implement a WTO-consistent regime. While we recognize that such a statement is subject to change, we request that Nepal submit a more detailed timetable for the enactment of legislation that incorporates the WTO Agreement on Customs Valuation into Nepal's law.

Answer:

Recognizing the fact that custom valuation based on the value of local goods and on reference prices is contrary to the WTO Customs Valuation Agreement, and desiring to adopt the valuation methods of Article 5 and 6 of the Agreement and to improve Nepalese legal provisions to implement a WTO – consistent regime, Nepal will incorporate the remaining provisions of the WTO Agreement on Customs Valuation into Customs Act, 1962 and Custom Regulation, 1969. A timetable for the enactment of legislation that incorporates the WTO Agreement on Customs Valuation into Nepal's law is provided in the Legislative Action Plan.

Question 32.

While noting that a timetable for bringing the customs valuation rules into full conformity with the WTO Agreement on customs valuation is dependant on technical assistance being provided, is Nepal nevertheless able to give any indication of an implementation timetable?

Answer:

An implementation timetable, provided Nepal receives required technical assistance, is presented in the Legislative Action Plan.

Question 33.

We welcome the efforts Nepal is undertaking to assure the respect of the relevant WTO Agreement and we can certainly discuss bilaterally whether technical assistance is necessary. At the same time, we would also welcome a submission by Nepal, when available but before the completion of the accession process, of a detailed action plan for the full implementation of the Agreement indicating the measures necessary to assure compliance and the timetable for their adoption.

Answer:

Please refer to answers to question 32.

(i) Other customs formalities**Question 34.**

Does Nepal require any sort of certification of customs documentation by consular officials in the country of export? If so, why, and what sort of fees are charged?

Answers:

Nepal does not require any kind of certification of customs documentation by Consular Officials.

(k) Application of internal taxes on imports**Question 35.**

The table of excise taxes in the response to question 35 in WT/ACC/NPL/3 is incomplete, i.e., no tariff is listed for "Wine of fresh fruits not exceeding 17 per cent alcoholic content", for "beer" or for "country beer". Please revise the table to supply this information. We would also appreciate the information provided on a HS tariff line basis, rather than by product category.

Answer:

The revised table of excise taxes in response to question 35 in WT/ACC/NPL/3 is as follows:

S.No.	HS Code	Items	Excise duty
1.	1703.10	Can molasses	Rs. 25 per quintal
2.		Raw sugar in solid form	Rs. 55 per quintal
3.	2106.90.20	Betel/Areca (Pan Parag) nuts mixed with catechu and lime with or without nicotine	Rs. 165 per kg
4.	2206	Champagne, Perry mead etc.	Rs. 125 per litre
5	2204.29	Wine or fresh fruits not exceeding 17 per cent alcoholic content	Rs. 70 per litre
6.	2306.00	Cider	Rs. 70 per litre
7.	2203.00	Beer	Rs. 36 per litre
8.	2206.00	Chhyang	Rs. 15 per litre
9.	2207.20	Denatured spirits	Rs. 6 per litre
10.	2207.20	Thinner	Rs. 25 per litre
11.	2208.00	Industrial spirits with 57.38 to 80 per cent alcohol content by volume, to be used as raw material for spirituous drink	Rs. 70 per litre
12.	2207.10	Rectified spirit, silent spirit (ENA) used as raw material for alcoholic products with an alcoholic strength of 80 per cent or higher by volume	Rs. 25 per litre
13.	2208.20.90 2208.30.90 2208.50.90	All alcoholic products Up to strength of 40 UP Strength of 40 to 60 UP Strength 60 UP and higher	Rs. 260 per LPL Rs. 150 per LPL Rs. 44 per LPL
14.	24.02.20	All kinds of cigarette i. Cigarettes up to 70 mm in length a) Without filter b) With filter ii. 70 mm to 75 mm (with filter) iii. 76 mm to 85 mm (with filter) iv. More than 85 mm (with filter)	Rs. 100 per M Rs. 285 per M Rs. 365 per M Rs. 500 per M Rs. 675 per M
15.	2402.10	All kinds of cigar	Rs. 2.25 per stick

S.No.	HS Code	Items	Excise duty
16.	2403.10.10	Pipe tobacco	Rs. 350 per kg
17.	2403.99	Tobacco extracts and essences including chewing tobacco	Rs. 165 per kg
18.	2403.99	Raw chewing tobacco	Rs. 100 per kg
19.	2523	All kinds of cement	Rs. 100 per M.T.
20.	6901-5	All kinds of bricks	Rs. 500 per thousand (Equalizing duty)
21.	8702, 3, 4	<u>Vehicle fuelled by petrol or diesel</u> Motor vehicle for transport (single cab, delivery van)	30 to 80% (Equalizing duty)
22.	3501	All kind of polythene bags	Rs. 15 per kg

Question 36.

Concerning the exemptions to the VAT listed in the response to question 76 of WT/ACC/NPL/3:

Are any of the exemptions available only for domestically produced goods (e.g. for raw agricultural products), or are all exemptions equally available for both imports and domestic products?

Answer:

Concerning the exemptions to the VAT, all exemptions are equally available for both imports and domestic products under Section 5 of the Value Added Tax Act, 1996.

Question 37.

Concerning the octroi tax. Could Nepal give a status report on the elimination of this tax and the alternative measures that will replace the revenues lost with its elimination?

Answer:

His Majesty's Government has eliminated the octroi tax and has adopted a system of levying "Local Development Fee" as alternative measures to replace revenues loss from the elimination octroi tax by the Finance Act, 2000. The Local Development Fee is levied on the imported goods, fixed by His Majesty's Government by a notice published in the Nepal Gazette. Currently, local development fee is 1.5 per cent of the value of imports. The collected amount will be distributed to the Municipalities for their development works.

(l) Rules of origin

Question 38.

WT/ACC/NPL/3 states that "Nepal only requires proof of origin to determine whether goods qualify for preferential treatment under the trade Agreements to which it is a Party or by national legislation," and describes its rules of origin for such imports. Please confirm Nepal's commitment to notify and implement regulations consistent with the WTO Agreement on Rules of Origin prior to using any trade measure that requires determination of origin for imports for either preferential or non-preferential trade. Please confirm that Nepal will provide, from the date of accession, the procedural protections of the WTO Agreement on Rules of Origin, e.g., covering the requirements of Article 2(h) and Annex II, paragraph 3(d), which require WTO

Members to provide, upon request and prior to the time of importation, an assessment of the origin of the import and outline the terms under which it will be provided.

Answer:

Nepal will notify and implement regulations consistent with the WTO Agreement on Rules of Origin prior to using any trade measure that requires determination of origin for imports for either preferential or non-preferential trade. Nepal also confirms its commitments on the procedural protection covering the requirements of Article 2 (h) and Annex ii and paragraph 3(d) of the WTO Agreement on Rules of Origin from the date of accession.

(m) **Anti-dumping regime**

(n) **Countervailing duty regime**

Question 39.

WT/ACC/NPL/3 states that Nepal is not certain when legislation authorizing the imposition of anti-dumping and countervailing duties might be developed. We seek a commitment from Nepal that it will not apply any anti-dumping or countervailing duty measures until it has notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI and on Subsidies and Countervailing Measures, and that after accession, Nepal will apply any anti-dumping duties or countervailing duties only in full conformity with the relevant WTO provisions.

Answer:

Nepal confirms its commitment that it will not apply any anti-dumping or countervailing duty measures until it has notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI and on Subsidies and Countervailing Measures, and that after accession, Nepal will apply any anti-dumping duties or countervailing duties only in full conformity with the relevant WTO Provisions.

(o) **Safeguard régime**

Question 40.

WT/ACC/NPL/3 states that Nepal may restrict the quantity or value of imports as well as capital movement in order to safeguard its external financial position and its balance-of-payments. Please cite the legal authority that would authorize the Government to apply such restrictions.

Answer:

The Government may restrict imports by issuing an order in accordance to Section 3 of the Export Import (Control) Act, 1957. The involved authorities are the Ministry of Industry, Commerce and Supplies, Department of Commerce and the Central Bank. See also answer to questions 25, 41 and 42.

Question 41.

Please elaborate on how Nepal may restrict the quantity or value of imports to safeguard its balance of payments. How will the consistency with the relevant WTO rules be assured? Does

Nepal undertake to introduce trade restrictions for balance of payment purposes only in the cases specified in the WTO Agreement (Question 10)?

Answer:

Nepal may restrict the quantity of imports by issuing an order in accordance to Section 3 of the Export Import (Control) Act, 1957. However, currently, there is no quantitative restriction on imports and thus, the question of WTO consistent rule in respect of import restriction does not arise.

Nepal undertakes to introduce trade restrictions for the balance of payment purposes and to prevent or remedy serious injury or threat to serious injury to a domestic industry as specified in the WTO Agreements.

Question 42.

In document WT/ACC/NPL/2/Add.1 and WT/ACC/NPL/3, Nepal states that it reserves the right to introduce import controls in the case of balance of payments problems and for economic development reasons, noting that the provisions of Articles XVIII and XIX would be relevant in such cases.

- **Do the provisions contained in current legislation authorizing such measures conform to the provisions of Article XIX of the GATT and the WTO Safeguards Agreement?**
- **We seek a commitment from Nepal that it will not apply any safeguard measures until it has notified and implemented appropriate laws in conformity with the provisions of the WTO Agreement on Safeguards, and that after its WTO accession it will apply any safeguard measures only in full conformity with the relevant WTO provisions.**
- **Can Nepal confirm that any import controls justified under balance of payments problems would be applied in compliance with GATT Article XVIII and the Understanding on the Balance of Payment Provisions of the General Agreement on Tariffs and Trade 1994?**

Answer:

Nepal confirms that any safeguard measures will not be applied until it is notified to the WTO and appropriate laws in conformity with the provisions of the WTO Agreement on Safeguards are implemented. Nepal will apply safeguard measures, after accession to WTO, only in full conformity with the relevant WTO provisions.

Please see Answer number 41 regarding invocation of Article XVIII of GATT 1994 and Understanding on Balance of payments provisions.

2. Export Regulation

Question 43.

Please explain in detail why export duties are levied on 16 items and why the import and export-licensing regime has been introduced?

Answer:

The import and export licensing regime has been introduced for statistical purposes. Currently HMG/Nepal has levied export duties on 23 items as provided on the answer to the question 91 of the

WT/ACC/NPL/3. The purposes of levying export duties are partly to discourage environmental degradation, partly to ensure food security and partly to discourage trade deflection to neighboring countries.

(a) Registration requirements for engaging in exporting

Question 44.

We have the same interest in Nepal's requirements for exporting as outlined in section IV:1(a), registration requirements for engaging in importing.

Answer:

The application for the export licence is to be submitted to the Director-General of the Department of Commerce under the prescribed form indicated in Schedule-2 of the Export Import Regulation 1978. The necessary documents and information required are mentioned in the application form. The export licenses are granted for different purposes, e.g., for commercial purpose, for purposes of private use for specimen purpose, for purposes of Government office use, for maintenance purpose etc. The commercial purpose export licence is granted only to registered entities. The Authority issues certificate of export licence, if it thinks it is appropriate, in accordance to the format prescribed in Schedule-4 of the Export Import Regulation 1978. The Application fee for export licence is Nepalese Rupees 10.00 and there is no other charge/fees for Export licence.

(a) Customs tariff nomenclature, types of duties, duty rates, weighted averages of duty rates

Question 45.

There is an export charge of 0.5 per cent. While we recognize its limited impact on exports, we maintain that, by being *ad valorem* it is inconsistent with Article VIII GATT. Could Nepal specify what is the service rendered to the exporter that justifies the charge (Question 92)?

Answer:

Nepal is examining the approximate cost for services rendered in respect to the export charges.

Question 46.

Nepal's export service fee of .05 percent of the value of exported goods. Such an *ad valorem* fee is not based on the cost of processing exports, but rather on the value of the goods, and is thus inconsistent with Article VIII. Nepal should revise the fee, along with the import licensing fee, to bring them both into line with WTO requirements prior to accession.

Answer:

Nepal is examining the cost for the services rendered in export and import and, Nepal intends to revise the export charge, along with the import licensing fee, to bring them both into line with WTO requirements.

(b) Quantitative export restrictions, including prohibitions, quotas and licensing systems

Question 47.

Could Nepal update the Working Party on the review of the prohibition to export all imported raw materials, parts and capital goods (Question 99)?

Answer:

Nepal is examining the impact of lifting the ban on the export of imported raw materials, parts and capital goods on the illegal deflection.

Question 48.

Annex 3.2 of WT/ACC/NPL/2/Add.1 lists the following products banned from exportation:

- **Raw hides and skin (including dry salted);**
- **Raw wool;**
- **All imported raw materials, parts and capital goods;**
- **Mamira; and**
- **Logs and timber.**

Nepal has justified its ban on the export of raw hides and skins, raw wool, and logs and timber by invoking Articles XI(a) and XX(g) of the GATT.

- **Per Article XX(g), In what way do the restrictions on export of logs and timber and Mamira (i.e., a wild herbal medicinal plant) conserve exhaustible natural resources, i.e., which of these resources are "exhaustible" if they are replanted? In what way are the export restrictions made effective in conjunction with restrictions on domestic production or consumption?**
- **Per Article XI(a), in what way do the restrictions on raw hides and skins and raw wool prevent or relieve critical shortages of foodstuffs or other products essential to Nepal? Is it Nepal's contention that these products are, by definition, always in a state of critical shortage? If so, why doesn't Nepal import to relieve the shortage?**
- **Why does Nepal ban the export of imported raw materials, parts and capital goods?**

Answer:

We believe that logs, timber and mamira obtained from naturally grown plants are exhaustible natural resources and it is our responsibility as a signatory of various Environment Conventions, to preserve and protect natural resources. Thus, there are restrictions even for domestic consumption except for authorized uses. However, Nepal is considering to lift the ban or restriction on the export of these products which are planted (not natural resources) and grown for commercial purposes.

Regarding the export restriction on raw hides and skins and raw wool, it has been temporarily applied and Nepal intends to lift this export restriction at an appropriate time.

Nepal has banned the export of imported raw materials, parts and capital goods due to the possibility of trade deflection.

(f) Export financing, subsidy and promotion policies

Question 49.

Nepal has invoked Article 27.2 of the WTO Agreement on Subsidies and Countervailing Measures, i.e., the prohibition of industrial export subsidies does not apply to least developed countries, to justify its refusal to eliminate the export subsidy program that exempts income from manufacture for export from taxation.

Answer :

Not Applicable.

(h) Import duty drawback schemes

Question 50.

Please describe Nepal's system for duty drawback.

Answer:

As per Section 15 of the Industrial Enterprises Act, 1992, the customs duties/if any, Value Added Tax (VAT), and excise duty levied on raw materials used by any industry in connection with its product during its production is reimbursed on the basis of the value/quantity of export. Industries producing intermediate goods that are utilized in the production of exportable goods are also entitled to the reimbursement of duties and taxes levied on raw materials. The exporter is required to apply in a prescribed form for such reimbursement within one year from the date of export to the Secretariat, One window Committee, constituted under Industrial Enterprises Act 1992. Such reimbursement shall be made within sixty days from the date of an application to that effect. If exporter fails to submit an application within one year from the date of export, the said reimbursement can not be available for export.

3. Internal Policy Affecting Foreign Trade in Goods

(a) Industrial policy, including subsidy policies

Question 51.

In response to Question 117 Nepal refers to the answer to Question 116. One of the incentives available to industry (Question 116, provision (N)) is that no income tax is levied on the profits earned through export. Would Nepal please explain how this subsidy is consistent with Article 3 of the Agreement on Subsidies and Countervailing Measures which prohibits subsidies contingent on export performance?

Answer:

It is our view that Nepal being a least developed country (LDC) should benefit from Article 27, particularly 27.2 (a) of the Agreement on Subsidies and countervailing Measures.

Question 52.

A tax rebate contingent on the use of national products is a measure inconsistent with the TRIMS Agreement. What are the steps that Nepal intends to take to eliminate this measure by 2001 as foreseen by that Agreement (Question 115)?

Answer:

The Nepalese legislation do not have any mandatory or enforceable provisions requiring any industry to use specific percentage of indigenous raw materials in the production process. The 10 percent rebate of the income tax is applicable both for domestic and foreign investment and thus, as we understand, is not inconsistent with the provisions of the Agreement on Trade-Related Investment Measures (TRIMS).

Question 53.

Are the fiscal benefits described in the reply to Question 116 available to all industries, foreign and domestic, operating in Nepal?

Answer:

The benefits described in the reply to Question 116, WT/ACC/NPL/3, are available to all industries foreign and domestic operating in Nepal.

Question 54.

The response to question 26 of WT/ACC/NPL/3 states that Nepal applies a price subsidy on urea that had been planned to be eliminated by the end of 1999. Was this subsidy eliminated? Nepal states in response 115 of WT/ACC/NPL/3 that it grants a 10 percent rebate of the income tax to industries using not less than eighty per cent indigenous raw materials in its products and employing all its manpower from among Nepalese citizens. While this rebate is not contingent upon export performance, it is a prohibited subsidy within the meaning of Article 3:1(b) of the WTO Agreement on Subsidies and Countervailing Measures. Nepal should use the accession process as an opportunity to find WTO consistent methods of promoting exports and encouraging the expansion of employment and development. Economic activity based on such measures is not based on a sound economic foundation.

Answer:

Yes, the price subsidies have already been eliminated by the cabinet decision of 25 November 1999. See also answer to questions 51 and 55.

Question 55.

In light of the programs described in the response to question 116 of WT/ACC/NPL/3 we seek a commitment from Nepal that upon accession it will administer its subsidy programmes in conformity with the Agreement on Subsidies and Countervailing Measures, and that all necessary information on such programmes would be notified to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement.

Answer:

Nepal will administer subsidy programmes in conformity with the Agreement on Subsidies and Countervailing Measures upon Nepal's accession to WTO and also taking into account of Article 27 of that Agreement. Nepal will notify all necessary information on such programmes to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon Nepal's accession to WTO.

- (b) **Technical regulations and standards, including measures taken at the border with respect to imports**

Question 56.

We welcome the efforts Nepal is undertaking to assure the respect of the relevant WTO Agreement and we can certainly discuss bilaterally whether technical assistance is necessary. At the same time, we would also welcome a submission by Nepal, when available but before the completion of the accession process, of a detailed action plan for the full implementation of the Agreement indicating the measures necessary to assure compliance and the timetable for their adoption.

Answer:

The detailed legislative action plan is submitted in a separate document.

Question 57.

Nepal has stated that it uses many international standards as a basis of their technical regulations. What international standards does Nepal use for its technical regulations? It is also stated that in regard to standards, Nepal currently has 577 product and testing methods.

- **Please expand on the process to establish these and if they what international standards were used?**
- **Can Nepal please provide documentation of the standard setting process to determine voluntary standards and mandatory technical regulations?**
- **What role does the public and foreign stakeholders play in the development of standards and mandatory regulations? Is there an opportunity to comment and to what degree does the Nepal standards setting organizations take these comments under consideration? How many days are provided for comments?**
- **Can Nepal provide a copy of its Standards, Weight and Measurement Act and the Quality Certificate Make and Rules Act?**

Answer:

Nepal is a Corresponding Member of ISO and has followed the standards prescribed by ISO, beside this Nepal also follows other national standard such as Indian Standard and British Standard as and when required.

The authority to determine standards in relation to any goods, process or services is Nepal Council of Standards (NCS). The Council is a government body chaired by Minister for Industry, Commerce and Supplies and the members include, among others, president of Federation of Nepalese Chambers of Commerce, representative from Tribhuvan University. A Technical committee under the NCS sets the standard based on internationally defined parameters, national data and national requirements, among others. The participation on the Technical Committee is opened to all interested national or foreign persons/institutions. The decision of the Committee is circulated to concerned parties to provide comments within 30 days. After the completion of the process of collecting responses and adapting them, the set standards are published/notified and only implemented.

Once standards are set, the government may make them mandatory technical regulations upon the recommendation of concerned ministry e.g. Ministry of Agriculture, Ministry of Health, Ministry of Environment, and consumers association.

Nepal welcomes suggestions provided by the domestic and foreign stakeholders in the development of standards and mandatory regulations. It has been the practice to provide 30 days for comments on the development of standards and mandatory regulations.

The copies of concerning laws, "Nepal Standards (Certification Mark) Act, 1980" and "Standard Weights and Measures Act, 1968" are attached herewith for the consideration of the Working Party. [Please see Annex VI & VII.]

Question 58.

Nepal has stated that Nepal is ready to comply with its future obligations under the TBT Agreement.

- **Please provide documentation, such as implementing legislation, or current laws that demonstrate how Nepal will comply with its TBT obligations.**
- **Is the Nepal Gazette a publicly available publication?**

Answer:

The existing laws relevant to the Agreement on Technical Barriers to Trade are attached herewith. Please see Annex VI & VII. See also WT/ACC/NPL/5.

Nepal Gazette is a publicly available publication which covers laws, regulations and major Government decisions.

Question 59.

WT/ACC/NPL/3 states that most Nepalese National standards are based on international standards.

- i. **Please explain how Nepal sets Conformity Assessment Procedures (CAPs)? Are they based on internationally accepted CAPs?**
- ii. **Is the Nepal Council of Standards a government agency?**
- iii. **Please elaborate on the Nepalese inspection process to allow products to be certified to use the National Certification Mark. What is involved? How many inspections are required? What tests are used?**

Answer:

- i. Nepal sets conformity assessment procedures as follows:

Step 1 - Establishment of national standards

Preliminary draft standard (product standard, methods of analysis labelling requirements and other compliance procedures) ----> Technical Committee ----> Draft standard ----> Circulation for comments ----> Final draft standard ----> Nepal Council for Standards ----> Nepal Standards.

Most of the Nepal standards so produced are voluntary but if it is the case of public safety and health some of these standards are made mandatory and are published in Nepal Gazette.

Step 2

Factory inspection and market inspection procedures as well as the procedures to collect representative sample are established as per ISO, BS, IS standards.

Step 3

Methods of analysis (physical as well as chemical) are adopted as per international standards industrial establishments are also made to follow the standard method as per Nepal Standard.

Step 4

Inter laboratory proficiency testing are carried out at regular basis and analyst are made to meet in case of any dispute.

Step 5

Samples are collected in duplicate and in some case triplicate samples are also prepared as per necessity.

Duplicate samples are analyzed in the factory premises and also at Nepal Bureau of Standards and Metrology (NBSM) laboratory. Comparisons are made. In case of dispute, the sample is also sent to some other domestic laboratory (private accredited or public laboratory). This way, the quality conformity to required standards assessed.

Step 6

Regular quality audit of the laboratories are also carried out.

Step 7

Calibrations and verifications of the equipment being used in the factory premises and laboratory are regularly carried out by Nepal Bureau of Standards and Metrology. Secondary Standards at NBSM are regularly calibrated by National Physical Laboratory at New Delhi, India.

As far as possible, internationally accepted CAPs are followed.

- ii Nepal Council for Standards is a governmental body.
- iii. The Nepalese inspection process to allow products to be certified to use the National Certification Mark (Nepal Standard NS Mark) and with regards to it person involved, inspection required, tests used are as follows:

Step I

Application from the producer to have licence to use NS Mark in his product. (in the standard format) to Nepal Bureau of Standards and Metrology.

Step II

Analysis of the application

Step III

Preliminary inspection of (a) producer's commitment to product as per required quality and in compliance with the established standard. (b) Laboratory facilities along with required technical persons. (c) Calibration of the equipments. (d) Laboratory manual as per ISO guide. (e) International quality auditing system or implementation of the quality manual and evidences to prove that.

Step IV

Counseling by Nepal Bureau of Standard and Measurement (NBSM) to comply with the requirements laid down to have the licence.

Step V

Inspection of the industry as per the checklist developed by NBSM, Collection of the sample in duplicate, Verification of the results of chemical and physical analysis, Calibration certificate

Step VI

Collection of the market sample, Result of the analysis, Final inspection of the factory premises and collection of sample in duplicate, Verification of results of analysis and compliance procedures.

Step VII

At this point NBSM is assured that the industry in question is capable, has commitment and will go on production of the quality produce in compliance with Nepal Standard.

Step VIII

Case is put forward to the committee (internal) headed by Director General and is being represented by inspection unit, certification unit, metrology unit laboratory unit and other senior members.

Step IX

Approved by committee to award the licence to use NS Mark in the product.

Number of inspection depends upon how the industry is efficient in complying with the NBSM requirements and implementing the directives given by NBSM as well as its monitoring process.

Once the licence is awarded and the industry starts manufacturing the product with NS Mark, frequency of the inspection at factory premises and market inspection in general given due importance in the beginning and if assurance is continued the frequency is lowered but if the industry is found to come across any non conformity, the industry is asked to take immediate corrective action or otherwise the licence to use NS Mark is suspended until the industry proves that the goods are being produced in compliance with the required standard or specifications.

Question 60.

Concerning the Nepal Standards (Certification Mark) Act of 1980 - please provide a copy.

Nepal has stated that there are no unnecessary obstacles to international trade under the Nepal Standards Act and the Standard Weight and Measures Act. Could Nepal elaborate further on this point?

Answer:

The Nepal Standards (Certification Mark) Act, 1980 is attached herewith [Please see Annex VI]. The Nepal Standards (Certification Mark) Act, 1980 has prescribed the provision of a laboratory for the purpose of determination of standards or tests. It has respected the most favoured nation and national treatment obligations. The system of transparency and judicial review are inherent parts of the Act. The Standard Weights and Measures Act, 1968 also follows the same principles.

(c) Sanitary and photo-sanitary measures, including measures taken with respect to imports

Question 61.

We welcome the tentative plans of action included in reply to Question 141 and the checklist of illustrative SPS issues (WT/ACC/NPL/6). Would Nepal provide a progress report on implementation of the tentative action plans?

Answer:

There is not much progress on implementation of the tentative action plan provided in Question 141 WT/ACC/NPL/3 in respect to Sanitary and Phytosanitary measures. Nepal expects to benefit adequate technical assistance from WTO members to make a successful implementation of the action plan.

Question 62.

We are reviewing Nepal's sanitary and phytosanitary regime in light of the checklist contained in WT/ACC/NPL/6 and other information provided. We appreciate the difficulties that Nepal may have in implementing the SPS Agreement, but we believe that the timetable outlined in WT/ACC/NPL/3 is unrealistic in light of Nepal's commitment to utilize WTO to the fullest extent possible. We also note that the transparency provisions are not slated for implementation prior to accession. This is necessary. We will submit our questions and comments in writing, along with a proposal for implementation that may be able to accelerate Nepal's compliance.

Answer:

Nepal highly appreciates suggestions and welcomes the Working Party comments, along with a proposal for implementation that will be able to accelerate Nepal's compliance in this respect.

Question 63.

We welcome the presentation of a tentative plan of action for the implementation of the SPS Agreement. It is important that such an action plan is constantly updated during the accession process so that the Working Party could keep track of the developments or problems arising in the course of its implementation.

Answer:

Upon receiving the proposal for implementation from the Working Party as noted in Question number 62, Nepal will present an updated tentative plan of action for the implementation of the SPS Agreement.

(e) **State-trading practices**

Question 64.

The response to question 25 of WT/ACC/NPL/3 states that Nepal is prepared to notify the Nepal Oil Corporation as a state trading enterprise within the definition of paragraph 1 of the Understanding on the Interpretation of Article XVII of the GATT 1994. Please confirm that after accession to the WTO Nepal will apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special or exclusive privileges in conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS, and that Nepal will notify any enterprise falling within the scope of Article XVII.

Answer:

Nepal confirms, after accession to the WTO, that it will apply its laws and regulations governing the trading activities of state-trading enterprises and other enterprises with special or exclusive privileges in conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding of that Article and Article VIII of the GATS, and it will notify any enterprise falling within the scope of Article XVII.

Question 65.

The response to question 151 of WT/ACC/NPL/3 is incomplete. We acknowledge Nepal's statement that the Nepal Food Corporation, the National Trading Limited, the Salt Trading Corporation, the Agriculture Imports Corporation, the Cottage and Handicraft Emporium, the Nepal Coal Company and the Nepal Transit and Warehouse do not have any exclusive rights or privileges. Do any of these enterprises have special rights or privileges, e.g., do they enjoy Government patronage or buy or sell on behalf of the government?

Answer:

With respect to these enterprises, Nepal is aware that upon the accession such enterprises shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in GATT and Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

(l) **Government procurement practices, including general legal regime and procedures for tendering, dealing with tenders and award of contracts**

Question 66.

One of the primary ways companies do business in Nepal is through government contracting. The answers to questions 160-175 indicate that there is still some preferential treatment given to Nepalese companies in government procurement. For example, Nepalese citizens need only deposit five per cent of the tender value when competing for government contracts, whereas foreigners must deposit ten per cent. Further, the Nepalese government has indicated that it will give preference to Nepalese products if the price difference with foreign products is not

above 7.5 per cent. Finally, there is not central agency in Nepal which controls the legislation relating to government procurement and monitors possible infringements. Could Nepal please advise what steps it is prepared to take to bring government procurement into conformity with the national treatment provisions in the WTO?

Answer:

At the moment, Nepal does not intend to take part on Plurilateral Trade Agreements including Agreement on Government Procurement.

Question 67.

We would welcome a commitment by Nepal to become an observer to the Government Procurement Agreement (GPA).

Answer:

In regard to the observer status of the Government Procurement Agreement, Nepal will seriously examine it.

Question 68.

Given its relatively open procurement policies, we continue to urge Nepal to initiate negotiations to join the Agreement on Government Procurement soon after accession.

Answer:

Please see answer 66.

4. Policies Affecting Foreign Trade in Agricultural Products

(b) Exports

Question 69.

Measures Exempt from Reductions (Table DS:1). We note Nepal's Domestic Support Table DS:1 includes three-year average expenditure of Nr 2,737,860,000 on infrastructural services, specifically "irrigation and drainage". Could Nepal confirm that this expenditure met the criterion in paragraph 2 of Annex 4 of the Agreement, namely that the infrastructure is generally available to the public? We would appreciate Nepal clarifying the nature of the "Crop Subsidies" expenditure under "Payment for Relief from Natural Disasters". In particular, could Nepal confirm the payments conformed to the criteria under paragraph 8 of Annex 2 of the Agreement? We would appreciate Nepal elaborating on the nature of the programs listed under the category "others" in table DS:1, in particular how the support for seeds and dairy development meets the criteria in Annex 2 of the

Answer:

Revised and updates of ACC 4 will be provided in due course of time. The revision will address the above questions.

(c) Export prohibitions and restrictions

Question 70.

Nepal considers (Question 179) the restriction on the export of raw wool could be justified under Article XI:2(A) of GATT 1994 which concerns export prohibitions or restrictions which are "temporarily applied". Would Nepal advise how long it anticipates maintaining the restriction?

Answer

Nepal will examine this issue.

(e) Internal policies

Question 71.

In response to Question 26 (Marketing and Price Regulation of Basic Agricultural Products), Nepal advised that the respective commodity associations determine the "support indicative prices" which are established for sugar cane, tobacco and cotton. Could Nepal provide details of how the commodity associations determine the support prices? We are also still interested in more information on the Ministry of Agriculture's Marketing and Price Regulation Policies and their operation.

Answer:

The support indicative prices, and marketing and price regulation policies do not exist any more.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

Question 72.

We welcome the efforts Nepal is undertaking to assure the respect of the relevant WTO Agreement and we can certainly discuss bilaterally whether technical assistance is necessary. At the same time, we would also welcome a submission by Nepal, when available but before the completion of the accession process, of a detailed action plan for the full implementation of the Agreement indicating the measures necessary to assure compliance and the timetable for their adoption.

Answer:

The detail legislative action plan is submitted in a separate document.

(a) Intellectual property policy

Question 73.

In WT/ACC/NPL/3 (Q.260) Nepal indicated that a patent may not be registered where the registration of the patent will constitute a contravention of existing Nepal law. How is this exclusion from patentability in conformity with Article 27.2 "provided that such exclusion is not made merely because the exploitation is prohibited by their law"?

Answer:

The provision of Nepalese law catches the spirit of Article XX: (d) of GATT and Article 27:2 of TRIPS. The Department of Industry shall not grant patent registration: a) if the patent is already registered in the name of any person, or b) if the applicant himself is not the inventor of the patent sought to be registered by him, nor has he acquired rights over it from the original inventor, or c) if the patent sought to be registered is likely to adversely affect the public health, conduct or morality or the national interest, or d) if the registration of the patent will constitute a contravention of existing Nepal Law. Regarding the last condition, the law will be amended in full conformity with the TRIPS Agreement as indicated in Legislative Action Plan.

Question 74.

With regards to patents or sui generis protection of plant varieties, Nepal has indicated that IPR protection may have implications for bio-diversity and that Nepal would make an assessment of these implications (Q.283-284, WT/ACC/NPL/3). What implications is Nepal considering and how would this effect the introduction of plant variety protection given that the granting of protection as required by TRIPS Article 27.3(B) does not prevent a country from introducing other regulations?

Answer:

In regard to patents or *sui generis* protection of plant varieties, Nepal is studying the implications of an alternative legal framework for biodiversity. Nepal does not intend, however, to make any provision inconsistent to Article 27.3(B) and any other Article of TRIPS.

Question 75.

We welcome the amendments and plans for amendments that Nepal has undertaken since 1999. (WTO/ACC/NPL/3). Does Nepal believe that it can make the requisite amendments to its laws by the date provided for by TRIPS Article 66.2, and what, if any assistance has Nepal received from the WTO Secretariat or other organizations, i.e. WIPO or countries?

Answer:

Yes, Nepal believes that it can make the requisite amendments to its laws by the date provided for by Article 66 of TRIPS Agreement. If Nepal receives substantive assistance from the WTO Secretariat or other organizations, the amendment of relevant laws could be completed earlier than the transition period of 10 years as provided in Article 66.1 of TRIPS Agreement.

Question 76.

Nepal has stated that it is preparing the draft of a new Industrial Property Law and reviewing the Copyright Act 1965 to make it fully compatible with the TRIPS Agreement. We also note Nepal's statement that it intends to incorporate all the substantive provisions of the TRIPS Agreement in its legal framework.

- **Nepal's commitment to bring its regime into conformity with TRIPS is very encouraging. We especially urge Nepal to use the comments provided in WT/ACC/NPL/3 and provided after this meeting to ensure that the noted issues in the IPR sector are addressed in the new laws.**
- **Is any additional legislation in development, e.g., how will provisions for the protection of undisclosed information be adopted?**

- **We look forward to reviewing the draft legislation and helping Nepal address the identified issues.**

Answer:

Nepal is thankful for the Working Party proposal and highly appreciates the assistance of Working Party in respect to bringing Nepal's IPR regime into conformity with TRIPS.

4. Enforcement

Question 77.

Document WT/ACC/NPL/7 indicates that enacting new laws or regulations will be necessary to implement several of the enforcement provisions found in TRIPS, Part III. The following questions seek information on Nepal's specific plans and the expected date of enactment for the pertinent new legislation or regulations

a) Concerning the response to Question 295:

- i. What is the expected time-frame for enactment of the new Industrial Property Law and amending existing intellectual property and enforcement laws to comply with the enforcement provisions in Part III of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)?**

Answer:

- a.i. Nepal expects that she would be able to develop required institutional mechanism and human resource to assume the enforcement obligations as envisioned in TRIPs by January 2006 and thus will enact a new Industrial Property Law and amend existing intellectual property and enforcement laws by that time to comply with the enforcement provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Question 78.

- ii. Please provide a list of all the existing intellectual property and enforcement laws that will be amended to comply with TRIPS, Part III.**

Answer:

- a.ii. The existing intellectual property and enforcement laws which are to be amended to comply with TRIPS Agreement are (i) Patent, Design and Trademark Act, 1965 and (ii) Copyright Act, 1965. Nepal is considering to enact Industrial Property Right Act instead of Patent, Design and Trademark Act, 1965 which will broaden the scope of the patentable subjects including geographical indications, layout designs and undisclosed information.

Question 79.

b) Concerning the response to Questions 296, 314 and 315:

- i. Please clarify whether additional procedures and remedies will be enacted to provide protection for intellectual property rights at the border and describe how they will meet the requirements of Articles 51 – 61 of Section 4 (Special Requirements Related to Border Measures).**

Answer:

- b.i. Concerning the border measures, Nepal is going to enact additional procedures and remedies to provide protection for intellectual property rights at the border and this enactment will be in line with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Question 80.

- c) **The answer to Question 297 indicates that administrative procedures (i.e. Registrar of Copyrights) exist for copyright infringement actions.**
- i. **Do copyright owners also have the option of filing an infringement action directly with judicial authorities?**
- ii. **If yes, must the action be filed with the Registrar of Copyrights first and then with judicial authorities?**
- iii. **If no, under what circumstances would a copyright infringement action be filed with judicial versus administrative authorities?**
- iv. **Does the Short Procedural Act 1971 also govern procedures in copyright infringement actions filed with judicial authorities?**
- v. **Please describe how the procedures under the Short Procedural Act 1971 comply with the provisions of TRIPS, Articles 42-48.**

Answer:

- c.i-v. Concerning the remedy procedures in respect to copyright infringement, the owner of the copyright has to file an infringement action directly with the Registrar of Copyrights which delivers its decision under its tribunal capacity. If a party of the case is not satisfied with the decision of the tribunal, it can file an appeal at the Court of Appeal. The Copyright Act, 1965 has prescribed some procedures in this respect and if some area of the procedure is not covered by the Copyright Act, 1965, it will be covered by the provisions of the Short Procedural Act, 1971. The Short Procedural Act, 1971 is a General law applied by courts and tribunals in certain cases. The Short Procedural Act, 1971 is aimed to finalize cases promptly in a short time and it governs summon notices, limitations, evidences, witnesses etc. It is not a substantive law and does not cover the areas described by Article 44, 45, 46, 48 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Question 81.

- vi. **Describe all remedies (e.g. injunctions, damages, disposition of infringing goods) that judicial and administrative authorities in Nepal can impose in civil infringement actions and, specifically, how they comply with TRIPS, Articles 44-46.**
- vii. **Please clarify whether remedies are available in copyright infringement cases, filed before judicial and administrative authorities only if the copyright is registered with the Registrar of Copyrights.**

Answer:

- c.vi-vii. All remedies, i.e., damages etc. are available under Copyright Act, 1965 in civil infringement action. Remedy of injunction is not available under Copyright Act, 1965 but a concerning party may request for the issuance of an injunction order with the Court of Appeal for the protection of copyright under Justice Administration Act, 1991. There is also a provision for border measures and a provision of imprisonment up to two years under Copyrights Act, 1965. Nepal is considering to amend the Copyright Act, 1965 and to arrange all laws thus improving it in accordance to the TRIPS. Nepal intends to amend the provision that infringement remedies are available only to the registered copyright.

Question 82.

- d) Concerning the response to question 299:**
- i. Does the Government of Nepal intend to amend its laws or regulations to provide the following procedures in infringement actions brought before judicial and administrative authorities?**
 - ii. A means to identify and protect confidential information, as required by TRIPS, Article 42.**
 - iii. To provide reasoned, written decisions on the merits, which are promptly made available to the parties as required by TRIPS, Article 41 (3).**
 - iv. Compensation to a party wrongfully enjoined or restrained as required by TRIPS, Article 48.**
 - v. If yes, what is the expected time-frame for enactment of the new legislation or regulations?**

Answer:

- d.i-v. Concerning the enforcement procedures, Government of Nepal intends to amend its laws to provide procedures to identify and protect confidential information as required by Article 42 of TRIPS, make provisions for the availability of reasoned decisions promptly to the parties as required by Article 41:3 of TRIPS, make provisions for compensation to a party wrongfully enjoined or restrained as required by Article 48 of TRIPS. Nepal expects technical assistance in the process of drafting and the expected time-frame for amendments or enactment of the new legislation or regulations is January 2006.

Question 83.

- e) Concerning the response to question 301:**
- i. Please clarify whether new fines will be imposed for violations of the Patent, Design and Trademark Act, 1965? How would the amount be determined and what is the time-frame for enactment?**

Answer:

- e.i. The provision of the fine for infringers for the violations of the Patent, Design and Trademark Act, 1965, will be reviewed in the amendment of the Patent, Design and Trademark Act, 1965. If the Industrial Property Right Act is enacted instead of amending the Patent, Design

and Trademark Act, 1956 the same standard will be adopted. The amount of fine will be in accordance to the losses caused to the owner of the intellectual property. The time frame for enactment of new legislation would be provided in Legislative Action Plan.

Question 84.

- f) **Concerning the response to question 305:**
- i. **Under what circumstances in IP infringement actions do Appellate Courts issue an order of mandamus or injunction?**

Answer:

- f.i. Concerning the order of mandamus or injunction, the Appellate Court may issue an order of injunction to prohibit further infringement or continuation of illegal acts and an order of mandamus in the name of Authority for the performance of legal duties under Justice Administration Act, 1991.

Question 85.

- g) **Concerning the response to question 311:**
- i. **Please elaborate on the procedures that will be enacted to comply with TRIPS, Article 50 and indicate an anticipated date for enactment of the new legislation or regulations.**

Answer:

- g.i. Regarding the Provisional Measures of Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, Nepal will adopt the Provisional Measures of Article 50 of TRIPS and follow all norms and standards prescribed in the said Article 50 by amending present intellectual property rights laws or enacting new laws. The anticipated date for enforcement of the new legislation or regulation would be January 2006.

Question 86.

- h) **Concerning the response to question 316:**
- i. **Please elaborate on the procedures that will be enacted to comply with TRIPS, Article 61 and indicate an anticipated date for enactment of the new legislation or regulations.**

Answer:

- h.i. Concerning the criminal procedures of Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Copyright Act, 1965 has already provided criminal procedures and penalties in cases of pirated copyrighted goods. Nepal will provide criminal procedures and penalties in cases of willful trademark counterfeit by amending the Patent, Design and Trademark Act, 1965 or enacting Industrial Property Right Act in accordance to the Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights. The anticipated date for enforcement of the new legislation or regulations would be January 2006.

VI. TRADE-RELATED SERVICES REGIME

1. General Introduction

Professional Services

Legal Services

Question 87.

When scheduling commitments to legal services would Nepal consider allowing foreign investment and participation in legal services, particularly in home, third country and international law?

Answer:

The revised schedule of initial commitments on services sector will be submitted separately.

Accounting, Auditing and Bookkeeping

Question 88.

Under the Company Act 2021, to what end must a Nepalese licensed auditor be appointed to work with a foreign auditor?

Answer:

The Company Act, 2021 is repealed by the Company Act, 2053 (1997) and in the New Act there is no such provision of requiring a foreign auditor to work with a Nepalese licensed auditor. Moreover, Foreign investment on accounting, auditing and book-keeping is not allowed under the Foreign Investment and Technology Transfer Act, 1992.

Engineering Services

Question 89.

Architectural Engineering, Integrated Engineering, and Urban Planning and Landscape Architectural Services - Would Nepal please consider removing the restrictions placed on these subsectors? We also seek information on the process of obtaining permission for the establishment of a foreign construction company.

Answer:

The revised schedule of initial commitments in services sector will be submitted separately.

The process of obtaining permission for the establishment of a foreign construction company is the same as for other foreign companies. Please see answers to question number 1 and 2 for the process of obtaining permission by a foreign company.

Telecommunications services

Question 90.

Would Nepal please provide information on the process of how foreign service providers are to ascertain whether a Nepalese national can provide these services? We would welcome an offer

from Nepal which allows open foreign investment and participation in this sector and so encourage Nepal to remove restrictions (Questions 333-336). We encourage Nepal to adopt in full the WTO reference paper on basic telecommunications (Questions 333-336). The answers to Questions 332-336 demonstrate that Nepal does have a policy of encouraging the involvement of foreign investors in the telecommunications sector. The Telecommunications Act 1997 says that no-one may operate a telecommunications service without obtaining a licence. Further, the Act establishes the Nepal Telecommunication Authority (NTA). One of the functions of the NTA is to ensure private sector participation, both domestic and foreign, in the operation of telecommunications services in Nepal. Although the legislation was passed in 1997, the NTA is not yet operational. Could Nepal advise when it expects the NTA to become operational?

Answer:

Nepal would positively consider to adopt WTO Reference Paper on basic telecommunication.

The Nepal Telecommunication Authority (NTA) has already been in operation. All information regarding the telecommunication services is available in the web site of NTA, i.e. <http://nta.gov.np>.

Financial Services

Question 91.

We strongly recommend Nepal use the financial services Annex in scheduling their commitments, to assist in increasing transparency and compatibility between countries (Questions 339-354). There is currently a mandatory requirements that foreign financial institutions have a local joint venture partner when operating in Nepal. The Nepalese Government directs foreign joint venture banks on matters such as lending policy and the number and location of branches. We would welcome an offer on financial services (insurance and banking) from Nepal which when in the standard schedule format, applied no restrictions on market access or national treatment, especially in modes 1), 2) and 3).

Answer:

With regards to Nepal's commitments, please see revised Nepal's Schedule of Commitments.

Question 92.

Please explain the scope and rationale of the economic needs test in the financial services sector.

Answer:

The Central Bank has not set out any criteria for economic needs test as such. The applicant is required to submit the feasibility study report based on the sound financial operation of the proposed company.

2. Policies Affecting Trade in Services

Question 93.

According to the response to Question 16 of WT/ACC/NPL/3, consultancy services, such as management, accounting, engineering and legal services, are not open to foreign investment. Please explain in detail the reason for such, as it seems more appropriate that these areas be open to foreign investment in order to promote the transfer of advanced expertise.

Answer:

Consultancy services, such as management, accounting, engineering and legal services, are not open to foreign investment under the Foreign Investment and Technology Transfer Act, 1992. However, the authority may grant permission for foreign technology transfer on such areas under the restrictive clause of Sub-section (4) of Section 3 of the said Act.

Question 94.

Please provide information on how Nepal is complying with or will make changes to ensure that its regulatory regime fully complies with GATS requirements. With regard to each of the services sectors subject to regulation where Nepal has specified the agency in charge of licensing and/or granting permission for each service activity, please report on how the requirements are made available to service providers and how the licensing system works in practice.

Answer:

Nepal's regulatory regime of the service sector listed in the Schedule of Commitment including the licensing system and the requirements will be made fully compatible with the General Agreement on Trade in Services by enacting and/or amending the concerning laws and regulations.

Question 95.

Please specify what judicial, arbitral or administrative procedures are available for the review of, and, where justified, remedy of administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the decision, please indicate whether there are procedures to ensure that such reviews or remedies are applied in an objective and impartial manner.

Answer:

The authorities' decision affecting trade in services are subject to judicial review under the provision of each law governing such a service sector. There is also a provision of appeal in such cases under Justice Administration Act, 1991. Generally the appeal lies with the Court of Appeal which is an independent judicial body.

Question 96.

We would like to offer the following points to assist Nepal in their progress, taking into consideration the provisions of Article IV.3 of the GATS. We will raise additional issues once Nepal submits a Services Schedule.

Answer:

Nepal welcomes further assistance and questions.

Question 97.

According to the answer to Question 18 of WT/ACC/NPL/3, the Foreign Investment and Technology Act does not provide an appeal procedure against any non-successful application. Does this mean that no non-successful application can be appealed? Are there any laws other than the Foreign Investment and Technology Act, which stipulate such an appeal procedure?

Answer:

Under Section 7 of the Foreign Investment and Technology Transfer Act, 1992 there is a provision of Arbitration for dispute settlement in respect to disputes that may arise between a foreign investor, national investor or a concerning industry. The decision of the Arbitration will be appealable to the Court of Appeal in accordance with the Arbitration Act, 1999.

The Justice Administration Act, 1991 provides provision of an appeal against the decision of any Authority in respect to disputes between parties but not in the case of non-successful application in respect to permission for foreign investment.

Question 98.

Please provide more information about the regulation of public sector entities, particularly those in the business, transport, communications, distribution, financial services and tourism sectors. Are regulatory functions separate from management and operation of the enterprises? In this regard note that GATS provisions may entail specific obligations where such enterprises are exclusive service providers or otherwise benefit from monopoly status.

Answer:

Some of the public sector entities are regulated by the Act made for them as such, i.e. Royal Nepal Airlines Corporation Act, 1962, Telecommunication Corporation Act, 2028, Gorkhapatra Corporation Act, 1962, Agriculture Development Bank Act, 1966, Nepal Drinking Water Corporation Act, 1988 and other public sector entities are regulated by the Corporation Act, 2021. Likewise, public sector entities relating to financial services are regulated by the Central Bank Act 1955 and the Commercial Bank Act, 1974.

Question 99.

Nepal states that all foreign investments require governmental approval. Why is permission necessary on a case-by-case basis, above and beyond regular licensing procedures? Please describe the criteria by which foreign investment applications are judged, and how this process differs from regular licensing procedures, for instance by specifying at what level of government the decision is made, whether it applies to additional investments by incumbent foreign investors or only new investments, and what conditions and criteria a foreign investor must meet. Also, indicate whether or not it is the case that if all conditions and criteria are met, then approval is automatically granted.

Answer:

Please see answers to question number 1 and 2 for the criteria of foreign investment and the authority which gives decision in respect to foreign investment. A foreign investor must meet this criteria only in case of new investments. If all conditions and criteria for foreign investments are met, then approval is granted without any discrimination.

It is our understanding that none of the WTO Agreements provide rights to foreigners to invest and it is the investment policy of Nepal which requires permission for foreign investment.

VII. INSTITUTIONAL BASIS FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

2. Economic Integration: Customs Union and Free Trade Area Agreements

Question 100.

Preferential arrangements, whether consistent with Article XXIV or not, undermine the value of all MFN commitments. As a consequence, Nepal has a responsibility to be fully transparent in its participation in such arrangements. Please provide in detail the information requested in WT/ACC/NPL/3 on the scope and nature of Nepal's preferential system.

Answer:

Nepal has entered into a number of bilateral trade Agreements and treaties with other countries. To date, Nepal has concluded bilateral trade Agreements with 17 countries including its closest neighbours such as India, Bangladesh, China, Pakistan, Russia, Mongolia and Sri Lanka as well as the countries of Bulgaria, Czech Republic, Egypt, Republic of Korea, Democratic People's Republic of Korea, Poland, Romania, UK, USA and Yugoslavia. More recently, a new trade deal between Nepal and the European Union was signed. At the same time, it has been a member of the South Asian Association for Regional Cooperation (SAARC), actively involved in the current negotiations for the creation of a free trade area among the SAARC members (i.e. Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka).

Trade diversification and export promotion are the basic objectives of Nepal's foreign trade policy. The policy instruments, commonly used in these Agreements to achieve the objectives, can be summarized as follows: the adoption of the Most Favoured Nation treatment principle, reciprocal and discriminatory trade concessions (in case of India, Tibet), facilitation of the movement of goods across borders by adopting clear and common transit procedures and provision of the facilities required for the goods in transit, and the granting of unilateral non-reciprocal special treatment for least developed countries.

Copy of the South Asia Preferential Trade Arrangement (SAPTA) and the Treaty of Trade between Nepal and India will be notified to the WTO.

Question 101.

What portion of Nepal's total imports in a recent period are imported on a preferential basis, under its Agreements with India, Tibet, and SAPTA?

Answer:

Nepal's imports, on a preferential basis, under its Agreement with SAPTA is 36.5 per cent of Nepal's total imports. Likewise imports from India is 35.1 per cent and Tibet is 1.2 per cent of Nepal's total imports. India is one of the members of the SAPTA.

Question 102.

We would like to see information on these arrangements included in the Working Party report. We also seek Nepal's Agreement that it will notify these arrangements to the WTO for review in the Committee on Regional Trade Arrangements.

Answer:

Nepal agrees to notify preferential arrangements to the WTO.
