

**INDO-NEPAL
TREATY OF TRADE**

**MINISTRY OF COMMERCE & INDUSTRY
GOVERNMENT OF INDIA NEW DELHI**

TREATY OF TRADE BETWEEN THE GOVERNMENT OF INDIA AND HIS MAJESTY'S GOVERNMENT OF NEPAL

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

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

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

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

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

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

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

For the government of India Shri P. Chidambaram,
Minister of State for Commerce

For His Majesty's Shri Gopal Man Shrestha,
Government of Nepal Minister of Commerce

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

ARTICLE I

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

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

ARTICLE IX

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

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

ARTICLE X

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

ARTICLE XI

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

ARTICLE XII

(a)* This Treaty shall remain in force ****for a period of five years from 6th March, 2002 to 5th March, 2007** and shall be automatically extended for further periods of five (5) years at a time, unless either of the parties gives to the other a written notice, three months in advance, of its intention to terminate the Treaty.

(b)* This Treaty may be amended or modified by mutual consent of the parties.

Done in duplicate in Hindi, Nepali and English languages, all the texts being equally authentic, at New Delhi on 6th December 1991. In case of doubt, the English text will prevail.

(P. CHIDAMBARAM)

Minster of State for Commerce
For the Government of India

(GOPALMAN SHRESTHA)

Minister of Commerce
Government of Nepal

* As modified through exchange of letters dated 3rd December, 1996 between the Commerce Secretaries of India and Nepal.

** As modified through exchange of letters dated 2nd March, 2002 between Commerce Secretaries of India and Nepal.

*** The Validity of the Treaty of Trade in its existing form stands extended for a further period of five years from 6th March 2007 to 5th March 2012.

PROTOCOL TO THE TREATY OF TRADE

I. With Reference to Article I

1. It is understood that the trade between the two Contracting Parties shall be conducted through the mutually agreed routes as are mentioned in the **Annexure A**. Such mutually agreed routes would be subject to joint review as and when required.
2. It is further understood that the exports to and imports from each other of goods which are not subject to prohibitions or duties on exportation or importation shall continue to move through the traditional routes on the common border.

II. With Reference to Article II

1. It is understood that all goods of Indian or Nepalese origin shall be allowed to move unhampered to Nepal or India respectively without being subjected to any quantitative restrictions, licensing or permit system with the following exceptions:
 - (a) goods restricted for export to third countries,
 - (b) goods subject to control on price for distribution or movement within the domestic market, and
 - (c) goods prohibited for export to each other's territories to prevent deflection to third countries.
2. In order to facilitate the smooth flow of goods across the border, the list of commodities subject to restrictions/prohibitions on exports to each other's territories shall be immediately communicated through diplomatic channels as and when such restrictions/prohibitions are imposed or relaxed.
3. It is further understood that when notifications regarding restrictions on exports to each other are issued, adequate provisions will be made therein to allow the export to each other of the goods which are already covered by Letter

of Credit or goods which are already in transit and/or booked through the railways or other public sector transport undertakings or goods which have already arrived at the border customs posts on the day of the notification.

4. In respect of goods falling under prohibited or restricted categories as mentioned in para 1 above and where needed by one Contracting Party, the other shall authorise exports of such goods subject to specific annual quota allocations. Specific request list of such goods shall be furnished to each other by the end of November, and specific quota allocations for the following calendar year shall be made by the end of December with due regard to the supply availability and the overall need of the other Contracting Party. The quota list may be jointly reviewed as and when necessary.

5. The Contracting Parties shall take appropriate measures and co-operate with each other to prevent unauthorised import in excess of the quota of goods the export of which is prohibited or restricted from the territory of the other Contracting Party.

III. With Reference to Article III

1. The Government of India will allow to his Majesty's Government of Nepal payment of the excise and other duties collected by the Government of India on goods produced in India and exported to Nepal provided that:

- (i) such payment shall not exceed the import duties and like charges levied by His Majesty's Government of Nepal on similar goods imported from any other country, and
- (ii) His Majesty's Government of Nepal shall not collect from the importer of the said Indian goods so much of the import duty and like charges as is equal to the payment allowed by the Government of India.

IV. With Reference to Article IV

1. The following primary products would be eligible for preferential treatment:
- 1. Agriculture, horticulture and forest produce and minerals which have not undergone any processing,
 - 2. Rice, pulses and flour,
 - 3. Timber,
 - 4. Jaggery (gur and shakar),
 - 5. Animals, birds and fish,
 - 6. Bees, bees-wax and honey,

7. Raw wool, goat hair, and bones as are used in the manufacture of bone-meal,
8. Milk, home made products of milk and eggs,
9. Ghani-produced oil and oilcakes,
10. Ayurvedic and herbal medicines,
11. Articles produced by village artisans as are mainly used in villages,
12. Akara,
13. Yak Tail,
14. Any other primary products which may be mutually agreed upon.

2. It is understood that in the matter of internal taxes or charges the movement of primary products of either Contracting Party to any market destinations in the territory of the other shall be accorded treatment no less favourable than that accorded to the movement of its own primary products within its territory.

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

V. #With Reference to Article V

1. The Government of India will provide preferential access to the Indian market free of customs duties normally applicable and quantitative restrictions, except as mentioned elsewhere, for all articles manufactured in Nepal, provided they fulfill the qualifying criteria given below:

- (a) the articles are manufactured in Nepal wholly from Nepalese materials or Indian materials or Nepalese and Indian materials; or
- (b) (i) the articles involve a manufacturing process in Nepal that brings about a change in classification, at four digit level, of the Harmonized Commodities Description and Coding System, different from those, in which all the third country origin materials used in its manufacture are classified; and the manufacturing process is not limited to insufficient working or processing as indicated in Annexure "B", and
- (b) (ii) From 6th March 2002 to 5th March 2003, the total value of materials, parts or produce originating from non-Contracting Parties or of undetermined origin used does not exceed 75% (seventy five percent) of the ex-factory price of the articles produced, and the final process of manufacturing is performed within the territory of Nepal. From 6th March

2003 onwards, the total value of materials, parts or produce originating from non-Contracting Parties or of undetermined origin used does not

As modified on 02.03.2002

exceed 70% (seventy percent) of the ex-factory price of the articles produced, and the final process of manufacturing is performed within the territory of Nepal.

Note:

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

(c) For Nepalese articles not fulfilling the conditions given in sub-para-1 (b) (i) above, but fulfilling the condition at sub-para-1 (b)(ii) above, preferential access may be given by the Government of India, on a case by case basis, after satisfying itself that such article has undergone a sufficient manufacturing process within Nepal.

(d) However, the import of Nepalese manufactured articles described in **Annexure "C"** which fulfill the criteria in sub-para-1 (a) or (b) (i) & (ii) above will be governed by the terms specified in this Annexure.

(e) In the case of other articles manufactured in Nepal which do not fulfill the qualifying criteria specified in sub-para-1 (a) or (b) (i) & (ii) above, the Government of India will provide normal access to the Indian market consistent with its MFN treatment.

2. Import of articles in accordance with the para-1 above shall be allowed by the Indian customs authorities on the basis of the Certificate of Origin to be issued by the agency designated for this purpose by His Majesty's Government of Nepal in the format prescribed at **Annexure – "D"** for each consignment of articles

exported from Nepal to India. Information regarding the basis of calculation for grant of such Certificates of Origin to the manufacturing facilities in Nepal will be provided to the Government of India on an annual basis. The modalities for this will be worked out within three months from the signing of the Protocol. Preferential facility shall not be available for the articles listed at **Annexure-“E”**.

3. On the basis of a Certificate issued, for each consignment of articles manufactured in the small-scale units in Nepal, by His Majesty's Government of Nepal, that the relevant conditions applicable to the articles manufactured in similar Small Scale Industrial units in India for relief in the levy of applicable Excise Duty rates are fulfilled for such a parity, Government of India will extend parity in the levy of Additional Duty on such Nepalese articles equal to the treatment provided in the levy of effective Excise Duty on similar Indian articles under the Indian Customs and Central Excise Tariff. However, this facility will be applicable only to articles manufactured in Nepal in such small scale units which qualify as small scale units under the Nepalese Industrial Policy as on 5th December, 2001.

4. The “Additional Duty” rates equal to the effective Indian excise duty rates applicable to similar Indian products under the Indian Customs & Central Excise Tariff will continue to be levied on the imports into India of products manufactured in the medium and large scale units in Nepal.

4.1 In regard to additional duty collected by the Government of India in respect of manufactured articles other than those manufactured in “small” units; Wherever it is established that the cost of production of an article is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 per cent of the “additional duty” collected by the Government of India, will be paid to His Majesty's Government of Nepal provided His Majesty's Government of Nepal have given assistance to the same extent to the (manufacturers) exporters.

5. Export of consignments from Nepal accompanied by the Certificate of Origin will normally not be subjected to any detention/delays at the Indian customs border checkposts and other places en route. However, in case of reasonable doubt about the authenticity of Certificate of Origin, the Indian Customs Authority may seek a clarification from the certifying agency which will furnish the same within a period of thirty days. Meanwhile, the subject consignment will be allowed entry into India on provisional basis against a bond i.e. a legally binding undertaking as required. After examining the information so provided by the certifying agency, the Indian Customs Authority would take appropriate action to finalise the provisional assessment. Whenever considered necessary, request for a joint visit of the manufacturing facility may be made by the Indian Customs Authority which would be facilitated by the concerned Nepalese

authority within a period of thirty days.

6. Where for social and economic reasons, the import of an item into India is permitted only through public sector agencies or where the import of an item is prohibited under the Indian Trade control regulations, the Government of India will consider any request of His Majesty's Government of Nepal for relaxation may permit the import of such an item from Nepal in such a manner as may be found to be suitable.

7. For the purpose of calculation of import duties customs valuation procedures, as prescribed under the prevailing customs law, will be followed.

VI. With Reference to Article VI

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

◆With Reference to Article IX

In the event of imports under the Treaty, in such a manner or in such quantities as to cause or threaten to cause injury to the domestic industry or a significant segment of it relating to the article, the importing country may request for consultations in the Joint Committee set up by the two Governments for this purpose with a view to taking appropriate measures. If the consultations in the Joint Committee fail to resolve the issue within a period of sixty days from the date of such request, then the requesting government shall be free to take appropriate remedial measures. The India-Nepal Inter-Governmental Committee (IGC) will review such measures.

"Injury" means significant damage to the domestic producers, of like or similar products resulting from a substantial increase of imports under the Treaty in situations which cause substantial losses in terms of earnings, production or employment unsustainable in short term. The examination of the impact on the domestic industry concerned shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of domestic industry of that product.

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

allegation, conjecture, or remote or hypothetical possibility.

◆ Inserted on 02.03.2002

Annexure " A "

AGREED ROUTES FOR MUTUAL TRADE

1. Pashupatinagar/Sukhia Pokhari
2. Kakarbhatta/Naxalbari
3. Bhadrapur/Galgalia
4. Biratnagar/Jogbani
5. Setobandha/Bhimnagar
6. Rajbiraj/Kunauli
7. Siraha, Janakpur/Jayanagar
8. Jaleswar/Bhitamore (Sursand)
9. Malangawa/Sonabarsa
10. Gaur/Bairgania
11. Birgunj/Raxaul
12. Bhairahawa/Nautanwa
13. Taulihawa/Khunwa
14. Krishnanagar/Barhni
15. Koilabas/Jarwa
16. Nepalgunj/Nepalgunj Road
17. Rajapur/Katerniyaghat
18. Prithvipur/Sati (Kailali)/Tikonja
19. Dhangadhi/Gauriphanta
20. Mahendranagar/Banbasa
21. Mahakali/Jhulaghat (Pithoragarh)
22. Darchula/Dharchula

**ILLUSTRATIVE LIST OF
INSUFFICIENT WORKING OR
PROCESSING**

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

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

Annexure " C "

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

Sl.no.	Nepalese Article	Quantity in MT per year
1	Vegetable fats (Vanaspati)	100, 000 (One hundred thousand)
2	Acrylic Yarn	10, 000 (Ten thousand)
3	Copper products under Chapters 74 & Heading 85.44 of the H.S. Code	10,000 (Ten thousand)
4	Zinc Oxide	2,500 (two thousand five hundred)

a) Imports into India of the above four commodities for quantities in excess of the fixed quota mentioned above will be permitted under normal MFN rates of duty, notwithstanding any concession in any other preferential arrangement.

b) Imports into India of the above commodities will be permitted through the land Customs Stations (LCS) at Kakarbhitta/Naxalbari, Biratnagar/Jogbani, Birganj/Raxaul, Bhairahawa/Nautanwa, Nepalgunj/Nepalgunj Road and Mahendranagar/Banbasa.

c) The detailed administrative arrangements for operationalisation of the fixed quota i.e. identifying the agencies for allocation and monitoring of exports and imports of fixed quota will be finalised by both the Governments.

Annexure " D "

CERTIFICATE OF ORIGIN

**FOR EXPORTS FREE OF CUSTOMS DUTIES
UNDER THE TREATY OF TRADE BETWEEN
HIS MAJESTY'S GOVERNMENT OF NEPAL AND
THE GOVERNMENT OF INDIA**

Reference No. _____

1. Articles consigned from (Exporter's business name, address)
2. Articles consigned to (Consignee's name, address)
3. Means of transport and route
4. Item Number (HS Tariff Line)
5. Marks and number of package
6. Description of Articles
7. Gross weight or other quantity
8. Number and date of Invoice together with value
9. Ex-Factory price• of the articles manufactured in Nepal:
10. (i) Whether articles are manufactured in Nepal under Para 1 (a) of the Protocol to Article V of the Treaty of Trade (Yes / No);

(ii) If articles are manufactured in Nepal under Para 1(b) (i) & (ii) of the Protocol to Article V of the Treaty of Trade;

(A) CIF value of materials, parts or produce originating from Non-Contracting Parties (i.e. other than Nepal & India) at the point of entry in Nepal:-

(B) Value of materials, parts or produce of undetermined origin.

•'Ex-factory' price means the price of the product at the time of clearance from the factory gate.

11. Percentage of the sum of the value of col. 10 (ii) (A) & (B) to the value of col. 9:

12. Declaration by the exporter;

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

(Place & Date, Signature of authorised signatory).

13. Certification

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

1. The articles have been manufactured in Nepal at a factory situated at _____(name of the place/district) by M/s. _____(name of the company).
2. The articles involve manufacturing activity in Nepal and that the manufacturing activity satisfies the criteria given in the Protocol to Article V of the Treaty of Trade.
3. The articles in question are not products of third country origin.*

For His Majesty's Government of Nepal
(Place and Date, Signature & Stamp of certifying authority)

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

14. For Official use of Indian Customs

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

Signature & Seal of the
Certifying authority

Dated:

Place:

Annexure " E "

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

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

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

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

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

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

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

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

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

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

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

For the Government of India
Shri Ramakrishna Hegde
Minister of Commerce

For His Majesty's Government of Nepal
Shri Purna Bahadur Khadka
Minister of Commerce

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

ARTICLE I

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

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

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

ARTICLE V

For convenience of traffic-in-transit, the Contracting Parties agree to provide at point or points of entry or exit, on such terms as may be mutually agreed upon and subject to relevant laws and regulations

prevailing in either country, warehouse or sheds, for the storage of traffic-in-transit awaiting customs clearance before onward transmission.

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

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

ARTICLE IX

Nothing in this Treaty shall prevent either Contracting Party from taking any measures which may be necessary in pursuance of general international conventions, whether already in existence or concluded hereafter, to which it is a party, relating to transit, export or import of particular kinds of articles such as narcotics and psychotropic substances or in pursuance of general conventions intended to prevent

infringement of industrial, literary or artistic property or relating to false marks, false indications of origin or other methods of unfair competition.

ARTICLE X

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

ARTICLE XI

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

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

Done at Kathmandu on 5th January, 1999.

(RAMAKRISHNA HEGDE)	(PURNA BAHADUR KHADKA)
Minister of Commerce	Minister of Commerce
For the Government of India	for His Majesty's Government of Nepal

* The Validity of the Treaty of Transit in its existing form stands extended for a further period of seven years with effect from 5.1.2006 to 4.1.2013.

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

With Reference to Article V

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

(i) COVERED ACCOMMODATION

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

(ii) OPEN SPACE

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

2. The above storage facilities shall be given on lease by the Trustees of the

Port of Calcutta (hereinafter referred to as the Trustees) to an undertaking incorporated in accordance with the relevant Indian laws and designated by His Majesty's Government of Nepal for this purpose (hereinafter referred to as the Lessee)

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

- preservation for onward transmission;
- (iv) Deal with the goods and their containers in such a manner as may be necessary to prevent loss or deterioration or damage to the goods;

10. The warehouses shall function during the normal working hours under the supervision of officers to be provided by the Calcutta Customs House. Where, however, such functioning is necessary outside the office hours, officers for supervision will be provided by the said Customs House on payment of the prescribed fees.

II. With Reference to Article VI

1. Traffic in transit via Calcutta shall: -

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

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

Note: Calcutta shall include Haldia.

Provided that:

- a) these routes may be discontinued or new ones added by mutual agreement;

- b) the Traffic-in-Transit shall be allowed to move through alternative roads with prior permission of the nearest Indian customs Officer, not below the rank of Superintendent, if the specified roads become unserviceable / unusable due to unforeseen events; and
 - (c) bulk traffic, such as fertilizers, cement, etc. moving by rail shall pass through Calcutta -Raxaul route or any other agreed route, subject to prior intimation being given to Customs as and when such movements are anticipated,
- (ii) Comply with the procedure as set out in the memorandum annexed hereto; and
- (iii) Comply with any other detailed regulations, which may be prescribed through mutual consultation by the Contracting Parties in keeping with the nature of the commodity and the need for expeditious movement and the safety of transport.
2. Wherever en-route it becomes necessary to break bulk in respect of consignments in transit, such breaking shall be done only under the supervision of the appropriate officials of the Indian Customs.
3. All goods intended for removal in transit to Nepal while in the process of removal to or from the warehouses or other storage places that may be leased out in Calcutta Port for the storage of such goods and also while in storage or under the process of packing, sorting and separation etc., in such warehouses or places, shall be subject to relevant Indian laws and regulations.
4. The procedure in the foregoing sub-paragraphs shall apply mutatis mutandis to road transport with the following modifications:
- (a) Arms, ammunition and hazardous cargo shall not be allowed to be transported by road

NOTE:

1. With reference to hazardous cargo, exception could be permitted as shall be mutually agreed.
2. Petroleum products, chemical fertilizers and industrial alcohol shall be allowed, as exceptions in terms of Note 1 above, to be transported by road, subject to compliance with the fire, safety and other statutory requirements.

- (b) Sensitive goods for imports, as specified by the Government of India from time to time, with prior intimation to His Majesty's Government of Nepal shall be permitted transit by marine container / pilfer-proof container trucks or rail at the option of the Nepalese importer.
 - (c) Bulk cargo such as boulders, fertilizer, cement, vegetable and fruits shall be permitted by open trucks also.
 - (d) Goods other than those mentioned at (a), (b) and (c) above shall be permitted transit by railway wagons or marine containers or pilfer-proof container trucks or any other trucks, capable of being sealed in a manner that will leave no visible traces of tampering, at the option of the importer.
 - (e) Pilfer-proof container truck shall conform to specifications mutually agreed upon and shall be capable of being locked and sealed. The containers shall be locked and sealed by the Indian Customs.
 - (f) Individual packages shall be sealed by Indian Customs provided that:
 - (i) Sealing of individual packages may be dispensed with when they are imported packed in recognised containers, provided the entire contents of the container are consigned to the same person and the container is sealed and the provision of sub-paragraph (e) above is complied with;
 - (ii) Sealing of individual packages may also be dispensed with when consignments consigned to different consignees are imported packed in one single recognised container, provided the entire contents of the container are transported in one single sealed container (not trucks) and the provision of sub-paragraph (e) above is complied with.
 - (g) If the truck breaks down, the nearest customs officer shall be approached with least possible delay.
 - (h) The Contracting Parties may mutually agree to any other modifications that may be considered necessary from time to time.
5. Respecting each other's relevant laws, it is agreed that the Contracting Parties will take all steps to prevent deflection of their mutual trade to third countries and to ensure compliance with the procedure for the transit of goods across their territories.
6. In order to facilitate the movement of traffic-in-transit, additional means of transport and facilities, mutually agreed upon, may be added.

MEMORANDUM TO THE PROTOCOL TO THE

TREATY OF TRANSIT BETWEEN INDIA AND NEPAL

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

IMPORT PROCEDURE

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

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

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

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

Signature & Seal

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

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

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

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

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

Signature

3. The Customs Transit Declaration shall be made in sextuplicate. All copies along with the bill of lading, invoice, packing list and a copy of the import licence issued by His Majesty's Government of Nepal, wherever issued, and a copy of the letter of credit, authenticated by the Royal Nepalese Consulate in Calcutta or the issuing bank, shall be presented to the Custom House. The copy of the import licence and the letter of credit so presented shall be examined by the Custom House against the copy of the import licence and/or the statement of particulars of the letter of credit received directly from His Majesty's Government of Nepal. No other additional document may be asked for, except where considered necessary for clearance of specific goods.
4. Nepalese imports shall be removed to Nepal sheds within free time, if not already put in wagons or trucks. An authorisation with removal

instructions of the owner for the purpose shall be necessary for removal.

5. a) In respect of containerised cargo, the following examination procedure shall be followed:

i) On arrival of the Nepalese containerised cargo, the Indian customs officer posted at the seaport, shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorised by the shipping company. If found intact, the customs officer shall allow transportation of the containerised cargo, without examination, unless there are valid reasons to do otherwise.

ii) In case where the 'one-time-lock' on the container arriving at the seaport in India is found broken or defective, the Indian customs authorities shall make due verification of the goods to check whether the same are in accordance with the Customs Transit Declaration, put fresh 'one-time-lock' and allow the container to move to the destination. The serial number of the new 'one-time-lock' shall be endorsed in the Customs Transit Declaration.

b) In respect of non-containerised cargo, the Custom House shall make a selective percentage examination of the goods to check whether the goods are in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit. Goods for Nepal as covered by the said licence and/or the said letter of credit and also in accordance with the Customs Transit Declaration shall be approved for onward transmission. However, in making such examination, avoidable delays shall be curtailed to the utmost in order to expedite the traffic-in-transit.

NOTE: The selective percentage examination referred to in sub-paragraph 5(b) shall mean that a percentage of the total packages in a consignment will be selected for examination and not that a percentage of the contents of each of the package comprised in the consignment will be examined.

6. Goods shall be transported from the customs port of entry to the border land customs station by the means of the transport provided in sub-paragraphs (a), (b), (c) and (d) of paragraph 4 of the Protocol with reference to Article VI of the Treaty of Transit and shall be locked and sealed in the manner provided in sub-paragraph (e) of paragraph 4 of the Protocol with reference to Article VI of the Treaty of Transit after examination as mentioned above.

7. Where goods cannot be transported in closed wagons or pilfer-proof container trucks or sealed tarpaulin covered trucks and have to be transported in open wagons or flats or open trucks, detailed identifying particulars shall be recorded in the Customs Transit Declaration.
8. Small consignments of traffic-in-transit will be accepted for booking by railway from one of the agreed warehouses leased to Nepal Transit and Warehousing Company Ltd. provided the minimum load condition as applicable in Indian Railways is satisfied.
9. The sensitive goods, as specified by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be covered by an insurance policy or a bank guarantee and/or such legally binding undertaking to the satisfaction of the Commissioner of Customs, Calcutta, in the manner indicated below:-

a) Goods moving by rail up to the border shall be covered by an insurance policy or a bank guarantee, at the option of the importer, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the Commissioner of Customs, Calcutta, and the amount shall become payable to the Commissioner in the event of the goods not reaching Nepal.

(b) Goods moving by road in trucks belonging to Nepal Transit & Warehousing Company Ltd., or Nepal Transport Corporation shall be covered by an insurance policy or a bank guarantee, at the option of the importer, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the Commissioner of Customs, Calcutta, and the amount shall become payable to the Commissioner in the event of the goods not reaching Nepal. In addition, Nepal Transit and Warehousing Company Ltd., or the Nepal Transport Corporation, as the case may be, shall give an undertaking to the said Commissioner of Customs, Calcutta, to pay the difference between the market value of goods in India and their c.i.f. value plus Indian customs duties in the event of the goods not reaching Nepal.

(c) Goods moving by road in trucks other than those mentioned at subparagraph (b) above shall be covered by an insurance policy or a bank guarantee at the option of the importer, for an amount equal to the difference between the market value of the goods in India and their c.i.f. value. This insurance policy or a bank guarantee shall be assigned to the Commissioner of Customs, Calcutta and the amount shall become payable to the said Commissioner in the event of the goods not reaching Nepal.

(d) The insurance policy shall be obtained by the importer from an insurance company authorised to do business in India on such terms and

conditions, to the satisfaction of the Commissioner of Customs, Calcutta, which would guarantee that the insured amount shall become payable forthwith to the Government of India on receipt of a notice to the insurance company from the Commissioner of Customs, Calcutta, after satisfying himself that the goods have not entered Nepal.

NOTE:

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

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

10. After the Custom House is satisfied as regards the checks contemplated in the preceding paragraphs, it shall endorse all the copies of the Customs Transit Declaration. The original copy shall be handed over to the importer. The duplicate and triplicate will be sent by post to the Indian border customs officer and the remaining copies shall be retained by the Custom House. In order to avoid delay in postal transmission, duplicate and triplicate copies of the Customs Transit Declaration, along with copy of the original railway receipt shall be handed over to the importer or his authorised representative in a sealed cover, if he so desires. This facility shall however be denied to the importer who defaults in the production of these documents within a reasonable time to the Indian border customs officer.

11. In case of any suspicion of pilferages, traffic-in-transit shall be subject to checks by the Indian Customs during the period that they are in transit, as may be necessary, particularly at the point of railway transshipment from broad-gauge to metre-gauge.

12. (a) On arrival of the containerised cargo at the border land customs station or at the border railway station, as the case may be, the following examination procedure will be followed:

- i) On arrival of the Nepalese containerised cargo, the Indian customs authorities posted at the land customs station or the railway station shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorised by the shipping company or the Customs authorities at the sea port or during the transit and, if found intact, shall approve for onward transmission of the containerised cargo, without examination of the cargo unless there are valid reasons to do otherwise.
- ii) In case where the 'one-time-lock' of the container is found broken or defective, the Indian customs authorities posted at the land customs station or the railway station, as the case may be, shall make due verification of the goods to check whether the goods are in accordance with the customs

Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit.

iii) If, on verification, the goods are found in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit, the Indian customs authorities posted at the border land customs station or the railway station shall put fresh 'one-time-lock' and approve for onward transmission of the container. The serial number of the new 'one-time-lock' shall be endorsed by the Indian customs authorities posted at the border land customs station or the railway station on the Customs Transit Declaration.

(b) On arrival of the non-containerised cargo at the border land customs station or at the border railway station, as the case may be, the following examination procedure will be followed:

i) The sealed railway wagons or the sealed marine containers or the sealed pilfer-proof containerised trucks or the sealed tarpaulin covered trucks, as the case may be, shall be presented to the Indian customs authorities posted at the border land customs station or the railway station, who shall examine the seals and locks and, if satisfied, shall permit onward transmission, or the unloading or breaking of bulk, as the case may be, without examination of the cargo, unless there are valid reasons to do otherwise.

ii) In cases where seals and locks on the wagons or on the marine containers or on the pilfer-proof containerised trucks or on the tarpaulin covered trucks or on the packages are found broken or defective, or there is suspicion otherwise, the Indian customs authorities posted at the border land customs station or the railway station, as the case may be, shall examine the goods to check whether the goods are in accordance with the Customs Transit Declaration and conform to the import licence, wherever such licence is issued, and the letter of credit. Goods for Nepal, as covered by the said licence, wherever such licence is issued, and the said letter of credit and also in accordance with the Customs Transit Declaration shall be approved for onward transmission through such escorts or supervision as may be necessary to ensure that the goods cross the border and reach Nepal. However, in making such examination, avoidable delays shall be curtailed to the utmost in order to expedite the traffic-in-transit.

(c) On arrival of the traffic-in-transit in open trucks, or open railway wagons, the Indian customs authorities at the border land customs station shall carry out such selective percentage examination as is deemed necessary to ensure that goods are in accordance with the Customs Transit Declaration and conform to import licence, wherever such import licence is issued, and the letter of credit.

12A. On arrival of traffic-in-transit mentioned at sub-paragraphs (a), (b) and (c) above at the border land customs station or at the border railway station, as the case may

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

13. If a consignment in transit is received at destination in more than one lot, the separate lots of the consignment covered by one Customs Transit Declaration may be presented in separate lots and the Indian customs officer at the border shall release the goods so presented after necessary examination and check of relevant documents and goods and after making the necessary endorsement. In such a case, the Indian customs officer, at the border shall send the triplicate copy of Customs Transit Declaration to the Nepalese customs officer at the corresponding Nepalese post only after release of the entire consignment as covered by the Customs Transit Declaration.
14. In cases where the duplicate and triplicate copies of the Customs Transit Declaration are not received at the customs office of exit, the Indian customs office will, by telephonic or other quick means of communication with the customs office of entry, seek confirmation to ensure against delay and then on the basis of aforesaid confirmation allow despatch of goods.
15. The Nepalese Customs officer shall:
 - (i) endorse a Certificate over his signature and authenticate it under a Customs stamps on the original copy of the Nepalese Import Licence, if any / Letter of Credit, and the original and the triplicate copy of the Customs Transit Declaration that the packages correspond in all material respects with the particulars shown in the declaration and in all material respects with the particulars shown in the declaration and in all material respects with the Nepalese Import Licence / Letter of Credit wherever required or opened as the case may be and that the goods have been cleared from the Nepalese Customs custody for entry into Nepal.

(ii) hand over, under acknowledgement, duly endorsed original copy of the Customs Transit Declaration to the importer who will present it to the Indian Border Land Customs Station within 15 days of the date on which transit was allowed at the Indian port of importation or such extended time as the concerned Assistant Commissioner of Indian Customs may allow. For every week or part thereof delay in presenting the original Customs Transit Declaration duly certified as above the importer shall pay a sum of Re.1/- for every Rs.1,000/- of the Indian market price of the goods to Assistant Commissioner of Customs of the concerned Indian Border Land Customs Station.

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

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

EXPORT PROCEDURE:

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

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

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

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

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

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

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

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

3. The Customs Transit Declaration shall be made in quadruplicate. All copies, along with invoice, packing list and a copy of the letter of credit, authenticated by the concerned Nepalese bank, shall be presented to the Indian customs officer at the entry point. No additional documents will be asked for by the Indian customs, except when considered necessary for the clearance of any specific goods.
4. (a) For the containerised goods, the Indian customs authorities at the point of entry into India shall observe the following procedures:
 - (i) On arrival of the Nepalese containerised cargo, the Indian customs officer posted at border land customs station shall merely check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorized by the shipping company and if found intact, shall allow transportation of the containerised cargo, without examination, unless there are valid reasons to do otherwise.
 - (ii) In case where the 'one-time-lock' on the container arriving at border land customs stations in India is found broken or defective, the Indian customs authorities shall make due verification of the goods to check whether the goods are in accordance with the Customs Transit Declaration and shall put fresh 'one-time-lock' and allow the containers to move to the destination. The serial number of the new 'one-time-lock' shall be endorsed in the Customs Transit Declaration.
- (b) The Indian customs officer at the point of entry into India shall make such selective percentage examination of packages and contents as may be necessary to check whether:
 - (i) the goods are in accordance with the Customs Transit Declaration,
 - (ii) the goods are such as have been specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, and/or
 - (iii) they are of origin as declared in the Customs Transit Declaration.

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

5. The goods, as specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be transported from the Indian customs border post to Calcutta port in closed railway wagons or in pilfer-proof containers (to be provided by the exporter) which can be securely locked. The containers or wagons, as the case may be, shall be locked and duly sealed after the examination by the border customs officer.
6. Where goods cannot be transported in closed wagons, and have to be transported in open wagons or flats or open trucks, detailed identifying particulars shall be recorded in the Customs Transit Declaration.
7. After the Indian Customs authorities at the border land customs station are satisfied as regards the checks contemplated in the preceding paragraphs, it shall endorse all the copies of the Customs Transit Declaration. The original copy shall be handed over to the exporter. The duplicate and triplicate will be sent by post to the Commissioner of Customs, Calcutta and the quadruplicate copy shall be retained. In order to avoid delay in postal transmission, duplicate and triplicate copies of the Customs Transit Declaration, along with copy of the original railway receipt, shall be handed over to the exporter or his authorised representative in a sealed cover, if he so desires. This facility shall, however, be denied to the exporter who defaults in the production of these documents within a reasonable time.
8. The sensitive goods for export, as specified by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal, shall be covered by an insurance policy or a bank guarantee and/or such legally binding undertaking to the satisfaction of the concerned Commissioner of Customs, in the manner indicated below: -
 - (a) Goods moving by rail up to the sea port shall be covered by an insurance policy or a bank guarantee, at the option of the exporter, for an amount equal to the Indian customs duties on such goods. This Insurance policy or bank guarantee shall be assigned to the concerned Commissioner of Customs, and the amount shall become payable to the Commissioner in the event of the goods not reaching Calcutta customs.
 - (b) Goods moving by road in trucks belonging to Nepal Transit & Warehousing Company Ltd., or Nepal Transport Corporation shall be covered by an insurance policy or a bank guarantee, at the option of the exporter, for an amount equal to the Indian customs duties on such goods. This insurance policy or bank guarantee shall be assigned to the concerned Commissioner

of Customs, and the amount shall become payable to the Commissioner in the event of the goods not reaching Calcutta customs. In addition, Nepal Transit and Warehousing Company Ltd., or the Nepal Transport Corporation, as the case may be, shall give an undertaking to the concerned Commissioner of Customs, to pay an amount equal to the difference between the market value of goods in India and their c.i.f. value plus Indian customs duties in the event of the goods not reaching Calcutta customs.

- (c) Goods moving by road in trucks other than those mentioned at sub-paragraph (b) above shall be covered by an insurance policy or a bank guarantee at the option of the exporter, for an amount equal to the difference between the market value of the goods in India and their c.i.f. value. This insurance policy or a bank guarantee shall be assigned to the concerned Commissioner of Customs, and the amount shall become payable to the said Commissioner in the event of the goods not reaching Calcutta customs.
- (d) The insurance policy shall be obtained by the exporter from an insurance company authorised to do business in India on such terms and conditions, to the satisfaction of the concerned Commissioner of Customs, which will guarantee that the insured amount shall become payable forthwith to the Government of India on receipt of a notice to the insurance company from the concerned Commissioner of Customs, after satisfying himself that the goods have not reached Calcutta customs.

NOTE:

1. In respect of goods belonging to and consigned by His Majesty's Government of Nepal under sub-paragraphs (a) and (b) above, no insurance or bank guarantee shall be required, provided an undertaking or a further undertaking, as the case may be, is given by Nepal Transport and Warehousing Corporation in lieu thereof.
 2. No such requirement will be necessary in respect of goods carried by air without transshipment en-route or in such cases as may be mutually agreed upon.
 3. In the event of goods carried by rail not reaching the booked destination, Indian Railways shall, where liable as carriers under the Indian Railways Act, pay the c.i.f. price to the exporter.
 4. When the Customs Transit Declaration, duly authenticated by the Calcutta Customs, is received at the concerned border land customs station within the prescribed period, it will be accepted as an evidence that goods have reached Calcutta Customs.

- 8A. For goods other than those specified by the Government of India in terms of paragraph 8 above, the exporter shall furnish, to the satisfaction of concerned Commissioner of Customs, a legally-binding undertaking that the amount equal to the difference between the market value of the goods in India and their c.i.f value shall be paid on demand to the concerned Commissioner of Customs, in the event of the goods not reaching Calcutta customs.
- 8B. The concerned Commissioner of Customs, shall provide to the concerned department of His Majesty's Government of Nepal, from time to time, details of cases where the goods, including those goods which have not been insured, do not appear to have reached Calcutta customs. His Majesty's Government of Nepal shall thereupon carry out enquiries and make all possible efforts to ensure that the concerned persons pay the dues to the Government of India.
9. In case of any suspicion of pilferage, the goods as have been specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal shall while in transit through India, be subject to such checks by the Indian customs, as may be necessary, particularly at the point of railway transshipment from meter-gauge to broad-gauge.
10. On arrival of goods at Calcutta Port, the exporter shall present the original copy of the Customs Transit Declaration duly endorsed by the Indian border land customs station to the Custom House. This copy shall be compared by the Custom House with the duplicate and triplicate received by it from the border. In case of goods which have moved under seals and locks, the Custom House shall check the seals and locks and where there is suspicion that they have been tampered with, will examine the goods to identify them with the corresponding Customs Transit Declaration. After the verification as contemplated in this paragraph is completed by the Custom House, it shall permit the export of the goods and will in case of goods specified as sensitive by the Government of India from time to time with prior intimation to His Majesty's Government of Nepal ensure that these are duly shipped. After the goods have been shipped, the Custom House shall endorse all the copies of the Customs Transit Declaration, hand over the original to the exporter and send the triplicate copy to the Indian border land customs station and retain the duplicate.
11. Where export cargo is shut out, it will be removed to the warehouse leased out to Nepal Transit and Warehousing Company Ltd., on filing of such removal instructions by the exporter or his authorised agents.
12. The Nepalese export cargo not shipped due to valid reasons will be

permitted to be returned to Nepal according to the procedure applicable for the Nepalese import cargo.

16th February, 1993
Kathmandu

Excellency,

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

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

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

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

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

His Excellency
Prof.Bimal Prasad

Ambassador Extraordinary & Plenipotentiary
Embassy of India,
KATHMANDU, NEPAL.

16th February, 1993
Kathmandu

Excellency,

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

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

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

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

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

Kathmandu
January 5, 1999

Excellency,

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

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

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

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

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

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

Sd/-

(**Purna Bahadur Khadka**)

Minister of Commerce

His Majesty's Government of Nepal

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

ANNEXURE 'A'

SPECIFIED LAND ROUTES

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

(or)

Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Kodarma-Nawadah-Biharsarif-Bakhtiyarpur-Gandhi Setu(Patna)-Hajipur-Musari-Garari-Samastipur-Dharbhanga-Jayanagar

7. Bhitamore Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Kulti-Jasidih-Kiul-Mokamah-Barauni-Muzaffarpur-Sitamarhi-Bhitamore.

(or)

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

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

(or)

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

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

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

11. Jarwa

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

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

(or)

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

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

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

(or)

Road connecting Calcutta-Vivekananda Bridge –Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Ghazipur-Gorakhpur-Basti-Baharaich-Gauriphanta.

15. Banbasa Road connecting Calcutta-Vivekananda Bridge-Dankuni-Mogra-Bardwan-Panagarh-Asansol-Dhanbad-Barhi-Aurangabad-Sasaram-Varanasi-Jaunpur-Sultanpur-Lucknow-Shahjahanpur-Bareily-Pilibhit-Banbasa.

NOTE:

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

3. Movement out of Calcutta through Vidhya Sagar Sethu may be permitted for all routes passing through Dankuni, with prior endorsement on the Customs Transit Declaration by the appropriate authority.

Kathmandu,
January 5, 1999

Excellency,

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

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

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

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

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

Sd/-
(**Purna Bahadur Khadka**)

Minister of Commerce
His Majesty's Government of Nepal

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

Kathmandu
January 5, 1999

Excellency,

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

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

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

It is further agreed that there shall be an Inter-Governmental Committee consisting of the senior representatives of the two Governments to promote trade, facilitate transit and control unauthorised trade between the two countries as envisaged in the Treaties and the Agreement. The Committee shall meet at least once in six months alternatively in Kathmandu and New Delhi. If any questions

remain unresolved in the meetings on the official groups referred to in the foregoing paragraph, they shall be referred to this Committee which will find solutions thereof. The Committee may also deal with any matter on its own in order to further the purpose envisaged in the said Treaties and the Agreement.

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

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

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

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

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

AGREEMENT OF CO-OPERATION BETWEEN GOVERNMENT OF INDIA AND HIS MAJESTY'S GOVERNMENT OF NEPAL TO CONTROL UNAUTHORISED TRADE

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

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

Have agreed as follows:

Article I

The Contracting Parties, while recognizing that there is a long and open border between the two countries and there is free movement of persons and goods across the border and nothing that they have the right to pursue independent foreign trade policies, agree that either of them would take all such measures as are necessary to ensure that the economic interests of the other party are not adversely affected through unauthorised trade between the two countries.

Article II

The Contracting Parties agree to co-operate effectively with each other, to prevent infringement and circumvention of the laws, rules and regulations of either country in regard to matters relating to Customs, Narcotics and Psychotropic Substances, Foreign Exchange and Foreign Trade and shall for this

purpose assist each other in such matters as consultation, enquiries and exchange of information with regard to matters concerning such infringement or circumvention..

Article III

Subject to such exceptions as may be mutually agreed upon each Contracting Party shall prohibit and co-operate with the other to prevent:

- (a) re-exports from its territory to third countries of goods imported from the other Contracting Party without manufacturing activity;
- (b) re-exports to the territory of the other Contracting Party of goods imported from third countries without manufacturing activity.

Provided that (a) and (b) above shall not be applicable in the case of the export of the Nepalese goods into India under the procedure set out in Protocol V to the Treaty of Trade between His Majesty's Government of Nepal and the Government of India.

Article IV

Each Contracting Party will:

- (a) prohibit and take appropriate measures to prevent import from the territory of the other Contracting Party of goods liable to be re-exported to third countries from its territory and the export of which from the territory of the other Contracting Party to its territory is prohibited;
- (b) in order to avoid inducement towards diversion of imported goods to the other Contracting Party, take appropriate steps through necessary provisions relating to Baggage Rules, gifts and foreign exchange authorisation for the import of goods from third countries.

Article V

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

Article VI

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

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

Article VII

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

Article VIII

This Agreement shall remain in force upto 5th March,2007. It may be renewed for further periods of five years, at a time, by mutual consent subject to such modifications as may be agreed upon. (As amended on 5th March,2002).

Done in duplicate in Hindi, Nepali and English languages, all the texts being equally authentic, at New Delhi on the 6th December 1991. In case of doubt, the English text will prevail.

(P.Chidambaram)
Minister of State for Commerce
Government of India

(Gopal Man Shrestha)
Minister of Commerce for
for His Majesty's Government of Nepal.

**INDO-NEPAL
TREATY OF TRADE**

**(Letters exchanged between the Government of India and
His Majesty's Government of Nepal on 2nd March, 2002)**



**MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
GOVERNMENT OF INDIA
NEW DELHI.**

New Delhi
2nd March,2002

Excellency,

Consequent upon the understandings reached between the Commerce Secretaries of the Government of India and His Majesty's Government of Nepal during their meetings in Delhi from 27th February to 2nd March 2002, it has been agreed to extend the validity of all the twelve Articles of the India-Nepal Treaty of Trade, and Protocols to Articles, I,II,III,IV and VI in their present form for a period of five years with effect from 6th March, 2002. The revised Protocol to Article V and the new Protocol to Article IX of the Treaty annexed to this letter will also be valid for the same period. However, there will be a transition period upto 16th April, 2002 to complete the administrative arrangements to change over to the Certificate of Origin requirement as prescribed in Annexure-"D" of the revised Protocol to Article V of the Treaty. The existing Certificate of Origin shall also be applicable during this transition period. Any imports from Nepal into India of items under fixed quota as prescribed in Annexure-'C' of the revised Protocol to the Article V of the Treaty with effect from 6th March, 2002, shall be through the designated Land Customs Stations and shall be counted towards the quota for the first year.

2. This letter and your Excellency's confirmation shall constitute an Agreement between our two Governments.
3. I shall be grateful if you could kindly confirm that the foregoing correctly sets out the understanding reached between our two Governments.
4. Please accept, Excellency, the assurances of my highest consideration.

Dipak Chatterjee
Commerce Secretary
Government of India

**H.E. Mr. B.P.Acharya,
Secretary, Ministry of Industry, Commerce and Supplies,
His Majesty's Government of Nepal.**

New Delhi

2nd March,2002

Excellency,

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

“Consequent upon the understandings reached between the Commerce Secretaries of the Government of India and His Majesty's Government of Nepal during their meetings in Delhi from 27th February to 2nd March 2002, it has been agreed to extend the validity of all the twelve Articles of the India-Nepal Treaty of Trade, and Protocols to Articles I, II, III, IV and VI in their present form for a period of five years with effect from 6th March 2002. The revised Protocol to Article V and the new Protocol to Article IX of the Treaty annexed to this letter will also be valid for the same period. However, there will be a transition period upto 16th April 2002 to complete the administrative arrangements to change over to the Certificate of Origin requirement as prescribed in Annexure –“D” of the revised Protocol to Article V of the Treaty. The existing Certificate of Origin shall also be applicable during this transition period. Any imports from Nepal into India of items under fixed quota as prescribed in Annexure -'C' of the revised Protocol to the Article V of the Treaty with effect from 6th March 2002, shall be through the designated Land Customs Stations and shall be counted towards the quota for the first year.

2. This letter and your Excellency's confirmation shall constitute an Agreement between our two Governments.

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

2. I confirm that the foregoing correctly sets out the understanding reached between us.

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

**B.P.Acharya,
Secretary,
Ministry of Industry, Commerce and Supplies,
His Majesty's Government of Nepal.**

**H.E. Mr. Dipak Chatterjee
Commerce Secretary
Government of India**

Protocol to the Treaty of Trade

With Reference to Article V

1. The Government of India will provide preferential access to the Indian market free of customs duties normally applicable and quantitative restrictions, except as mentioned elsewhere, for all articles manufactured in Nepal, provided they fulfill the qualifying criteria given below:

(a) the articles are manufactured in Nepal wholly from Nepalese materials or Indian materials or Nepalese and Indian materials ;or

(b) (i) the articles involve a manufacturing process in Nepal that brings about a change in classification, at four digit level, of the Harmonized Commodities Description and Coding System, different from those, in which all the third country origin materials used in its manufacture are classified; and the manufacturing process is not limited to insufficient working or processing as indicated in **Annexure “B”**, and

(b) (ii) From 6th March 2002 to 5th March 2003 , the total value of materials, parts or produce originating from non-Contracting Parties or of undetermined origin used does not exceed 75% (seventy five percent) of the ex-factory price of the articles produced, and the final process of manufacturing is performed within the territory of Nepal. From 6th March 2003 onwards, the total value of materials, parts or produce originating from non-Contracting Parties or of undetermined origin used does not exceed 70% (seventy percent) of the ex-factory price of the articles produced, and the final process of manufacturing is performed within the territory of Nepal.

Note:

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

(c) For Nepalese articles not fulfilling the conditions given in sub-para-1 (b) (i) above, but fulfilling the condition at sub-para- 1 (b) (ii) above, preferential access may be given by the Government of India, on a case by case basis, after satisfying itself that such article has undergone a sufficient manufacturing process within Nepal.

(d) However, the import of Nepalese manufactured articles described in

Annexure “C” which fulfill the criteria in sub-para-1 (a) or (b) (i) & (ii) above will be governed by the terms specified in this Annexure .

(e) In the case of other articles manufactured in Nepal which do not fulfill the qualifying criteria specified in sub-para-1 (a) or (b) (i) & (ii) above, the Government of India will provide normal access to the Indian market consistent with its MFN treatment.

2. Import of articles in accordance with the para -1 above shall be allowed by the Indian customs authorities on the basis of a Certificate of Origin to be issued by the agency designated for this purpose by His Majesty's Government of Nepal in the format prescribed at **Annexure -“D”** for each consignment of articles exported from Nepal to India. Information regarding the basis of calculation for grant of such Certificates of Origin to the manufacturing facilities in Nepal will be provided to the Government of India on an annual basis. The modalities for this will be worked out within three months from the signing of the Protocol. Preferential facility shall not be available for the articles listed at **Annexure-“E”**.

3. On the basis of a Certificate issued, for each consignment of articles manufactured in the small-scale units in Nepal, by His Majesty's Government of Nepal, that the relevant conditions applicable to the articles manufactured in similar Small Scale Industrial units in India for relief in the levy of applicable Excise Duty rates are fulfilled for such a parity, Government of India will extend parity in the levy of Additional Duty on such Nepalese articles equal to the treatment provided in the levy of effective Excise Duty on similar Indian articles under the Indian Customs and Central Excise Tariff. However, this facility will be applicable only to articles manufactured in Nepal in such small scale units which qualify as small scale units under the Nepalese Industrial Policy as on 5 December,2001.

4. The “Additional Duty” rates equal to the effective Indian excise duty rates applicable to similar Indian products under the Indian Customs & Central Excise Tariff will continue to be levied on the imports into India of products manufactured in the medium and large scale units in Nepal.

4.1 In regard to additional duty collected by the Government of India in respect of manufactured articles other than those manufactured in “small” units; Wherever it is established that the cost of production of an article is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 per cent of the “additional duty” collected by the Government of India, will be paid to His Majesty's Government of Nepal provided His Majesty's Government of Nepal have given assistance to the same extent to the (manufacturers) exporters.

5. Export of consignments from Nepal accompanied by the Certificate of Origin

will normally not be subjected to any detention / delays at the Indian customs border checkpoints and other places en route. However, in case of reasonable doubt about the authenticity of Certificate of Origin, the Indian Customs Authority may seek a clarification from the certifying agency which will furnish the same within a period of thirty days. Meanwhile, the subject consignment will be allowed entry into India on provisional basis against a bond i.e. a legally binding undertaking as required. After examining the information so provided by the certifying agency, the Indian Customs Authority would take appropriate action to finalise the provisional assessment. Whenever considered necessary, request for a joint visit of the manufacturing facility may be made by the Indian Customs Authority which would be facilitated by the concerned Nepalese authority within a period of thirty days.

6. Where for social and economic reasons, the import of an item into India is permitted only through public sector agencies or where the import of an item is prohibited under the Indian Trade control regulations, the Government of India will consider any request of His Majesty's Government of Nepal for relaxation and may permit the import of such an item from Nepal in such a manner as may be found to be suitable.

7. For the purpose of calculation of import duties customs valuation procedures, as prescribed under the prevailing customs law, will be followed.

With reference to Article IX

In the event of imports under the Treaty, in such a manner or in such quantities as to cause or threaten to cause injury to the domestic industry or a significant segment of it relating to the article, the importing country may request for consultations in the Joint Committee set up by the two Governments for this purpose with a view to taking appropriate measures. If the consultations in the Joint Committee fail to resolve the issue within a period of sixty days from the date of such request, then the requesting Government shall be free to take appropriate remedial measures. The India-Nepal Inter-Governmental Committee (IGC) will review such measures.

“ Injury ” means significant damage to the domestic producers, of like or similar products resulting from a substantial increase of imports under the Treaty in situations which cause substantial losses in terms of earnings, production or employment unsustainable in short term. The examination of the impact on the domestic industry concerned shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of domestic industry of that product.

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

ANNEXURE “A”

AGREED ROUTES FOR MUTUAL TRADE

1. Pashupatinagar/ Sukhia Pokhari
2. Kakarbhatta/ Naxalbari
3. Bhadrapur/ Galgalia
4. Biratnagar/ Jogbani
5. Setobandha/ Bhimnagar
6. Rajbiraj/ Kunauli
7. Siraha, Janakpur/ Jayanagar
8. Jaleswar/ Bhitamore (Sursand)
9. Malangawa/ Sonabarsa
10. Gaur/ Bairgania
11. Birgunj/ Raxaul
12. Bhairahawa/ Nautanwa
13. Taulihawa/ Khunwa
14. Krishnanagar/ Barhni
15. Koilabas/ Jarwa
16. Nepalgunj/ Nepalgunj Road
17. Rajapur/ Katerniyaghat
18. Prithvipur/ Sati (Kailali)/ Tikonia
19. Dhangadhi/ Gauriphanta
20. Mahendranagar/ Banbasa
21. Mahakali/ Jhulaghat (Pithoragarh)
22. Darchula/ Dharchula

ANNEXURE “B”

ILLUSTRATIVE LIST OF **INSUFFICIENT WORKING OR** **PROCESSING**

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

manufacture are classified:-

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

ANNEXURE "C"

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

Sl. No.	Nepalese article	Quantity in MT per year
1.	Vegetable fats (Vanaspati)	100,000 (One hundred thousand)
2.	Acrylic Yarn	10,000 (Ten thousand)
3.	Copper products under Chapters 74 & Heading 85.44 of the H.S.Code	7,500 (Seven thousand five hundred)
4.	Zinc Oxide	2,500 (Two thousand five hundred)

- a) Imports into India of the above four commodities for quantities in excess of the fixed quota mentioned above will be permitted under normal MFN rates of duty, notwithstanding any concession in any other preferential arrangement.
- b) Imports into India of the above commodities will be permitted through the land Customs Stations (LCS) at Kakarbhitta/Naxalbari, Biratnagar/Jogbani, Birganj/Raxaul, Bhairahawa/Nautanwa, Nepalgunj/Nepalgunj Road and Mahendranagar/ Banbasa .
- c) The detailed administrative arrangements for operationalisation of the fixed quota i.e. identifying the agencies for allocation and monitoring of exports and imports of fixed quota will be finalised by both the Governments.

ANNEXURE "D"

CERTIFICATE OF ORIGIN

FOR EXPORTS FREE OF CUSTOM DUTIES
UNDER THE TREATY OF TRADE BETWEEN
HIS MAJESTY'S GOVERNMENT OF NEPAL AND
THE GOVERNMENT OF INDIA

Reference No. _____

1. Articles consigned from (Exporter's business name, address)
2. Articles consigned to (Consignee's name, address)
3. Means of transport and route
4. Item Number (HS Tariff Line)
5. Marks and number of package
6. Description of Articles
7. Gross weight or other quantity
8. Number and date of Invoice together with value
9. Ex-Factory price^{*} of the articles manufactured in Nepal:
10. (i) Whether articles are manufactured in Nepal under Para 1(a) of the Protocol to Article V of the Treaty of Trade (Yes / No):

(ii) If articles are manufactured in Nepal under Para 1 (b)(i) & (ii) of the Protocol to Article V of the Treaty of Trade:

(A) CIF value of materials, parts or produce originating from Non-Contracting Parties (i.e. other than Nepal & India) at the point of entry in Nepal: -

(B) Value of materials, parts or produce of undetermined origin: -

11. Percentage of the sum of the value of col. 10 (ii) (A) & (B) to the value of col. 9:

- 'Ex-factory price' means the price of the product at the time of clearance from the factory gate.

12. Declaration by the exporter:

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

(Place & Date, Signature of authorised signatory).

13. Certification

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

1. The articles have been manufactured in Nepal at a factory situated at _____ (name of the place/ district) by M/s _____ (name of the company).

3. The articles involve manufacturing activity in Nepal and that the

manufacturing activity satisfies the criteria given in the Protocol to Article V of the Treaty of Trade.

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

For His Majesty's Government of Nepal
(Place and Date, Signature & Stamp of certifying authority)

*For the purpose of the above item No.4, the articles which have undergone a manufacturing process in Nepal as defined in the Protocol to Article V of the Treaty will not be treated as product of third country origin.

14. For Official use of Indian Customs

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

Signature & Seal of the
Certifying authority

Dated:

Place:

ANNEXURE "E"

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

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

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

(*) Nepalese beers can be imported into India on payment of the applicable liquor excise duty equal to the effective excise duty as levied in India on Indian beers under the relevant rules and regulations of India.

5th March,2002

Excellency,

Consequent upon the understandings reached between the Commerce Secretaries of the Government of India and His Majesty's Government of Nepal during their meetings in Delhi from 27th February to 2nd March 2002, it has been agreed to extend the validity of all the eight Articles of the Agreement of Cooperation between Government of India and His Majesty's Government of Nepal to Control Unauthorised Trade in their present form for a period of five years with effect from 6th March 2002.

2. This letter and your Excellency's confirmation shall constitute an Agreement between our two Governments.

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

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

Dipak Chatterjee
Commerce Secretary

Government of India

**H.E. Mr. B.P.Acharya,
Secretary, Ministry of Industry, Commerce and Supplies,
His Majesty's Government of Nepal.**

New Delhi

5th March, 2002

Excellency,

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

“Consequent upon the understandings reached between the Commerce Secretaries of the Government of India and His Majesty's Government of Nepal during their meetings in Delhi from 27th February to 2nd March 2002, it has been agreed to extend the validity of all the eight Articles of the Agreement of Cooperation between Government of India and His Majesty's Government of Nepal to Control Unauthorised Trade in their present form for a period of five years with effect from 6th March 2002.

2. This letter and your Excellency's confirmation shall constitute an Agreement between our two Governments.

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

2. I confirm that the foregoing correctly sets out the understanding reached between us.

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

**B.P.Acharya,
Secretary,
Ministry of Industry, Commerce and Supplies,
His Majesty's Government of Nepal.**

**H.E. Mr. Dipak Chatterjee
Commerce Secretary
Government of India**