Minutes of the meeting of India-Nepal Inter-Governmental Committee (IGC) on Trade, Transit and Cooperation to Control Unauthorized Trade held in New Delhi on December 5-6, 2011

India-Nepal Secretary level Inter-Governmental Committee (IGC) Meeting on Trade, Transit and Cooperation to Control Unauthorized Trade was held in New Delhi. The Nepalese delegation was led by Mr. Prurushottam Ojha Secretary, Ministry of Commerce and Supplies, Government of Nepal. The Indian delegation was led by Dr. Rahul Khullar, Secretary, Ministry of Commerce and Industry, Government of India. The lists of members of both delegations are at ANNEXURE-I & II. The Agenda of the Meeting as adopted is at ANNEXURE-III.

2. The leader of Indian delegation, Dr. Rahul Khullar, welcoming the Nepalese delegation stated that India attaches high importance to her bilateral trade relations with Nepal. He stated that the present round of discussions will help in deepening the bilateral relationship. He stated that a game changer is needed to ratchet the bilateral relationship to a higher level. It is, therefore, important that emphasis should shift from trade towards investments. It is also important to focus on long-term solutions to the current problems being faced of Nepal’s growing trade deficit with India. He emphasized that the advantage of Nepal will be in harnessing its natural endowment i.e. hydropower.

3. The leader of the Nepalese delegation, Mr. Prurushottam Ojha, thanked the Government of India for the warm hospitality extended to his delegation and expressed his pleasure to be in New Delhi. He reiterated the good relationship between the two countries and stated that India is the single largest trading partner of Nepal. He underlined the fact that there has been a growing dynamism in India and Nepal trade relations. He also informed that Nepal has constituted the Board of Investment to facilitate the promotion of foreign direct investment in Nepal. He also expressed happiness on the signing of Bilateral Investment Promotion and Protection Agreement and the Agreement on Avoidance of Double Taxation and Prevention of Fiscal Evasion. He hoped that this meeting would resolve several pending issues.

Agenda Item 1: Trade Facilitation Measures

(i) Waiver of Additional Duty of Customs (ADC) on all export items

Nepalese side requested that since their export trade is losing advantage in Indian market due to the additional duty imposed by Government of India, the same should be removed. Nepalese side stated that their products were enjoying preferential market access in India without any duty under Nepal-India Treaty of Trade. Union Budget of India of 2006
imposed 4% additional duty on all export items of Nepal to India. On receipt of a request for waiver, Government of India exempted 111 products from the levy of ADC in 2007. Government of India, through the notification issued on 27th February 2010 exempted Additional Duty of Customs on readymade garments, exempting 55 categories of HS code lines. Nepalese side stated that there are still 162 items at six-digit level which need to be given the waiver of 4% additional customs duty. Nepalese side reiterated their request for waiver.

Indian side stated that the additional customs duty provides a level playing field to the domestic producers vis-à-vis importers. It was clarified that this is not a tax to hinder exports to India but only a tool to offset the disadvantage of the Indian producers.

It was thereafter intimated that the waiver requested by Nepal side is being extended for all those export items from Nepal which enjoy zero basic custom duty under India-Nepal Treaty of Trade. Necessary notification dated 5th December, 2011 has been issued (copy given to Nepal side). Nepalese side thanked the Government of India for the notification on waiver of additional duty of customs on Nepalese exports.

(ii) Implementation of the provisions of Treaty of Trade signed in October 2009.

(a) Replacement of Duty Refund Procedure (DRP) by new arrangement.

A new treaty of trade was signed between Nepal and India in October 2009. The provision under Protocol VII related to Article IX states that both contracting parties shall make provisions so that no discrimination will be made in respect of tax including central excise rebate and other benefits to exports merely on the basis of payment modality and currency of payment of trade. This would be made effective from the date to be mutually agreed upon, after which the Protocol to Article III would become redundant. Both contracting Parties agreed to develop modalities for transition from the existing to new system.

Indian side informed that necessary notifications for implementation of the changes in the Duty Refund Procedure have been issued on 5th December, 2011 (copies given to Nepal side). Nepalese side thanked the Government of India for switching to a new arrangement, replacing the DRP.
(b) Operationalization of additional customs points.

The treaty has added five more customs points for bilateral trade.

1. Maheshpur-Thutibari,
2. International Airports connected by direct Flights between Nepal and India (Kathmandu/Delhi, Mumbai, Kolkata and Chennai)
3. Shikta -Bhiswa Bajar,
4. Laukaha - Thadi
5. Guleria -Murtia.

Indian side informed that at two places viz: Thutibari and Thadi, land has been acquired for setting up a Land Custom Station and Department of Revenue will shortly notify these two additional customs points. However, at Bhiswa Bajar and Murtia, land acquisition may take time. As regards operationalization of customs points at international airports, Nepal side was informed that these customs points are already operational. A clarification will be issued in a week’s time informing all concerned that air cargo is permissible at these airports for exports by Nepal to India.

(c) Trade related technical assistance

Nepal side stated that they expect technical assistance from India regarding general trade related issues. Nepal side requested for a technical mission from India to identify the nature and extent of technical assistance required for Nepal.

Indian side informed that the desired outcomes need to be identified as a first step. It is important to know whether assistance is required regarding testing infrastructure capacity building, lab facilities or mutual recognition agreement. Therefore, the Joint Secretaries of the Department of Commerce of the respective countries will discuss this issue in respect of all matters relating to standards and regulations for all such commodities and submit a report (within two months) on the basis of which further action can be taken.

(d) Harmonization of Standards and regulation (SPS &TBT).

As decided under Agenda 1 (ii) (c)

(e) Allowing the export of waste & scrap under the new rules of origin.

Nepalese side stated that reusable scrap and waste should be allowed to be exported to India, as under the definition of wholly produced category in the India-Nepal Treaty of Trade.
Indian side stated that it would examine the issue on the basis of specific tariff lines where problem of export of such items is faced by Nepal. Environmental issues would also need to be examined for waste/scrap imports into India.

(iii) Permission of Nepalese Jute Industry in the Procurement process of government and commercial agency in India

Nepalese side stated that the notification of "Mandatory Jute Packaging Order of the Jute Commissioner of India, Kolkata" dt. 28.09.2004 and the related notification in 'the Gazette of India' dated 27.08.2010 restrict the Nepalese Jute products from participation in the public procurement. Since Nepal imports about 60% of its raw jute from India and as it exports constitute only 2% of India’s total jute production, Government of India should waive the restrictions as a special consideration for Nepal.

It was decided that JS (Textiles), Government of India and JS (Industry), Government of Nepal will meet in the first week of January, 2012 in Delhi, to explore the possibility of any special concession which India could make, keeping in view the Nepalese request.

(iv) Import of Petroleum Products by the private sector

Nepalese side stated that propane and butane are proposed to be imported from third countries by private companies of Nepal. These ingredients will then be mixed in India and exported to Nepal. Nepal side requested that the excise duty on such exports be waived. Indian side informed that such mixing is considered a production activity and hence is subject to excise duty as per the law of the land. However, refund can be availed of through the Duty Refund Procedure, as per existing regulations.

(v) Restoration of Margin of Preference on Import Duty for Indian Goods

Indian side stated that Government of Nepal (GON) reduced the margin of preference (MOP) on import of Indian goods from 20% in 2001-02 to 5% in 2006-07. Currently the margin of preference is 7% on duty rates up to 30% (as it abolished the 25% duty rate) and 5% on duty rates above 30%. In contrast, under SAFTA, the Government of Nepal provides a rebate of 25% or more, on applicable goods. Indian side reiterated that the restoration of the eroded MOP would help in deepening the relationship.

Nepalese side informed that the SAFTA concessions are automatically available to India. Regarding enhancement of the MOP, the huge trade deficits have been hindering forward movement. However, Nepal side
agreed to favourably consider this issue in their forthcoming budget session (June-July, 2012).

(vi) **Abolition of agriculture reform fee on import of primary products from India.**

Indian side stated that the Trade Treaty provides duty free access to each other's primary products as per agreed list. However, the GoN continues to levy Agriculture Reform Fee @ 5% on import of primary products from India. It should be immediately abolished.

Nepalese side informed that as per their commitment under the WTO, the agriculture reform fee has to be brought down to zero by 2013. Nepal side committed to adhere to this timeline.

(vii) **Non Tariff Barrier in respect of Ayurvedic and Pharmaceutical imports from India.**

Department of Drug Administration of Nepal demands that all Ayurvedic drugs imported from India should have a COPP Certificate vide WHO-GMP norms though the same is not applicable to domestic manufacturers. Hence, National Treatment is not being extended to Indian imports.

Nepal side stated that there are existing companies exporting to Nepal providing WHO-GMP Certificates for their Ayurvedic products. Therefore, it is important that new companies also provide the required certificates.

Indian side agreed to take further clarifications regarding the use of WHO-GMP certificate for Ayurvedic products from the concerned Department.

**Pharmaceuticals:**

Indian side stated that the Department of Drug Administration of Nepal has stopped registration of pharma manufacturing companies until further notice. As a result no new products can be registered and exported to Nepal.

Nepalese side clarified that new registration has been started.

(viii) **Expansion of Trading Facility by Indian JVs with their parent companies.**

Indian Joint Ventures engaged in manufacturing activity in Nepal are given only a limited facility to trade with their parent companies. Indian side has been requesting that this facility may be expanded without any
restrictions on the value or time period, to help launch new products in Nepal.

Nepalese side informed that there is a restriction on import of manufactured products from parent company for marketing purposes of upto 5% of total turnover. This is for encouraging the production within Nepal and hence improves its manufacturing base.

(ix) Discriminatory requirements in respect of import of vehicles from India

(a) Vehicle Emission Norms

Indian side pointed out that Nepal Government permits all countries, other than India, to import vehicles through self certified Type Approval (TA) which creates an uneven playing field for Indian manufacturers and also acts as a non-tariff barrier against import of vehicles from India.

Nepalese side informed that if the Government of India authorizes any manufacturer for giving self-certified TA’s, Government of Nepal will recognize the same.

(b) CIF rates India vs. other third countries

Indian side stated that the cost of freight is charged under Nepalese customs rules on actual or at 5% of the value of the goods imported including customs, excise and duties. However, Indian vehicles are always charged freight on actuals whereas third country vehicles are permitted C&F valuation from Kolkata port to Birgunj at a very low rate of Nrs 10,000 /-. This gives an unfair advantage to third country vehicle importers.

Nepalese side informed that the cost of freight is calculated as per the declaration given by the Indian exporters.

(x) Restrictions on temporary import of used vehicles and equipment for project works in Nepal

Indian side stated that approval for the import of used passenger vehicles for undertaking construction projects in Nepal is denied as Government of Nepal prohibits import of such used vehicles in the country.

Nepal side informed that this problem has been resolved.
Agenda Item 2: Unauthorized Trade Control Measures

(i) Unauthorized import of Food grains and other items prohibited for export from India.

Instances of food grains viz. rice, wheat, pulses etc. and other prohibited items such as sugar, fertilizers being brought into Nepal from India through routes other than those specified under Trade Treaty are being received. Further, such illegal transactions are being cleared by the Nepal Customs legitimizing such unauthorized trade. This is against the spirit of the Trade Treaty and also the Agreement of Cooperation to Control Unauthorised Trade signed between the two countries. Indian side requested GON to enforce submission of all mandatory export documents to control such trade through in the notified land custom stations.

Nepalese side requested the Indian side to maintain vigil on its side of the border and agreed to cooperate with India on this issue and reiterate instructions to all concerned land customs points/ concerned Customs Officers.

(ii) Unauthorized export of Betel Nuts from Nepal to India

This issue was dropped from the Agenda.

(iii) Intimation by Nepalese Authorities regarding stolen Indian Vehicles

This issue was dropped from the Agenda.

Agenda Item 3: Transit Facilitation Measures

(i) Affixation of an additional one time lock by Indian custom on traffic in transit between Kolkata/Haldia Port and Nepal

Indian side started affixing an additional One Time Lock (OTL) on Nepal bound cargo coming from Kolkata/Haldia with effect from 1st August, 2011 to facilitate quicker movement of transit cargo. Nepalese side has requested for discontinuing this practice as this goes beyond the framework of the Treaty of Transit between the two countries.

Indian sides stated that the affixation of One Time Lock will continue. However, a Committee headed by Commissioner (Customs), Department of Revenue from the Indian side and his counter-part from the Ministry of
Finance from the Nepalese side will meet in Kolkata on 16th January, 2012 to discuss the simplification of procedures for trade/transit cargo.

Simplified procedure evolved will apply mutatis mutandis to all the routes agreed between India and Nepal for Transit Trade.

(ii) **Operationalisation of Vishakhapatnam Port (Amendment in RSA for rail transport to/from Vishakhapatnam and in Treaty of Transit for traffic-in-transit between Vishakhapatnam Port and Nepal).**

As decided under Agenda 3(f).

(iii) **Operationalisation of Rail Transit facility through Singhabad for Nepal’s trade with and through Bangladesh**

As decided under Agenda 3(f).

(iv) **Comprehensive review of the Rail Services Agreement to enhance cooperation in the field of railway and explore movement additional stream of wagons to/from ICD, Birgunj in Nepal.**

Both sides agreed that the next meeting for comprehensive review of the Rail Services Agreement will be held on 23-24 January, 2012 in Kathmandu. This matter will be taken up during the review meeting of the Railway Service Agreement.

(v) **Simplification of modalities for Traffic-in Transit between Nepal and Bangladesh through Kakarbhitta-Banglabandh corridor.**

As decided under Agenda 3 (f).

(vi) **Alternate border crossing of Mahendranagar- Banbasa**

Nepalese side stated that in view of remaining limited life span of Sharada barrage over the Mahakali River, there is an urgent need of exploring alternative trade corridor linking Kanchanpur district of Far Western Nepal with adjacent Indian territory. The opening of the new corridor will reduce the road length connecting Kathmandu to Delhi by 550 Kilometers. They proposed that a Joint team should be constituted for exploring possibilities of including other necessary transit facilitation measures to develop this alternate corridor.

Indian side requested for a concept note from Nepalese side of the desired outcomes. Based upon such clarity, the respective Joint Secretaries of the Commerce Ministry would finalize issues of techno-economic viability.
(vii) **Facilitation of movement of Indian goods from one part of India to another through Nepalese territory**

In 2006, Nepal side agreed to permit movement of Indian goods from one part of India to another through Nepalese territory. The finalized draft LOE was sent in February, 2011 soliciting consent of GON. Indian side requested that this LOE may be de-linked with other LOEs and signed at the earliest.

Nepal side agreed to favourably consider this request.

(viii) **Operationalisation of Railway Links from Kolkata/Haldia-Jogbani and Kolkata/Haldia-Nautanawa Corridor for bulk traffic**

Nepal side requested for allowance of bulk traffic on Kolkata/Haldia-Jogbani and Kolkata/Haldia-Nautanawa rail routes so as to improve connectivity and also reduce congestion at Raxaul.

Indian side stated that lack of infrastructure within the railway yard was hindering the usage of Kolkata/Haldia-Jogbani rail route particularly for container traffic. The infrastructure requirements were specified as requirement of perimeter security and also fork-lift crane for unloading cargo from the railway wagons and loading them onto trucks.

Both sides agreed that Ministry of Railways, Government of India will check with CONCOR regarding their interest in being appointed as the logistic operator and revert within six weeks (by 15th January, 2012).

As regards, Kolkata/Haldia-Nautanwa Rail route, Indian side informed that Department of Revenue will re-examine the issue.

**Agenda Item 4: Dispute Resolution Measures**

**Outstanding dues to be paid by respective Indian & Nepalese Companies**

Both sides noted the issue.
Agenda Item 5: Trade Related Issues

(i) Effective implementation of measures to check 500 & 1000 denominations Indian Rs. notes

Indian side reiterated its concern regarding circulation of Fake Indian Currency Notes (FICN) through Nepal and its security implications thereof.

Nepalese side informed that vigilance has been increased to see that such illegal activities are curtailed. The Nepalese side noted the possibility that notes of 500 and 1000 Indian rupee denomination may be rendered legitimate for use in Nepal.

Indian side agreed that a strategy should be devised for detecting and punishing those involved in circulation of counterfeit currency.

Nepalese side also informed that Nepalese workers in India have been facing difficulties in repatriating their hard-earned income to Nepal owing to de-legitimization of 500 and 1000 Indian currency notes and requested that notes of 500 and 1000 denomination may allowed for legitimate use in Nepal.

(ii) Commission of Survey Licenses into Project Development Agreement (PDA) of Indian Companies in Hydropower projects

Indian side stated that the Government of Nepal has awarded 28 survey licenses to Indian companies for development of hydropower projects in Nepal, with total generation capacity of 8249 MW. However, many of them are facing obstructions and delays in the negotiation of the project development agreement, which is essential for financial closure of the project and undertaking pre-construction activities. Indian side requested Government of Nepal to conclude Project Development Agreements and to ensure that there are no policy changes that may adversely affect the viability of the project or deter investor's confidence.

Nepalese side stated that the Joint Commission on water resources (JCWR) is the appropriate mechanism to deliberate on this matter. Both sides agreed that Joint Secretary (Commerce) of respective countries will facilitate the concerned Government authorities, to progress this issue.
Agenda Item 6: Other Issues

Petroleum Product Pipeline from Raxaul - Amlekhgunj

Government of Nepal wishes to construct a petroleum product pipeline connecting IOC Depot at Raxaul with the NOC Depot, Amlekhgunj and requested for grant assistance from Government of India.

Indian side stated that this issue will be examined in consultation with the concerned Ministry, after obtaining full details from the Nepal side of the project cost, land availability etc. Nepalese side agreed to provide such information within one month.

(i) Deferred payment to IOC

Under the current Supply Agreement effective from April 2007 and expiring in March 2012, the settlement of outstanding amount dues by NOC to IOC is done on a weekly basis. Nepalese side requested for deferment of payments by three months, as there is shortage of supply of POL products from IOC to Nepal.

Indian side stated that this issue will be examined in consultation with the concerned Ministry.

(ii) Simplification of Duty Drawbacks Procedures for import of petroleum products

Nepalese side informed that the present system of Duty Drawback procedure is time consuming and non-transparent and requested for simplifying the procedure.

Both sides agreed that MoC will interact with IOC in respect of:

(a) Revision in the brand price as well as duty drawback procedures and
(b) Simplification and revision of the procedures.

It was also noted that IOC is directly responsible for applying and effecting the revision in consultation with Department of Revenue.

(iii) Incidence of excise duty on kattha (catechu) and Copper/Brass utensils

Nepal side stated that Government of India vide notification no.1/2011 of central excise imposed a duty of 1% ad valorem if NO CENVAT credit is availed of by the Indian Manufacturing Unit on any of the 130 items
already exempted from excise duty. However, if CENVAT credit is availed of, then the chargeable excise duty will be 5% instead of 1%.

However, if the Nepalese producing unit is not able to prove that they have not availed of the credit, Indian custom/excise department charges duty at a rate of 5% (vide notification no.2/2011) instead of 1% on such items. This has created an uneven playing field between the Indian manufacturer vis-à-vis the Nepalese manufacturer.

Indian side informed that national treatment is being extended to the Nepalese exporters.

(v) **Import of hybrid cows by Nepal**

Nepal side requested for provision of the necessary authorizations from the concerned Government authorities to allow Nepal to import 10,000 number of hybrid cows to help their dairy farmers improve milk production.

Indian side agreed to examine the issue in consultation with the concerned Government authorities.

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MINISTRY OF COMMERCE & INDUSTRY
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New Delhi
6th December, 2011

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