

NEPAL'S COMPLIANCE WITH THE WORLD TRADE ORGANIZATION'S TRADE FACILITATION AGREEMENT

1. **Nepal's Accession.** In December 2013, the World Trade Organization (WTO) forged the Trade Facilitation Agreement (TFA), a multilateral agreement to address key non-tariff barriers to trade. Nepal's Parliament reached the decision to accede to the TFA in January 2017 as the 108th WTO member to do so. Shortly afterwards on 22 February 2017, the WTO obtained the two-thirds acceptance of the TFA from its 164 members needed to bring the TFA into force. Nepal and the rest of the acceding members are now under time-bound commitments to implement the TFA Section 1's 37 measures—most of them related to customs—in the areas of legal/procedural reforms, institutional framework, and human resources/training.¹ As a least-developed country (LDC), Nepal benefits from the TFA's special and differential treatment, which gives flexibility in the implementation (Section 2) and access to international technical assistance to meet the obligations (Section 3). The TFA is founded on World Custom's Organization's revised Kyoto Convention (RKC) and related international standards.² Nepal embarked on the process to accede to the RKC in 2011, and the Parliament reached the accession decision in September 2016.

2. **Benefits of TFA implementation.**³ Globally, full implementation of the TFA is forecast to cut down the members' trade costs by an average of 14.3%, with developing countries having the most to gain. The TFA is also expected to reduce the time needed to import goods by over a day and a half and to export goods by almost two days, representing a reduction of 47% and 91%, respectively, over the current average. Once the TFA is fully implemented, developing countries are predicted to increase the number of new products exported by as much as 20%. LDCs like Nepal are expected to be the main beneficiaries, seeing an increase in the export product numbers by up to 35%. Simulation of Nepal's TFA implementation also shows that reduced trade costs, export growth and diversification, as well as gross domestic product growth will be among the country's gains from successful compliance.⁴ Other benefits for Nepal are expected to include its firms' greater participation in global value chains, expanded export opportunities for small- and medium-sized enterprises, improved revenue collection, and increased attractiveness of the country as a destination for foreign direct investment.⁵

3. **Customs Reform Modernization Strategies and Action Plan (CRMSAP)—the government strategy on customs and trade facilitation.** The Department of Customs (DOC) has been implementing the CRMSAP since 2003 in phases, with each phase programmed for 3–4 years. Successive phases of CRMSAP have provided strategic directions to the government's efforts to meet the requirements of the WTO TFA, the RKC, and other related international standards on trade facilitation. The fourth-phase CRMSAP 2013–2017 will be completed in July 2017, and its main achievements to date include: (i) the RKC accession; (ii) completion of the

¹ The TFA consists of three sections. Section 1 details the reform measures. The remaining two sections are: Special and Differential Treatment (SDT) Provisions for Developing Country Members and Least Developed Country Members (Section 2) and Institutional Arrangements and Final Provisions (Section 3). https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

² For comparison between the provisions of the WTO TFA and the RKC, see World Customs Organization. 2013. *International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention): Toolkit for Quality Implementation Assessment*. Brussels.

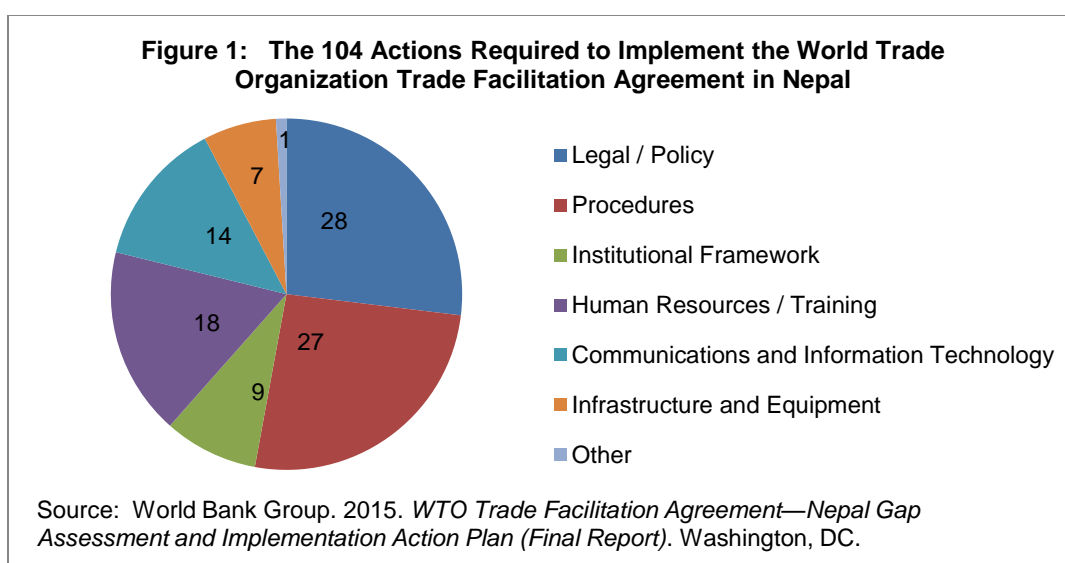
³ The figures on the global gains from implementing the TFA are from WTO. 2015. *World Trade Report 2015—Speeding up Trade: Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement*. Geneva.

⁴ For the details on the simulation and its methodology, see Estimated Gains in Trade from Improvement in Trade Facilitation (accessible from the list of linked documents in Appendix 2).

⁵ Economic Analysis and Nepal's Development Context and the Role of Trade Facilitation (accessible from the list of linked documents in Appendix 2).

study on tariff structure review; (iii) improved public access to information through an updated DOC website and client service desk operations; (iv) formulation of e-Customs Master Plan; and (v) commencement of the Automated System for Customs Data (ASYCUDA) World pilot.⁶ The succeeding fifth-phase CRMSAP 2017–2021⁷ was formulated with ADB technical assistance.⁸ The new strategy's time-bound implementation action plan is fully consistent with Nepal's schedule for implementing the WTO TFA and the RKC (para. 4). The CRMSAP 2017–2021's guiding principles embed customs' role as a trade facilitator. They include reducing compliance costs and time, enhancing risk management, and helping export promotion.

4. Current status of compliance with the WTO TFA Section 1 and the role of Nepal's customs administration. With the CRMSAP as a key policy tool, Nepal has been making progress in undertaking trade facilitation reforms over the years, particularly those related to the customs. The government's efforts have translated into the current status of WTO TFA compliance as follows, according to the government's 2015 WTO TFA gap assessment and implementation action plan:⁹ of the 37 TFA reform measures, 2 are fully aligned, 11 substantially aligned, and 16 partially aligned, 7 in need of actions to commence, and 1 uncategorized. This action plan of the government—which outlines its plans to implement 31 of the 37 measures in 2 to 5 years from its accession to the TFA, i.e., by January 2022—lists 104 actions, 82 of them in the areas of legal/procedural reforms, institutional framework, and human resources/training (Figure 1). The remaining actions largely concern infrastructure/equipment and communications/information technology. The gap assessment also underscored DOC's central role in TFA compliance: 18 of the 37 measures require DOC to lead or implement reforms alone; of the remaining 19 measures, 15 require DOC to play a co-leading role; only 4 measures have no explicit role for the DOC.



⁶ For a full list of key achievements, Government of Nepal, Ministry of Finance. Department of Customs. 2016. *Customs Reform and Modernization Strategies and Action Plan 2013-2017 Mid-Term Review and Updated Action Plan*. Kathmandu. [unpublished].

⁷ Government of Nepal, Ministry of Finance. Department of Customs. 2017. *Customs Reform and Modernization Strategies and Action Plan 2017-2021*. Kathmandu.

⁸ ADB. 2013. *Technical Assistance to Nepal for Supporting Participation in the South Asia Subregional Economic Cooperation Trade Facilitation Program*. Manila.

⁹ The gap analysis was conducted with technical assistance from the World Bank Group. World Bank Group. 2015. *WTO Trade Facilitation Agreement—Nepal Gap Assessment and Implementation Action Plan (Final Report)*. Washington, DC. [restricted distribution]. ADB reviewed draft versions and provided input.

5. **The South Asia Subregional Economic Cooperation Customs Reform and Modernization for Trade Facilitation Program’s focus on the six WTO TFA provisions for risk-based, paperless customs (Table 1).** The CRMSAP 2017–2021’s impact statement reads as: “The goal (impact) of the CRMSAP 2017–2021 is ‘Customs to be recognized as a modern administration that is responsive to the needs of the 21st century customers.’ Customs procedures such as Valuation, *PCA* [post-clearance audit], *Advance Rulings*, *pre-arrival clearance*, *expedited shipment*, *risk management and TTP* [trusted traders program]¹⁰ will be automated to attribute [*sic.*] to the desired goal”¹¹ [emphasis added]. Aside from valuation, which is an integral component of effective risk management, the remaining six thematic areas each constitute a WTO TFA measure. They are recognized in the CRMSAP 2017–2021 as particularly crucial ingredients for introducing risk-based, paperless, time- and cost-efficient customs clearance. The program targets reforms in these six WTO TFA provisions from multiple angles: amending and refining the relevant legislative framework is a starting point. For implementation, the Program (i) supports the review and reengineering of the business processes on these six measures; (ii) introduces the concerned automation tools through the ASYCUDA World and the related subsystems; (iii) helps the DOC tailor its institutional structure with sufficient resources and rational organigram to implement the six priority reforms; and (iv) equips the DOC with a long-term capacity development strategy and training manuals to nurture internal knowledge on the six areas.

Table 1: Six Priority Trade Facilitation Reform Areas for Introducing Risk-Based, Paperless, Time, and Cost-Efficient Customs Clearance

The Six World Trade Organization Trade Facilitation Agreement Provisions	Definition, Scope and Benefits
<p>Article 3: Advance Rulings</p> <p>Nepal’s status of compliance:</p> <p>Partial</p>	<p>Definition</p> <p>Advance rulings are government’s binding decisions issued at a request of a person on specific issues in relation to export or import of goods, such as customs valuation, harmonized system classification and origin. The TFA requires the member government to issue an advance ruling in tariff classification and origin of goods to the applicant who has submitted a written request containing all necessary information.</p> <p>Benefits</p> <p>Advance ruling measures enhance trade facilitation by:</p> <ul style="list-style-type: none"> • providing predictability for traders and their agents, as to how their goods will be treated by the country of import, allowing them to plan their operations with certainty; • promoting consistency and uniformity in tax treatment of the goods across all customs points in the importing country and in application of the law; • developing confidence between the customs administrations and traders; and • encouraging compliance and minimizing delays, complaints, and litigation.

¹⁰ The Trusted Traders Program is a version of the trade facilitation measures for Authorized Operators (WTO TFA measure 7.7).

¹¹ Government of Nepal, Ministry of Finance. Department of Customs. 2017. *Customs Reform and Modernization Strategies and Action Plan 2017–2021*. Kathmandu. p.9.

The Six World Trade Organization Trade Facilitation Agreement Provisions	Definition, Scope and Benefits
<p>Article 7.1: Pre-arrival processing</p> <p>Nepal's status of compliance:</p> <p>Partial</p>	<p>Definition</p> <p>Pre-arrival processing is a cargo release procedure, which allows traders to submit import or export declarations before arrival of the cargo at customs stations. It enables customs to conduct risk assessment and information processing, prior to the goods arriving at the port of entry or exit, thus helping the release of the goods immediately upon arrival and mitigate port congestions.</p> <p>Benefits</p> <p>The pre-arrival processing measures enhance trade facilitation by:</p> <ul style="list-style-type: none"> • reducing time and cost to traders by allowing expeditious release of cargo; • improving compliance and supply chain security; and providing a base for effective risk management and targeted inspections.
<p>Article 7.4: Risk Management</p> <p>Nepal's status of compliance:</p> <p>Partial</p>	<p>Definition</p> <p>Risk management selects cargoes for documentary, physical examinations, or post-clearance audit (PCA), based on the application of risk management principles. The TFA obligates the member government to “adopt or maintain a risk management system for customs control” to the extent possible, leaving some flexibility in the interpretation of reform scope.</p> <p>Benefits</p> <p>The risk management measures enhance trade facilitation by:</p> <ul style="list-style-type: none"> • limiting the physical verification level of cargo to high risk consignment, thus providing expedited clearance for low risk cargo; • developing trust between customs and traders; • encouraging voluntary compliance by the traders; • focusing customs control to high risk issues; and • avoiding arbitrary or discriminatory treatment of trade.
<p>Article 7.5: Post-clearance Audit</p> <p>Nepal's status of compliance:</p> <p>Partial</p>	<p>Definition</p> <p>PCA is a method of compliance management, whereby a customs administration may release the majority of consignments at the time of their arrival and conduct an audit of selected traders at a later time at premises other than the border.</p> <p>Benefits:</p> <p>The PCA enhances trade facilitation by:</p> <ul style="list-style-type: none"> • shifting the notion of cargo checking <i>at the border</i> to <i>beyond the border</i>; • supporting implementation of risk management in customs clearance; and • expediting the movement of cargo at the border.
	<p>Definition</p>

The Six World Trade Organization Trade Facilitation Agreement Provisions	Definition, Scope and Benefits
<p>Article 7.7: Trade Facilitation Measures for Authorized Operators</p> <p>Nepal's status of compliance:</p> <p>Not Aligned</p>	<p>An authorized operators' scheme introduces simplified import, export, or transit formalities and procedures to clear consignments belonging to certified traders (the "authorized operators"). It gives traders incentives to voluntarily comply with trade regulations, because of the privilege of expedited clearance of their goods, when they meet the criteria set by customs administration, such as good past records of compliance with import and export requirements.</p> <p>Benefits</p> <p>The authorized operators scheme enhances trade facilitation by:</p> <ul style="list-style-type: none"> • enabling rapid clearance of goods and easier formalities for operators recognized as secure and reliable; • promoting customs-business partnership by encouraging trust between traders and customs; • ensuring security of cargoes by validating the supply chain processes of the authorized operators; and • providing business entities with an internationally recognized certification and paving the way for mutual recognition with other countries.
<p>Article 7.8: Expedited Shipments</p> <p>Nepal's status of compliance:</p> <p>Not Aligned</p>	<p>Definition</p> <p>Expedited shipment recognizes the time-sensitive nature of certain cargoes and seeks to ensure expedited clearance arrangements for such consignments. Such cargoes, when they meet the conditions laid down by the customs administration, can be granted immediate release and clearance. The TFA requires that when traders apply for such treatment, procedures are adopted or maintained to allow for the expedited release of at least those goods entered through air cargo facilities, while maintaining customs control.</p> <p>Benefits</p> <p>Measures for expedited shipment enhances trade facilitation by:</p> <ul style="list-style-type: none"> • allowing for rapid release and clearance of time-sensitive cargo, particularly air cargo for export and import; and • providing a regulatory environment to facilitate clearance of low value shipments and e-commerce.

Source: World Trade Organization. *Agreement on Trade Facilitation*. 15 July 2014; World Bank Group. World Bank Group. 2015. *WTO Trade Facilitation Agreement—Nepal Gap Assessment and Implementation Action Plan (Final Report)*. Washington, DC. [restricted distribution].

6. **Other trade facilitation reforms in the program's scope.** Additionally, the program's comprehensive review of the customs legislations and expansion of customs automation (Outputs 1 and 2)¹² will improve Nepal's compliance with 19 more provisions of the WTO TFA. The coverage of the program will extend to 25 out of the 37 WTO TFA provisions. The 25 provisions target those which: (i) require the DOC to lead the government's compliance efforts, (ii) are listed under the medium-term implementation schedule of 2–5 years from the TFA ratification; (iii) have

¹² See the design and monitoring framework in Appendix 1.

high degree of alignment with the RKC commitments and the CRMSAP 2017–2021 priority actions (para. 3); (iv) build on ADB's recent and ongoing trade facilitation sector support in Nepal, including the South Asia Subregional Economic Cooperation (SASEC) customs subgroup activities;¹³ and (v) complement the ongoing initiatives of the government and the development partners.¹⁴ Table 2 shows the program's selection of 25 WTO TFA provisions, and how they meet the above criteria. The TFA measures are divided into three categories: (i) those Nepal is fully complied with; (ii) those which are for 2–5 years of implementation (medium term), and (iii) those which require 5 years or longer for implementation (long term). The program's main areas of intervention are highlighted as follows: the 6 key trade facilitation areas marked in , and the legal gap analysis and amendments and automation to improve the compliance level in additional 19, marked in .

Table 2: The 37 World Trade Organization Trade Facilitation Agreement Measures

Serial No.	TFA Measures	Customs Role ^a	RKC General Annex ^b	CRMSAP 2017–2021 Priorities ^c	Recent and Ongoing ADB Support ^d	Other Development Partners ^e
Fully Compliant measures						
1	10.5: Pre-shipment	✓✓				
2	10.6: Use of Customs Brokers	✓✓	✓			
Measures to be complied with in the Medium Term (2 to 5 years from ratification)						
3	1.1: Publication	✓	✓			World Bank (NIRTP)
4	1.2: Information available through Internet	✓	✓	✓	✓	World Bank (NIRTP)
5	1.3: Enquiry points	✓	✓	✓	✓	
6	2.1: Opportunity to Comment and Information before Entry into Force	✓	✓			
7	2.2: Consultations	✓	✓	✓	✓	
8	3: Advance Ruling	✓	✓	✓		World Bank (NIRTP)
9	4: Procedure for Appeal or Review	✓	✓	✓	✓	
10	5.1. Notifications for Enhanced Controls or Inspections					
11	5.2: Detention	✓				
12	6.1: General disciplines on fees and charges imposed on or in connection with importation and exportation	✓				
13	6.2: Specific disciplines on fees and charges for customs processing imposed on or in connection with importation and exportation	✓✓	✓	✓		
14	6.3: Penalty Disciplines	✓✓	✓	✓		
15	7.1: Pre-arrival Processing	✓✓	✓	✓		

¹³ ADB's Sector Experience in Sector Assessment (Summary): Industry and Trade (accessible from the list of linked documents in Appendix 2).

¹⁴ Development Coordination (accessible from the list of linked documents in Appendix 2).

Serial No.	TFA Measures	Customs Role ^a	RKC General Annex ^b	CRMSAP 2017–2021 Priorities ^c	Recent and Ongoing ADB Support ^d	Other Development Partners ^e
16	7.3: Separation of Release from Final Determination and Payment of Customs Duties, Taxes, Fees, and Charges	✓✓	✓	✓		
17	7.4: Risk Management	✓✓	✓	✓	✓	IFC, IMF
18	7.5: Post-clearance Audit	✓✓	✓	✓		IMF
19	7.6: Establishment and Publication of Average Release Times	✓✓	✓	✓	✓	
20	7.7: Trade Facilitation Measures for Authorized Operators	✓✓	✓	✓		
21	7.8: Expedited Shipments	✓✓	✓	✓		
22	7.9: Perishable goods	✓✓	✓	✓		
23	8: Border Agency Cooperation	✓	✓	✓	✓	World Bank (NIRTTP)
24	10.1: Formalities and Documentation Requirements	✓	✓	✓		
25	10.2: Acceptance of Copies	✓✓	✓	✓		
26	10.3: Use of International Standards	✓✓	✓	✓	✓	World Bank (NIRTTP), IFC
27	10.7: Common Border Procedures and uniform documentation Requirements	✓✓	✓	✓	✓	
28	10.8: Rejected Goods					
29	10.9.1: Temporary Admission of Goods and 10.9.2: Inward and Outward Processing	✓✓	✓	✓		
30	12: Customs Cooperation	✓✓	✓		✓	
31	23.2: National committee on Trade Facilitation					World Bank (NIRTTP)
Measures to be Complied with in the Long Term (5< years)						
32	5.3: Test procedures	✓	✓	✓	✓	World Bank (NIRTTP)
33	7.2: Electronic Payment	✓✓	✓	✓	✓	World Bank (NIRTTP)
34	9: Movement of Goods intended for import under Customs Control.	✓		✓		World Bank (NIRTTP)
35	10.4: Single Window	✓	✓	✓	✓	World Bank (NIRTTP)
36	11: Freedom of Transit	✓				World Bank (NIRTTP)
Uncategorized Measures						
37	1.4: Notification					

ADB = Asian Development Bank, CRMSAP = Customs Reform Modernization Strategies and Action Plan, IFC = International Finance Corporation, IMF = International Monetary Fund, NIRTTP = Nepal–India Regional Trade and Transport Project, RKC = Revised Kyoto Convention, TFA = Trade Facilitation Agreement, WTO = World Trade Organization.^a Roles for the customs administration identified (✓✓ for the lead role, and ✓ for a supportive role).

^b The RKC General Annex contains related provisions (✓).

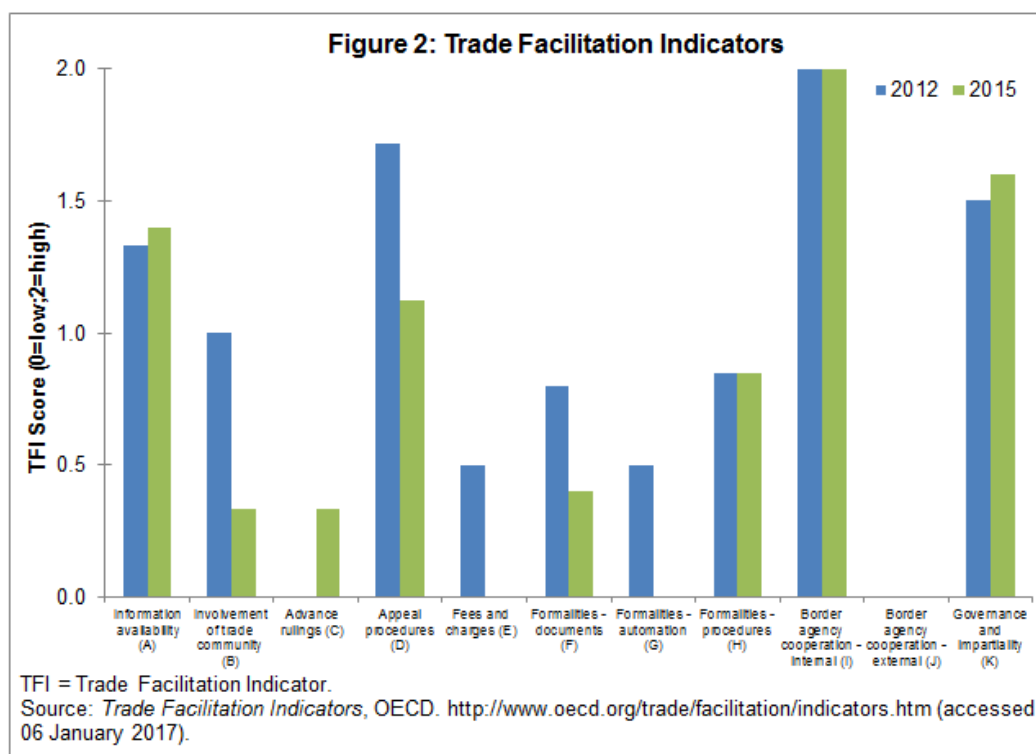
^c Measures covered by the CRMSAP 2017–2021 priorities (✓).

^d ADB's recent or ongoing support has addressed the measures (√), including joint ADB–UNCTAD support of ASYCUDA.

^e Measures being addressed by non-ADB development partners' work.

Sources: ADB; Government of Nepal, Ministry of Finance. Department of Customs. 2017. *Customs Reform and Modernization Strategies and Action Plan 2017-2021*. Kathmandu; World Bank Group. 2015. *World Trade Organization Trade Facilitation Agreement—Nepal Gap Assessment and Implementation Action Plan (Final Report)*. Washington, DC. [restricted distribution]; World Customs Organization. 2013. *International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention): Toolkit for Quality Implementation Assessment*. Brussels; World Trade Organization. *Agreement on Trade Facilitation*. 15 July 2014

7. **Indicators on the WTO TFA compliance.** Successful completion of reforms under the program is expected to result in significant improvement in Nepal's score on the global indicators to measure its compliance with the WTO TFA, given the Program's broad coverage of 25 WTA TFA provisions out of 37 in total. The Organisation for Economic Co-operation and Development (OECD) developed a tool to assess country-level compliance with the TFA on 11 indicators (Figure 2). In 2015, Nepal scored 0.8 on a scale of 0 to 2 (2 being the best possible performance), making Nepal the lowest ranking country in South Asia and among the lowest in the world.¹⁵ The CRMSAP 2017–2021's results framework includes a performance target of improving this overall score to 1.3 by the end of the implementation period in July 2021, which in turn is one of the outcome indicators of the Program.¹⁶



¹⁵ Overall, trade facilitation indicator is calculated as the simple average of its 11 components, shown in Figure 2. Interactive tools on the OECD website allow users to compare country performance in WTO TFA across 11 indicators. <http://www.oecd.org/trade/facilitation/indicators.htm>. "Country Note – Nepal" was generated in June 2016. The 2015 ratings of other South Asian countries are: India (1.5), Sri Lanka (1.4), Bangladesh (1.1), the Maldives (1.1), and Bhutan (0.9).

¹⁶ The design and monitoring framework is in Appendix 1.