

Section on Sustainable Development and Countries in Special Situations

NTMs in Nepal

Existing and new issues in the wake of LDC
graduation

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Abstract

This paper provides a comprehensive analysis of the challenges posed by non-tariff measures (NTMs) on Nepal's trade, particularly in light of its upcoming graduation from the least developed country (LDC) status in 2026. NTMs, which include policy measures other than tariffs, can significantly impact international trade by altering prices and quantities traded. While NTMs often serve legitimate purposes such as public health and safety, they can also act as trade barriers, creating procedural obstacles for exporters. The study highlights the dual impact of NTMs on Nepal's trade, focusing on sectors like agriculture and pharmaceuticals where compliance costs are high. The paper discusses the potential loss of preferential trade treatments and more lenient rules of origin (RoO) post-graduation, which will necessitate significant adjustments in Nepal's export strategies. It also examines the impact on subsidy regimes and the readiness of Nepal's regulatory framework to handle these changes. The paper concludes with recommendations for capacity building and proactive international engagement to mitigate the adverse effects of stricter NTMs and ensure continued trade performance.

I: Background

NTMs (Non-Tariff Measures) are policy measures that could potentially have an impact on the trade of commodities. As such, they represent a vast array of measures.

The formal definition of NTMs is as follows:

“Non-tariff measures are policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both” (UNCTAD 2010).

While NTMs sometimes serve a useful purpose, most notably for the promotion of public health, consumer protection, and environmental protection, evidence suggests that NTMs are also applied as alternative trade policy instruments. They provide an effective alternative against limitation imposed by multilateral trade agreements on the use of traditional trade policy instruments, most notably tariffs (UNCTAD 2010).

NTMs could have a positive impact on trade as well as a negative impact. First, NTMs designed with a protectionist intent most likely disrupt trade. But even non-protectionist NTMs impact trade although their impacts are not always straightforward (Disdier and Fugazza, 2019). For instance, some NTMs such as the ‘hard’ NTMs—the quantity-control measures (Chapter E)¹ and price-control measures (Chapter F)—are more likely to disrupt trade. However, other NTMs such as Sanitary and Phytosanitary (SPS) measures and technical barriers to trade (TBT) pose an interesting dilemma and their impact is ambiguous. While these measures—referred to as technical measures—serve legitimate purposes for public policy purposes, they can also have protectionist intents. Moreover, NTMs could impose significant trade costs—estimated to be more than double that of ordinary customs (UN ESCAP and UNCTAD 2019). Furthermore, even if they are justified on the grounds of legitimate public interests and do not have hidden protectionist impacts, they can pose significant challenges to developing countries and least developed countries (LDCs), effectively curtailing their export. Table 1 presents the classification of non-tariff measures by chapter.

Table 1 Classification on non-tariff measures by chapter

Imports	Technical measures	A	Sanitary and phytosanitary measures
		B	Technical barriers to trade
		C	Pre-shipment inspection and other formalities
	Non-technical measures	D	Contingent trade-protective measures

¹ A multi-agency team of several international organizations coordinated by UNCTAD, known as the Multi-Agency Support Team (MAST), contributed to the international classification of non-tariff measures. The revised version of the final proposal of the MAST group resulted in the international classification of non-tariff measures (2012 version), which was revised in 2019. See UNCTAD (2019) for the detailed international classification of NTMs.

		E	Non-automatic import licensing, quotas, prohibitions, quantity-control measures and other restrictions not including sanitary and phytosanitary measures or measures relating to technical barriers to trade
		F	Price-control measures, including additional taxes and charges
		G	Finance measures
		H	Measures affecting competition
		I	Trade-related investment measures
		J	Distribution restrictions
		K	Restrictions on post-sales services
		L	Subsidies and other forms of support
		M	Government procurement restrictions
		N	Intellectual property
		O	Rules of origin
	Exports	P	Export-related measures

Source: UNCTAD

Nepal, currently a least developed country (LDC), stands on the verge of graduating from the category, with graduation set for 2026. This is a testament to Nepal’s commendable socio-economic development. However, LDC graduation could also pose new challenges, particularly with regards to market access. The weak capacity to navigate NTMs in the destination markets could exacerbate market access challenges resulting from the loss of preferential tariffs and other types of special and differential (S&D) treatment provided to LDCs. Furthermore, LDC graduation will amplify some of the existing issues related to NTM –for instance, rules of origin.

This paper discusses the NTM-related challenges that Nepal is grappling with, and how LDC graduation may exacerbate some of the challenges. The second section discusses the increasingly challenging NTM landscape vis-à-vis tariffs to highlight its significance for LDCs. The third section provides a detailed assessment of the types of NTM that Nepal currently grapples with. This is followed by a comprehensive analysis of the of how LDC graduation will further influence the application of NTMs for Nepal and LDCs in general. The final section proposes a set of recommendations to mitigate the identified potential impacts.

II: Why NTMs pose a more binding constraint than tariffs for LDCs

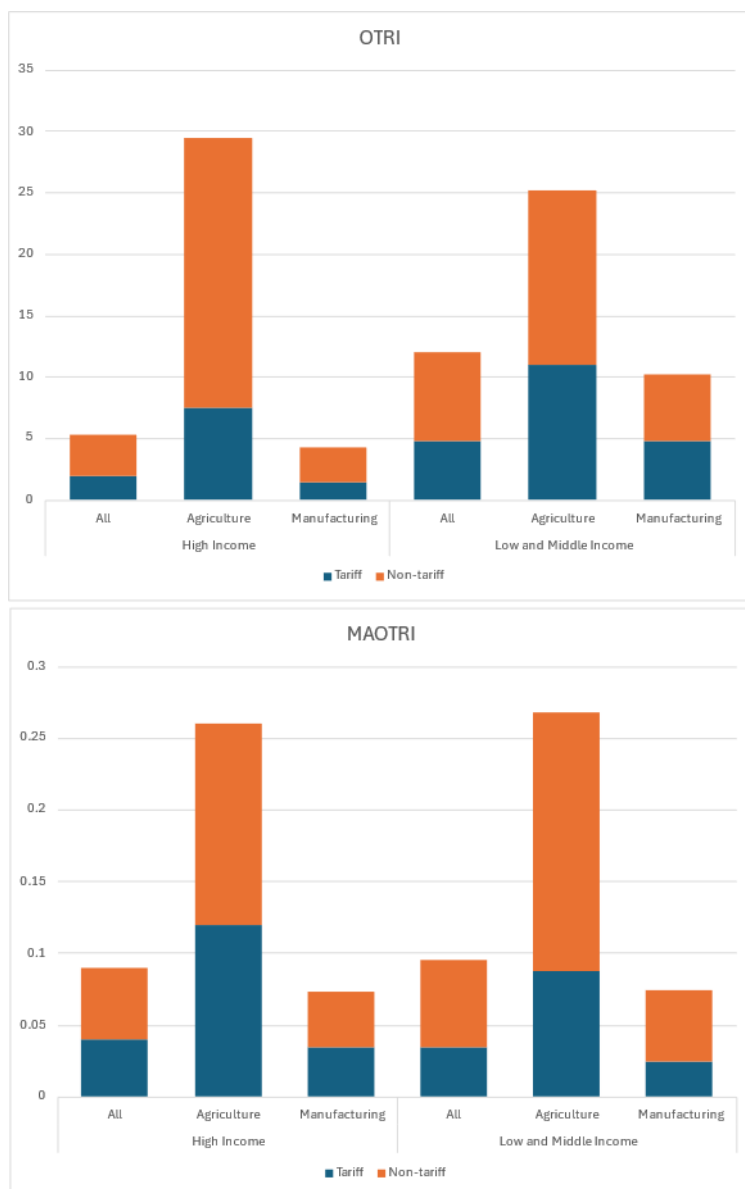
NTMs have increasingly become a significant barrier to trade, especially for LDCs. Unlike tariffs, which have been systematically reduced through various trade agreements, NTMs encompass a wide range of policy measures that can have profound effects on international trade. These include Sanitary and Phytosanitary (SPS) measures, Technical Barriers to Trade (TBT), quotas, price controls, and other regulatory requirements. While NTMs are often implemented to achieve legitimate policy objectives, such as protecting public health and the environment, they pose considerable challenges for LDCs due to their complex and often costly compliance requirements.

Tariffs primarily raise the price of goods, which can reduce demand but generally do not prevent trade entirely. In contrast, NTMs can result in complete obstruction if LDC exporters are unable to meet the stringent regulatory standards. The increased cost from tariffs can make goods from LDCs less competitive in international markets, but they do not usually result in complete market exclusion. Tariffs are a more straightforward cost to account for and manage compared to the multifaceted compliance requirements of NTMs. This is particularly problematic for LDCs, which often lack the infrastructure and resources to meet these standards. For example, complying with SPS measures, which include requirements for pesticide residues in food products, can be prohibitively expensive for small-scale producers in LDCs. These costs can include testing, certification, and adapting production processes to meet the standards of importing countries.

In a study that refers to two measures of NTM restrictiveness—the Overall Trade Restrictiveness Index (OTRI) and its mirror image the Market Access OTRI (MA-OTRI)—the authors present a set of stylized facts (Figure 1). Firstly, non-tariff measures (NTMs) impede international trade flows more significantly than tariffs. This effect is especially evident in developed countries compared to developing ones, possibly due to differences in industry composition. Additionally, NTMs exert a greater impact on agricultural trade flows than on manufacturing. Overall, NTMs significantly amplify the trade restrictiveness faced by traders, sometimes doubling the perceived impact of trade policies. Consequently, even with preferential tariff schemes like the Generalized System of Preferences, developing country exporters endure higher restrictions due to their export focus on agriculture, where NTMs are more prevalent (Edgerton and Michele, 2016).²

² Overall Trade Restrictiveness Index (OTRI), which measures the “uniform tariff that if imposed on home imports instead of the existing structure of protection would leave aggregate imports at their current level”, and its mirror image the Market Access OTRI (MA-OTRI), which is the “uniform tariff that if imposed by all trading partners on exports of a country instead of their current structure of protection would leave exports of that country at their current level”.

Figure 1 Tariff VS Non-tariff measures



Source: Replicated based on Edgerton and Michele (2016)

The following are some of the most consequential implications of NTMs.

- i. **Procedural obstacles and compliance costs:** One of the most significant issues with NTMs is the procedural obstacles they create. These include complex documentation requirements, lengthy approval processes, and the need for multiple certifications. For LDCs, where administrative capacity is often limited, these procedural barriers can be insurmountable. This is exacerbated by the fact that NTMs vary widely between countries, requiring exporters to navigate a labyrinth of different regulations depending on their target markets.
- ii. **Disproportionate impact on smaller exporters:** Smaller exporters in LDCs are disproportionately affected by NTMs. Larger firms might have the resources to invest in compliance infrastructure and absorb the additional costs, but smaller enterprises often find these costs prohibitive. This limits their ability to enter or sustain their presence in international markets, effectively stifling trade growth and economic development in these countries

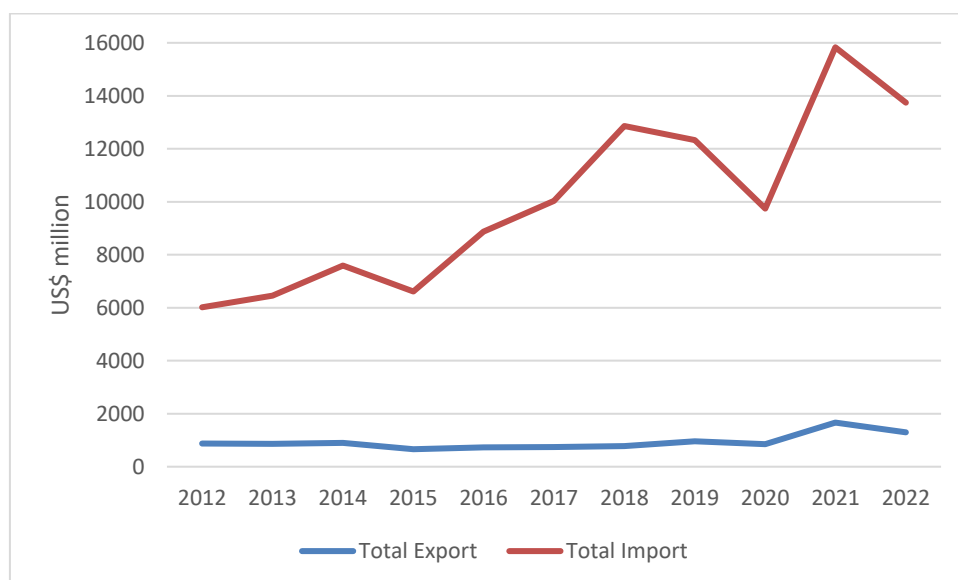
- iii. **Loss of market access:** NTMs can lead to a significant loss of market access for LDCs. When exporting firms are unable to comply with the regulatory requirements of importing countries, they may be forced to exit those markets. This not only reduces the diversity of export destinations but also makes LDCs more dependent on a limited number of markets, increasing their vulnerability to external shocks and trade policy changes in those markets.

III: Nepal: Trade and NTM overview

Trade Overview

Nepal has seen a rapidly widening merchandise trade deficit over the years (Figure 2). While imports have seen a meteoric rise—for instance, imports increased from about US\$ 6 billion in 2012 to a peak of 15.8 billion in 2021, which slightly declined to US\$ 13.7 billion in 2022—exports have not seen a significant increase. Specifically, exports which stood at about a meager US\$ 870.7 million in 2012, have seen only a slight increase to US\$ 1300.5 million in 2022. However, the rise in exports has been dominated by a couple of products—refined soya-bean oil and refined palm oil, which represented a little less than 30 percent of Nepal’s total exports in 2022 (Table 2).³

Figure 2 Nepal’s merchandise trade trends



Source: UN Comtrade

Accordingly, Nepal’s exports are concentrated around a few product categories. For instance, its top 10 exports in 2022 represented about 54 percent of its total export for the year (Table 2). In addition to refined vegetable oils which represent its top two exports of 2022, textiles (carpets, felt, yarn, and fabrics) also represent several of its top exports (Table 2).

³ Nepal’s recent export trend is somewhat peculiar in that its top export products (soya bean oil and palm oil) are made possible only because of tariff differentials and certain trading preferences offered by one of Nepal’s free trade agreements (Agreement on South Asian Free Trade Area) and not because Nepal has any competitive edge in the export of these products—for instance, Nepal did not export these products until 2017 and Nepal does not have any significant production of palm and soya bean. See Dahal (2021) for a more detailed treatment of the subject.

Table 2 Nepal's top 10 exports in 2022

HS6	Description	Export (US\$ million)		Product Category	Share in total export (%)
150790	Vegetable oils; soya-bean oil and its fractions, other than crude, whether or not refined, but not chemically modified	186.91		Oilseeds, fats and oils	14.37
151190	Vegetable oils; palm oil and its fractions, other than crude, whether or not refined, but not chemically modified	186.00		Oilseeds, fats and oils	14.30
570110	Carpets and other textile floor coverings; knotted, of wool or fine animal hair, whether or not made up	84.67		Textiles	6.51
090831	Spices; cardamoms, neither crushed nor ground	46.64		Coffee, tea, cocoa and spices	3.59
560290	Felt; impregnated, coated, covered or laminated (excluding needleloom felt and stitch-bonded fibre fabrics)	38.13		Textiles	2.93
550951	Yarn; (not sewing thread), of polyester staple fibres, mixed mainly or solely with artificial staple fibres, not put up for retail sale	37.65		Textiles	2.89
200990	Juices; mixtures of fruits or vegetables (but not nut juice), unfermented, not containing added spirit, whether or not containing added sugar or other sweetening matter	35.17		Beverages and tobacco	2.70
550921	Yarn; (not sewing thread), single, of synthetic staple fibres, containing 85% or more by weight of polyester, not put up for retail sale	31.97		Textiles	2.46

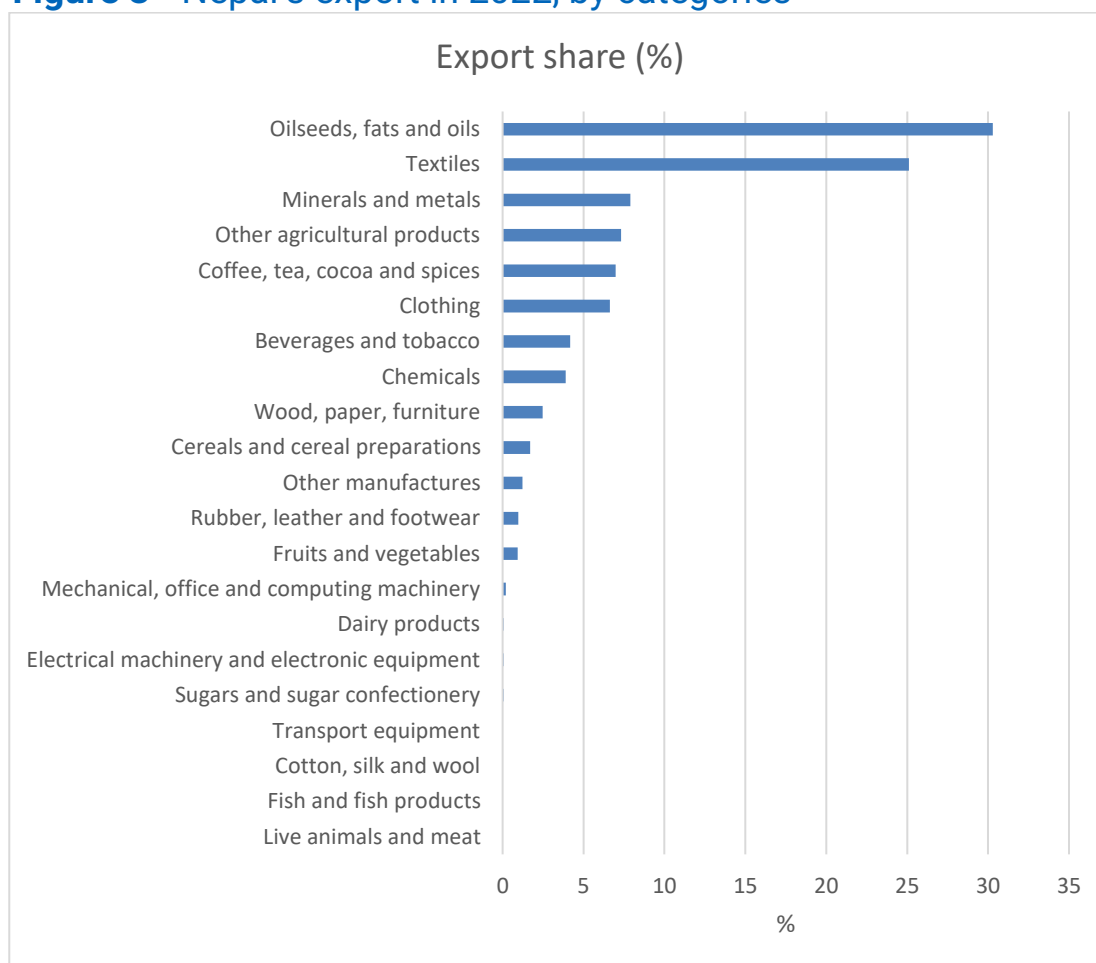
090240	Tea, black; (fermented) and partly fermented tea, in immediate packings of a content exceeding 3kg	30.90		Coffee, tea, cocoa and spices	2.38
531090	Fabrics, woven; of jute or of other textile bast fibres of heading no. 5303, other than unbleached	27.15		Textiles	2.09
	Total	705.18			54.22

Source: Author, using UN COMTRADE

Notes: WTO's 2023 version of Multilateral Trade Negotiations (MTN) categories is used for product categorization.

A predominant share of Nepal's export falls under two categories: Oilseeds, fats and oils represent the largest product group exported by Nepal (representing about 30 percent of its total export), followed by textiles (25.1 percent) (Figure 3). The other prominent product categories in terms of Nepal's exports are minerals and metals (representing about 7.9 percent of its total exports), followed by 'other agricultural products' (7.3 percent), and clothing (6.6 percent) (Figure 3).

Figure 3 Nepal's export in 2022, by categories

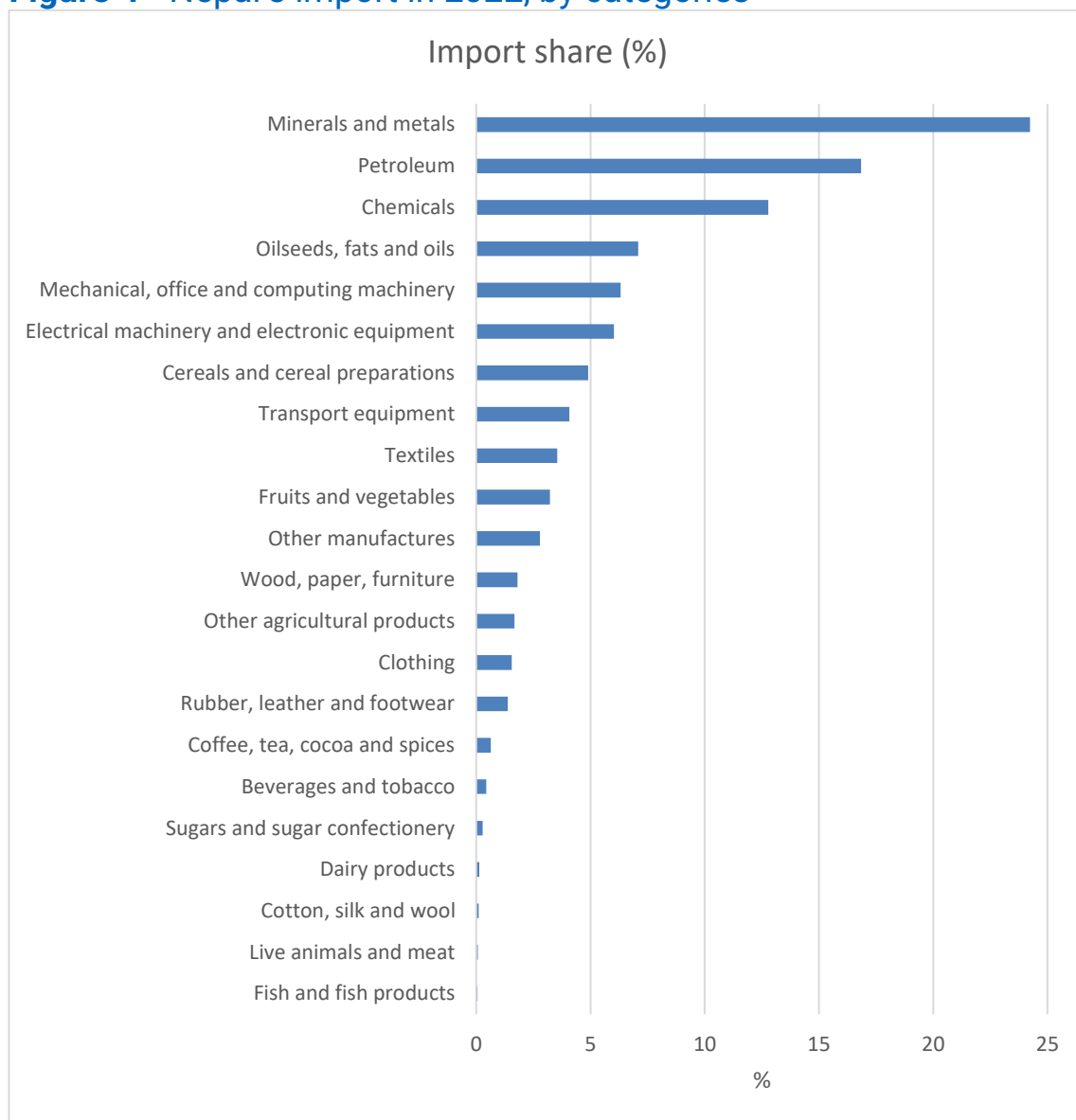


Source: Author, using trade data from UN COMTRADE and MTN categories from WTO

Notes: WTO's 2023 version of Multilateral Trade Negotiations (MTN) categories is used for product categorization. The categories do not include about 0.4 percent of Nepal's total export because these products are classified as "Commodities not specified according to kind" (HS 999999).

'Minerals and metals' represent Nepal's largest imported product group (about 24.2 percent of total imports) followed by Petroleum (16.9 percent), Chemicals (12.8 percent), and 'Oilseeds, fats and oils' (7.1 percent) (Figure 4).

Figure 4 Nepal's import in 2022, by categories

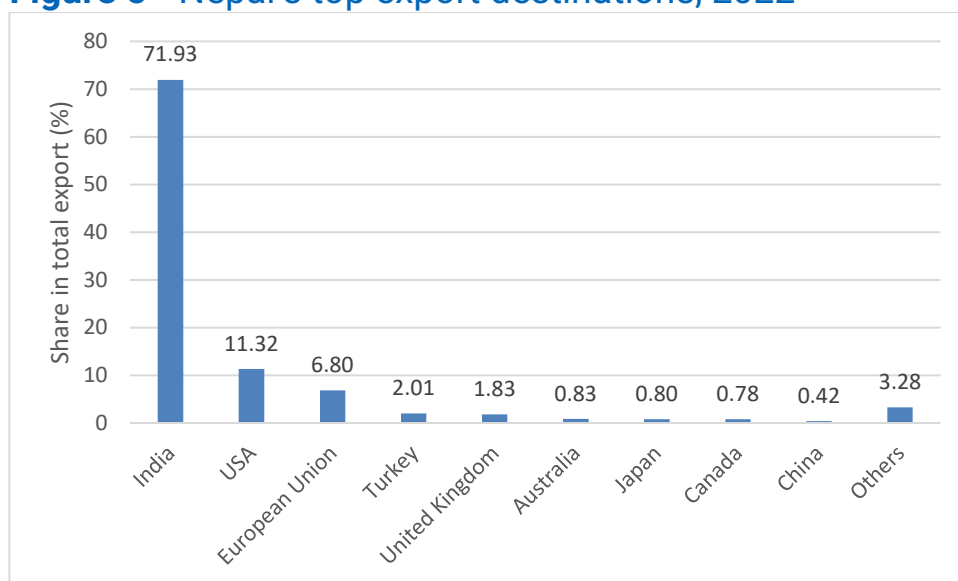


Source: Author, using trade data from UN COMTRADE and MTN categories from WTO

Notes: WTO's 2023 version of Multilateral Trade Negotiations (MTN) categories is used for product categorization. The categories do not include about 1.5 percent of Nepal's total import because these products are classified as "Commodities not specified according to kind" (HS 999999).

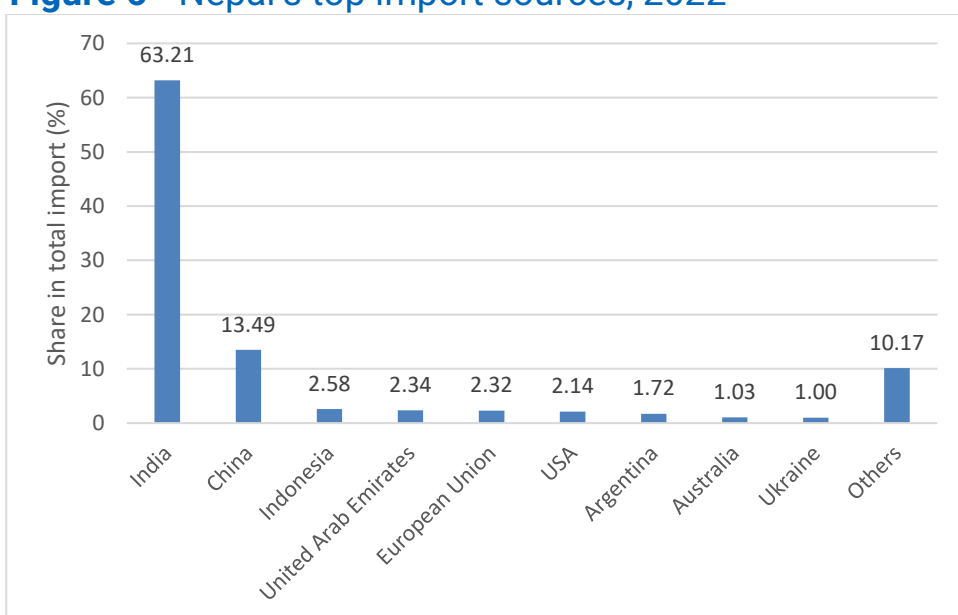
A predominant share of Nepal's cross-border trade is carried out with its neighbor India—for instance, about 71.9 percent of Nepal's exports in 2022 were destined to India and about 63.2 percent of its imports in 2022 were sourced from India (Figure 5 and Figure 6). Nepal's largest export destinations after India are USA, the European Union, and Turkey (Figure 5). China, Indonesia, United Arab Emirates, and the European Union represent Nepal's largest import sources after India (Figure 6).

Figure 5 Nepal's top export destinations, 2022



Source: Author, using trade data from UN COMTRADE

Figure 6 Nepal's top import sources, 2022



Source: Author, using trade data from UN COMTRADE

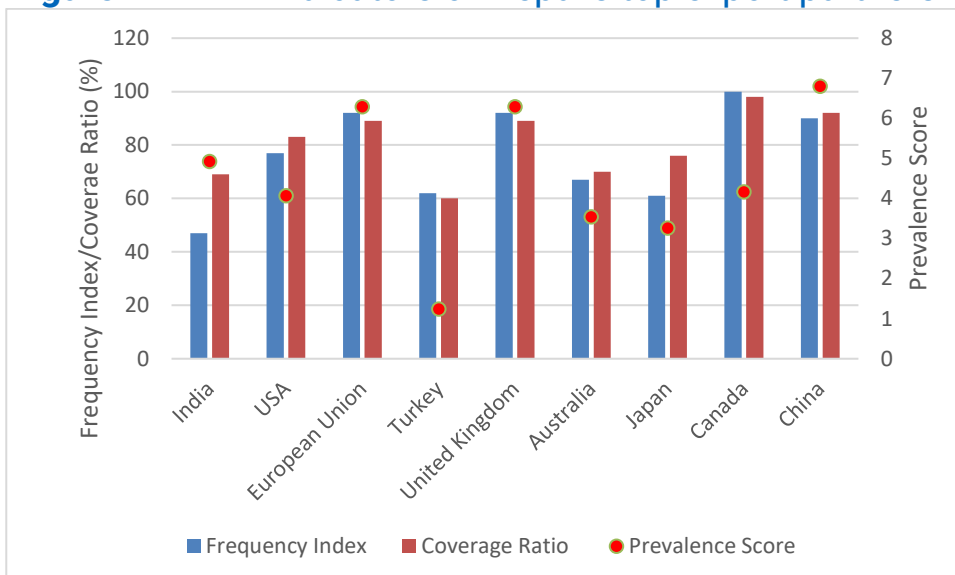
3.1 A technical assessment of NTMs in Nepal

Nepal's NTM frequency index was computed to be 22 percent, with a coverage ratio of 44 percent, and prevalence score of 0.37.⁴ Figure 7, which presents these scores for each of Nepal's top export destinations, shows that the European Union, the United Kingdom, Canada, and China have relatively higher values for all the three indexes. It must be underscored that a high frequency index, coverage ratio, and prevalence score do not necessarily reflect the level of stringency of NTM measures. While not necessarily the case, the relatively larger presence of NTMs may indicate greater challenges for exporters

⁴ The frequency index measures "the percentage of products to which NTMs apply"; the coverage ratio measures "the percentage of trade subject to NTMs"; and the prevalence score (PS) measures "the average number of NTMs applied to products" (De Melo and Nicita 2018).

to comply with. Furthermore, India, which is Nepal’s largest export destination, also has a relatively high coverage ratio and prevalence score. Many exporters in Nepal also complain about non-tariff measures such as testing and certification requirements in India being especially cumbersome, largely because of procedural obstacles associated with these measures.

Figure 7 NTM indicators of Nepal’s top export partners



Source: Compiled from UNCTAD TRAINS (<https://trainsonline.unctad.org/home>), accessed 16 May 2024

3.1.1 Nepal and NTMs: some observations

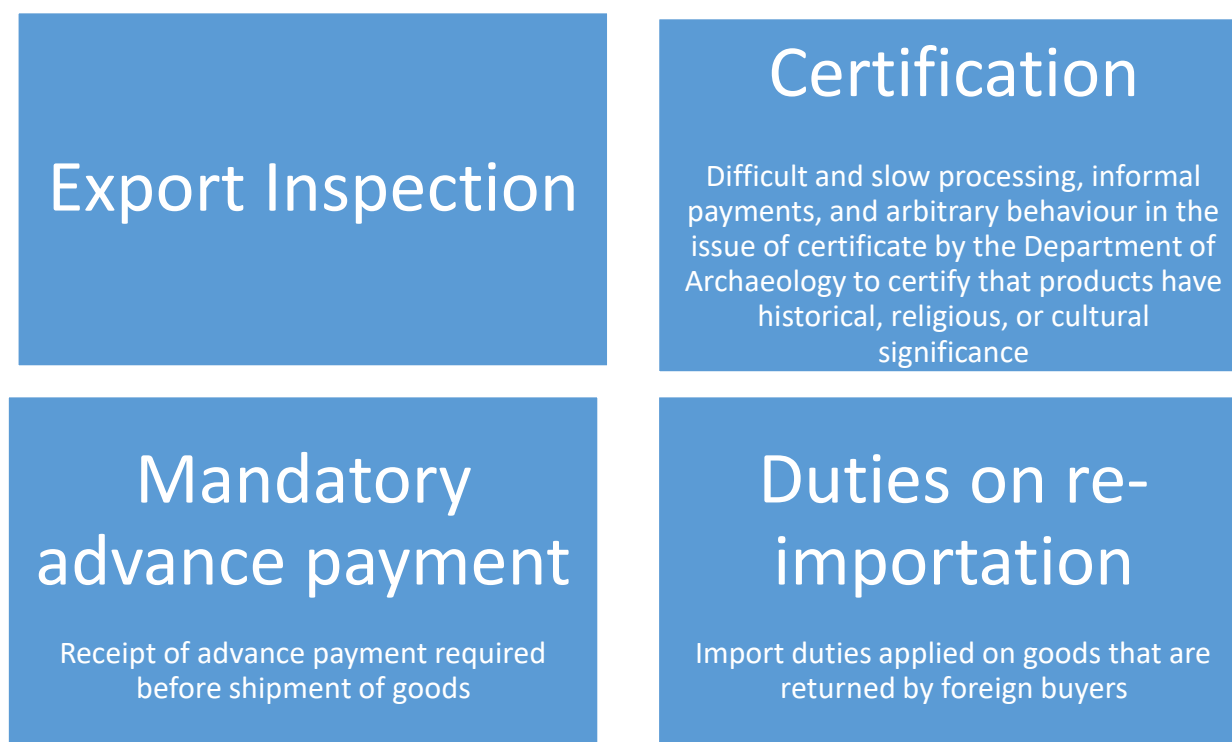
We start by presenting some important stylized observations, primarily drawing from the NTM business survey of Nepali exporters and importers carried out by ITC (2017), and partly drawing from other relevant literature. The following are the key stylized facts.

- NTMs pose a significant constraint to Nepal’s exports.** A large number of exporters are affected by NTMs (ADB 2019, CNI 2016, ITC 2016, ITC 2017). For instance, according to a survey of exporters, 51 percent of exporters had encountered problematic NTMs (ITC 2017). Other available studies also find that NTMs are significant impediments to Nepal’s exports (ADB 2019, CNI 2016, ITC 2016, etc.). The government has also long identified NTMs as a significant constraint to be dealt with. For instance, Nepal Trade Integration Strategy (NTIS) 2010 (GoN 2010) acknowledges the need to address issues related to non-tariff barriers (NTBs), including in areas of technical standards and sanitary and phytosanitary standards. Likewise, NTIS 2016 (GoN 2016) identifies NTMs as serious bottlenecks for Nepali exports and attributes Nepal’s inability to benefit from preferential schemes (e.g., GSP) to “difficulties in meeting the stringent NTMs”. The recently endorsed NTIS 2023 (GoN 2023) also acknowledges the barriers that NTMs pose, primarily related to SPS and TBT, and hence has many action plans for dealing with these NTMs.
- Impacts of NTMs varies across sectors.** The troublesome NTMs are more prevalent in agricultural exports than in manufacturing exports—according to the NTM survey, 77 percent of companies in the agricultural sector reported difficult NTMs compared to 42 percent of exporters in the manufacturing sector (ITC 2017). The impact on imports is less—for instance, according to the ITC’s NTM survey, only 22 percent of the companies reported burdensome regulations and procedural obstacles compared to 51 percent of the exporters burdened by regulations and procedural obstacles (ITC

2017).⁵ Furthermore, most of the affected importers were in the area of agricultural imports—40 percent of the importers in the agricultural sector were affected versus 19 percent in the manufacturing sector (ITC 2017).

- **Regulations applied by the destination countries are the major sources of NTM-related burdens for exporters.** In the NTM survey, while 21 percent of the reported NTM obstacles originated from regulations in Nepal, a predominant 77 percent of the reported NTMs resulted from regulations applied by destination countries.⁶
- **While regulations applied by destination countries are the most reported burdensome NTMs, export-related regulations applied by Nepal are also reported as burdensome.** Export inspection, certification for exporting certain items of religious, historical, or cultural significance, hassles associated with advance payment requirement for exports, etc. constitute the major export related NTMs applied domestically (ITC 2017) (Figure 8). Export inspection is a concern predominantly reported by manufacturing exporters (ITC 2017). Difficulties in obtaining certificate issued by the Department of Archeology may now be less of an issue as the process has now moved into Nepal’s paperless trade system (Nepal National Single Window).⁷

Figure 8: Burdensome export-related NTMs applied by Nepal



Source: Compiled from ITC (2017)

- **The most reported NTM obstacles are in the European Union and Indian markets.** As per the NTM survey, 35 percent of the reported NTM obstacles relate to the regulation of the European Union (EU) countries, primarily while exporting to Germany (11 percent of the reported cases) and France (5

⁵ However, it must be noted that there were significantly fewer importers participating in the survey—only 67 companies surveyed were engaged in import compared to 474 firms that were engaged in export.

⁶ As per the survey, a few of the reported NTM cases were related to regulations in transit countries.

⁷ As per the Nepal National Single Window (NNSW) website, the Department of Archaeology (DoA) was integrated into the NNSW on 25 October 2021. Consultations with the relevant exporters and commodity associations (for example, the Handicraft Association of Nepal) are required to assess if the concerned NTM is still burdensome or whether the burden has eased after DoA’s integration into the single window.

percent of the reported cases). At the individual partner country level, Indian regulations contributed to the most burdensome NTM cases—18 percent of the burdensome NTM cases related to NTM measures applied by India (ITC 2017). This was followed by NTM cases in the United States (11 percent), Japan (10 percent) and China (7 percent) as per the NTM survey.

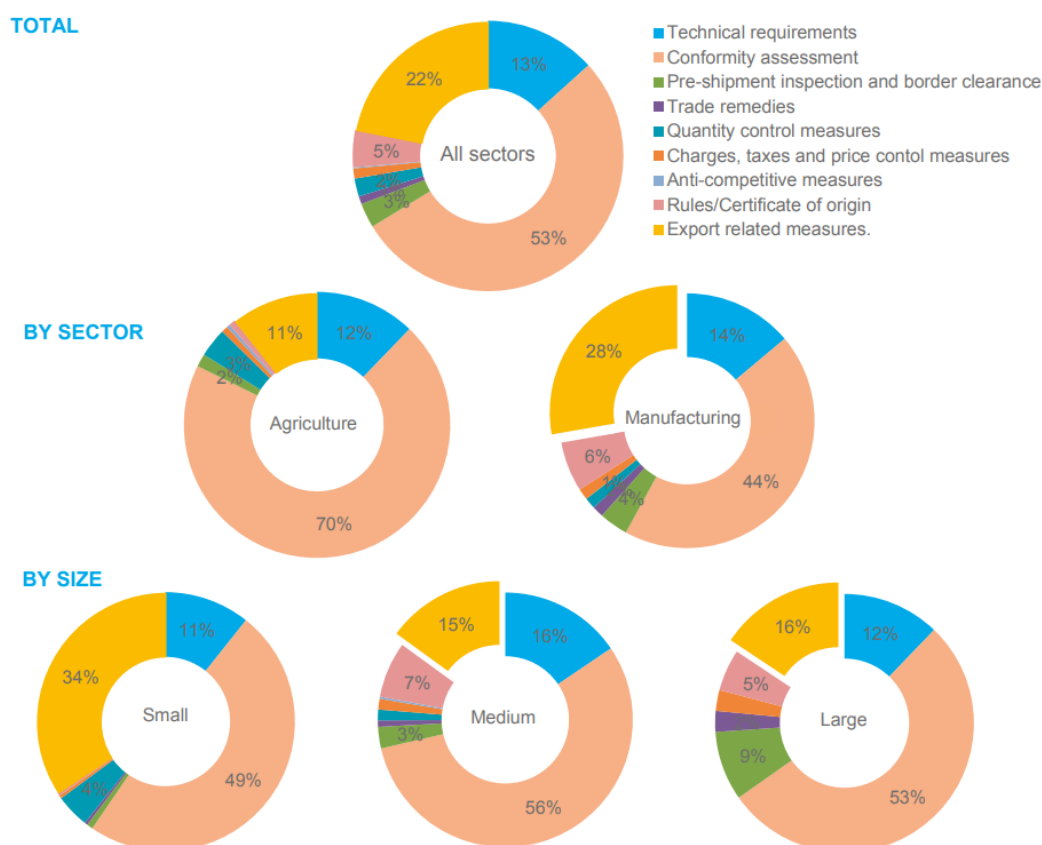
- **Technical measures (SPS and TBT) comprise the majority of burdensome NTMs.** In the NTM survey, technical measures and the associated procedural obstacles accounted for 66 percent of the total reported cases (see Figure 3 and Table 3). Furthermore, the survey finds that technical regulations are the primary concerns of exporters across all sectors (see Figure 3). CNI (2016) also identifies SPS measures and the associated procedural complexities as the most pressing NTM faced by Nepali exporters. Likewise, ADB (2019) also discusses technical measures as the major NTM faced by Nepali exporters. The government also recognizes technical measures as burdensome NTBs/NTMs (GoN 2010, GoN 2016, GoN 2023). According to NTIS 2023, SPS requirements imposed by developed countries such as traceability requirements, pesticide residue limits, pest-free production, accepted process for eliminating pests and diseases, good manufacturing practices, and associated testing and certification requirements are difficult for Nepali exporters to adhere to.
- **Cumbersome conformity assessment procedures make it more difficult to meet the technical measures than the technical requirement itself.** The NTM survey shows that conformity assessment—proving compliance with the specified technical requirement—was more burdensome than meeting the technical requirement that had to be complied with (Table 3). This is the case for both agricultural and non-agricultural exports and for firms of different sizes (Figure 9). Among exporters facing difficulties with technical regulations, 73 percent reported difficulties related to procedural obstacles (arising from conformity assessment) compared to 13 percent reporting difficulty meeting regulations (regulations too strict to comply with) and 14 percent reporting difficulties with both regulatory requirements and procedural obstacles (ITC 2017). Among technical measures, tolerance limits for residues of or contamination by certain substances (A21 and B21)⁸, and fumigation requirements (A53) are reported as the most troublesome NTMs, followed by “prohibitions or restrictions of products or substances” (A11, A22, and B22). Among the conformity assessment requirements, testing and product certification requirements are cited as causing the most difficulties.
- **Non-NTM private standards (voluntary standards) also pose issues:** Requirements of importers such as Good Agricultural Practices (GAP), Good Manufacturing Practices (GMP), and organic standards, which are voluntary in many cases, also pose trouble to exporters, for instance to exporters of tea, coffee, and medicinal herbs and essential oils (ITC 2017). The lack of agencies that provide such certification and the cost incurred are the main issues in complying with voluntary standards. The government also acknowledges that several Chinese and Indian companies have their voluntary standards in place which render Nepali exporters unable to export their products because of the difficulties in meeting these voluntary standards (GoN 2023).
- **Exporters’ experience with NTMs varies according to their size—while large companies report a bigger share of burdensome NTMs, smaller companies tend to be more affected by NTMs.** Large companies encounter more burdensome NTMs—67 percent of large companies reported difficult NTMs compared to 54 percent of medium-sized companies and 45 percent of small companies (ITC 2017). However, it would be misleading to conclude from this that SMEs are less affected by NTMs than large enterprises. Since large enterprises tend to be engaged in the trade of a wider portfolio of

⁸ See UNCTAD (2019) for details of NTM classification.

products across a larger array of export destinations, they are more likely to encounter troublesome NTMs in at least one instance. It may also be because large enterprises tend to take care of export clearance procedures themselves and hence are likely to report these cases but the smaller enterprises tend to assign clearing roles to other agencies such as freight forwarders and logistic companies (ITC 2017). Moreover, evidence suggests that SMEs in Nepal have a much harder time dealing with NTMs, particularly technical regulations (ITC 2017).

- **Small enterprises face special challenges in dealing with technical regulations and associated burdensome conformity assessment requirements.** ITC (2016) points out that key challenges that SMEs face in international markets are non-tariff barriers, and in particular, SPS measures and other quality and standards-related measures. Likewise, ITC (2017) points out that smaller companies are much more constrained in meeting regulations, including domestic regulations. For instance, the NTM survey finds that small companies are overwhelmed much more by domestic regulations than large companies—34 percent of smaller companies reported facing more difficulties with domestic regulations compared to 15 percent of medium-sized and 16 percent of large companies. Moreover, when it comes to exporting agricultural and food items, ITC (2017) reports that smaller enterprises find it harder to export than the larger firms due to the associated costly conformity assessment procedures.

Figure 9: Burdensome NTMs, by type, sector, and firm size



Source: ITC NTM Business Survey (Nepal), 2016 in ITC (2017)

Table 1: Categories of NTMs and associated procedural obstacles reported by Nepali exporters as burdensome

NTM Type	NTM Measure	Share of NTMs
Technical requirements	Tolerance limits for residues of or contamination by certain substances	7%
	Fumigation	4%
	Prohibitions or restrictions of products or substances	2%
	Other (labelling, product characteristics, etc.)	1%
Conformity assessment	Testing	22%
	Product certification	22%
	Quarantine	4%
	Inspection requirement	2%
	Others	1%
Pre-shipment inspection and border clearance	Pre-shipment inspection and border clearance	3%
Trade remedies	Trade remedies	1%
Quantity control measures	Quantity control measures	2%
Charges, taxes and price control measures	Charges, taxes and price control measures	1%
Anti-competitive measures	Anti-competitive measures	1%
Rules/Certificate of origin	Rules of origin and related certificate of origin	4%
Export related measures	Export inspection	9%
	Certification required by the exporting country	3%
	Other	9%

Source: Findings of ITC NTM Survey in Nepal, 2016 reproduced from ITC (2017)

3.2 Issues around Nepal's NTM administration

The literature and SAWTEE's consultations over the years with exporters and importers yield some important observations regarding the causes that make NTMs problematic to deal with for many exporters, and for some importers.

3.2.1 Poor national quality infrastructure

Inadequate export quality infrastructure is a critical constraint that Nepali exporters face in navigating the web of NTMs (ITC 2017, ADB 2019, GoN 2010, GoN 2016, GoN 2023). While there has been notable progress in obtaining accreditation of testing laboratories, especially government laboratories run by DFTQC and NBSM, the full range of accreditation parameters required for a complete internationally accepted certification of a large number of export products is missing (GoN 2016, ADB 2019, Van Der Meer 2015).⁹ As Nepali certifications of products are not accepted internationally, exporters are compelled to use testing laboratories and certification services in other countries, including India, China, Australia, United States, etc. (ITC 2017, ADB 2019).

The recently endorsed trade integration strategy (NTIS 2023) also acknowledges weaknesses in the state of quality infrastructure in the area of SPS measures. According to NTIS 2023, the capacity and standard

⁹ For information about different testing laboratories and accredited parameters, refer to ITC (2016). Refer to ADB (2019) for slightly updated information. It has to be noted that testing facilities and the range of accredited parameters may have undergone some changes since then.

of plant and animal laboratories are limited and there is an absence of internationally accredited laboratories in these sectors; with regard to food testing laboratories, there is a need to enhance capacity and upgrade them to ensure that they can provide certifications in all the parameters needed (GoN 2023, 20). Likewise, NTIS 2023 mentions the need to upgrade quarantine facilities and laboratories, including at the integrated checkpoints in Kathmandu and Birgunj. Moreover, NTIS recognizes that the inability to prove competence in quality infrastructure has contributed to the rejection of certificates issued in Nepal (GoN 2023, 19).

Likewise, in the area of industrial products, there are issues with the quality infrastructure, making it burdensome to meet TBT measures. Despite the Nepal Bureau of Standards and Metrology (NBSM) having accreditation in testing several parameters¹⁰, NTIS 2023 reports that NBSM doesn't have adequate capacity required for conformity assessment certification in international markets (GoN 2023, 21). This is an issue given that NBSM provides the overwhelming majority of the testing and certification for industrial products. Even in the area of pharmaceutical products, while a private laboratory (Zest Laboratories) provides accredited testing for a few products (ICT 2016), the testing facilities provided by the government laboratory (National Medicine Laboratory) are not yet accredited.

3.2.2 Lack of harmonization

Harmonization of standards, either with the major trading partners or with international standards, is believed to promote trade. The major reason may be that when the domestic standard aligns with the foreign standard, producers have already coped with the cost of compliance, which implies lower export costs (Vigani, Raimondi, and Olper 2012). Empirical evidence also confirms the trade-promoting effects of harmonized regulations/standards and trade-impeding effects of differences in regulations/standards.¹¹ Alignment with international standards may also be necessary to ensure that imported goods satisfy the minimum health and quality criteria. Finally, significant regulatory divergence could also be a roadblock for carrying out mutual recognition agreements (MRAs).

Despite the importance of harmonization of standards, at bilateral, regional, or international levels, Nepal's standards show a lack of harmonization. In many cases, primarily in food products, while Nepal formulates its standards in adherence to Codex standards, the slow rate of standardization means that standards in many products are yet to be formulated. Furthermore, even in products where standards exist, there are deviations from international best practices (ADB 2019). The government also acknowledges that there is a lack of harmonization in the areas of food quality and plant health standards with Nepal's major trade partners, namely India, China, and Bangladesh (GoN 2023, 19). ADB (2019) shows that Nepal's standards in several products deviate from those of the European Union. Furthermore, while Nepal's food products' standards prepared by DFTQC are said to adhere to international standards (Codex), some harmful chemicals and residues are not incorporated into the standards (GoN 2023, 20). Not only does this have an impact on exports because of regulatory divergence and higher compliance

¹⁰ According to NTIS 2023, accredited testing facilities provided by NBSM have seen a slight decline from 82 parameters to 76 parameters. Accredited testing parameters are in the areas of construction materials, chemicals, food products, microbiological parameters, electric, pipe, clothing, leather, machineries, and measurement.

¹¹ For instance, see Vigani, Raimondi, and Olper (2012); and De Frahan and Vancauteran (2006) for trade-promoting effect of harmonization of bilateral standards; and see Wilson and Otsuki (2003) for trade promoting effect of alignment with international standard.

costs, but this also leaves the possibility of entry of harmful food products that are deleterious to health.¹²

3.2.3 Inadequate and outdated regulatory provisions

Some of the major laws that dictate the SPS and TBT environment of the country—for instance, Nepal Standards (Certification) Act, 1980, Standard Measurement and Weight Act, 1968, Food Act, 1967, and Pesticide Act, 1991—do not adequately address the current realities. Likewise, there is an absence of certain regulatory and policy frameworks such as import inspection protocols and laboratory policy (GoN 2023). Furthermore, there is no distinct national quality policy. For a prolonged period, the absence of an accreditation-related law resulted in the lack of an independent accreditation body that could carry out activities related to internationally accepted accreditation. While the Accreditation Bill was endorsed in 2022, the accreditation body specified by the law is yet to be formed.

The government acknowledges that some of the legislative frameworks—Nepal Standards (Certification) Act, 1980, and Standard Measurement and Weight Act, 1968—are outdated and must be amended or overhauled to make them conducive to promoting international trade. The government also acknowledges that there is a pressing need to update regulatory framework to international standards formulated by Codex Alimentarius, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (GoN 2023, 20).

Furthermore, under the current framework, both regulatory and commercial functions are consolidated under a single agency (NBSM), DFTQC in the case of food products. This overlap logically results in considerable conflicts of interest and ineffectiveness in the operation of the national quality infrastructure (NQI) system (Tippman 2013). The government acknowledges that having the same agency oversee standardization and regulation is a weakness (GoN 2023, 23).

3.2.4 Weak institutional capacity

Weak institutional capacity is a major contributor in the area of standardization, conformity assessment, and NTM administration. Inadequate implementation of formulated standards and other regulations is also a major issue.

Likewise, standardization takes place at a slow pace. As a result, there are limited standards, both in the area of mandatory standards (technical regulations) of food products (under the aegis of DFTQC), and in the area of national standards for food products and industrial products (under the aegis of National Standards Council, with NBSM as its secretariat) (GoN 2023, 23, ADB 2019). A less than optimal institutional set-up and a lack of prioritization, coupled with human resources constraints in the relevant agencies, contribute to the slow pace of standardization.

Inadequate staff at the government agencies that oversee different aspects of NTM-related technical regulations, primarily in NBSM and DFTQC, and the laboratories that they oversee, is also an issue. Likewise, human resource capacity at various agencies is also lacking, given that skilled staff are frequently transferred (ADB 2019, Van Der Mer, 2015).

Weak institutional capacity has resulted in an especially weak SPS management capacity. In addition to

¹² A large informal trade with India leads to the circumvention of many of Nepal's NTMs, and hence poses the risk of entry of harmful and illegal products.

the absence of testing capacity for full internationally accredited certification of products, weak institutional capacity contributes to other weaknesses in SPS management practices. For instance, “Nepal does not have a national reference laboratory for diagnostics of plant pests and diseases and its pest surveillance methodology and coverage are deficient” (Van Der Mer 2015). The weak capacity in the area of plant health persists—for instance, the government (GoN 2023, 20) has very recently identified the need for enhancing capacity in the area of plant health and pest risk analysis. Furthermore, the government lacks capacity to implement a risk based SPS system, and SPS import inspection is hardly in place and is ineffective (Van Der Mer, 2015). Working relations between SPS authorities in Nepal and India are also limited (Van Der Mer, 2015), thus limiting the ability to quickly resolve many of the SPS disputes that arise in Nepal-India trade.

Another major institutional constraint is extremely poor coordination and cooperation among different agencies of the government that impact trade in some ways, including in the area of SPS and TBT administration and other NTM issues (Kharel and Dahal 2021, GoN 2016, ADB 2019). For instance, there is weak coordination between SPS agencies and customs, and even coordination among different SPS agencies is problematic (Kharel and Dahal 2021). While the government had formed a National SPS Coordination Committee, it remains non-functional (GoN 2016).

Finally, weak trade negotiation capacity, and poor trade diplomacy, have resulted in an inability to conduct mutual recognition agreements (MRAs) in priority products, and an inability to promptly resolve trade disputes, including the issues of NTMs such as testing and certification. The government acknowledges that it has not been able to execute bilateral or multilateral agreements for the mutual acceptance of quality and safety-related certifications as well as pest-free certifications (GoN 2023).

3.2.5 Inadequate private sector capacity

Capacity constraints in producers and exporters also contribute to NTM-related difficulties. In several sectors, the exporters show weak capacity regarding complying with even the basic technical requirements. For instance, as CNI (2016) points out, most of the ginger exported by Nepal is ‘dirty’ with the needed washing, grading and packaging done on the Indian side. Detection of soil residue has resulted in India occasionally refusing to allow the entry of Nepali ginger. Likewise, the private sector also shows weak capacity in garnering information related to NTMs in the destination markets. Furthermore, some of the exporters lack awareness about many of the testing facilities that are already available in the country (ADB 2019).

3.2.6 Weak capacity to effectively regulate imports

There is a general tendency to under-regulate imports when it comes to implementing policy measures related to safety and quality. This results in an increased likelihood of entry of potentially harmful products that are hazardous to health and the environment. The absence of import inspection protocol, human resource constraints, and weak coordination among government agencies—for instance, between SPS agencies and customs administration—contribute to the under-regulation of imports. However, this tendency to under-regulate NTMs in imports, coupled with a weak capacity to effectively administer NTMs, including safety and quality requirements, results in occasional over-regulation and ad-hoc measures. For instance, the government, in 2019, made pesticide residue tests mandatory in the import of vegetables and fruits, although lacking the necessary technical and human resources capacity to

administer this measure effectively. Furthermore, Nepal did not have mandatory standards regarding pesticide residues for vegetables and fruits, and hence there was a lack of clarity regarding the specific pesticide residues that were to be tested (Dahal and Singh 2019).

IV. NTMs: LDCs and LDC graduation

While most of the NTM provisions are not contingent on the LDC status of a country, the change in WTO rules in some of the areas after graduation, and a reduction or loss of support in related areas, may impact the graduating LDCs. Below, we discuss the avenues for potential changes in the NTM landscape for graduating LDCs, and how Nepal may be affected by these changes.

4.1 Impact on trade through the loss of LDC-specific flexibilities provided by TRIPS Agreement

Measures that are related to intellectual property rights can potentially impact trade and hence are classified under a chapter in UNCTAD's NTM classification (Chapter N). Before delving into the impacts of LDC graduation through IP-related NTMs, a brief discussion on how intellectual property rights are protected in the case of traded products and services is warranted.

The protection of intellectual property rights across borders when goods and services are traded is codified in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that came into effect in 1994. The TRIPS Agreement mandates minimum standards for protection of intellectual property rights within the territories of each Member for traded products that embody some type of intellectual property—the intellectual property covered by the TRIPS Agreement include copyright (and related rights), trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information. The TRIPS Agreement brought a radical change in global standards of intellectual property protection by requiring all WTO members to substantively protect intellectual property rights in different areas. Moreover, all WTO members were obligated to grant patent protection in all fields of technology without discrimination. This meant that WTO members could not exclude sectors like pharmaceuticals from patent protection or accord them limited protection, which had been a common practice among countries with a strong pharmaceutical sector (Syam and Syed 2023). However, developing countries and LDCs in particular were provided a transition period for the enforcement of the TRIPS Agreement. While the transition period for other developing countries has already expired, LDCs still enjoy an extended transition period. Furthermore, LDCs are offered other flexibilities and special arrangements.

The TRIPS Agreement commits to providing maximum flexibility to LDCs in the implementation of IP laws and regulations. This special and differential treatment to LDCs appears in the form of a general transition period (during which they are exempted from the rules), and a special transition period in the case of pharmaceuticals. More specifically, the general transition period has been extended three times and currently LDCs have until 1 July 2034 or until the date on which they cease to be an LDC member, whichever is earlier, to protect IPR under the TRIPS Agreement. In addition to the general transition period, LDCs are beneficiaries of another transition period specifically for pharmaceutical products. The special

transition period has been extended twice and currently LDCs benefit from a transition period until 1 January 2033 or until the date on which they cease to be an LDC member, whichever is earlier, for the protection of patents and undisclosed information for pharmaceutical products. Further, LDC members are exempt from the application of mailbox requirements and exclusive marketing rights until 1 January 2033 or until the date on which they cease to be an LDC, whichever is earlier.

Another commitment to LDC is in the form of provisions that require developed countries to provide incentives to their enterprises to transfer technology to LDCs.

The extended transition period and special flexibilities enjoyed by LDCs in the implementation of TRIPS imply that graduation, which entails cessation of all the flexibilities and support, may impose significant burdens on LDCs. While graduated LDCs would still be eligible for certain flexibilities and policy space that are not exclusive to LDCs, many LDCs still lack necessary conditions to benefit from a stronger level of intellectual property protection given their level of legislative development and capacity (Syam and Syed 2023).

In light of the discussion above, the impact of LDC graduation through the loss of flexibilities and special arrangements under the TRIPS Agreement may be the following:

Loss of policy space resulting from the need to enhance the scope of intellectual property protection:

LDCs, after graduation, have to provide substantive protection of intellectual property rights as per the minimum standards set by WTO TRIPS Agreement. For those LDCs that have not yet developed legal provisions that adhere to the requirements of the WTO TRIPS Agreement,

Impact on production, export, and import of generic versions of patented medicines:

- **Patent protection to all technologies, including pharmaceuticals:** After graduation, countries are no longer entitled to the extended transition period for general protection as well as for the patent protection of pharmaceutical products. Hence, graduated LDCs have to grant patent protection to all patentable technologies, including pharmaceutical products. Thus, LDCs that excluded pharmaceutical products from patent protection or provided limited forms of protection will have to ensure that substantive protection laid out in the TRIPS Agreement is provided. This will have implications for the production and/or access to generic versions of patented medicines. Generic versions of patented medicines can no longer be manufactured without paying royalties to the patent holder (with their authorization) or imported. However, the impact of LDC graduation will depend on the current intellectual property regime of the LDC—whether it excludes pharmaceuticals from patent protection or includes pharmaceutical products under patent protection.
- **Impact on imports through changes in compulsory licensing system:** In order to ensure that countries with weak manufacturing capabilities retain access to affordable medicines and promote public health, TRIPS provides flexibilities under its Article 31*bis*. Specifically, countries can import generic medicines under a ‘compulsory licensing’ system (ability of governments to authorize the production of generics without the consent of the patent holder) to ensure access to affordable medicines. Furthermore, the Amendment to the TRIPS Agreement in January 2017 provides a “permanent legal cover for using compulsory licensing” to export to countries with limited or no manufacturing capacity in the pharmaceutical sector (WTO 2020). The only caveat is that this system requires eligible importing Members to submit a notification to the Council for TRIPS of their intention to use the

system, as well as a notification of insufficient or no manufacturing capacities in the particular pharmaceutical product(s), and other details about the product(s) in question. While LDCs are currently exempt from this notification requirement upon graduation they will be required to comply with the requirement.

Loss of technology transfer support: The TRIPS Agreement directs developed countries to support LDCs through enabling technology transfer for technological development of LDCs. More specifically, Article 66 (2) of the TRIPS Agreement specifies that “Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.” Hence, the developed countries will be relieved of their obligations to support an LDC in technology transfer after its graduation. However, the implementation of this provision is found to be weak (see Pandey et al. 2022 for Nepal), and hence the loss of this arrangement may not be much of a concern for graduating LDCs.

Potential impact on Nepal’s production and import of pharmaceutical products

Since Nepal pledged to implement the TRIPS Agreement by 1 January 2007 during its accession to WTO, the general transition period until 2034 for LDCs to implement TRIPS may theoretically not apply to Nepal (Pandey et al. 2022). However, Nepal is yet to fully implement TRIPS, and hence, regardless of whether the transition period applies to Nepal or not, Nepal will have to fully implement TRIPS once it graduates in 2026. Thus, employing measures related to IPR in trade may pose some challenges to Nepal upon graduation.

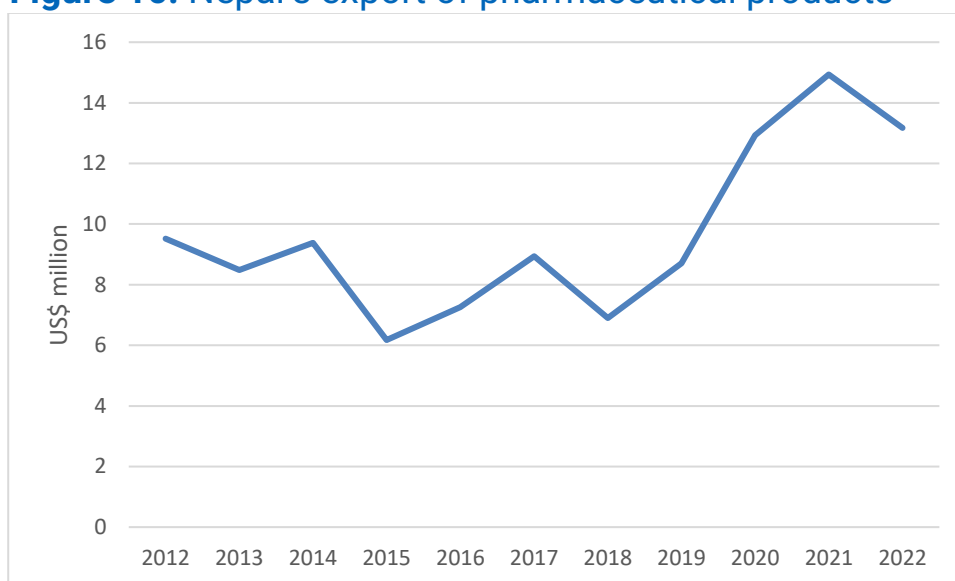
As described above, LDCs are beneficiaries of another transition period specifically for pharmaceutical products until 1 January 2033 which allows Nepal to produce generic versions of patented pharmaceutical products (patented abroad) as well as export them to markets where they are not protected by patents, without paying royalties to the patent holders. Furthermore, Nepal can also import generic versions of patented pharmaceutical products without paying royalties or without the need for a compulsory license. However, upon graduation in 2026, it will have to enforce patent protection for pharmaceutical products, thus curtailing its ability to freely produce, export, and import generic versions of patented medicines. While precise data on Nepal’s production of the generic version of patented medicine is lacking, communications with domestic pharmaceutical manufacturers suggest that a dozen or so dominant firms that account for about 60 percent of the domestic share of the pharmaceutical market produce generic versions of some medicines patented abroad (Sharma and Gupta 2020).¹³ Hence, the expiry of this waiver after graduation could impact Nepal’s pharmaceutical sectors’ production and potential exports, a concern given that Nepal’s pharmaceutical sector has been gradually growing to supply an increasing share of domestic demand. Furthermore, it might affect the currently low but expanding pharmaceutical exports of Nepal (Figure 10).

Another concern of this expiry is that domestically produced generic versions of patented medicines have been concentrated in the non-communicable disease categories, which have emerged as a major cause of premature deaths in Nepal (Pandey et al. 2022). However, this can be mitigated by Nepal’s eligibility to use the compulsory license system to import generic medicines on account of its insufficient

¹³ According to Sharma and Gupta (2020), the generic versions of patented medicines account for about 10-30 percent of the annual sales of four of the reporting firms.

manufacturing capacities in the particular pharmaceutical product(s).

Figure 10: Nepal's export of pharmaceutical products



Source: Author, using trade data from UN COMTRADE

Notes: Only products under Chapter 30 of HS Nomenclature are considered

4.2 Stricter origin requirements after LDC graduation

Rules of origin: an overview

Rules of origin (ROO) are integral components of international trade that are criteria to determine the source country of the exported merchandise. It is formally defined as “those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods” (WTO 2002). While determining the origin country of a shipped product is crucial in many cases, rules of origin can, in certain cases, be burdensome to exporters. The rules may themselves be difficult to meet or, in some cases, proving compliance with the rules, may be costly. Hence, rules of origin are classified as non-tariff measures (Chapter O) owing to their potential to impact trade.

The rules of origin may be classified into two types: non-preferential rules of origin, and preferential rules of origin. Non-preferential rules of origin lay out criteria for identifying origin country for purposes such as record-keeping, application of trade remedy measures, application of quantitative restriction measures, etc. The second set of rules of origin, which is the concern of this report, is the preferential rules of origin. When countries provide preferential treatment—treatment that go beyond what is provided generally or the most-favored nations (MFN) treatment—to a country or a group of countries, it is necessary to identify the origin of the product to apply the preferences. Furthermore, since many of the exported products today contain inputs that are sourced from one or more foreign countries, rules of origin are needed to determine with clarity the nationality of the exported product.

Hence, preferential rules of origin are criteria laid down in preferential trade schemes that are used to determine whether the goods can be deemed to have originated in the exporting country for the sake of granting preferential tariff. Preferential ROO broadly falls into two categories— ‘wholly obtained’ (mostly used in the case of agricultural produce such as live animals, vegetables, fruits, etc.) where the good is

entirely or largely produced in the exporting country without using non-originating or imported materials and 'substantial transformation' where the good uses non-originating materials but a significant share of production is done in the exporting country. Whether substantial transformation has happened or not is determined using a few criteria or a combination of them. These include:

- i. Value-addition criteria: value-addition in the exporting country (local value added) is at least the desired percentage; or, defined differently, maximum value of non-originating materials is at most the specified percentage.
- ii. Change in tariff classification: The final products' tariff classification—tariff chapter or heading or sub-heading as specified—is different than that of the non-originating inputs), and specific process criteria (specific technical requirements laid out in the criteria are met).

Lenient rules of origin arrangements for LDCs

One of the primary ways that LDCs benefit in the current multilateral trade setup is through more accommodative market access to several products originating from LDCs. In particular, the Generalized System of Preferences (GSP) provides unilateral tariff preferences, often duty-free quota-free access, to a significant portion of LDCs' exports destined to a handful of developed countries. In addition to a lower tariff, the GSP schemes often aid LDCs' market access through a relatively less stringent rules of origin as well. However, once an LDC graduates, it has to adhere to rules of origin requirements for other developing countries, which are more stringent than the rules of origin requirements for LDCs. Hence, the burden related to meeting rules of origin increases after the graduation.

Graduation from the LDC status will result in the change of the GSP scheme to GSP+ in the case of the European Union (Enhanced Preferences in the case of the United Kingdom) or a general GSP scheme. In the GSP schemes of several countries, this translates into more stringent rules of origin. The United States is a primary export destination of many countries (including countries covered by this report), which will not see a change in rules of origin after the graduation (see Annex Table A.1). However, the European Union and the United Kingdom are also major export destinations of many countries (including the countries covered by the report). The preferential rules of origin for many products will be stricter in both these destinations (see Table 4). Specifically, value added criteria will increase from 30 percent for LDCs to 50 percent in several sectors. More importantly, in several textiles and apparel products, which represent major exports of several LDCs, rules of origin will get notably stringent—one-step transformation (or the single transformation requirement) for LDCs will change to the two-step transformation (double transformation requirement) for many products. Likewise, rules of origin criteria will also change for other export destinations providing GSP preferences such as Canada, Australia, Russian Federation, Switzerland, and Norway.¹⁴ The rules of origin will also be stricter after graduation in some of the regional trade agreements (for example Agreement on South Asian Free Trade Area) where LDCs currently benefit from less stringent rules of origin.

¹⁴ Rules of origin for GSP schemes in Norway and Switzerland are identical to those of the European Union.

Table 2: Change in rules of origin in GSP scheme of the European Union (and United Kingdom) after LDC graduation

Description	GSP-LDC	GSP/GSP+/EF
Product Specific Rules (PSRs) for products of the chemical or allied industries, ceramic products, machinery and mechanical appliances, some vehicles and some optical elements	Local content requirement of 30%	Local content requirement of 50%
PSRs for several textiles and apparel articles	One-stage process or "single transformation" (e.g. weaving)	Two-stage process or "double transformation" (e.g. weaving accompanied by dyeing)

Source: WTO (2020) adapted in Pandey, Kharel, Dahal, Singh, and Aryal (2022)

Potential impact on Nepal's export

As mentioned earlier, preferential rules of origin (RoO) are less stringent in several LDC-specific GSP schemes and, hence, graduation from LDC status implies that RoO could be more burdensome. In the case of GSP schemes, graduation from LDC status will result in the change of the GSP scheme to GSP+ or a general GSP scheme. In the GSP schemes of several countries, this translates into more stringent RoOs. For instance, while there is no change in RoO in Nepal's second largest export destination (the United States of America)¹⁵, some of Nepal's exports will witness a more stringent RoO in its next two largest export destinations (the European Union and the United Kingdom) (see Table 5). Especially for Nepal, the double transformation requirement or the two-stage process in the production of apparel articles, will require a significant change. For instance, in a survey of textile and clothing (T&C) manufacturers from Asia, T&C manufacturers from Nepal reported an "overwhelming reliance on imported raw materials", and most of them expressed concerns about not meeting the more stringent double-transformation ROO (EIF 2022). An analysis of the top 10 exports to the EU and the United Kingdom shows that several of these products will face the more stringent double-transformation RoO (Table 5 and Table 6). Hence, LDC graduation may have a significant impact on Nepal through change in the RoO provisions in its major exports.

Table 3: Rules of origin in top 10 exports to the European Union before and after graduation

HS6	Product Description	Total export to the European Union (US\$ million)	Share in total export to the European Union (%)	Current Rules of Origin	Rules of origin after graduation (GSP/GSP+)
570110	Carpets and other textile floor coverings; knotted, of wool or fine animal hair, whether or not made up	15.9	23.4	Specific Process (SP)	SP (no change)
621420	Shawls, scarves, mufflers,	10.4	15.2	SP or (SP and	SP or (SP and RVC)

¹⁵ The United States follows a general rule of origin in its GSP scheme—local value content, or regional value content (when cumulation is applied), must be at least 35 percent. This ROO criterion is the same for both the GSP-LDC and the general GSP.

	mantillas, veils and the like; of wool or fine animal hair (not knitted or crocheted)			RVC)	(no change)
560290	Felt; impregnated, coated, covered or laminated (excluding needleloom felt and stitch-bonded fibre fabrics)	5.2	7.7	SP	SP (no change)
611012#	Jerseys, pullovers, cardigans, waistcoats and similar articles; knitted or crocheted, of fibres from kashmir (cashmere) goats	3.3	4.8	SP (single transformation—manufacture from fabric)	SP (double transformation—knitting and making-up (including cutting))
620442	Dresses; women's or girls', of cotton (not knitted or crocheted)	2.5	3.6	SP (single transformation—manufacture from fabric)	SP (double transformation)
620462	Trousers, bib and brace overalls, breeches and shorts; women's or girls', of cotton (not knitted or crocheted)	2.3	3.4	SP (single transformation—manufacture from fabric)	SP (double transformation)
620432	Jackets and blazers; women's or girls', of cotton (not knitted or crocheted)	2.3	3.3	SP (single transformation—manufacture from fabric)	SP (double transformation)
410621*	Tanned or crust hides and skins; of goats or kids, without wool or hair on, whether or not split, but not further prepared, in the wet state (including wet blue)	1.5	2.2	SP or CTH	SP or CTH (no change)
611011#	Jerseys, pullovers, cardigans, waistcoats and similar articles; knitted or crocheted, of wool or fine animal hair	1.5	2.2	SP (single transformation—manufacture from fabric)	SP (double transformation—knitting and making-up (including cutting))
630520	Sacks and bags; of a kind used for the packing of goods, of cotton	1.3	2.0	SP (weaving or knitting and making up (including cutting))	SP (Extrusion of man-made fibres or spinning of natural and/or man-made staple fibres accompanied by weaving or knitting and making-up (including cutting))

Source: Pandey et al. (2022)

Notes: Total export is the average of export to the destination in the five-year period FY 2016/17-2020/21 (using data obtained from the Department of Customs, Government of Nepal).

SP=Specific Process; CTH=Change in Tariff Heading

indicates that some of the products in the chapter described as other (other than "obtained by sewing together or otherwise assembling, two or more pieces of knitted or crocheted fabric which have been either cut to form or obtained directly to form") have the same ROO provisions for LDC scheme as well as non-LDC GSP schemes.

* indicates that product is currently taxed at the MFN rate of zero and hence the preferential ROO is not applicable

Table 4: Rules of origin in top 10 exports to the United Kingdom before and after graduation

HS6	Description	Total export to the United Kingdom (US\$ million)	Share in total export to the United Kingdom (%)	Current Rules of Origin	Rules of Origin after graduation
570110*	Carpets and other textile floor coverings; knotted, of wool or fine animal hair, whether or not made up	4.9	21.9	SP	SP (no change)
620432	Jackets and blazers; women's or girls', of cotton (not knitted or crocheted)	3.1	13.6	SP (single transformation—manufacture from fabric)	SP (double transformation)
621420	Shawls, scarves, mufflers, mantillas, veils and the like; of wool or fine animal hair (not knitted or crocheted)	2.2	9.9	SP or (SP and RVC)	SP or (SP and RVC) (no change)
611012#	Jerseys, pullovers, cardigans, waistcoats and similar articles; knitted or crocheted, of fibres from kashmir (cashmere) goats	2.2	9.6	SP (single transformation—manufacture from fabric)	SP (double transformation—knitting and making-up (including cutting))
560290	Felt; impregnated, coated, covered or laminated (excluding needleloom felt and stitch-bonded fibre fabrics)	1.1	4.8	SP	SP (no change)
620442	Dresses; women's or girls', of cotton (not knitted or crocheted)	1.1	4.7	SP (single transformation—manufacture from fabric)	SP (double transformation)
620462	Trousers, bib and brace overalls, breeches and shorts; women's or girls', of cotton (not knitted or crocheted)	0.7	3.0	SP (single transformation—manufacture from fabric)	SP (double transformation)
610442#	Dresses; women's or girls', of cotton, knitted or crocheted	0.6	2.5	SP (single transformation—manufacture from fabric)	SP (double transformation—knitting and making-up (including cutting))
650500	Hats and other headgear; knitted or crocheted, or made up from lace, felt or other textile fabric, in the	0.5	2.1	CTH	CTH (no change)

	piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed				
482010*	Paper and paperboard; registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles	0.4	2.0	CTH or RVC 30%	CTH or RVC 30% (no change)

Source: Pandey et al. (2022)

Notes: Total export is the average of export to the destination in the five-year period FY 2016/17-2020/21 (using data obtained from the Department of Customs, Government of Nepal).

SP=Specific Process; RVC=Regional Value Content; CTH=Change in Tariff Heading

indicates that some of the products in the chapter described as other (other than "obtained by together or otherwise assembling, two or more pieces of knitted or crocheted fabric which have been either cut to form or obtained directly to form") have the same ROO provisions for LDC scheme as well as non-LDC GSP schemes.

* indicates that product is currently taxed at the MFN rate of zero and hence the preferential ROO is not applicable

Besides the case of the European Union, the United Kingdom, Norway, Switzerland, and Turkey described above, rules of origin provision will also get more stringent after LDC graduation in the GSP schemes of Canada, Australia, Russian Federation (and other members of the Eurasian Economic Union) (WTO 2020; Pandey et al. 2022). Hence, LDC graduation could have a significant impact on Nepal's exports through the route of more restrictive ROO in GSP schemes.

Furthermore, as a result of LDC graduation, Nepal will also face an increased stringency in ROO in its regional free trade agreement—Agreement on South Asian Free Trade Area (SAFTA)¹⁶. While there will be no change in product-specific rules, which covers 190 products at the Harmonized System (HS) subheading level and 1 product at the HS heading level, other products will be affected—the general rule for non-LDC will be a change in tariff heading (CTH) coupled with a minimum domestic value addition (DVA) of 40 percent compared to CTH and 30 percent DVA for LDCs (see Table 7). Nepal's trade, including exports to SAFTA member states, is overwhelmingly concentrated in India (see Figure 11). Since Nepal's trade with India mostly takes place through the bilateral trade treaty, the change in SAFTA's ROO may not have a significant impact, but it could affect Nepal's aspirations to enhance regional exports. Moreover, SAFTA had agreed to a provision whereby the Maldives would still be eligible for LDC-specific treatment even after its graduation. Hence, Nepal could also use this precedent to negotiate for LDC-specific preferences even after its graduation; however, given that SAARC has been in deep freeze in recent years, this may be challenging to achieve.

¹⁶ SAFTA came into effect in 2006, thus creating a free-trade area encompassing member countries of the South Asian Association for Regional Cooperation (SAARC). Currently, SAARC has eight member states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

Table 5: Preferential rules of origin in SAFTA for LDCs and non-LDCs

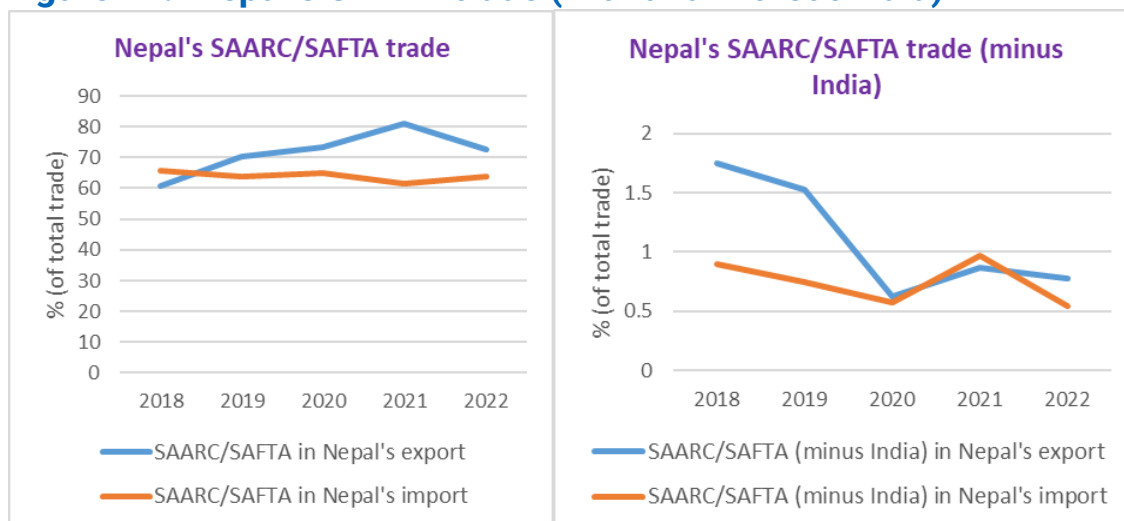
Description	SAFTA rules of origin for LDCs	SAFTA rules of origin for non-LDCs
General rule	CTH+DVA 30%	CTH+DVA 40% (35% for Sri Lanka)
Product-specific rules: Less stringent rules of origin for 190 products at HS subheading level and 1 product category at HS heading level (HS 8903)	CTSH+DVA 30% (172 products); CTSH+DVA 40% (16 products); CTSH+DVA 60% (2 products); CTSH+DVA 25% (1 HS heading)	CTSH+DVA 30% (172 products); CTSH+DVA 40% (16 products); CTSH+DVA 60% (2 products); CTSH+DVA 25% (1 HS heading)
Cumulation	SAARC (RVC 50% and DVA 20%)	SAARC (RVC 50% and DVA 20%)

Note: DVA=Domestic Value Addition; RVC=Regional Value Content

Source: Pandey et al. 2022

While RoO may not be a grave concern currently, some observations indicate that it is already burdensome to some exporters. For instance, utilization of LDC-specific preferences¹⁷ provided by LDC-specific GSP schemes and other DFQF arrangements is low in some of the markets (see Figure 12). While many factors could have contributed to this, the inability to meet RoO may be one of them. Furthermore, the NTM survey (ITC 2017) finds that 5 percent of exporters reported difficulties complying with rules of origin—the actual affectedness by RoO may be more than what is characterized by the survey given that RoO may not be a concern for certain sectors such as agricultural exports and a large number of SMEs delegate these processes to other entities such as freight forwarders and cargo handlers. Moreover, as mentioned above, apparel exports constitute a significant share of Nepal’s exports to these preference-granting destinations, and the markedly stringent RoO provisions in some of the destinations after LDC graduation imply that RoO may become a significant concern. Hence, given that RoO is already a concern in some segments of exports, the increased stringency in RoO provisions could magnify the impacts in the wake of LDC graduation.

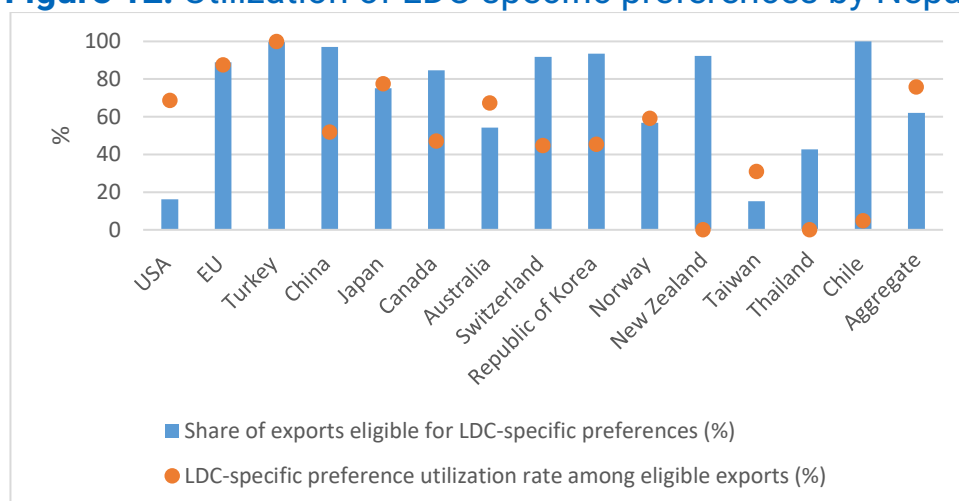
Figure 11: Nepal’s SAFTA trade (with and without India)



Source: Data obtained from Trade and Export Promotion Centre (TEPC), Government of Nepal

¹⁷ Preference utilization rate is computed as the ratio of value of exports that utilize the LDC-specific preference to value of exports that are eligible for LDC-specific preferences, expressed in percentage.

Figure 12: Utilization of LDC-specific preferences by Nepal's exports



Note: The figure is based on three-year data except for Turkey where only two-years data for the recent years (2018-19) was available (2016-18 for China; 2017-19 for United States (USA), Japan, Canada, Australia, Norway, New Zealand, Thailand, and Chile; and 2018-20 for European Union (EU), Switzerland, Republic of Korea, and Taiwan). Data is not available for the United Kingdom, Russian Federation, and Iceland. Kazakhstan, Armenia, Montenegro, the Kyrgyz Republic, and Tajikistan are not considered because of their negligible imports from Nepal. Source: Pandey et al. (2022), with updated data for China obtained from WTO PTA database (accessed 18 October 2023).

4.3 Change in domestic support/subsidy regime

Subsidies and other forms of government support can also create trade distortions and hence are classified as NTMs under the chapter “Subsidies and other forms of support” (Chapter L). These are formally defined as “a measure or practice by any level of government that involves a financial transfer attributable to an identifiable beneficiary or group of beneficiaries that creates or could potentially create an advantage for those beneficiaries” (UNCTAD 2019). Such subsidies/supports can be officially grouped into two categories: support to enterprises (sections L1 to L5) and support to final consumers/individuals/households (sections L6 to L9) (UNCTAD 2019). For the purposes of this paper, we assess the potential change to the subsidy regime of the first kind—the government support to enterprises—after LDC graduation.

Impact on agricultural export subsidies: The Agreement on Agriculture provided certain exemptions to developing countries and least-developed countries regarding agricultural subsidies—Article 9.4 of the Agreement exempted developing countries (including LDCs) from undertaking commitments with respect to export subsidies. Specifically, export subsidies would be allowed to reduce marketing costs of agricultural products including “handling, upgrading and other processing costs, and the costs of international transport and freight” and subsidies on internal transport and freight charges for export shipments. Later, the Ministerial Decision of 2015 maintained that developing countries would be entitled to this benefit until the end of 2023 and the least developed countries and net food-importing developing countries (NFIDs) would benefit from this provision until the end of 2030.¹⁸ However, a few LDCs such as Nepal committed to not providing agricultural export subsidies during its WTO accession (Pandey et al. 2022), and hence the special flexibility provided to LDCs would not apply to these LDCs. Hence, LDCs that are providing agricultural export subsidies using this flexibility could lose this benefit if they graduate before 2030. However, they could continue to benefit from this flexibility if they are included in the list of NFIDs, which could be done for qualifying LDCs upon the request to the Committee on Agriculture (WTO 2020).

¹⁸ See Ministerial Decision of 19 December 2015 on “Export Competition” (WT/MIN(15)/45-WT/L/980) in WTO’s website: https://www.wto.org/english/thewto_e/minist_e/mc10_e/l980_e.htm

Impact on non-agricultural export subsidies: WTO's provisions on subsidies is primarily governed by the WTO Agreement on Subsidies and Countervailing Measures (SCM). Firstly, the SCM Agreement groups subsidies into two categories: prohibited and actionable. Export subsidies (subsidies contingent upon export performance) and local content subsidies (subsidies contingent upon the use of domestic over imported goods) are prohibited (Article 3) given their explicit intent to distort international trade. The other forms of government subsidies fall under actionable subsidies and if these subsidies are shown to adversely impact another country's interests—for example, "injury to the domestic industry of another Member"—the subsidy has to be withdrawn, or in absence of that, countermeasure—countervailing duty—may be applied as remedy. LDCs were given certain special considerations by the Agreement, some of which have already expired and some of which continue to exist. For instance, Article 27.3 of the SCM Agreement provided LDCs a transition period of eight years regarding the local content subsidies, which has already expired. Hence, LDCs no longer benefit from this transition period regarding local content subsidies, and hence graduation will have no impact regarding this special and differential treatment (S&DT) provided to LDCs. However, the SCM Agreement also provides LDCs with S&DT with regard to the prohibited export subsidies. Least-developed countries, along with developing countries listed in Annex VII (b) of the Agreement, are exempt from the prohibition in the use of export subsidies. While the original Agreement provided the exemption for developing countries listed in Annex VII (b) until their Gross National Product (GNP) per capita reached US\$ 1,000 per annum, the Doha Ministerial in 2001 clarified that members listed in Annex VII (b) will remain in the list until their GNP per capita reaches US\$ 1,000 in constant 1990 dollars for three consecutive years.¹⁹ However, since the SCM Agreement is silent on what happens to this S&DT provided to LDCs after their graduation, graduating LDCs will no longer be able to provide non-agricultural export subsidies after graduation (WTO 2020, WTO 2022).²⁰ LDCs attach high importance to the ability to use export subsidies, and as such the LDC Group submitted a proposal requesting that graduated LDCs with a GNI per capita below US\$ 1000 (constant 1990 dollars) be eligible for providing export subsidies as do Annex VII (b) countries of the SCM Agreement (WTO 2020). At least four graduating LDCs—Bangladesh, Lao PDR, Nepal, and Solomon Islands—would still fall under the US\$ 1,000 GNI per capita (1990 dollars) threshold as per the calculation made by WTO (2020) using the recent data available. However, in absence of any such clarification made, LDCs will lose their flexibility to apply non-agricultural export subsidies once they graduate. Hence, any LDC providing non-agricultural export subsidies would be impacted by the loss of the flexibility provided by the SCM Agreement. However, based on the evidence of WTO's Trade Policy Reviews and responses to a questionnaire administered by WTO, only two of the seven graduating LDC members—Bangladesh and Nepal—seem to be impacted by the loss of this flexibility provided to LDCs (WTO 2020).

Potential scrutiny of Nepal's subsidy regime and the need to make adjustments

While WTO allows LDCs and Net Food-Importing Developing Countries (NFIDCs) to provide certain export subsidies until 2030, Nepal committed to not providing export subsidies as part of its accession negotiation (Razzaque 2020, Pandey et al. 2022). However, Nepal has been providing export subsidies under its "Cash Incentive Scheme for Exports (CISE)", including to agricultural products, since 2012. While

¹⁹ See "Implementation-Related Issues And Concerns" (WT/MIN(01)/17), Ministerial Conference, Doha, 2001 at the website: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.pdf

²⁰ The SCM Agreement also applies to agricultural subsidies but makes exemptions to the subsidies allowed by the Agreement on Agriculture. Given that the Agreement on Agriculture allows for agricultural subsidies in the case of LDCs, we talk only about non-agricultural subsidies here.

there have been amendments to the scheme periodically, the core of the scheme is that different rates of cash subsidies are provided to a select group of products: the budget speech of FY 2022/23 specified that the cash subsidy of up to 8 percent of export value will be provided for the export of high export potential goods like clinker, cement, steel, footwear, and processed water. The earlier version of this scheme provided cash subsidies at a rate of 3 percent or 5 percent to a select group of products (see Table 8). Since the list contains a handful of agricultural products, and Nepal has committed not to provide export subsidies to agricultural commodities, LDC graduation could result in greater scrutiny of Nepal's subsidy practice (Razzaque 2020, Pandey et al. 2022). Furthermore, as per the SCM Agreement, Nepal may no longer be able to provide export subsidies to industrial products once it graduates even though Nepal's GNI per capita (1990 dollars) would still fall under the US\$ 1,000 thresholds (unless clarification is made and graduated LDCs with GNI per capita (1990 dollars) below US\$ 1,000 are deemed eligible for providing export subsidies as do Annex VII (b) countries of the SCM Agreement).

However, Nepal allocates a paltry sum for the distribution of export subsidies—for instance WTO's trade policy review of Nepal notes that budget allocation for the export subsidy scheme is insignificant (WTO 2018). Defever, Reyes, Riaño, and Varela (2017) also find an insignificant impact of export subsidies on export growth. Hence, the impact of the possible scrutiny and challenge by WTO members is supposed to be modest. However, for certain commodities, where exporters rely on export subsidies to meet the challenges of exporting, including meeting high compliance costs of technical NTMs, a potential challenge against this provision by WTO members could affect the export of such products. Furthermore, the loss of policy space in this regard may be crucial if Nepal intends to support NTM compliance of agricultural exports through a similar scheme in the future, either through increased support or through expanding the scope of the products covered by the scheme.

Table 6: Products under Nepal's export subsidy scheme

Products that qualify for 5% export subsidy (at least 50 percent domestic value addition)	Products that qualify for 3% export subsidy (at least 30 percent domestic value addition)
Processed tea	Domestically produced textiles
Processed coffee	Readymade garments
Handicraft and wooden craft	Carpet and woollen products
Processed hides and skins (crust leather) and leather products	'Chyangra' pashmina and products thereof
Hand-made paper and products thereof	Domestically processed jute and jute products
Processed herbs and essential oils	Gold and silver Jewellery
Worked/processed precious or semi-precious stones and jewellery thereof	Domestically produced semi-processed hides and skins
Allo (Himalayan nettle) products	Pharmaceuticals
Processed drinking water/mineral water	Felt (woolen) products
Processed turmeric	Polyester yarn/ fiber; viscous yarn/acrylic yarn/cotton yarn
Vegetables	Copper products (handicraft products, decoration products, and other utensils)
Flowers	Footwear
Processed honey	
Processed cardamoms	
Processed ginger (including dried, sliding, oil, and powder)	

Source: Working Procedure on Export Subsidy, 2019 reproduced from Pandey et al. 2022

4.4 Reduced financial and technical support for enhancing NTM capacity

Another way that LDC graduation will affect the NTM landscape is through reduced financial and technical assistance support in the area of NTMs as some of the existing initiatives are exclusively for LDCs or prioritize LDCs. For instance, the Standards and Trade Development Facility (STDF), which funds SPS capacity building, has a target of providing at least 40 percent of the support to LDCs and other low-income countries (OLICs) (STDF n.d.)—STDF’s actual support to LDCs in the period 2004-2019 was 59 percent of its total disbursement (STDF 2020). Furthermore, LDCs also benefit in the form of a lower co-financing obligation—10 percent of the requested STDF contribution compared to 20 percent for lower-middle-income countries and 60 percent for upper-middle-income countries.²¹ Hence, LDC graduation may impact access to STDF funds and there will be an increased co-financing obligation for graduated LDCs if they receive STDF support.

Similarly, the Enhanced Integrated Framework (EIF), an Aid for Trade mechanism, exclusively supports LDCs. EIF can support graduating LDCs for five years after graduation and projects approved prior to graduation qualify for support until their completion. However, the current phase of EIF is set to expire in 2024, and whether LDCs will continue to receive support from EIF post-graduation will depend upon whether there is an extension of the EIF’s mandate (Pandey et al. 2022).

LDCs have also been granted S&DT in the WTO agreements related to the implementation of technical measures. For instance, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the “SPS Agreement”) directs Member Countries to take account of the special needs of the least-developed country Members in the preparation and application of SPS measures (Article 10). In addition, the SPS Agreement acknowledges the provision of technical assistance to developing country Members (Article 9); however, this is not exclusive to LDCs. Moreover, the Doha Ministerial Declaration of 2001 urges Members to provide financial and technical assistance to LDCs so that they can respond adequately to introduction of any new SPS measures and to the special problems they face in implementing the SPS Agreement.²² Likewise, the WTO Agreement on Technical Barriers to Trade (the “TBT Agreement”) recognizes the special problems of the LDCs and acknowledges that needs of the LDCs are to be prioritized in providing advice and technical assistance. Furthermore, the Doha Ministerial Declaration of 2001 urges Members to provide financial and technical assistance to LDCs so that they can respond adequately to the introduction of any new trade-disrupting TBT measures and to the special problems they face in implementing the TBT Agreement.²³

Lastly, as discussed earlier, the TRIPS Agreement provides for support exclusively to LDCs by developed nations to enterprises and institutions to promote technology transfer for the creation of a sound and viable technological base. Graduated LDCs will not benefit from this support. However, as pointed out, the implementation of this provision has been wanting, and hence the loss of this support is not a significant concern for a graduating LDC.

Potential reduction in financial and technical support for Nepal in the area of NTMs

LDC graduation may impact Nepal’s access to STDF funds and there will be an increased co-financing

²¹ <https://standardsfacility.org/project-grants>

²² See “Implementation-Related Issues And Concerns” (WT/MIN(01)/17), Ministerial Conference, Doha, 2001 at the website: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.pdf

²³ See “Implementation-Related Issues And Concerns” (WT/MIN(01)/17), Ministerial Conference, Doha, 2001 at the website: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.pdf

obligation if it receives STDF support. However, Nepal will continue to benefit for a period of three years after the graduation from the favorable LDC eligibility criteria when applying for STDF projects as was agreed upon in 2022 (STDF 2022).

EIF has a history of supporting Nepal in the area of SPS improvements—for instance, enhancing ginger exports, through enhancement of SPS capacity, among others. EIF can support graduating LDCs for five years after graduation and projects approved prior to graduation qualify for support until their completion. However, as mentioned before, the current phase of EIF is set to expire in 2024, and if EIF's mandate is not extended, the loss of support will occur even before the graduation.

Nepal doesn't seem to have benefited extensively from other technical support provisions, for instance in the SPS Agreement and the TBT Agreement. Likewise, technology transfer commitments in the TRIPS Agreement has not been properly implemented, including in the case of Nepal. Hence, while it does not seem to be a grave concern, LDC graduation may result in a loss of some of the LDC-specific resources that could have been used for enhancing NTM-related capacity, especially in the area of enhancing SPS and TBT capacity.

V. Recommendations

5.1 Enhance capacity for meeting NTMs and proper implementation of NTMs for public welfare, including public health and environmental quality

- *Expedite the upgradation of internationally accredited laboratories* through a proper stocktaking of which parameters are still lacking accreditation and cause major hurdles to exporters.
- *Enhance harmonization of standards with that of major bilateral partners and with international standards.* Harmonization of standards as well as mutual recognition agreements have been found to enhance trade among the agreement countries (Chen and Mattoo, 2008). Furthermore, harmonization of standards will also reduce the risk of entry of potentially harmful substances.
- *Update the outdated laws,* including the Nepal Standards (Certification) Act, 1980, Standard Measurement and Weight Act, 1968, Food Act, 1967, and other laws that are inadequate to address modern challenges or are not conducive to promoting international trade.
- *Expedite formulation of key regulatory documents that are necessary for the proper administration of NTMs and for enhancing NTM compliance of exporters.* These include formulating the import inspection protocol and the laboratory policy.
- *Expedite the setup of the accreditation body mandated by the recently endorsed Accreditation law* so that the accreditation of domestic laboratories is relatively easy and economical.
- *Prioritize developing institutional capacity in the administration of technical measures as well as other NTMs.* One important area for improving institutional capacity is in the area of SPS management.
- *Undertake proactive engagement with India to solve the existing NTM issues.* Because of the arbitrariness in the implementation of NTMs by India²⁴, NTMs are viewed as political rather than the

²⁴ For instance, some shipments of the same commodity clear the customs easily, and in other instances, they have to be tested at laboratories far away from the customs point, a requirement often of dire consequences for perishable goods.

technical measures that they are—businesses, as well as policymakers and international development partners have started viewing the issue of NTMs that exporters face in India as India’s political interference (including protectionist measures) rather than technical issues that Nepal has to deal with.²⁵ However, Nepal also needs to upgrade its national quality infrastructure to resolve the issue.

- *Undertake quick reforms to ensure improvements in the area of coordination and cooperation among government agencies, including among agencies that oversee NTMs.*
- *Undertake capacity building of farmers, producers and exporters to enhance producers’/ exporters’ abilities to address challenges of NTMs in foreign markets.*
- *Undertake a proactive engagement with the private sector, prioritizing SMEs, to better understand challenges posed by NTMs and possible solutions.* The impact of NTMs are not easy to decipher as is the case with straightforward tariffs. Furthermore, the impacts of NTMs vary by sector, destination, and even the size of the exporter. Moreover, NTMs are dynamic—NTMs are ever-evolving alongside the changes in the international trade landscape, new scientific evidence, public preference, new trade agreements, etc. Hence, a one-time understanding of NTMs affecting Nepali exporters is not enough to support Nepali exporters in navigating this complex arena of NTMs. Thus, the government should design some sort of institutional mechanism or have the current institutional mechanisms such as the Trade Facilitation Committee or Board of Trade—the institutional structures that have the participation of many stakeholders from several relevant fields—actively focus on NTMs to perennially engage in the better management of NTM challenges as well as in efficiently handling the plethora of NTMs that exporters have to face.
- *Ensure that only the necessary export control measures are in place and streamline export-related NTMs such as export inspection, advance payment requirements, and certification requirements.*
- *Invest in enhancing trade negotiation capacity to ensure that many of the necessary cross-border solutions to NTM issues can be delivered.*
- *Finally, formulate a national quality policy (NQP) to ensure the development of the national quality infrastructure.* Having a national quality policy that is well cognizant of the major issues in dealing with national quality infrastructure (NQP) issues can propose appropriate solutions for addressing the weaknesses in NQP. Furthermore, it can also be instrumental in providing a clear roadmap for the development of NQP, including the model of infrastructure development (private or public or both), and ensuring that necessary investments are in place.

5.2 Enhance capacity to deal with the changing NTM landscape.

Dealing with more stringent RoOs

- *Proactively lobby for an increased transition period for ROOs that may be difficult for Nepali exporters to comply with immediately after LDC graduation.* Double transformation requirements in the European Union and the United Kingdom may require increased transition periods.
- *Engage in SAARC forums to lobby for the LDC-like treatment even after graduation as was the case for the Maldives.*

Dealing with challenges to pharmaceutical producers as well as in imports of the generic versions of patented medicines

²⁵ Based on SAWTEE’s past consultations.

- *Vigorously participate in international forums to extend the transition periods associated with the implementation of waivers provided to LDCs in the protection of pharmaceutical products by patents to ensure that Nepal's growing pharmaceutical production industries are not adversely affected. Such proposals have already been floated to the WTO, for instance by Chad on behalf of the LDC group.*²⁶

Dealing with potential challenges to the current agricultural export subsidy regime

- *Provide alternative support to agricultural exporters to ensure easy compliance with NTMs such as testing and certification so that a hypothetical challenge to Nepal's agricultural subsidy regime doesn't hurt exporters through reduced funds for NTM compliance.*

Dealing with a potential drop in funds available for enhancing SPS and TBT capacity

- *Enhance capacity in project preparation and implementation to compete for scarce STDF funds and other sources of financial and technical support in the wake of LDC graduation.*

VI. Conclusion

This paper synthesized the impact of NTMs on Nepal's trade, particularly in the context of its upcoming graduation from LDC status. The paper underscored the dual nature of NTMs, acknowledging their role in safeguarding public health, safety, and environmental standards, while also highlighting their potential to impede trade. For Nepal, the primary concerns revolve around the procedural obstacles associated with NTMs, which often outweigh the challenges posed by the technical requirements themselves. This is particularly evident in sectors such as agriculture and pharmaceuticals, where conformity assessment procedures are cited as major hurdles.

As Nepal approaches its LDC graduation, the loss of preferential treatments, especially in rules of origin and tariff preferences, poses significant challenges. The stricter RoO requirements in major export markets like the European Union and the United Kingdom could severely impact Nepal's apparel and textile industries, which heavily rely on imported raw materials. The transition from a single transformation to a double transformation process in these markets will necessitate substantial adjustments in the production processes of Nepali exporters.

Additionally, graduation will alter Nepal's subsidy regime, particularly concerning export subsidies. Although the impact of these subsidies has been modest due to their limited budget allocation, their elimination could still affect certain sectors that depend on them to offset high compliance costs with technical NTMs. The agricultural sector, in particular, might face increased scrutiny and challenges post-graduation, necessitating alternative support mechanisms to maintain competitiveness.

The study also highlighted the importance of capacity building in navigating the evolving NTM landscape. Enhancing the ability of domestic institutions to comply with international standards and ensuring robust quality infrastructure will be crucial. Furthermore, proactive engagement in international forums to seek extended transition periods and continued preferential treatments, even after graduation, will be vital for mitigating the adverse impacts of stricter NTMs.

²⁶ See WTO document "TRADE RELATED CHALLENGES OF THE LEAST DEVELOPED COUNTRIES AND WAY FORWARD: A DRAFT FOR MC DECISION" (WT/GC/W/807).

In conclusion, while Nepal's graduation from LDC status marks a significant milestone in its socio-economic development, it also brings forth new challenges, particularly in trade facilitation. Addressing these challenges will require comprehensive strategies, including strengthening domestic capacities, seeking continued international support, and fostering resilience in key export sectors. The preliminary recommendations provided in this paper serve as a roadmap for policymakers to navigate the post-graduation landscape effectively, ensuring that Nepal continues to thrive in the global trading system.

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