
LOAN NUMBER 3546-NEP(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])

South Asia Subregional Economic Cooperation
Customs Reform and Modernization for Trade Facilitation Program

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 10 SEPTEMBER 2017

NEP 50254

**LOAN AGREEMENT
(Ordinary Operations [Concessional])**

LOAN AGREEMENT dated 10 September 2017 between NEPAL ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 9 May 2017 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's trade facilitation sector ("Program");

(B) the Borrower has applied to ADB for a loan for the purposes of the Program; and

(C) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations (Concessional) Loan Regulations, dated 1 January 2017 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(v) is deleted and the following is substituted therefor:

"Program" means the program for which ADB has agreed to make the Loan, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower;

(b) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(c) Section 2.01(x) is deleted and the following is substituted therefor:

"Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement;

- (d) The term "Project Executing Agency" wherever it appears in the Loan Regulations shall be substituted by the term "Program Executing Agency".
- (e) Section 5.01(b) is deleted.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "ASYCUDA World" means the third generation of the Automated Systems for Customs Data system designed by the United Nations Conference on Trade and Development;
- (b) "Customs National Trade Facilitation Committee" or "CNTFC" means the Borrower's Customs National Trade Facilitation Committee;
- (c) "Counterpart Funds" means the local currency generated from the Loan proceeds under the Program and referred to in paragraph 7 of Schedule 4 to this Loan Agreement;
- (d) "Customs Act" means the Borrower's Customs Act, 2064 (2007);
- (e) "Customs Procedures with Economic Impact" or "CPEI" means storage/warehousing, inward processing, outward processing, procedures permitting temporary importation/exportation, drawback, and transit;
- (f) "Customs Reform and Modernization Strategies and Action Plan" or "CRMSAP" means the Borrower's Customs Reform and Modernization Strategies and Action Plan 2017-2021;
- (g) "Customs-Related TFA Measures" means the measures referred to as such in Supplementary Linked Document 16 ("Nepal's Compliance with the World Trade Organization's Trade Facilitation Agreement") to the Report and Recommendation of the President for the Program;
- (h) "Deposit Account" means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;
- (i) "First Tranche" means the portion of the proceeds of the Loan in an amount equivalent to \$10,000,000 to be withdrawn pursuant to and subject to the provisions of paragraph 5 of Schedule 3 to this Loan Agreement;
- (j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);
- (k) "Ministry of Finance" or "MOF" means the Borrower's Ministry of Finance, or any successor thereto;

- (l) "Policy Matrix" means the policy matrix as agreed between the Borrower and ADB, which sets forth actions accomplished or to be accomplished by the Borrower under the Program and is attached to the Policy Letter;
- (m) "Program Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Borrower's Department of Customs or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;
- (n) "Program Implementation Framework" or "PIF" means the entity within the Program Executing Agency referred to in paragraph 2 of Schedule 4 to this Loan Agreement;
- (o) "Program Steering Committee" or "PSC" means the entity referred to in paragraph 3 of Schedule 4 to this Loan Agreement;
- (p) "Revised Kyoto Convention" or "RKC" means the International Convention on the Simplification and Harmonization of Customs Procedures of the WCO;
- (q) "Second Tranche" means the balance of the proceeds of the Loan remaining in the Loan Account after the utilization of the First Tranche, to be withdrawn pursuant to and subject to the provisions of paragraph 6 of Schedule 3 to this Loan Agreement.
- (r) "Trade Facilitation Agreement" or "TFA" means the Trade Facilitation Agreement of the WTO ratified by the Borrower on 24 January 2017;
- (s) "Trade Facilitation Strategic Priorities" means the following six areas under the TFA: advance ruling, expedited shipment, post-clearance audit, pre-arrival processing, risk management, and trade facilitation measures for authorized operators.
- (t) "TIR Convention" means the Convention on International Transport of Goods Under Cover of International Road Transports Carnets concluded on 14 November 1975 to establish an international customs transit system;
- (u) "WCO" means the World Customs Organization; and
- (v) "WTO" means the World Trade Organization.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount in various currencies equivalent to fifteen million three hundred forty-one thousand Special Drawing Rights (SDR15,341,000).

(b) The Loan has a principal repayment period of 24 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 January and 15 July in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 1 August 2021 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV**Particular Covenants**

Section 4.01. In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. (a) As part of the reports and information referred to in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (i) the Counterpart Funds and the use thereof; and (ii) the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(b) Without limiting the generality of the foregoing or Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB semi-annual reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

ARTICLE V**Effectiveness**

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI**Miscellaneous**

Section 6.01. The Secretary of the MOF is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Numbers:

977-1-4211164
977-1-4211165

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

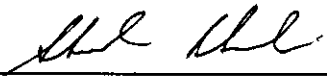
(632) 636-2444
(632) 636-2221.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of the ADB.

NEPAL

By 
BAIKUNTHA ARYAL
Joint Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
SHARAD BHANDARI
Officer-in-Charge
Nepal Resident Mission

SCHEDULE 1

Description of the Program

1. The principal objective of the Program is to increase legitimate trade's access to simplified, harmonized and modernized trade processes, and the scope includes (a) national policy and legal framework for trade facilitation improved; (b) customs procedures improved; (c) DOC organizational structure strengthened; and (d) DOC's capacity enhanced. The Program is described in more detail in the Policy Letter.

2. The Program is expected to be completed by 1 August 2021.

SCHEDULE 2

Amortization Schedule

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 January 2026	479,406
15 July 2026	479,406
15 January 2027	479,406
15 July 2027	479,406
15 January 2028	479,406
15 July 2028	479,406
15 January 2029	479,406
15 July 2029	479,406
15 January 2030	479,406
15 July 2030	479,406
15 January 2031	479,406
15 July 2031	479,406
15 January 2032	479,406
15 July 2032	479,406
15 January 2033	479,406
15 July 2033	479,406
15 January 2034	479,406
15 July 2034	479,406
15 January 2035	479,406
15 July 2035	479,406
15 January 2036	479,406
15 July 2036	479,406
15 January 2037	479,406
15 July 2037	479,406
15 January 2038	479,406
15 July 2038	479,406
15 January 2039	479,406
15 July 2039	479,406
15 January 2040	479,406
15 July 2040	479,406
15 January 2041	479,406
15 July 2041	<u>479,414</u>
TOTAL	15,341,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**Withdrawal of Loan Proceeds**

1. Except as set out in this Schedule or as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.
2. An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.
3. (a) Prior to submitting the first application to ADB for withdrawal from the Loan Account, the Borrower shall nominate an account (the Deposit Account) at Nepal Rastra Bank into which all withdrawals from the Loan Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with the applicable regulations and procedures of the Borrower.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles acceptable to ADB. Upon ADB's request, the Borrower shall have the financial statements for the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB. Promptly after their preparation but in any event not later than 6 months after the date of ADB's request, copies of such audited financial statements and the opinion of the auditors on the financial statements, in the English language, shall be furnished to ADB.
4. No Loan proceeds shall be withdrawn to finance any item specified in Attachment 1 to this Schedule.
5. The Borrower may withdraw the First Tranche upon effectiveness of this Loan Agreement.
6. Notwithstanding any other provisions of this Loan Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account for the Second Tranche unless ADB is satisfied, after consultation with the Borrower, that (a) sufficient progress has been achieved by the Borrower in the carrying out of the Program; (b) the policy actions that were met for the release of the First Tranche continue to be complied with by the Borrower; and (c) the Borrower has met the policy actions for the release of the tranche specified in Attachment 3 to this Schedule.

Negative List

No withdrawals of Loan proceeds will be made for the following:

- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

Table: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or for goods supplied from the territory of the Borrower;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

Policy Actions for Release of the First Tranche

1. The Borrower shall have issued CRMSAP, which shall include a timeline for revision in the customs legislation required to comply with the RKC and the TFA.
2. The Borrower shall have submitted the instrument of accession for (a) the Body of the Convention and General Annex of RKC to the WCO; and (b) the TFA to the WTO.
3. The Borrower shall have: (a) prepared an initial draft legislative amendment for revisions to the Customs Act, and the Borrower's customs rules and administrative instructions, for full compliance with the General Annex of RKC to cover the Customs-Related TFA Measures on the Trade Facilitation Strategic Priorities; and (b) consulted CNTFC on the draft amendment.
4. The Borrower shall have issued the instruction to commence preparation of: (a) legal gap analysis on the Customs-Related TFA Measures and related international standards, in particular those concerning CPEI; and (b) draft legislation (including rules and administrative orders) required, based on the findings of the gap analysis.
5. The Borrower shall have: (a) approved the proposal to conduct business process reengineering in respect of the declaration processing steps for direct import declaration, in accordance with the relevant provisions of the RKC (Chapter 6.4 General Annex: ICT Guidelines); and (b) issued instructions on the proposal's immediate implementation.
6. The Borrower shall have rolled out the ASYCUDA World pilot in the Birgunj, Mechi and Sirsiya Dry Port customs offices, and completed detailed evaluation and assessment of the rollouts with lessons learned and recommendations for future ASYCUDA World implementation.
7. The Borrower shall have: (a) finalized the ongoing risk profiling exercise (comprehensively studying the 2010-2015 import data to map the risk levels of traders, commodities and agents); (b) made adjustments (if any) to the identified risk profiles for programming into the ASYCUDA World selectivity module; and (c) formulated remaining action points towards effective implementation of the ASYCUDA World selectivity module.
8. The Borrower shall have (a) formed a committee, with participation from its Ministry of General Administration and the MOF, to review the Program Executing Agency's existing organogram and proposed a phased realignment plan to adopt risk-based approach to customs clearance; and (b) submitted through the committee the phased realignment plan for MOF approval.*
9. The Borrower shall have conducted a gap analysis and training needs assessment, focusing on the six Trade Facilitation Strategic Priorities, as well as the related areas of procurement, accounting, integrity and automation.

* The proposed realignment shall be an interim proposal, noting that the Borrower's pending and imminent decision on federal structure and its implication for the customs operations shall affect the findings and recommendations of the proposal.

10. The Borrower shall have conducted competency mapping to identify a pool of experts (comprising, with respect to customs technical areas, officials, retirees and other ex-officials of the Program Executing Agency, and with respect to other cross-cutting areas, such persons and external experts) to address the gaps under Policy Action 9 above.

Policy Actions for Release of the Second Tranche

1. The Borrower shall have achieved the implementation milestones set out in Supplementary Document 12 (Policy Action (2-1): The Customs Reform and Modernization Strategies and Action Plan (CRMSAP) 2017-2021 implementation milestones) of the Report and Recommendation of the President to the Board of Directors in respect of the Program, to enable risk-based customs clearance.
2. The proposed legislative amendments to comply with the General Annex of RKC extended to cover the Customs-Related TFA Measures on the Trade Facilitation Strategic Priorities shall have been submitted to Cabinet.
3. The Borrower shall have (a) drafted an amendment to the Customs Act to comply with Customs-Related TFA Measures and related international standards in particular those concerning CPEI, based on the completed legal gap analysis; and (b) circulated the draft amendment to CNTFC for consultation.
4. The Borrower shall have consulted with the Federation of Nepalese Chambers of Commerce and Industry, the Confederation of Nepalese Industries, the Nepal Chamber of Commerce, and the Nepal Freight Forwarders Association on the adoption of the TIR Convention.
5. The Borrower shall have (a) developed declaration processing steps within the scope of the ASYCUDA World; and (b) pilot tested the reengineered declaration processing steps at Birgunj, Mechi and Sirsiya Dry Port customs offices.
6. The Borrower shall have: (a) adopted a comprehensive implementation plan for the ASYCUDA World, and its functionalities (including those required to implement the Trade Facilitation Strategic Priorities) and (b) extended the ASYCUDA World's automated customs processing to the 10 highest revenue-yielding customs offices, with the functionalities specified in the implementation plan.
7. The Borrower shall have adopted a Risk Management Framework integrating the Trade Facilitation Strategic Priorities, and a Risk Management Standard Operating Procedure, based on the analyses of risk profiling in Tranche 1 Policy Action 7, to integrate risk management into the customs clearance procedures.
8. The Borrower shall have completed the initial phase of the phased realignment plan to be in line with the task requirements of the six Trade Facilitation Strategic Priorities, which shall include establishment of a dedicated risk management section in the Program Executing Agency.
9. Based on the completed gap analysis and training needs assessment, the Borrower shall have: (a) formulated a capacity development plan to address the needs identified in the assessment under Tranche 1 Policy Action 9; (b) endorsed the training plan for the respective units of the Program Executing Agency; (c) developed training modules on

the Trade Facilitation Strategic Priorities as well as the related areas of procurement, accounting, integrity and automation; and (d) commenced implementation of the plans.

10. The Borrower shall have formulated and commenced implementation of the "pool of expert" scheme.

SCHEDULE 4**Program Implementation and Other Matters**Implementation Arrangements

1. DOC shall be the executing agency and implementing agency for the Program and shall be responsible for the timely implementation of the Program.
2. Within 60 days of the Effective Date, the Borrower shall have established the PIF which shall be responsible for implementing the policy actions and other activities for the Program led by the Program Executing Agency's Deputy Director General supervising its coordination, legislation, automation, risk management, and organization and development task forces.
3. The PSC, chaired by the Program Executing Agency's Director General, with Director of Customs Reform and Modernization as member secretary, and comprising representation from the Borrower's Ministries of Finance and Commerce and its Department of Industry, and the Program Executing Agency's Deputy Director Generals and Directors of Customs Reform and Modernization, Tariff, Intelligence, Administration, Monitoring, Valuation and Planning sections, shall guide and monitor the implementation of the Program.
4. The Borrower shall ensure that the PSC meets at least semi-annually and, if needed, on an ad hoc basis to (a) monitor the progress of the Program; (b) provide guidance and direction for Program implementation to the Program Executing Agency; and (c) recommend adjustments or supplementary measures to facilitate and ensure timely implementation of the Program. ADB shall be invited to attend all meetings of the PSC as an observer.

Policy Actions and Dialogue

5. The Borrower shall ensure that (a) all policy actions adopted under the Program, as set forth in the Policy Letter and the Policy Matrix, continue to be in effect for the duration of the Program and subsequently; (b) the reforms specified in the Policy Letter and Policy Matrix continue to be implemented in a phased and timely manner in accordance with the approved plans, assessments and directives issued pursuant to the Policy Matrix; and (c) all of its obligations as stipulated in this Loan Agreement are carried out in a timely and efficient manner.
6. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take into account ADB's views before finalizing and implementing any such proposal.

Use of Counterpart Funds

7. The Borrower shall ensure that the Counterpart Funds are used to finance the implementation of CRMSAP.

Governance and Anticorruption

8. The Borrower shall: (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Program; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation. Such investigation may occur in coordination with the Borrower's anticorruption agencies.

Monitoring and Review

9. The Borrower shall ensure that the PIF submits, to the PSC and ADB, (a) on a semi-annual basis, Program monitoring and evaluations reports and time-based work programs in a form acceptable to ADB, and (b) promptly after any meeting of the CNTFC at which any matters in connection with or relevance to the Program were discussed, excerpts of minutes of such matters. Based on the feedback from the PSC and ADB, the PIF shall, if necessary, amend and revise its work programs to ensure timely and effective implementation of the Program.

10. ADB shall undertake periodic review missions to (a) confirm progress and fulfillment of policy actions for tranche release; (b) confirm release of adequate funds from the Borrower for Program-specific activities; (c) monitor continued applicability of the assumptions that might impact Program success, as well as specified risks and their mitigating measures; and (d) advise on actions to maintain effective implementation within the Program period.

Institutional Matters

11. The Borrower shall by the Effective Date cause the Program Executing Agency to participate in the Borrower's Computerized Government Accounting System.