

Benefits of Adopting Measures
to Facilitate Trade:
**A Case Study on Forest Permits for
Exporting Horticultural Products**

September 2024

Research Brief



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A Case Study on Forest Permits for Exporting Horticultural Products

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The Economics Team of Verité Research compiled the study. The research team comprised Subhashini Abeysinghe, Mathisha Arangala and Shalomi Liyanage.

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SUMMARY

A permit from the Forest Department is mandatory for exporting horticultural products from Sri Lanka. Currently, the process of issuing these permits is manual, cumbersome, and unpredictable. This research brief proposes practical steps to address the resistance and delays encountered in transitioning to an automated, efficient, and predictable system. These steps are categorised under four well-established trade facilitation measures adopted globally. The proposed measures are relevant not only to the Forest Department but also to other government agencies responsible for issuing import and export permits.

Three of the measures aim to address the agency's resistance to change, which stems from a mistrust of traders and limited capacity to detect and prevent malpractices at the border. These measures include: 1) Pre-border risk assessment and management; 2) technical cooperation and data sharing between regulatory and enforcement agencies (i.e. Forest Department and Sri Lanka Customs); and 3) consulting traders on proposed regulatory revisions. The first measure reduces the need for frequent border inspections, the second strengthens the capacity to detect non-compliance at the border, and the third enhances the predictability of the process for traders.

The fourth proposed measure addresses constraints that typically delay implementation. These include a lack of institutional ownership, awareness, accountability, and resource prioritisation. Many countries have established National Committees on Trade Facilitation (NCTF), which includes representatives from border agencies, to develop action plans and institute monitoring mechanisms to overcome these constraints. In Sri Lanka, involving permit-issuing agencies, such as the Forest Department, at NCTF meetings, and incorporating actions to streamline permit-issuing processes into the National Action Plan on Trade Facilitation, could expedite implementation.

Many of the proposed measures are already part of the World Trade Organisation's Trade Facilitation Agreement (WTO TFA), of which Sri Lanka is a signatory. However, according to the WTO TFA database, Sri Lanka lags behind its peers, including some of the least developed countries (LDCs), in implementing these measures. This case study highlights the importance of having an active and accountable NCTF with a well-articulated action plan and monitoring mechanism to accelerate the implementation of trade facilitation measures.

1. INTRODUCTION

Requiring government permits to export or import certain products is a common practice across many countries. Such permits are often instituted to achieve legitimate objectives, such as protecting forests and endangered species, preventing the spread of diseases, and protecting consumers' health.

In Sri Lanka, exporters of horticultural products are required to obtain a forest permit from the Forest Department, as per the Forest Ordinance No. 16 of 1907, the Forest (Amendment) Act No. 65 of 2009, and subsequent regulations made under the Act. The Act's primary aim is to conserve, protect, and manage the country's forests and forest resources. As per the Act, the Forest Department has the authority to regulate the export of timber and forest produce¹, prohibit the export of any forest produce without a permit issued by the Forest Department, and prohibit the export of any timber or forest produce that cannot be exported from Sri Lanka.²

While these requirements are necessary, the manner in which they are implemented can add unnecessary costs, delays, and uncertainty - undermining businesses' ability to compete internationally. Trade facilitation measures are designed to "simplify the process and minimise transaction costs in international trade while maintaining effective levels of government control".³

This research brief demonstrates how adopting trade facilitation measures can help address the challenges of transitioning from a manual, cumbersome, and unpredictable permit-issuing process to one that is automated, streamlined, and predictable. The proposed measures will strengthen the ability of the respective agencies to enforce regulations more effectively and efficiently. The findings are also applicable to other regulatory agencies that issue permits for exporting and importing goods. The research brief is divided into two sections. First, it outlines the current process of issuing a forest permit and identifies factors that hinder and delay the adoption of a more efficient and automated system. The second section outlines steps to address these constraints, framed under four broad trade facilitation measures. Many of the proposed measures align with the commitments Sri Lanka has made under the World Trade Organisation's Trade Facilitation Agreement (WTO TFA), to which the country is a signatory. However, despite these obligations, Sri Lanka has made slow progress in implementing key provisions. This lethargic approach is particularly concerning when compared to the progress made by many other signatories, including several Least Developed Countries (LDCs), which have outpaced Sri Lanka in adopting trade facilitation reforms.⁴

1 Forest produce includes the following things when found in or brought from a forest, "trees and leaves, flowers and fruits, seeds, roots, juice, timber, charcoal, caoutchouca , catechu, wood oil, natural varnish, bark, lac, gum, and myrobalans, plants not being trees, including grass, creepers, reeds, and moss, and all parts or produce of such plants, tusks, horns, shed horns, and edible birds' nests, and peat, surface soil, rocks and minerals, including limestone, coral, laterite, bitumen, bituminous shale, asphalt, minerals, oils and all products of mines or quarries; peat, surface soil, rocks and minerals, including limestone, coral, laterite, bitumen, bituminous shale, asphalt, minerals, oils and all products of mines or quarries"

2 Section 24 (p) of the Forest Ordinance amended by the Forest (Amendment) Act, No. 65 of 2009

3 United Nations Economic and Social Commission for Asia and the Pacific. 'Designing and Implementing Trade Facilitation Measures in Asia and the Pacific'. 2013. https://www.unescap.org/sites/default/d8files/4%20-%20Part%20I_An%20Overview%20Of%20Trade%20Facilitation.pdf

4 Verité Research. 'Sri Lanka Falls Behind Least Developed Countries in Trade Facilitation'. 2023, at <https://www.veriteresearch.org/publication/sri-lanka-falls-behind-least-developed-countries-trade-facilitation/> [last accessed 12 September 2024]

2. UNDERSTANDING THE CURRENT PROCESS AND RESISTANCE TO CHANGE

2.1. The Current Process

Exporters are required to apply for a permit for each shipment, listing the varieties and quantities approved for export. Along with the application, exporters must submit colour printouts of the varieties they plan to export. The entire process, from document submission and payment to obtaining the permit, is conducted manually. Due to resource constraints within the Forest Department, permits are only issued on three working days of the week (refer to Annex 1 for more details). Exporters report that, in addition to the time and cost involved in the time-consuming manual process for each shipment, the current process prevents them from accommodating last-minute buyer requests to add new varieties.

The predictability of the process is further undermined by changes introduced without consultation with traders. These ad-hoc revisions, especially those that change long-standing practices overnight, can have significant negative impacts on businesses. For instance, interviews with traders revealed that they were not consulted when a gazette issued on August 21, 2023 expanded the list of products requiring permits. This new list included non-native and tissue culture products, which had not previously required permits. The inclusion of tissue culture products, cultivated in labs and not strictly classified within the definition of forest produce under the Act, came as a surprise to exporters.

2.2. Resistance to change

Several steps could make the current process more efficient, less costly, and more predictable. First, the requirement for a permit for each shipment could be replaced with a permit valid for an extended period (e.g., six months or one year), listing the varieties and quantities that can be exported during that time frame. Second, automating the document submission, payment, and permit issuance would make the process more efficient. Third, the predictability of the process could be improved by consulting traders on proposed regulatory changes and providing them with advance notice, allowing them time to adjust.

However, several factors hinder this transition. One of the main reasons behind the Forest Department's reluctance to issue long-term permits or eliminate the requirement for a permit to export tissue culture products is the deep mistrust officials have towards traders. Due to past experiences with unscrupulous traders, officials fear these flexibilities will be exploited. Another reason for resistance is the limited confidence in the ability to detect and prevent malpractices at the border. Discussions with officials revealed concerns over the technical competence of Customs Officers in distinguishing between the varieties of exported products. Furthermore, the lack of access to export data by variety limits the Forest Department's ability to monitor the utilisation of the permits issued.

The research also found that efforts to implement agreed-upon solutions, such as automation, have experienced extensive delays. These delays are primarily due to a lack of institutional ownership and an over-reliance on individuals to drive change. This issue is compounded by the absence of a mechanism to hold the implementing institution accountable and a failure to prioritise resources for such initiatives. Given the wide range of responsibilities assigned to agencies like the Forest Department and the Ministries they report to, such as the Ministry of Environment, issuing permits to horticulture exporters is unlikely to be seen as a top priority during resource

allocation. Moreover, manual and rigid processes often create fertile ground for corruption within permit-issuing agencies, which further contributes to resistance to change.

3. FOUR MEASURES TO OVERCOME RESISTANCE AND FAST TRACK IMPLEMENTATION

The challenges faced by the Forest Department, as identified earlier, are encountered by similar regulatory agencies worldwide. This section outlines several trade facilitation measures aimed at addressing similar concerns raised by such agencies, enhancing both their capacity and willingness to adopt change.

The measures and frameworks referred to here are part of the World Trade Organisation's Trade Facilitation Agreement (WTO TFA), which came into effect in 2017. As mentioned earlier, despite being a signatory to the WTO TFA, Sri Lanka has made limited progress in implementing these measures.⁵ For Sri Lanka to create a dynamic export sector, it is crucial to reverse this trend and accelerate the implementation of measures such as those proposed in this report.

3.1. Introducing a pre-border risk assessment and management system

One of the key trade facilitation measures recommended and increasingly adopted by countries to reduce the frequency of border inspections while minimizing non-compliance is the use of risk assessment and management systems. These mechanisms enable agencies to selectively inspect shipments based on risk.

A risk assessment system enables regulatory agencies to efficiently allocate their limited resources by focusing on consignments or traders with higher risk. A sound risk assessment system seeks to address the root causes of risks at their source, rather than at the border. For example, in the case of Forest Permits, a pre-border risk assessment and mitigation system could entail inspecting and certifying of exporters' premises to assess their capacity to export the varieties and quantities for which they seek a forest permit. Selective inspections at the border would then be used to validate the effectiveness of mitigation measures applied before the border.⁶ Pre-border risk assessment systems, combined with improved coordination and communication between the regulatory authority (the Forest Department) and the enforcement authority (the Customs Department), as discussed in detail in the next section, can help bridge the trust deficit between traders and government agencies. This approach allows regulatory agencies like the Forest Department to ensure compliance without the need to issue permits for every shipment or mandate permits to export products such as tissue culture products.

Without risk assessment and mitigation mechanisms, all traders, regardless of their capacity and compliance levels, are treated as equally risky and subjected to the same intense scrutiny. In such a system, the malpractices of a few unscrupulous traders result in all traders being treated as potentially fraudulent. This blanket approach risks creating a process that rewards non-compliant traders, who are more willing to bribe officials to get their goods across, while penalising compliant traders.

5 Verité Research. 'Sri Lanka Falls Behind Least Developed Countries in Trade Facilitation'. 2023, at <https://www.veriteresearch.org/publication/sri-lanka-falls-behind-least-developed-countries-trade-facilitation/> [last accessed 12 September 2024]

6 World Bank. 'Sri Lanka Development Update: Protecting the Vulnerable in a Time of Crisis'. 12 December 2022, at <https://documents1.worldbank.org/curated/en/099457512122392342/pdf/IDU05d8bbb230cc56048fb0a5e0006cee13d32ef.pdf> [last accessed 12 September 2024]

In contrast, risk assessment and management systems enable regulatory agencies to differentiate traders based on their capacity, compliance levels, and risk profiles, encouraging compliance. Under such a system, traders with a proven track record of compliance and lower risk profiles are rewarded with fewer inspections and scrutiny.

Risk management is a crucial aspect covered in the WTO TFA. While Article 7.4 of the WTO TFA primarily focuses on the adoption of a risk management system by Customs Authorities, it is equally beneficial for other border agencies, especially those issuing permits and licenses. It will result in reduced inspections and increased compliance. The implementation of risk assessment mechanisms by other border agencies will further enhance the effectiveness of Customs' risk-based inspection processes.

ARTICLE 7.4 OF THE WTO TFA

1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.
2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.
3. Each Member shall concentrate customs control and, to the extent possible, other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.
4. Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

World Trade Organisation's Trade Facilitation Agreement (WTO TFA)

3.2. Improving communication and cooperation between regulatory and enforcement agencies

Effective cooperation between regulatory agencies (the Forest Department) and enforcement agencies (the Customs Department) is critical to facilitate trade. Such cooperation is necessary to address the Forest Department's concerns about the Customs Department's capacity to detect and prevent malpractices at the border.

Discussions with officials revealed two primary factors contributing to these concerns. First, the limited technical expertise of Customs Officials has raised concerns about their ability to distinguish between different varieties of forest produce and the associated risk of fraudulent traders deceiving customs officials. Second, the Forest Department's limited access to information on quantities and varieties exported. This information is necessary to monitor the utilisation of permits issued by the Forest Department and detect malpractices.

These challenges can be addressed through better coordination and communication between the Forest Department and the Customs Department. Such cooperation can take the form of training Customs officials, providing them with a guidebook containing colour images of permitted varieties, and ensuring the Customs Department shares export data in a format that is useful for the Forest Department. Access to data is critical for detecting and preventing malpractices, and a mechanism for recording and sharing export data between the two agencies will enhance their capacity to detect and prevent non-compliance.

Improved coordination and communication are key trade facilitation measures that can help alleviate fears of regulatory circumvention by traders. The absence of such coordination and cooperation has been identified as a critical bottleneck preventing the Forest Department from adopting a more efficient system to issue forest permits.

Border agency cooperation, both nationally and internationally, is a trade facilitation measure included in the WTO TFA. Enhancing coordination and communication between border agencies can help improve regulatory oversight while also reducing the compliance burden on traders by streamlining processes.

ARTICLE 8.1 OF THE WTO TFA

Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

World Trade Organisation's Trade Facilitation Agreement (WTO TFA)

3.3. Stakeholder consultations and provision of advance notice of regulatory revisions

Consulting stakeholders and offering traders opportunities to provide feedback on regulatory revisions before they come into effect is critical for building trust between traders and the regulatory agency. These consultations also enhance the predictability of the permit-issuing process. Without them, ad hoc revisions can make the permit-issuing process less predictable and unnecessarily stringent.

Stakeholder consultations help regulatory agencies to identify unintended consequences and practical challenges posed by regulations, agree on effective remedies, and implement necessary reforms. This collaborative approach can significantly improve the quality of rules and regulations, enhancing compliance and reducing enforcement costs for both the government and businesses.

Coupling consultations with advance notice of proposed changes also helps improve compliance, as traders have time to adapt to the revisions. Additionally, it fosters a sense of partnership and shared responsibility between the traders and the government. This consultative approach not only enhances the legitimacy of the proposed revisions but also helps foster mutual trust and respect between traders and government agencies.

An example of the issues caused by a lack of consultation and prior notice is the revision introduced in August 2023, which required exporters to obtain permits for products that previously did not require one. Stakeholder consultations, combined with the adoption of measures to mitigate the risks of non-compliance discussed earlier, would

enable traders and the regulator to reach an amicable solution that strikes a fair balance between trade facilitation and the enforcement of regulations.

Under the WTO TFA, providing sufficient time for stakeholders to comment on new or amended regulations is also a requirement. Article 2 highlights the importance of stakeholder consultations in ensuring transparency and effectiveness of regulatory processes. Additionally, governments are expected to publish these revisions as early as possible before they come into force. The WTO TFA also requires regular consultations between government agencies and traders, not just when regulations are amended.

ARTICLE 2.1 OF THE WTO TFA

1. Opportunity to Comment and Information before Entry into Force - Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.
2. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit are published or information on them made otherwise publicly available as early as possible before their entry into force in order to enable traders and other interested parties to become acquainted with them.

ARTICLE 2.2 OF THE WTO TFA

Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

World Trade Organisation's Trade Facilitation Agreement (WTO TFA)

3.4. Effective use of the National Committee on Trade Facilitation to enhance implementation accountability

A National Committee on Trade Facilitation (NCTF) has been established in many countries to address the typical constraints that prevent or delay the implementation of trade facilitation measures, such as those discussed in Section 2. The NCTF can help prevent undue delays by improving coordination among border agencies overseeing trade, mobilising resources, creating a platform for stakeholder consultations, and providing a mechanism to monitor and report progress.

By enhancing coordination and accountability, institutional frameworks like the NCTF can help overcome barriers that delay the implementation of trade facilitation measures, such as the lack of institutional ownership, accountability, and resource prioritisation.

NCTF also facilitates the sharing of information and best practices across agencies. For example, officials from the Forest Department were initially unaware of an existing digital system called 'Digital Government Project

Forms', an initiative by the Information and Communication Technology Agency (ICTA) of Sri Lanka, which has been in operation since 2021. This system aimed to automate and streamline government services. Additionally, public and private stakeholders consulted during this research were unaware of the recent government initiative, proposed in the budget, to mandate electronic payments for all government transactions from 2024.⁷

Although Sri Lanka established a National Committee on Trade Facilitation (NCTF) in 2014, the findings of this research highlight the need to enhance its effectiveness. Key steps include providing permit-issuing agencies, such as the Forest Department, the opportunity to participate in NCTF meetings, incorporating permit-issuing agencies and their processes in the National Trade Facilitation Action Plan of the country, and implementing a robust mechanism to monitor the implementation progress of agreed trade facilitation initiatives.

ARTICLE 23 OF THE WTO TFA

2. Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

World Trade Organisation's Trade Facilitation Agreement (WTO TFA)

4. CONCLUSION

This case study highlights the typical constraints faced by permit-issuing agencies, such as the Forest Department, which hinder their transition from a manual, paper-based, inefficient and unpredictable permit-issuing process to an automated, efficient and predictable one. These constraints include a high level of mistrust towards traders, limited capacity to detect and prevent malpractices at the border, lack of institutional ownership to implement agreed measures, and the absence of mechanisms to mobilise resources and hold institutions accountable. Additionally, manual and opaque processes often foster corruption, further increasing resistance to change.

The research brief outlines straightforward, practical steps that permit-issuing agencies can take to address such constraints and facilitate the transition.

These measures, which fall into four broad, well-established categories of trade facilitation and institutional practices, include:

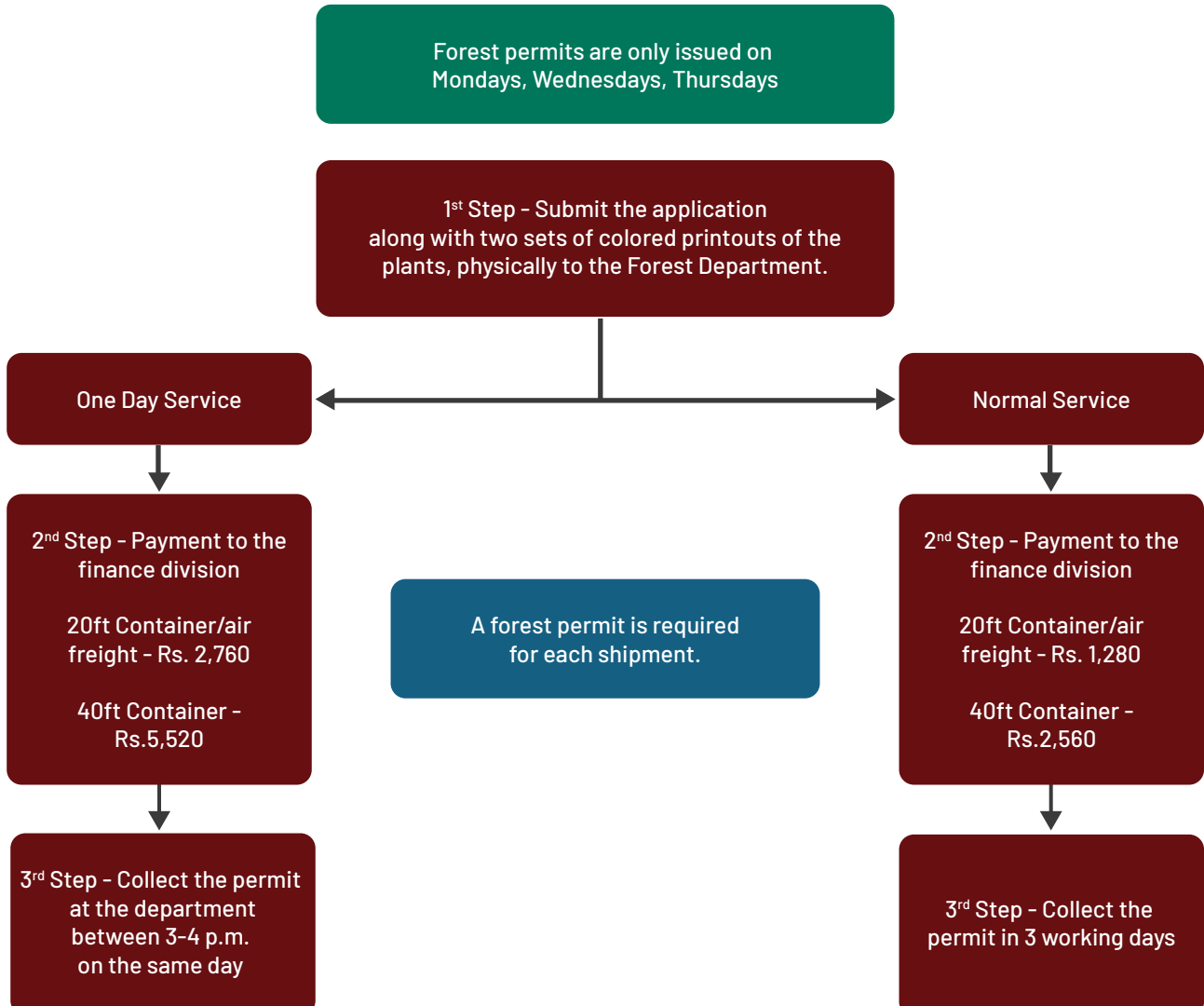
1. Reducing the need for a permit for each shipment by introducing a pre-border risk assessment mechanism,
2. Enhancing the capacity of regulatory and enforcement agencies to detect malpractices at the border by improving technical coordination and data sharing,
3. Ensuring predictability of the process by consulting traders on proposed regulatory revisions and providing opportunities for them to comment, and

⁷ Ministry of Finance, Economic Stabilization & National Policies. Sri Lanka. 'Budget Speech 2024'. November 2023, available at <https://www.treasury.gov.lk/api/file/095fc672-c4a5-48e8-94c1-30eeb0d77971> [last accessed 12 September 2024].

4. Providing permit-issuing agencies, such as the Forest Department, with opportunities to engage with the NCTF, the apex body responsible for implementing trade facilitation measures.

The report finds that most of these proposed measures are part of the WTO TFA, to which Sri Lanka is a signatory. Therefore, fast-tracking its implementation and bringing in permit-issuing agencies such as the Forest Department to be part of the process will facilitate trade by enabling automated, simple, and efficient processes for issuing permits.

ANNEX 1 - The process of obtaining a forest permit as of September 2024.



Source - Key Informant Interviews

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A | No. 5A, Police Park Place, Colombo 5
T | +94 11-2055544
E | reception@veriteresearch.org
W | www.veriteresearch.org