

GAN comments to USTR - Trade Preference for Nepal :

April 26, 2016

The Chairman,
South Asian Subcommittee,
Trade Policy Staff Committee(TPSC)
Office of the USTR,
Washington DC, USA.

Dear Sir,

Subject: **Trade Preferences for Nepal:**

Request for Public comments of review of Nepal's Country Eligibility

Reference is drawn on the notice seeking public comments Nepal's Country Eligibility pertaining to Section 915 of the Trade Facilitation and Trade Enforcement Act of 2015.

Garment Association Nepal (GAN), the umbrella organization representing the interests of the entire Ready Made Garment manufacturers and exporters from Nepal, while welcoming this recently approved Trade Preferences for Nepal , submit the following arguments, facts and comments which validates that Nepal meets the relevant eligibility criteria set forth under various pertinent USA Acts.

Arguments supporting Nepal Meeting Eligibility Requirements under Sec.104:

- 1) Nepal has an established process and legislations for the following :-
 - A) The recently promulgated Nepalese Constitution 2072 (2015AD), enshrines "A Market Based economy" which protects private property rights, Open rule based trading system with minimal governmental interference in the economy through measures such as price controls, subsidies and government ownership of assets.
 - B) The Nepalese Constitution 2072 (2015AD) also enshrines the rule of law, political pluralism, and the right to due process, a fair trial and equal protection under the law, besides promising all round inclusiveness of the Nepalese society.
 - C) There are a number of Nepalese Acts which provides protection of all Foreign Direct Investments in Nepal and not only limited to US Investments also protects , Intellectual Property Rights and helps in resolution of bilateral trade and investment disputes. These are namely, :-
 - Foreign Investment & Technology Transfer Act 2063 (1992 – Last revision 2001AD)
 - Customs Act 2064 (2007 – 2009AD).
 - Competition Promotion and Market Protection Act 2063 (2007 AD).
 - Copy Rights Act 2002 AD.

- Nepal has also entered into TIFA with USA, which provides the right platform for resolution of trade and investment disputes

D) Government of Nepal has adequate programs and policies for poverty reduction and the recently promulgated Nepalese Constitution 2072 (2015AD) enshrines various provisions for addressing social welfare for the entire Nepalese society in respect of Health care, Education, Gender mainstreaming, infrastructural development, micro credit programs and development of private enterprises on open competitive economic environment.

E) Nepal has an unique, functional and effective constitutionally mandated institution to combat corruption and bribery. **The Commission for the Investigation of Abuse of Authority (CIAA)** is a constitutional body created by the Interim Constitution of Nepal 2007, Part 11, Article 119. Its members are appointed by the President on the recommendation of the Constitutional Council. Article 120 of the constitution empowers this commission to investigate and enquire upon cases of improper conduct or corruption by any public official and to recommend that departmental action or judicial proceedings be taken against persons deemed guilty of such offences. CIAA functions on premises of the following Nepalese Acts and Regulations like:-

- Prevention of Corruption Act, 2002
- Commission for the Investigation of Abuse of Authority Act, 1991
- Commission for the Investigation of Abuse of Authority Rules, 2002

F) Labour Rights in line with ILO stipulations are protected under Labour Act 1992. This Act has provisions protecting workers rights, including the right of association, right to organize and bargain collectively, ban on forced labour, child labour, acceptable and safe working environment, protects minimum wages, working hours each week, occupational safety and health.

2. Nepal does not engage in any activities in any manner that undermine United States national security or foreign policy interests. The guiding principal of the Nepalese Foreign Policy is as below:-

Guiding Principles

The foreign policy of Nepal is guided by the abiding faith in the United Nations and policy of nonalignment. The basic principles guiding the foreign policy of the country include:

1. Mutual respect for each other's territorial integrity and sovereignty;
2. Non-interference in each other's internal affairs
3. Respect for mutual equality
4. Non-aggression and the peaceful settlement of disputes
5. Cooperation for mutual benefit

The foreign policy of Nepal is also guided by the international law and other universally recognized norms governing international relations. The value of world peace also constitutes a significant element guiding the foreign policy of the country.

3. The recently promulgated Nepalese Constitution 2072 (2015AD) has stipulated provisions which protects Human Rights and guidelines for consolidating the same. Debarring the 10 year long 1996-2006 armed insurgency, Nepal enjoys excellent record in respect of Human Rights. The Nepalese Constitution mandates a Human Rights Commission for ensuring fullest compliance to UN recognized HR guidelines and this body acts totally independently free from any Governmental interference.

Arguments supporting Nepal Meeting Eligibility Requirements under Sec.502 of Trade Act 1974:

1. Nepal does not come under the provisions of Sec 502, which makes a country ineligible for Designation.

2. Factors effecting Country Designation:

2.1 Nepal has expressed its desire to be designated through its appeal dated August 6th, 2015 to the Hon. Chairmen of Senate Committee on Finance and House Committee Ways & Means.

2.2 Nepal has a per capita income of US\$730. Approximately 25% of 28 Million Nepalese population live in poverty.

2.3 Generalized Preferential Tariff treatment has been extended to Nepal by Australia, Canada, EU countries, UK, Japan and India.

2.4 Nepal Trade policy is based on open trade regime with fair treatment to goods from all countries including USA origin.

3 Nepal also conforms to other Clauses of the Sec 502 related to Eligibility requirements.

The above submissions fully supports Nepal to be designated as a Eligible Country for receiving Preferential Trade arrangement. Over and above, GAN takes the liberty to also highlight the following points.

- At its peak during MFA regime, Nepal exported approx US \$ 200 Million worth of wearing apparels to USA.
- Over 90,000 Nepalese people mostly women and marginalized segment of the population were employed.
- Whereas, during the past Nepalese fiscal year Nepal exported only US \$ 40.60 Million worth wearing apparels 25% were destined to USA and currently employs only 10000 people in the industry.
- Nepal's total Wearing Apparels export even at its peak during 2002 was below 0.01% of total import of this commodity into US.

- Nepal suffered devastating earthquake on April 25th and May 12th, 2015, which resulted in death of over 9000 people and rendered over 200,000 people homeless.
- The assessed damage to Nepalese economy from the earth quakes were e=in excess of US\$7.00 Billion.
- Just when Nepal was ready to embark on economic development phase post promulgation of new Nepalese Constitution on 20 April 2015, the Southern Neighbour India imposed an undeclared economic sanction which lasted over four years and further brought down the Nepalese economy to nearly Negative growth.
- GAN also feels the 66 eligible articles specified in the Trade Facilitation and Trade Enforcement Act 2015, would not have any major positive impact. Primarily because this does not incorporate the wearing apparels in which Nepal has core competence and used to export to US in the past. A list of which is attached.

In conclusion GAN appeals to the pertinent officials of USTR to favourably consider and recommend to HE President of USA to designate Nepal as a Eligible Country for Preferential Trade.

GAN takes this opportunity to express to its highest consideration to USTR and requests an early designation as well as explained in the list as per the attached.

Thanking you. With best regards,

For Garment Association Nepal (GAN)

Chandi P Aryal,
Acting Chairman