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(16-6769)

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**General Council**

**TRADE PREFERENCES GRANTED BY THE UNITED STATES OF AMERICA TO NEPAL**

**DECISION OF 7 DECEMBER 2016<sup>1</sup>**

The General Council,

*Conducting* the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Having regard* to paragraphs 1, 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956 (BISD 5S/25), and the Understanding in Respect to Waivers of Obligations under the General Agreement on Tariffs and Trade 1994 (the "Understanding");

*Taking note* of the request of the United States, pursuant to paragraph 3 of Article IX of the WTO Agreement, for a waiver of its obligations under paragraph 1 of Article I and paragraphs 1 and 2 of Article XIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) through 31 December 2025, to the extent necessary to permit it to provide duty-free treatment to eligible products originating in Nepal designated pursuant to section 915 of the Trade Facilitation and Trade Enforcement Act of 2015 ("the Act");

*Bearing in mind* also the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries and the 1994 Decision on Measures in Favour of Least-Developed Countries;

*Considering* the dramatic social and economic situation as a consequence of the earthquake and its aftershocks which affected extensive regions of Nepal in April 2015, as well as the efforts made by the Members to foster economic development in landlocked least developed countries such as Nepal;

*Considering* further that the preferential treatment provided to Nepal under the Act is designed to promote the expansion of trade and economic development of Nepal in a manner consistent with the objectives expressed in paragraphs 1, 2, and 3 of the Preamble to the WTO Agreement;

*Considering* further that the preferential treatment provided under the Act will not alter benefits provided under the US Generalized System of Preferences to other developing countries;

*Considering*, moreover, that the duty-free treatment provided to Nepal under the Act should not prejudice the interests of other Members not benefiting from such treatment, and that it is expected that the provision of such duty-free treatment to Nepal will not cause a significant diversion of United States imports of products eligible under this Act originating in Members who are not beneficiary countries;

*Considering* that the duty-free treatment provided to Nepal under the Act by the United States shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

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<sup>1</sup> Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council on 15 November 1995 (WT/L/93).

*Taking note* of the assurances given by the United States that it will promptly enter into consultations, on request, with any interested Member with respect to any difficulty or matter that may arise as a result of the preferential treatment provided under the Act;

*Noting* that, in light of the foregoing, the exceptional circumstances justifying the waiver from paragraph 1 of Article I and from paragraphs 1 and 2 of Article XIII of the GATT 1994 exist;

*Decides* as follows:

1. Subject to the terms and conditions set out hereunder, paragraph 1 of Article I and paragraphs 1 and 2 of Article XIII shall be waived through 31 December 2025, to the extent necessary to permit the United States to provide duty-free treatment to eligible products originating in Nepal, as defined in the Annexes to this Decision, without being required to extend the same treatment to like products of any other Member.
  2. The United States shall submit to the General Council an annual report on the implementation of the provisions that provide preferential treatment to Nepal under the Act with a view to facilitating the annual review provided for in paragraph 4 of Article IX of the WTO Agreement.
  3. Such duty-free treatment shall be designed to facilitate and promote the trade of Nepal and not to raise barriers to or create undue difficulties for the trade of any other Members.
  4. The United States shall promptly enter into consultations, on request, with any interested Member with respect to any difficulty or matter that may arise as a result of the preferential treatment provided to Nepal under the Act. If a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultation shall examine the possibility of action for a satisfactory resolution of the matter.
  5. This Decision does not affect Members' rights as set forth in the Understanding in Respect of Waivers of Obligations under the GATT 1994.
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**ANNEX 1****THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015 (SEC. 915 OF P.L. 114-125)****SEC. 915. TRADE PREFERENCES FOR NEPAL.****(a) FINDINGS.**—Congress makes the following findings:

- (1) Nepal is among the least developed countries in the world, with a per capita gross national income of \$730 in 2014.
- (2) Nepal suffered a devastating earthquake in April 2015, with subsequent aftershocks. More than 9,000 people died and approximately 23,000 people were injured.

**(b) ELIGIBILITY REQUIREMENTS.**—

- (1) **IN GENERAL.**—The President may authorize the provision of preferential treatment under this section to articles that are imported directly from Nepal into the customs territory of the United States pursuant to subsection (c) if the President determines—
  - (A) that Nepal meets the requirements set forth in paragraphs (1), (2), and (3) of section 104(a) of the African Growth and Opportunity Act (19 U.S.C. 3703(a)); and
  - (B) after taking into account the factors set forth in paragraphs (1) through (7) of subsection (c) of section 502 of the Trade Act of 1974 (19 U.S.C. 2462), that Nepal meets the eligibility requirements of such section 502.
- (2) **WITHDRAWAL, SUSPENSION, OR LIMITATION OF PREFERENTIAL TREATMENT; MANDATORY GRADUATION.**—The provisions of subsections (d) and (e) of section 502 of the Trade Act of 1974 (19 U.S.C. 2462) shall apply with respect to Nepal to the same extent and in the same manner as such provisions apply with respect to beneficiary developing countries under title V of that Act (19 U.S.C. 2461 et seq.).

**(c) ELIGIBLE ARTICLES.**—

- (1) **IN GENERAL.**—An article described in paragraph (2) may enter the customs territory of the United States free of duty.
- (2) **ARTICLES DESCRIBED.**—
  - (A) **IN GENERAL.**—An article is described in this paragraph if—
    - (i) (I) the article is the growth, product, or manufacture of Nepal; and (II) in the case of a textile or apparel article, Nepal is the country of origin of the article, as determined under section 102.21 of title 19, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act);
    - (ii) the article is imported directly from Nepal into the customs territory of the United States;
    - (iii) the article is classified under any of the following subheadings of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act):

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4202.11.00.....	4202.22.60 .....	4202.92.08
4202.12.20.....	4202.22.70 .....	4202.92.15
4202.12.40.....	4202.22.80 .....	4202.92.20
4202.12.60.....	4202.29.50 .....	4202.92.30
4202.12.80.....	4202.29.90 .....	4202.92.45
4202.21.60.....	4202.31.60 .....	4202.92.60
4202.21.90.....	4202.32.40 .....	4202.92.90
4202.22.15.....	4202.32.80 .....	4202.99.90
4202.22.40.....	4202.32.95 .....	4203.29.50
4202.22.45.....	4202.91.00 .....	
5701.10.90.....	5702.91.30 .....	5703.10.80
5702.31.20.....	5702.91.40 .....	5703.90.00
5702.49.20.....	5702.92.90 .....	5705.00.20
5702.50.40.....	5702.99.15 .....	
5702.50.59.....	5703.10.20 .....	
6117.10.60.....	6214.20.00 .....	6217.10.85
6117.80.85.....	6214.40.00 .....	6301.90.00
6214.10.10.....	6214.90.00 .....	6308.00.00
6214.10.20.....	6216.00.80 .....	
6504.00.90.....	6505.00.30 .....	6505.00.90
6505.00.08.....	6505.00.40 .....	6506.99.30
6505.00.15.....	6505.00.50 .....	6506.99.60
6505.00.20.....	6505.00.60 .....	
6505.00.25.....	6505.00.80 .....	

- (iv) the President determines, after receiving the advice of the United States International Trade Commission in accordance with section 503(e) of the Trade Act of 1974 (19 U.S.C. 2463(e)), that the article is not import-sensitive in the context of imports from Nepal; and
  - (v) subject to subparagraph (C), the sum of the cost or value of the materials produced in, and the direct costs of processing operations performed in, Nepal or the customs territory of the United States is not less than 35 percent of the appraised value of the article at the time it is entered.
- (B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of Nepal for purposes of subparagraph (A)(i)(I) by virtue of having merely undergone—
  - (i) simple combining or packaging operations; or
  - (ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.
- (C) LIMITATION ON UNITED STATES COST.—For purposes of subparagraph (A)(v), the cost or value of materials produced in, and the direct costs of processing operations performed in, the customs territory of the United States and attributed to the 35-percent requirement under that subparagraph may not exceed 15 percent of the appraised value of the article at the time it is entered.
- (3) VERIFICATION WITH RESPECT TO TRANSSHIPMENT FOR TEXTILE AND APPAREL ARTICLES.—
  - (A) IN GENERAL.—Not later than January 1, April 1, July 1, and October 1 of each calendar year, the Commissioner shall verify that textile and apparel articles imported from Nepal to which preferential treatment is extended under this section are not being unlawfully transshipped into the United States.
  - (B) REPORT TO PRESIDENT.—If the Commissioner determines under subparagraph (A) that textile and apparel articles imported from Nepal to which preferential treatment is extended under this section are being unlawfully

transshipped into the United States, the Commissioner shall report that determination to the President.

(d) TRADE FACILITATION AND CAPACITY BUILDING.—

(1) FINDINGS.—Congress makes the following findings:

- (A) As a land-locked least-developed country, Nepal has severe challenges reaching markets and developing capacity to export goods. As of 2015, exports from Nepal are approximately \$800,000,000 per year, with India the major market at \$450,000,000 annually. The United States imports about \$80,000,000 worth of goods from Nepal, or 10 percent of the total goods exported from Nepal.
- (B) The World Bank has found evidence that the overall export competitiveness of Nepal has been declining since 2005. Indices compiled by the World Bank and the Organization for Economic Co-operation and Development found that export costs in Nepal are high with respect to both air cargo and container shipments relative to other low-income countries. Such indices also identify particular weaknesses in Nepal with respect to automation of customs and other trade functions, involvement of local exporters and importers in preparing regulations and trade rules, and export finance.
- (C) Implementation by Nepal of the Agreement on Trade Facilitation of the World Trade Organization could directly address some of the weaknesses described in subparagraph (B).

(2) ESTABLISHMENT OF TRADE FACILITATION AND CAPACITY BUILDING PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the President shall, in consultation with the Government of Nepal, establish a trade facilitation and capacity building program for Nepal—

- (A) to enhance the central export promotion agency of Nepal to support successful exporters and to build awareness among potential exporters in Nepal about opportunities abroad and ways to manage trade documentation and regulations in the United States and other countries;
- (B) to provide export finance training for financial institutions in Nepal and the Government of Nepal;
- (C) to assist the Government of Nepal in maintaining publication on the Internet of all trade regulations, forms for exporters and importers, tax and tariff rates, and other documentation relating to exporting goods and developing a robust public-private dialogue, through its National Trade Facilitation Committee, for Nepal to identify timelines for implementation of key reforms and solutions, as provided for under the Agreement on Trade Facilitation of the World Trade Organization; and
- (D) to increase access to guides for importers and exporters, through publication of such guides on the Internet, including rules and documentation for United States tariff preference programs.

(e) REPORTING REQUIREMENT.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the President shall monitor, review, and report to Congress on the implementation of this section, the compliance of Nepal with subsection (b)(1), and the trade and investment policy of the United States with respect to Nepal.

(f) TERMINATION OF PREFERENTIAL TREATMENT.—No preferential treatment extended under this section shall remain in effect after December 31, 2025.

- (g) EFFECTIVE DATE.—The provisions of this section shall take effect on the date that is 30 days after the date of the enactment of this Act.
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**ANNEX 2****PRODUCTS ORIGINATING IN NEPAL TO BE EXEMPTED FROM CUSTOM DUTIES  
UPON IMPORTATION INTO THE UNITED STATES**

Products are listed by Harmonized Tariff Schedule of the United States (HTS) subheadings. The product descriptions in this list are for informational purposes only; the definitive tariff nomenclature for the products listed below can be found in the HTS. The descriptions below are not intended to delimit in any way the scope of the relevant subheadings. The HTS may be viewed at <http://www.usitc.gov/tata/hts/bychapter/index.htm>.

<b>HTS Subheading</b>	<b><u>Brief Description</u></b>
4202.11.00	Trunks, suitcases, vanity & all other cases, occupational luggage & like containers, surface of leather, composition or patent leather
4202.12.20	Trunks, suitcases, vanity and attache cases, occupational luggage and similar containers, with outer surface of plastics
4202.12.40	Trunks, suitcases, vanity & attache cases, occupational luggage & like containers, surfaces of cotton, not of pile or tufted construction
4202.12.60	Trunks, suitcases, vanity & attache cases, occupational luggage & like containers, w outer surface of veg. fibers, excl. cotton
4202.12.80	Trunks, suitcases, vanity & attache cases, occupational luggage and similar containers, with outer surface of textile materials nesi
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesi, n/o \$ ea.
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesi, over \$ ea.
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
4202.22.40	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, nesi
4202.22.45	Handbags with or without shoulder strap or without handle, with outer surface of cotton, not of pile or tufted construction or braid
4202.22.60	Handbags with or w/o shoulder strap or w/o handle, outer surface of veg. fibers, exc. cotton, not of pile or tufted construction or braid
4202.22.70	Handbags with or w/o shoulder strap or w/o handle, with outer surface containing % or more of silk, not braided
4202.22.80	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, nesi
4202.29.50	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap.cov., of mat. nesi
4202.29.90	Handbags with or without shoulder straps or without handle, with outer surface of vulcanized fiber or of paperboard, not covered with paper
4202.31.60	Articles of a kind normally carried in the pocket or handbag, with outer surface of leather, composition or patent leather, nesi
4202.32.40	Articles of a kind normally carried in the pocket or handbag, with outer surface of cotton, not of pile or tufted construction
4202.32.80	Articles of a kind normally carried in the pocket or handbag, with outer surface of vegetable fibers, not of pile or tufted construction, nesi
4202.32.95	Articles of a kind normally carried in the pocket or handbag, with outer surface of textile materials, nesi
4202.91.00	Cases, bags and containers nesi, with outer surface of leather, of composition leather or patent leather
4202.92.08	Insulated food or beverage bags with outer surface of textile materials, nesoi
4202.92.15	Travel, sports and similar bags with outer surface of cotton, not of pile or tufted construction

<b>HTS Subheading</b>	<b>Brief Description</b>
4202.92.20	Travel, sports and similar bags with outer surface of vegetable fibers, excl. cotton, not of pile construction
4202.92.30	Travel, sports and similar bags with outer surface of textile materials other than of vegetable fibers
4202.92.45	Travel, sports and similar bags with outer surface of plastic sheeting
4202.92.60	Bags, cases and similar containers, nesi, with outer surface of cotton
4202.92.90	Bags, cases and similar containers nesi, with outer surface of plastic sheeting or of textile materials, excl. cotton
4202.99.90	Cases, bags and similar containers, nesi, with outer surface of vulcanized fiber or of paperboard
4203.29.50	Gloves, mittens and mitts of leather or composition leather, nesi, lined, for persons other than men
5701.10.90	Carpets and other textile floor coverings, of wool or fine animal hair, not hand-hooked, not hand knotted during weaving
5702.31.20	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of wool/fine animal hair, nesoi
5702.49.20	Carpets & other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of other textile materials nesoi
5702.50.40	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of wool or fine animal hair, nesoi
5702.50.59	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of other textile materials nesoi
5702.91.30	Floor coverings, not of pile construction, woven not on power-driven loom, made up, of wool or fine animal hair, nesi
5702.91.40	Carpets & other textile floor coverings, not of pile construction, woven nesoi, made up, of wool or fine animal hair, nesoi
5702.92.90	Carpet & other textile floor coverings, not of pile construction, woven, made up, of man-made textile materials, nesi
5702.99.15	Carpets and other textile floor coverings, not of pile construction, woven, made up, of cotton, nesoi
5703.10.20	Hand-hooked carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair
5703.10.80	Carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair, nesoi
5703.90.00	Carpets and other textile floor coverings, tufted, whether or not made up, of other textile materials nesoi
5705.00.20	Carpets and other textile floor coverings, whether or not made up, nesoi
6117.10.60	Shawls, scarves, mufflers, mantillas, veils and the like, nesoi
6117.80.85	Headbands, ponytail holders & similar articles, of textile materials other than containing % or more by weight of silk, knitted/crocheted
6214.10.10	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, containing % or more silk or silk waste
6214.10.20	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, containing less than % silk or silk waste
6214.20.00	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, of wool or fine animal hair
6214.40.00	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, of artificial fibers
6214.90.00	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, of textile materials nesoi
6216.00.80	Gloves, mittens and mitts, not knitted or crocheted, of wool or fine animal hair, nesoi



<b>HTS Subheading</b>	<b><u>Brief Description</u></b>
6217.10.85	Headbands, ponytail holders and similar articles, of textile materials containing < % by weight of silk, not knit/crochet
6301.90.00	Blankets and traveling rugs, nesoi
6308.00.00	Needlecraft sets for making up into rugs, etc., consist of woven fabric and yarn, whether/not w/accessories, put up packings for retail sale
6504.00.90	Hats and headgear, plaited or assembled from strips of any material (o/than veg. fibers/unspun fibrous veg. materials and/or paper yarn)
6505.00.08	Hats and headgear made from hat forms and hat bodies of , except of fur felt
6505.00.15	Hats and headgear, of cotton and/or flax, knitted
6505.00.20	Headwear, of cotton, not knitted; certified hand-loomed and folklore hats & headgear, of cotton or flax, not knitted
6505.00.25	Hats and headgear, of cotton or flax, not knitted, not certified hand-loomed folklore goods
6505.00.30	Hats and headgear, of wool, knitted or crocheted or made up from knitted or crocheted fabric
6505.00.40	Hats and headgear, of wool, made up from felt or of textile material, not knitted or crocheted or made up from knitted or crocheted fabric
6505.00.50	Hats and headgear, of man-made fibers, knitted or crocheted or made up from knitted or crocheted fabric, wholly or in part of braid
6505.00.60	Hats and headgear, of man-made fibers, knitted or crocheted or made up from knitted or crocheted fabrics, not in part of braid
6505.00.80	Hats and headgear, of man-made fibers, made up from felt or of textile material, not knitted or crocheted, not in part of braid
6505.00.90	Hats and headgear, of textile materials (other than of cotton, flax, wool or man-made fibers), nesoi
6506.99.30	Headgear, nesoi, of furskin, whether or not lined or trimmed
6506.99.60	Headgear (other than safety headgear), nesoi, of materials other than rubber, plastics, or furskins, whether or not lined or trimmed