

FREE TRADE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL AND THE GOVERNMENT OF INDIA

His Majesty's Government of Nepal and the Government of India (hereinafter referred to as the Contracting Parties),

Being conscious of the need to fortify the traditional connection between the markets of the two countries,

Being animated by the desire to strengthen economic co-operation between them.

Impelled by the urge to develop their economies for their several and mutual benefit, and

Convinced of the benefits of mutual sharing of scientific and technical knowledge and experience to promote mutual trade.

Have resolved to conclude a Treaty of trade in order to expand trade between their respective territories and encourage collaboration in economic development, and

Have for this purpose appointed as their Plenipotentiaries the following persons, namely,

Shri Gopal Man Shrestha

Minister of Commerce

For His Majesty's Government Of Nepal

Shri P. Chidambaram

Minister of State of Commerce

for the Government of India

Who, having exchanged their full power and found them good and in due form, have agreed as follows:

Article I

The Contracting Parties shall explore and undertake all measures, including technical co-operation, to promote, facilitate, expand and diversify trade between their two countries.

Article II

The Contracting Parties shall endeavour to grant maximum facilities and to undertake all necessary measures for the free and unhampered flow of goods, needed by one country from the other, to and from their respective territories.

Article III

Both the Contracting Parties shall accord unconditionally to each other treatment no less favourable than that accorded to any third country with respect to (a) customs duties and charges of any kind imposed on or in connection with importation and exportation and (b) import regulations including quantitative restrictions.

Article IV

The Contracting Parties agree, on a reciprocal basis, to exempt from basic customs duty as well as from quantitative restrictions the import of such primary products as may be mutually agreed upon, from each other.

Article V

Notwithstanding the provisions of Article III and subject to such exceptions as may be made after consultation with His Majesty's Government of Nepal, the Government of India agree to promote the industrial development of Nepal through the grant on the basis of non-reciprocity of specially favourable treatment to imports into India of industrial products manufactured in Nepal in respect of customs duty and quantitative restrictions normally applicable to them.

Article VI

With a view to facilitating greater interchange of goods between the two countries, His Majesty's Government shall endeavour to exempt, wholly or partially, imports from India from customs duty and quantitative restrictions to the maximum extent compatible with their development needs and protection of their industries.

Article VII

Payments for transactions between the two countries will continue to be made in accordance with their respective foreign exchange laws, rules and regulations. The Contracting Parties agree to consult each other in the event of either of them experiencing difficulties in their mutual transactions with a view to resolving such difficulties.

Article VIII

The Contracting Parties agree to co-operate effectively with each other to prevent infringement and circumvention of the laws, rules and regulations of either country in regard to matters relating to foreign exchange and foreign trade.

Article IX

Notwithstanding the foregoing provisions either Contracting Party may maintain or introduce such restrictions as are necessary for the purpose of:

- a. protecting public morals,
- b. protecting human, animal and plant life,
- c. safeguarding national treasures,
- d. safeguarding the implementation of laws relating to the import and export of gold and silver bullion, and
- e. safeguarding such other interests as may be mutually agreed upon.

Article X

Nothing in this treaty shall prevent either Contracting Party from taking any measures which may be necessary for the protection of its essential security interests or in pursuance of general international conventions, whether already in existence or concluded hereafter, to which it is a party relating to transit, export or import of particular kinds of articles such as narcotics and psychotropic substances or in pursuance of general conventions intended to prevent infringement of industrial, literary

or artistic property or relating to false marks, false indications of origin or other methods of unfair competition.

Article XI

In order to facilitate effective and harmonious implementation of this Treaty, the Contracting Parties shall consult each other regularly.

Article XII

This Treaty shall come into force on the 6th December 1991, and shall remain in force for a period of five years. It may be renewed for further periods of five years, at a time, by mutual consent, subject to such modifications as may be agreed upon.

Done in duplicate in Nepali, Hindi and English languages, all the texts being equally authentic, at New Delhi on 6th December 1991. In case of doubt, the English text will prevail.

Shri Gopal Man Shrestha
Minister of Commerce
For His Majesty's Government Of Nepal

Shri P. Chidambaram
Minister of State of Commerce
for the Government of India

PROTOCOL TO THE TREATY OF TRADE

- **With Reference to Article I**

1. It is understood that the trade between the two Contracting Parties shall be conducted through the mutually agreed routes as are mentioned in the Annexure A. Such mutually agreed routes would be subject to joint review as and when required.
2. It further understood that the exports to and imports from each other of goods, which are not subject to prohibitions or duties on exportation or importation, should continue to move through the traditional routes on the common border.

- **With Reference to Article II**

1. It is Understood that all goods of Indian or Nepalese origin shall be allowed to move unhampered to Nepal or India respectively without being subjected to any quantitative restrictions, licensing or permit system with the following exception:
 - a. goods restricted for export to third countries,
 - b. goods subject to control on price for distribution or movement within the domestic market, and
 - c. goods prohibited for export to each other's territories to prevent deflection to third countries.
2. In order to facilitate the smooth flow of goods across the border, the list of commodities subject to restrictions/prohibitions on exports to each other's territories shall be immediately communicated through diplomatic channels as and when such restriction/prohibitions are imposed or relaxed.
3. It is further understood that when notifications regarding restrictions on exports to each other are issued, adequate provisions will be made therein to allow the export to each other of the goods which are already

covered by Letter of Credit or goods which are already in transit and/or booked through the railways or other public sector transport undertakings or goods which have already arrived at the border customs posts on the day of the notification.

4. In respect of goods falling under prohibited or restricted categories as mentioned in para 1 above and where needed by one contracting Party, the other shall authorise exports of such goods subject to specific annual quota allocations. Specific request list of such goods shall be furnished to each other by the end of November and specific quota allocations for the following calendar year shall be made by the end of December with due regard to the supply availability and the overall need of the other Contracting Party. The quota list may be jointly reviewed as and when necessary.
5. The Contracting Parties shall take appropriate measures and co-operate with each other to prevent unauthorised import in excess of the quota of goods the export of which is prohibited or restricted from the territory of the other Contracting Party.

- **With Reference to Article III**

The Government of India will allow to His Majesty's Government of Nepal payment of the excise and other duties collected by the Government of India on goods produced in India and exported to Nepal provided that:

- i. such payment shall not exceed the import duties and like charges levied by His Majesty's Government of Nepal on similar goods imported from any other country, and
- ii. His Majesty's Government of Nepal shall not collect from the importer of the said Indian goods so much of the import duty and like charges as is equal to the payment allowed by the Government of India.

- **With Reference to Article IV**

1. The following primary products would be eligible for preferential treatment:
 1. Agriculture, horticulture and forest produce and minerals which have not undergone any processing.
 2. Rice, Pulses and flour,
 3. Timber,
 4. Jaggery (gur and shakhar)
 5. Animals, birds and fish,
 6. Bees, bees-wax and honey,
 7. Raw wool, goat hair, and bones as are used in the manufacture of bone-meal,
 8. Milk, home made products of milk and eggs,
 9. Ghani-produced oil and oilcakes,
 10. Ayurvedic and herbal medicines,
 11. Articles produced by village artisans as are mainly used in villages,
 12. Akara,
 13. Yak tail,
 14. Any other primary products which may be mutually agreed upon.

2. It is understood that in the matter of internal taxes or charges the movement of primary products of either Contracting Party to any market destinations in the territory of the other shall be accorded treatment no less favourable than that accorded to the movement of its own primary products within its territory.
 3. It is also understood that the aforesaid provisions will not preclude a Contracting Party from taking any measure, which it may deem necessary on the exportation of primary products to the other.
- **With Reference to Article V**
 - i. The Government of India will provide access to the Indian market free of "basic and auxiliary" customs duty and quantitative restrictions generally, for all manufactured articles which contain not less than eighty percent of Nepalese materials or Nepalese and Indian materials.
 - ii. Further, the Government of India will provide access to the Indian market, on a case to case basis, free of "basic and auxiliary" customs duty and quantitative restrictions for manufactured article which contain not less than fifty five percent of Nepalese materials or Nepalese and Indian materials.
 - Further, when such articles are manufactured in "small" units in Nepal, the "additional" duty on these articles will be equivalent to the rates of excise duty applicable under the Indian Customs and Central Excise Tariff to articles produced in similar units in India.
 - In regard to "additional" duty collected by the Government of India in respect of manufactured articles other than those manufactured in "small" units: Wherever it is established that the cost of production of an article is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 percent of the "additional" duty collected by the Government of India, will be paid to His Majesty's Government of Nepal provided:
 - a. Such manufactured articles contain not less than eight percent of Nepalese and Indian material, and
 - b. His Majesty's Government of Nepal have given assistance to the same extent to the (manufacturer) exporter.
 - Procedures to determine the eligibility of industrial products to these concessions and for the verification of the values of different components of Nepalese industrial products shall be as already in force under the 1978 Nepal-India Treaty of Trade. Changes, if any, in the procedures which may be considered necessary may be agreed upon mutually.
 - List of articles produced in Nepal already exempted from "basic and auxiliary" customs duty and quantitative restrictions under provisions of para 1 above is at Annexure B.
 - In the case of other manufactured articles in which the value Nepalese and Indian materials including labour added in Nepal is at least 40 percent of the ex-factory price, the Government of India will allow the articles on case by case basis for following preferential treatment, keeping in mind the need for expeditious clearance, in the Indian market:
 - a. barring exceptional circumstance, exemption from quantitative restriction and/or

- b. tariff concessions to the extent of 50 percent of the MFN rate of import duty where the value added in such articles is less than 80 percent but more than 40 percent of the ex-factory price.
- His Majesty's Government will furnish the request list of the articles eligible for preferential access to the Indian market as per the para 6 above as and when required and on receipt of which Government of India will communicate expeditiously to His Majesty's Government the scope of preferential treatment offered to such articles.
- It is also understood that in the case of other manufactured articles in which the value of Nepalese and Indian materials and labour added in Nepal is less than 40 percent of the ex-factory price, the Government of India will provide normal access to the Indian market consistent with its import regime and MFN treatment accorded.
- Where for social and economic reasons, the import of an item into India is permitted only through public sector agencies or where the import of an item is prohibited under the Indian Trade Control regulations, the Government of India will consider any request of His Majesty's Government of Nepal for relaxation and may permit the import of such an item from Nepal in such manner as may be found to be suitable.
- For the purpose of calculation of import duties customs valuation procedures, as prescribed under the Indian Customs Act, will be followed.
- Exports of articles eligible for preferential treatment in accordance with above mentioned paragraph shall be covered by a certificate from His Majesty's Government of Nepal or an authority designated by it which shall certify the extent of material component or value added involved as the case may be.
- **With Reference to Article VI**
His Majesty's Government of Nepal, with a view to continuing preferences given to Indian exports, will waive additional customs duty on all Indian exports during the validity of the treaty.

ANNEXURE "A"

AGREED ROUTES FOR MUTUAL TRADE

1. Pashupatinagar/Sukhia Pokari
2. Kakarbhitta/Naxalbari
3. Bhadrapur/Galgolia
4. Biratnagar/Jogbani
5. Setobandha/Bhimnagar
6. Rajbiraj/Kunauli
7. Siraha, Janakpur/Jayanagar
8. Jaleshwar/Bhitamore (Sursand)
9. Malangawa/Sonabarsa
10. Gaur/Bairgania
11. Birgunj/Raxaul
12. Bhairahawa/Nautanwa
13. Taulihawa/Khunwa
14. Krishnanagar/Barhni
15. Koilabas/Jarwa

16. Nepalgunj/Nepalgunj Road
17. Rajapur/Katemiyaghat
18. Prithivipur/Sat (Kailali)/Tikonja
19. Dhanagadhi/Gauriphanta
20. Mahendranagar/Banbasa
21. Mahakali/Jhulaghat (Pithoragarh)
22. Darchula/Dharchul

ANNEXURE "B"

**LIST OF NEPALESE INDUSTRIAL PRODUCTS, WHICH HAVE BEEN ALLOWED
PREFERENTIAL ENTRY INTO INDIA UNDER NOTIFICATION NO.
203/90. CUSTOM (AS ON 6TH DECEMBER 1991)**

S. No. Description of goods

1. Biscuits
2. * Refined ghee
3. High boiled sweets
4. Salseed oil, Rice bran oil, Salseed extraction and rice extraction
5. * Straw Board
6. Plywood
7. * Magnesite
8. * Marble Blocks, Slabs and Chips
9. Wet Blue chrome Tanned Goat Skins
10. Cast Iron goods
11. Raw Talc
12. * Ice blocks
13. * Wooden articles and furniture
14. * Katha and Kutch
15. * Wheat bran
16. Jute manufactures – all sorts
17. Mustard oil
18. Resin
19. * Oil Cakes
20. * Chuni, Bhusi & Akra
21. Handicrafts and Handlooms
22. Linseed oil
23. * Match splints
24. Ground talc (other than cosmetic grade)
25. * Saw dust
26. * Rice Bran
27. * Sugar
28. * Slate
29. Cattle and Poultry feed
30. * Split crust (Cow and Buff)
31. * Wet blue hides (Cow and Buff)
32. * Wet blue splits (Cow and Buff)
33. * Vegetable Tanned Buff Sole Leather
34. * Chrome Upper and Lining Leather
35. Leather Board

36. Ginger oil
37. Fruit Jam, jelly and Squash
38. Lemon Barley
39. Vinegar
40. Pineapple Crush
41. Rose syrup and Khus syrup
42. Tomato sauce and tomato ketchup
43. Golden Mist Marmalade
44. * Noodles and Spaghetti
45. * Hides and skins (processed and semi-processed)
46. * Redried tobacco (non-processed)
47. Footwear and closed leather uppers
48. Mama snacks (corn puff)
49. Pan Masala that is to say, any preparation containing betel nuts and any one or more of other ingredients such as lime, katha (catechu) cardamom, copra, menthol and tobacco.
50. Emery cloth
51. Emery paper
52. Sand paper
53. Rosin
54. Turpentine
55. Dressed Bristles
56. Paint Brushes
57. Wood Veneer
58. Pasteurised butter
59. Chocolate Pastry
60. Coconut Cakes
61. Dead Burnt Magnesite
62. Linchin Resinoid
63. Pineapple Pulp
64. Orange Juice
65. Orange Extracts
66. Lead pencils
67. Writing and Printing papers
68. Solid wood panel door
69. Solid wood parquet
70. Fruit Juice packed in bottles or cans, made of soft steel plate with a coating of pure tin.
71. Tomato juice packed in bottles or cans made of soft steel plate with a coating of pure tin.
72. Pine-apple slices packed in cans made of soft steel plate with a coating of pure tin.
73. Tomato puree packed in cans made of soft steel plate with a coating of pure tin.
74. Wire Nails
75. Barbed wire
76. Aluminium Utensils
77. Laundry soap
78. Cube Sugar.

79. Terry-towel and Terry-Towel cloth

80. Winter Green Oil

81. Abies oil

82. Artemisia oil

83. Juniper oil

84. Belladonna Extracts

85. Palmarosa oil

86. Zanthoxylum oil

87. Bidi

88. Chewing gum

89. Bubble gum

90. Asbestos cement pipes

*These products have been exempted from submission of proforma.