

THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR
MINISTRY OF COMMERCE
DIRECTORATE OF TRADE
Office Building No.3, Nay Pyi Taw, Myanmar.
Tel: ++95 -67- 408244, Fax: ++95-67- 408243
E-mail: momoc@commerce.gov.mm

May 21, 2014

VIA FILLING AT REGULATIONS.GOV

Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508.

Ambassador Derek J. Mitchell
Embassy of the Unites of States of America
The Republic of the Union of Myanmar

Mr. William D. Jackson
Chairman, GSP Subcommittee of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Addendum Submission to Follow-up Report of the Republic of the Union of Myanmar to Be Reinstated as a Beneficiary Developing Country (BDC) under the United States' Generalized System of Preferences (GSP)

Excellencies:

On behalf of the Republic of the Union of Myanmar (“Myanmar” or “the MM Government”), we respectfully submit this follow-up report in support of the designation of Myanmar as a Beneficiary Developing Country (BDC) and Least Developed Beneficiary Developing Country (LDBDC) under the United States Generalized System of Preferences program (“the GSP Program”).

*The Government of the Republic of the Union of Myanmar
Post-Hearing Brief in support of Myanmar as a BDC and LDBDC
Respectfully submitted May 21, 2014*

I. INTRODUCTION

Bilateral trade between the United States and Myanmar has grown rapidly over the past several years, with exports to the United States reaching a value of \$30 million in 2013. It should be noted that over two-thirds of such exports were for articles which would be eligible for GSP treatment. Thus, granting GSP treatment to Myanmar would favorably impact employment and growth this year in Myanmar, as well as in years to come.

The MM Government has started, with the help of trade groups in Yangon and Mandalay, to disseminate information to Myanmar businesses on the benefits of GSP, in order to insure a high utilization rate once such treatment is granted by the United States (**N.B** the E.U has already granted GSP status to Myanmar). Furthermore, we have encouraged trade associations from other Asian countries to consider the benefits of granting U.S. GSP benefits to Myanmar. Granting GSP benefits to Myanmar in conjunction with preference provided to other existing GSP- eligible ASEAN countries under the U.S Harmonized Tariff Schedules will enable the United States to help the entire region increase ASEAN economic integration, with particular benefits to SMEs, the main motors of employment in the ASEAN and elsewhere. Additionally, granting GSP to Myanmar would contribute to a greater portion of investments going towards value-added processing in Myanmar, thus creating new integrated supply chain industries where few exist today.

The current perception of an imminent GSP status for Myanmar has already had an impact on inbound investment in Myanmar. We have experienced substantial growth in investment year-over-year, and investment has actually accelerated in the second half of 2013, in part due to the perception that the United States is becoming a new and major market for Myanmar.

Finally, and what is probably most important for Myanmar, granting GSP to Myanmar would assist the development of SMEs in the farthest corners of Myanmar by opening a huge market to local products which today suffer from restricted distribution. This diversification of the supply base in Myanmar, as well as enlargement and growth of the GSP-eligible products reaching the United States would help foster inclusive economic growth and opportunity.

II. SUBMISSION INFORMATION

The MM Government is aware of the multiple criteria upon which Myanmar's GSP eligibility status will be judged, some of which are mandatory and others which are discretionary. Although we have mentioned these criteria in our prior submissions, we would like to use this opportunity to reiterate our position as well as emphasize and detail some of the work in which we are engaged to better the labor environment in Myanmar:

- 1) Regarding legal protections for workers prior to union formation, as well as enforcement of any existing protection for union activity,** we provide additional information on the following:

- a) The government's intent to develop or propose legislative or administrative changes that increase these protections

The government recognizes the need for legal protections for workers prior to union formation, as well as the need for enforcement of any existing protection for union activity, and provides such protection in section 49 of the Labor Organization Law (which provides protections to workers prior to forming a union) and under section 44 (d) of the Labor Organization Law (which provides protections for workers who have already formed a union). Because the government implemented the Labor Organization Law only in 2011, the law is still in its infant stage. The MM Government remains committed to providing legal protections for workers prior to union formation, as well as properly enforcing existing protection for union activity, and consequently, will review the existing law in order to gauge its strengths and weaknesses with regards to its application. The MM Government is also committed to seeking input from all interlocutors and interested parties – such as the ILO and worker and employer groups – on how current law can be amended to make these protections stronger, and how new laws that offer more worker protections can be devised.

- b) Resources or training provided to or proposed for the Ministry of Labor to better enforce existing or proposed protections

The MM Government understands that in order to increase the capacity and efficiency of its work on labor, and in order to better enforce existing or proposed protections, it will have to engage in capacity-building activities for the staff of government ministries, including the Ministry of Labor, Employment and Social Security. To that end, between 2012 and 2014 (the current date), the Ministry of Labor, Employment and Social Security has conducted a total of: 70 awareness raising workshops; 34 bipartite workshops¹ and 15 tripartite workshops² in Yangon Division; three bipartite workshops and one tripartite workshop in Mandalay Division; one bipartite workshop and two tripartite workshops in Magwe Division; four bipartite workshops in Nay Pyi Taw; one bipartite workshop and one tripartite workshop in Ayeyarwaddy; one bipartite workshop and one tripartite workshop in Tanintharyi Division; one bipartite workshop and one tripartite workshop in Bago Division; two bipartite workshops and one tripartite workshop in Mon State; and one tripartite workshop in Shan State for government officials representing various ministries, workers' representatives from various industrial sectors and employers' representatives. These workshops and awareness-raising events, conducted in partnership with the ILO, are meant to increase various groups' understanding of the rights of workers and of regulations

¹A bipartite workshop consists of workers and employers.

²A tripartite workshop consists of representatives from government, workers and employers.

and labor laws. For the majority of the workshops, the MM Government counted on an average participation rate of 28 representatives (in bipartite workshops) and 80 representatives (in tripartite workshops).

Specific to additional resources and training that the Ministry of Labor, Employment and Social Security will engage in in order to better enforce existing or proposed protections, it should be noted that in Myanmar, labor inspections are conducted by the Factories and General Labor Laws Inspection Department (FGLLID) under the Ministry of Labor, Employment and Social Security. There exist two types of inspections: factory inspections that focus on Occupational Safety and Health (OSH) matters and general labor laws inspections that focus on labor standards including wages, working hours, rest periods, leave and holidays. In order to enhance the capacity of both of these types of inspections, and in order to enhance the overall work of FGLLID, FGLLID is in the process of recruiting new inspectors through the Union Civil Service Board.³ Currently, there exist 69 inspectors, but FGLLID is projecting that by the end of the 2015 – 2016 fiscal year, it will employ a total of 326 labor inspectors. The MM Government has already allocated a budget for the increase in labor inspectors and will continue to allot budgeting for this additional hiring year-by-year.

The Ministry of Labor, Employment and Social Security is also actively engaged with civil society groups, workers' groups, employers' groups and international institutions – such as the ILO – in deciding and requesting training for staffs from the Ministry of Labor, Employment and Social Security on labor rights and other issues. To that end, the MM Government remains committed to exploring further training and further increases in resources in order to better enforce and protect the rights of workers, before, during, and after union formation.

- c) Actual cases in which complaints or concerns regarding anti-union activity were raised and how they were addressed

The government is making every effort to properly address complaints regarding anti-union activity. To date, the MM Government has only received a small number of cases in which complaints of anti-union activity were raised. All these cases were resolved at the Township Registrar- and Chief Registrar-level or by the Arbitration Body. Nonetheless, the MM Government understands that complaints or concerns regarding anti-union activity are a serious matter and will properly and proactively address any such complaints as they are raised. The MM Government also remains committed to exploring the creation of a proper

³ Under this process, the minimum requirement for a factory inspector is an Engineering Degree holder and a Law Degree holder for general labor laws inspector. Those who have been selected by Union Civil Service Board to serve as a factory inspector must attend the basic training course for Officers. After completion of the training course, candidates are formally appointed as labor inspectors.

mechanism through which it can properly address complaints or concerns regarding anti-union activity.

2) Regarding the 2,000 cases "resolved" by the arbitration council

- a) The MM Government avails itself at this opportunity to clarify the data on arbitration that it provided in its prior GSP submission to USTR. From June 2012 to February 2014, the Township Conciliation Body conciliated 1614 labor disputes. Out of the 1614 cases, 1473 cases were resolved via settlement and a mutual agreement by both parties in the presence of the relevant Township Conciliation Body. The remaining 141 cases that could not achieve settlement were referred to the relevant Arbitration Body by the Township Conciliation Body. Of these 141 cases, the decision of the Arbitration Body was adopted, implemented and carried out by relevant parties in 66 cases. The remaining 75 cases were sent to the Arbitration Council. Of these 75 cases, the decision of the Arbitration Council was adopted, implemented and carried out by relevant parties in 68 cases. The remaining seven cases were sent to the Union Supreme Court as writs according to the section 377 of the Constitution of the Republic of Union of Myanmar (2008). The Union Supreme Court rejected five of the cases and dismissed the two other cases, thereby, under Myanmar law, sending these cases back to the Arbitration Council for a final decision that was implemented and agreed to by both parties.

Of the 75 cases which were sent to the Arbitration Council, 66 cases were found in favor of the workers and nine cases were found in favor of the employers. FGLLID is charged with implementing the decisions of the Arbitration Body and Arbitration Council.

- b) The MM Government is aware that in some instances, it has been difficult for FGLLID to properly enforce the decision of the Arbitration Council when it comes to reinstating workers that had originally been laid off. The MM Government is aware that as its Settlement of Labor Dispute Law currently stands, penalties for lack of enforcement of an Arbitration Council decision on reinstatement of workers are weak. For example, in the case of *Daw Kyi Kyi Linn vs. Dr. Min Min (Htate Tan Myanmar Clothing)*, Arbitration Council Case No. 6/2013 and *Daw Khin Htay Ye vs. Dr. Min Min (Htate Tan Myanmar Clothing)*, Arbitration Council Case No. 14/2013, the employer simply ignored the Arbitration Council's decision to reinstate the workers. Conversely in the case of *Daw Chaw Su Hlaing and the 6 members of the Labor Organization vs. Daw Lee Kwaee Kyon (Tawin Myanmar Clothing)* Arbitration Council Case No. 8/2013, the workers ignored the Arbitration Council's decision to be reinstated in the workplace and the workers in question simply did not go back to the workplace.

In order to make the Settlement of Labor Dispute Law have more legal binding and in order to strengthen penalties against workers or employers who do not abide by the law and/or the Arbitration Council decision, the MM Government has drafted and introduced to Parliament the Amendment Bill of the Settlement of Labor Dispute Law (presented to the Union Government and then submitted to the Pyidaungsu Hluttaw (Parliament) on February 20, 2014). The draft bill strengthens penalties and provides for other measures that would ensure proper enforcement of and adherence to Arbitration Council and other arbitration decisions. Parliament is currently debating the bill and the MM Government expects it to be enacted within a few months. In addition, the MM Government stands committed to working with all interested parties and interlocutors to explore the amendment of other existing laws and regulations, or the creation of new laws and regulations that would strengthen worker protections and create proper enforcement mechanisms for arbitration decisions.

3) Regarding access to military sites by international observers regarding child soldiers

- a) The Government of the Republic of the Union of Myanmar and the Country Taskforce on Monitoring and Reporting (CTFMR) signed a Plan of Action to prevent the recruitment and use of the children by armed forces on June 27, 2012 in Nay Pyi Taw. The MM Government held coordinating meetings with CTFMR on implementation of the Plan of Action 25 times between June 2012 and the current date. These meetings have enabled the MM Government to proactively engage with proper interlocutors on the implementation of the Plan of Action in addition to visits to military sites by international observers.

International observers, accompanied by senior military liaison officers, have been able to conduct monitoring visits to basic military training schools and Defence Services (Army) recruiting units. Plans are underway to allow for more such visits by international observers to remaining military command sites depending on the security of the region. Together with the Senior Military Liaison Officer, the CTFMR paid a total of 27 visits to 12 command units, 26 light infantry regiment units and 40 other units as part of its mission to carry out monitoring and reporting work as mandated by the Plan of Action. These visits took place in Nay Pyi Taw, Yangon, Meiktila, Mawlamyine, Taunggyi, and Patheingyi. We would note that all these visits are conducted independently and without government interference in accordance with the CTFMR monitoring criteria.

- b) Tangential to increased cooperation by the military with international observers, the MM Government would like to highlight that thanks to the implementation of the Plan of Action and in cooperation with the CTFMR, a total of 42 children who had been recruited as minors due to various reasons were returned to their parents/guardians on September 3, 2012 for the first time. Subsequent to that, a total of 24 children were discharged and returned to families on February 15, 2013. A total of 42 child soldiers were discharged and returned to families on July 7, 2013 for third time, 68 child soldiers were discharged and returned to families on August 7, 2013, and 96 child soldiers were discharged and returned to families on January 18, 2014. This indicated a grand total of 272 child soldiers discharged and reunited with their families.

As part of the Plan of Action's awareness-raising component, the MM Government has disseminated and sent posters and stickers, as part of efforts to heighten public awareness on the prevention of recruitment and use of children by armed forces, to the secretary of respective regions/state governments for distribution and dissemination to township administrators. In addition, a total of 57 vinyl billboards containing messages on the prevention of recruitment and use of children by armed forces, measuring 20x20 feet, have been set up in all of Myanmar's regions and states. Public awareness campaigns are being carried out through print, electronic and media (e.g., publishing news and pictures in newspapers and broadcasting them on television channels), and the MM Government has also engaged in an educational campaign to raise the general public's awareness of this problem. Moreover, the MM Government is exploring ways to scrutinize soldiers who have not attained the minimum age of 18 in order to be a part of a regiment/unit, and is exploring ways to enable respective commanders to properly discharge under-aged soldiers if they are found to be below the minimum age for recruitment.

The MM Government is aware that much work remains, but stands committed to continuing its implementation of the Plan of Action. In addition, while the MM Government notes that certain restrictions on access to child soldiers remain in place (e.g., observers must be accompanied by military personnel during visits, access to certain areas and regions is prohibited on the grounds of national security and because access to these sites would require travel to conflict areas), the government stands committed to continuing its cooperation with international observers interested in making military site visits.

4) Regarding Special Economic Zones

- a) The MM Government confirms that labor laws are applied in the same fashion within Special Economic Zones as they are applied outside of these zones. In addition, the Special Economic Zone Law (Chapter 16) focuses on labor affairs

and clearly states in sections 70, 71, 72, 76 and 77 that all labor services in Special Economic Zones enjoy the same rights and responsibilities as contained in laws and regulations concerning employment contracts and employment conditions (e.g., minimum wage, leave, holiday, overtime wage, severance pay and compensation). The Special Economic Zone law also states that employers and employees must comply with the country's existing labor laws.

5) Regarding the Joint Strategy on Forced Labor

a) In an effort to eliminate forced labor in Myanmar by the end of 2015, the Government of the Republic of the Union of Myanmar and the ILO signed a Memorandum of Understanding (MOU) March 16, 2012. Under the Memorandum of Understanding, the joint strategy of the implementation of the action plan of elimination of forced labor includes the following action items. Where possible, we have indicated activities in which we are already engaged under a particular action item, or activities in which we plan to engage. The MM Government stands committed to continuing its implementation of this action plan and to engaging with all interlocutors on the effective implementation of each of the specific action items listed below, as well as to planning new activities under each of the actions items listed below:

- **Action Plan Item 1: Awareness Raising**
 - o The forced labor brochure has been prepared in seven languages with 1,209,277 additional copies distributed since June 2012 through the military, the General Administration Department, the Ministry of Labour, and the Ministry of Information and at various seminars and workshops. The brochure has been reproduced in full in Myanmar language newspapers and journals, and the Ministry of Information is currently working to have it printed in ethnic language publications. Nationwide radio and television broadcasts have included the full brochure content, explaining what forced labor is and how citizens can exercise their rights through the ILO complaints mechanism if they are subjected to forced labor.
 - o The MM Government has organized and held 17 awareness raising workshops in Yangon Division, six workshops in Mandalay Division, two workshops in Magwe Division, one workshop in Nay Pyi Taw, Ayeyarwaddy and Tanintharyi Division in cooperation with the Ministry of Labor, Employment and Social Security, the ILO and other concerned ministries.
 - o In addition, the Ministry of Labor, Employment and Social Security is cooperating with the ILO to hold more awareness raising workshops in

Kachin State, Kayah State, Rakhine State and Tanintharyi Division (Kaw Thong).

- **Action Plan Item 2:** Continued Activities under The Supplementary Understanding.
 - o Under this action item, the MM Government and the ILO have created a mechanism which gives Myanmar Resident Citizens the right to lodge complaints alleging the use of forced labor. This complaints mechanism is designed to allow genuine victims of forced labor, with the assistance of the ILO Liaison Officer, an opportunity to seek redress and/or remedies from the government authorities in full confidence that no retaliatory action will be taken against them. In response to the forced labor complaints filed with the complaints mechanism, the MM Government has settled over 200 cases since 2007.
- **Action Plan Item 3:** Undertake investigation and take necessary remedial action in respect of unanswered allegations as documented in the comments of ILO supervisory bodies.
 - o In March 2012, the MM Government passed the amendment law to the Ward or Village Tract Administration Law that makes the use of forced labor by any person a criminal offence punishable under the Penal Code. The legislation contains a definition of forced labor which is in conformity with the Forced Labor Convention, 1930 (No. 29).
 - o In this regard, and as documented by the ILO, the MM Government has also taken punitive measures against perpetrators of forced labor, and in response to the forced labor complaints filed with the complaints mechanism, has settled over 200 cases since 2007. Penalties for perpetrators of forced labor range from administrative measures to imprisonment, and the government has also taken action under the penal code against such perpetrators.
- **Action Plan Item 4:** Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labor.
 - o In November 2013, the MM Government and the ILO signed a cooperation agreement to conduct the first comprehensive National Labor Force Survey (LFS) in the country since 1990. The LFS will furnish data to formulate policies of critical importance to Myanmar, including national employment policy, and will identify areas where child labor and forced labor are prevalent in the country in order to address these issues. The MM Government is working closely with the ILO in order to implement the survey and initiate it.
- **Action Plan Item 5:** Forced labor by way of underage (under 18) recruitment into the Defence Services and militia including support for the final agreement

and implementation of a joint Action Plan in respect of children in armed conflict (Security Council. RES 1612).

- The Commander-in-Chief of the defense services has issued orders to all military personnel advising that any breach of the law against the use of forced labor, including under-age or forced recruitment, will be considered a criminal offence prosecuted under the Penal Code.
- In addition, military orders have been issued instructing that civilians are not to be used for any military support activity, including pottering, sentry/guard duty and camp construction/maintenance in conflict zones. Further orders have been issued instructing that any such civilian support to military operations in non-conflict zones should be freely entered into and provided in the framework of paid employment or service contracts. The MM Government is currently drafting practical guidelines for military personnel to support these orders.
- **Action Plan Item 6:** Support for the justice system (Civilian and Military) and other institutions such as parliamentary commissions/ committees and the national human rights commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of force labor.
 - The Myanmar Human Rights Commission has held consultations with the ILO for the purpose of supporting the Commission in developing its working mechanisms and cooperation in the management of complaints.
- **Action Plan Item 7:** Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modeling.

The MM Government stands committed to eliminating forced labor by the end of 2015 and to that end, will continue its activities under the Joint Plan. In addition, the MM Government will continue to proactively engage with civil society, other government actors and worker and employer groups on this issue. The MM Government will continue to explore ways to implement the Joint Plan.

6) Additional detail available on other areas of the submission, the staff and budgetary resources of the labor inspectorate, land tenure, the child labor action plan, and the new child labor survey.

We have addressed your inquiry on the staff and budgetary resources of the labor inspectorate above under the discussion of future plans for the Ministry of Labor, Employment and Social Security. Please refer to our discussion of FGLLID under that particular section.

With regards to the elimination of the worst forms of child labor, the MM Government notes that on December 18, 2013, it ratified Convention 182 on the Elimination of the Worst Forms of Child Labor. In order to implement the convention, the MM Government has been working closely with the regional ILO office (Yangon) to implement a four year program (2014- 2017). As part of this program, the MM Government has formed the Myanmar Technical Working Group on Eradication of Child Labor (My-PEC), and has assigned FGLLID's Director General for Factories and General Labor Laws Inspection Department U Win Shein as chairperson of the group. The group counts on representatives from the Ministry of Education, Ministry of Defense, Ministry for Home Affairs, Ministry of Social Welfare, Relief and Resettlement, INGOs, NGOs and Civil Societies, and the Ministry of Labor, Employment and Social Security, and has already met several times in an effort to begin its work in developing an action plan to implement Convention 182. The MM Government stands committed to eliminating the worst forms of child labor and will continue to proactively interact with all interlocutors and other government agencies in continuing implementation of Convention 182.

III. CONCLUSION

The Government of Myanmar has made much progress in the area of labor, and based on this progress, respectfully requests that the recommendation be made to President Obama to reinstate Myanmar as a least developed GSP beneficiary at his earliest opportunity. We believe that Myanmar meets the criteria for both designations as a BDC and LDBDC under the GSP Program, and hereby formally request that Myanmar be reinstated to the GSP program.

We respectfully give thanks to the United States Trade Representative Michael Froman, U.S. Ambassador to Myanmar, The Honorable Derek Mitchell Office of the United States Trade Representative GSP Subcommittee Chairman William Jackson and all members of the GSP Subcommittee for their consideration to reinstate Myanmar to the GSP Program.

If you require additional information or have any questions regarding any of the foregoing matters and responses, please contact the undersigned directly.

Thanking you for considering this submission.

Respectfully submitted,
MINISTRY OF COMMERCE,
THE REPUBLIC OF THE UNION OF MYANMAR

*The Government of the Republic of the Union of Myanmar
Post-Hearing Brief in support of Myanmar as a BDC and LDBDC
Respectfully submitted May 21, 2014*

