

PART II: COMPILATION OF U.S. TRADE STATUTES

Chapter 8: TARIFF AND CUSTOMS LAWS

**A. IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE
OF THE UNITED STATES**

**Title I, Subtitle B (Sections 1201-1217) of the Omnibus Trade and
Competitiveness Act of 1988**

[19 U.S.C. 3001 et seq.; Public Law 100-418, as amended by Public Law 100-647]

SEC. 1201. PURPOSES.

The purposes of this subtitle are—

- (1) to approve the International Convention on the Harmonized Commodity Description and Coding System;
- (2) to implement in U.S. law the nomenclature established internationally by the Convention; and
- (3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

SEC. 1202. DEFINITIONS.

As used in this subtitle:

- (1) The term “Commission” means the U.S. International Trade Commission.
- (2) The term “Convention” means the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987.
- (3) The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.
- (4) The term “Federal agency” means any establishment in the executive branch of the U.S. Government.
- (5) The term “old Schedules” means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a).
- (6) The term “technical rectifications” means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—
 - (A) errors in spelling, numbering, or punctuation;
 - (B) errors in indentation;
 - (C) errors (including inadvertent omissions) in cross-references to headings or subheadings or notes; and
 - (D) other clerical or typographical errors.

SEC. 1203. CONGRESSIONAL APPROVAL OF UNITED STATES ACCESSION TO THE CONVENTION.

(a) CONGRESSIONAL APPROVAL.—The Congress approves the accession by the United States of America to the Convention.

(b) ACCEPTANCE OF THE FINAL LEGAL TEXT OF THE CONVENTION BY THE PRESIDENT.—The President may accept for the United States the final legal instruments embodying the Convention. The President shall submit a copy of each final instrument to the Congress on the date it becomes available.

(c) UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of the Convention nor the enactment of this subtitle may be construed as creating any private right of action or remedy for which provision is not explicitly made under this subtitle or under other laws of the United States.

(d) TERMINATION.—The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) do not apply to the Convention.

SEC. 1204. ENACTMENT OF THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by striking out title I and inserting a new title I entitled “Title I—Harmonized Tariff Schedule of the United States” (hereinafter in this subtitle referred to as the “Harmonized Tariff Schedule”) which—

(1) consists of—

(A) the General Notes;

(B) the General Rules of Interpretation;

(C) the Additional U.S. Rules of Interpretation;

(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

(E) the Chemical Appendix to the Harmonized Tariff Schedule; all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled “Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes” and Supplement No. 1, thereto; but

(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1, thereto.

(b) MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE.—At the earliest practicable date after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, the President shall—

(1) proclaim such modifications to the Harmonized Tariff Schedule as are consistent with the standards applied in converting the old Schedules into the format of the Convention, as reflected in such Publication No. 2030 and

Supplement No. 1, thereto, and as are necessary or appropriate to implement—

(A) the future outstanding staged rate reductions authorized by the Congress in—

(i) the Trade Act of 1974 (19 U.S.C. 2101 et seq.) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) to reflect the tariff reductions that resulted from the Tokyo Round of multilateral trade negotiations, and

(ii) the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 1202 note) to reflect the tariff reduction resulting from the United States-Israel Free Trade Area Agreement,

(B) the applicable provisions of—

(i) statutes enacted,

(ii) executive actions taken, and

(iii) final judicial decisions rendered, after January 1, 1988, and before the effective date of the Harmonized Tariff Schedule, and

(C) such technical rectifications as the President considers necessary; and

(2) take such action as the President considers necessary to bring trade agreements to which the United States is a party into conformity with the Harmonized Tariff Schedule.

(c) STATUS OF THE HARMONIZED TARIFF SCHEDULE.—

(1) The following shall be considered to be statutory provisions of law for all purposes:

(A) The provisions of the Harmonized Tariff Schedule as enacted by this subtitle.

(B) Each statutory amendment to the Harmonized Tariff Schedule.

(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974).

(2) Neither the enactment of this subtitle nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—

(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or

(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.

(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective rate of duty.

(d) INTERIM INFORMATIONAL USE OF HARMONIZED TARIFF SCHEDULE CLASSIFICATIONS.—Each—

- (1) proclamation issued by the President;
- (2) public notice issued by the Commission or other Federal agency; and
- (3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency; during the period between the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 and the effective date of the Harmonized Tariff Schedule shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

SEC. 1205. COMMISSION REVIEW OF, AND RECOMMENDATIONS REGARDING, THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

- (1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;
- (2) to promote the uniform application of the Convention and particularly the Annex thereto;
- (3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;
- (4) to alleviate unnecessary administrative burdens; and
- (5) to make technical rectifications.

(b) AGENCY AND PUBLIC VIEWS REGARDING RECOMMENDATIONS.—In formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

- (1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and
- (2) may provide for a public hearing.

(c) SUBMISSION OF RECOMMENDATIONS.—The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each

recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) **REQUIREMENTS REGARDING RECOMMENDATIONS.**—The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected U.S. industry, labor, or trade.

SEC. 1206. PRESIDENTIAL ACTION ON COMMISSION RECOMMENDATIONS.

(a) **IN GENERAL.**—The President may proclaim modifications, based on the recommendations by the Commission under section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with U.S. obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) **LAY-OVER PERIOD.**—

(1) The President may proclaim a modification under subsection (a) only after the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor.

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) **EFFECTIVE DATE OF MODIFICATIONS.**—Modifications proclaimed by the President under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 1207. PUBLICATION OF THE HARMONIZED TARIFF SCHEDULE.

(a) **IN GENERAL.**—The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

- (1) in the form of microfilm images; or
 - (2) in the form of electronic media.
- (b) **CONTENT.**—Publications under subsection (a), in whatever format, shall contain—
- (1) the then current Harmonized Tariff Schedule;
 - (2) statistical annotations and related statistical information formulated under section 484(f) of the Tariff Act of 1930 (19 U.S.C. 1484(f)); and
 - (3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.

SEC. 1208. IMPORT AND EXPORT STATISTICS.

The Secretary of Commerce shall compile, and make publicly available, the import and export trade statistics of the United States. Such statistics shall be conformed to the nomenclature of the Convention.

SEC. 1209. COORDINATION OF TRADE POLICY AND THE CONVENTION.

The United States Trade Representative is responsible for coordination of U.S. trade policy in relation to the Convention. Before formulating any U.S. position with respect to the Convention, including any proposed amendments thereto, the United States Trade Representative shall seek, and consider, information and advice from interested parties in the private sector (including a functional advisory committee) and from interested Federal agencies.

SEC. 1210. UNITED STATES PARTICIPATION ON THE CUSTOMS COOPERATION COUNCIL REGARDING THE CONVENTION.

(a) **PRINCIPAL U.S. AGENCIES.**—

(1) Subject to the policy direction of the Office of the United States Trade Representative under section 1209, the Department of the Treasury, the Department of Commerce, and the Commission shall, with respect to the activities of the Customs Cooperation Council relating to the Convention—

- (A) be primarily responsible for formulating United States Government positions on technical and procedural issues; and
- (B) represent the United States Government.

(2) The Department of Agriculture and other interested Federal agencies shall provide to the Department of the Treasury, the Department of Commerce, and the Commission technical advice and assistance relating to the functions referred to in paragraph (1).

(b) **DEVELOPMENT OF TECHNICAL PROPOSALS.**—

(1) In connection with responsibilities arising from the implementation of the Convention and under section 484(f) of the Tariff Act of 1930 (19 U.S.C. 1484(f)) regarding United States programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall prepare technical proposals that are appropriate or required to assure that the U.S. contribution to the development of the Convention recognizes the needs of the

U.S. business community for a Convention which reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices.

(2) In carrying out this subsection, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall—

(A) solicit and consider the views of interested parties in the private sector (including a functional advisory committee) and of interested Federal agencies;

(B) establish procedures for reviewing, and developing appropriate responses to, inquiries and complaints from interested parties concerning articles produced in and exported from the United States; and

(C) where appropriate, establish procedures for—

(i) ensuring that the dispute settlement provisions and other relevant procedures available under the Convention are utilized to promote U.S. export interests, and

(ii) submitting classification questions to the Harmonized System Committee of the Customs Cooperation Council.

(c) AVAILABILITY OF CUSTOMS COOPERATION COUNCIL PUBLICATIONS.—As soon as practicable after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, and periodically thereafter as appropriate, the Commission shall see to the publication of—

(1) summary records of the Harmonized System Committee of the Customs Cooperation Council; and

(2) subject to applicable copyright laws, the Explanatory Notes, Classification Opinions, and other instruments of the Customs Cooperation Council relating to the Convention.

SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) are in effect on the day before the effective date of the Harmonized Tariff Schedule; and

(B) contain references to the tariff classification of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the U.S. Government to make the conforming changes required under paragraph (1), shall affect to any extent the validity or effect of the proclamation, regulation, ruling, notice, finding, determination, order, recommendation, or other action referred to in paragraph (1).

(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2463(a), 2464(c)(3)).

(2) In applying section 504(c)(1) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)) as in effect on July 31, 1995) for calendar year 1989, the reference in such section to July 1 shall be treated as a reference to September 1.

(c) IMPORT RESTRICTIONS UNDER THE AGRICULTURAL ADJUSTMENT ACT.—

(1) Whenever the President determines that the conversion of an import restriction proclaimed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) from part 3 of the Appendix to the old Schedules to subchapter IV of chapter 99 of the Harmonized Tariff Schedule results in—

(A) an article that was previously subject to the restriction being excluded from the restriction; or

(B) an article not previously subject to the restriction being included within the restriction;

the President may proclaim changes in subchapter IV of chapter 99 of the Harmonized Tariff Schedule to conform that subchapter to the fullest extent possible to part 3 of the Appendix to the old Schedules.

(2) Whenever the President determines that the conversion from headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules to Additional U.S. Note 2, chapter 17, of the Harmonized Tariff Schedule results in—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1990.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This subtitle may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this subtitle shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on February 1, 1988; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

No later than September 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

(3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform such Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 180 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

SEC. 1212. REFERENCE TO THE HARMONIZED TARIFF SCHEDULE.

Any reference in any law to the “Tariff Schedules of the United States”, “the Tariff Schedules”, “such Schedules”, and any other general reference that clearly

refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule.

[SEC. 1213. TECHNICAL AMENDMENTS.]

[SEC. 1214. CONFORMING AMENDMENTS.]

Amendments to codified titles, the Tobacco Adjustment Act of 1983, the Federal Hazardous Substances Act, the Consumer Product Safety Act, the Toxic Substances Control Act, the Emergency Wetlands Resources Act of 1986, COBRA of 1985, the Tariff Act of 1930, the Automotive Products Trade Act of 1965, the Trade Act of 1974, the Trade Agreements Act of 1979, the Act of March 2, 1897, the Controlled Substances Import and Export Act, the Comprehensive Anti-Apartheid Act of 1986, the Strategic and Critical Materials Stock Piling Act, the Internal Revenue Code of 1986, the Caribbean Basin Economic Recovery Act, the Act Relating to Reforestation Trust Fund, the Trade and Tariff Act of 1984, the Meat Import Act of 1979, the National Wool Act of 1954, and the Agricultural Act of 1949.

[SEC. 1215. NEGOTIATING AUTHORITY FOR CERTAIN ADP EQUIPMENT.]

Amendments to section 128(b) of the Trade Act of 1974 (19 U.S.C. 2138(b))]

SEC. 1216. COMMISSION REPORT ON OPERATION OF SUBTITLE.

The Commission, in consultation with other appropriate Federal agencies, shall prepare, and submit to the Congress and to the President, a report regarding the operation of this subtitle during the 12-month period commencing on the effective date of the Harmonized Tariff Schedule. The report shall be submitted to the Congress and to the President before the close of the 6-month period beginning on the day after the last day of such 12-month period.

SEC. 1217. EFFECTIVE DATES.

(a) **ACCESSION TO CONVENTION AND PROVISIONS OTHER THAN THE IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.**—Except as provided in subsection (b), the provisions of this subtitle take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988.

(b) **IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.**—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

- (1) the amendments made by sections 1204(a), 1213, 1214, and 1215 take effect and apply with respect to articles entered on or after such date; and
- (2) sections 1204(c), 1211, and 1212 take effect.

Section 484(e) of the Tariff Act of 1930, as amended

[19 U.S.C. 1484(f); Public Law 71-361, as amended by Public Law 93-618 and Public Law 95-106]

SEC. 484. ENTRY OF MERCHANDISE.

* * * * *

(f) **STATISTICAL ENUMERATION.**—The Secretary of the Treasury, the Secretary of Commerce, and the U.S. International Trade Commission are authorized and

directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

B. EXCERPTS FROM THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) RELATING TO SPECIAL DUTY TREATMENT

1. American Goods Returned (HTS Item 9801.00.10)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER I

ARTICLES EXPORTED AND RETURNED, NOT ADVANCED OR IMPROVED IN CONDITION;
ANIMALS EXPORTED AND RETURNED

U.S. Notes

1. The provisions in this subchapter (except subheadings 9801.00.70 and 9801.00.80) shall not apply to any article:

(a) Exported with benefit of drawback;

(b) Of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and was not refunded; or

(c) Manufactured or produced in the United States in a customs bonded warehouse or under subheading 9813.00.05 and exported under any provision of law.

Heading/ Subheading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				1	2	
				General	Special	
9801.00.10		Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture of other means while abroad		Free		

**2. American Goods Repaired or Altered Abroad (HTS Items 9802.00.40,
.50)**

American Metal Articles Processed Abroad (HTS Item 9802.00.60)

American Components Assembled Abroad (HTS Item 9802.00.80)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER II

ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD

U.S. Notes

1. Except for goods subject to NAFTA drawback, this subchapter shall not apply to any article exported:

- (a) From continuous customs custody with remission, abatement or refund of duty;
- (b) With benefit of drawback;
- (c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or
- (d) After manufacture or production in the United States under heading 9813.00.05.

2. (a) Except as provided in paragraph (b), any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article, and, if subject to a duty which is wholly or partly ad valorem, shall be dutiable, except as otherwise prescribed in this part, on its full value determined in accordance with section 402 of the Tariff Act of 1930, as amended. If such product or such article is dutiable at a rate dependent upon its value, the value for the purpose of determining the rate shall be its full value under the said section 402.

(b) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710) may be treated as a foreign article, or as subject to duty, if—

(i) the article is—

(A) assembled or processed in whole of fabricated components that are a product of the United States, or

(B) processed in whole of ingredients (other than water) that are a product of the United States, in a beneficiary country; and

(ii) neither the fabricated components, materials or ingredients, after exportation from the United States, nor the article itself, before importation into the United States, enters the commerce of any foreign

country other than a beneficiary country.

As used in this paragraph, the term “*beneficiary country*” means a country listed in general note 7(a).

3. *Articles repaired, altered, processed or otherwise changed in condition abroad.*—The following provisions apply only to subheadings 9802.00.40 through 9802.00.60, inclusive:

(a) The value of repairs, alterations, processing or other change in condition outside the United States shall be:

(i) The cost to the importer of such change; or

(ii) If no charge is made, the value of such change,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) No appraisal of the imported article in its changed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.

(c) The duty, if any, upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the article, as returned to the United States, is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate which when applied to the full value of such article determined in accordance with said section 402 would provide the same amount of duties as the specific or compound rate. In order to compute the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the United States.

(d) For the purposes of subheadings 9802.00.40 and 9802.00.50, the rates of duty in the “Special” subcolumn of column 1 followed by the symbol “CA” or “MX” in parentheses shall apply to any goods which are returned to the United States after having been repaired or altered in Canada or in Mexico, respectively, whether or not such goods are goods of Canada or goods of Mexico under the terms of general note 12 to the tariff schedule.

(e) For purposes of subheading 9802.00.60, the term “*metal*” covers (1) the base metals enumerated in additional U.S. note 1 to section XV; (2) arsenic, barium, boron, calcium, mercury, selenium, silicon, strontium, tellurium, thorium, uranium and the rare-earth elements; and (3) alloys of any of the foregoing.

4. *Articles assembled abroad with components produced in the United States.*—The following provisions apply only to subheading 9802.00.80 and 9802.00.90:

(a) The value of the products of the United States assembled into the imported article shall be:

(i) The cost of such products at the time of the last purchase; or

(ii) If no charge is made, the value of such products at the time of the shipment for exportation,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) The duty, if any, on the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in such proportion as the cost or value of such products of the United States bears to the full value of the imported article.

5. No imported article shall be accorded partial exemption from duty under more than one provision in this subchapter.

6. Notwithstanding the partial exemption from ordinary customs duties on the value of the metal product exported from the United States provided under subheading 9802.00.60, articles imported under subheading 9802.00.60 are subject to all other duties, and any other restrictions or limitations, imposed pursuant to title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), or chapter 1 of title II or chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2251 et seq., 19 U.S.C. 2411 et seq.).

7. (a) For purposes of the special tariff treatment authorized by the African Growth and Opportunity Act (AGOA) (title I of Pub.L. No. 106-200) for certain goods of heading 9802.00.80 imported directly from those beneficiary sub-Saharan African countries previously designated by proclamation that are subsequently enumerated in a notice published in the Federal Register by the United States Trade Representative (USTR) as having been determined to have satisfied the requirements of the AGOA and therefore to be afforded such tariff treatment, the duty-free treatment indicated for such heading shall apply only to apparel articles sewn or otherwise assembled in one or more such beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of chapter 56 and are wholly formed and cut in the United States). Articles otherwise eligible to enter under this heading, and which satisfy the conditions set forth in U.S. note 3 to subchapter XIX of this chapter, shall not be ineligible to enter under this heading. Such countries shall be enumerated in this note whenever the USTR issues a Federal Register notice as described herein. Articles covered by the provisions of this note shall be eligible to enter the customs territory of the United States free of quantitative limitations. The USTR has determined that the following countries have adopted an effective visa system and related procedures and have satisfied the customs requirements of the AGOA and, therefore, are to be afforded

the tariff treatment provided for in this note:

Benin, Botswana, Cameroon, Cape Verde, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia

(b) For purposes of heading 9802.00.80, duty-free treatment shall be accorded to the following articles imported directly from a beneficiary United States-Caribbean Basin Trade Partnership Act (CBTPA) country previously designated by the President in a proclamation issued pursuant to such Act and enumerated in general note 17(a) to the tariff schedule--

(i) apparel articles sewn or otherwise assembled in one or more such beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of chapter 56 and are wholly formed and cut in the United States) provided they otherwise comply with the provisions of this note; or

(ii) textile luggage assembled in a designated beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States.

Articles otherwise eligible to enter under this heading, and which satisfy the conditions set forth in U.S. note 3 to subchapter XX of this chapter, shall not be ineligible to enter under this heading. Articles covered by the terms of this note shall be admitted into the customs territory of the United States free of quantitative limitations. Apparel articles entered on or after September 1, 2002, that are assembled in a beneficiary CBTPA country from knitted or crocheted fabrics or from woven fabrics shall be eligible to receive the duty treatment provided for in this note only if all dyeing, printing and finishing of such fabrics from which the articles are assembled is carried out in the United States. The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

Barbados, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Trinidad and Tobago

(c) For purposes of heading 9802.00.80, duty-free treatment shall be accorded only to textile luggage assembled in a designated Andean Trade Promotion and Drug Eradication Act beneficiary country enumerated in U.S. note 1 to subchapter XXI of this chapter from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States.

Heading/ Subheading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				General	Special	2
9802.00.40	20 ¹ 40 ¹	Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means: Articles exported for repairs or alterations: Repairs or alterations made pursuant to a warranty Internal combustion engines . . . dutiable value Other . . . dutiable value	(1) (1)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).	Free (AU, B, C, CA, CL, IL, JO, MX, SG)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).
9802.00.50		Other		A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).	Free (AU, CL, IL, JO, MX, SG) A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter)(B, C, CA).	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).
9802.00.60	00 ¹	Any article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing.	(1) ¹	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter).	Free (IL). A duty upon the value of such processing of such processing outside the United States (see U.S. note 3 of this subchapter)(AU, B, C, CA, CL, JO, MX, SG).	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter).
9802.00.80		Articles, except good of heading 9802.90, assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their		A duty upon the full value of the imported article, less the cost or	Free (IL). A duty upon the full value of the imported	A duty upon the full value of the imported

		<p>physical identity in such articles by change in forms, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting</p>	<p>value of such products of the United States (see U.S. note 4 of this subchapter).</p>	<p>article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)(AU, B, C, CA, CL, E, J, JO, MX, SG). Free, for products described in U.S. note 7 to this subchapter. Free, for qualifying articles from sub-Saharan African countries enumerated in U.S. note 7 to this subchapter.</p>	<p>article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter) (see U.S. note 4 of this subchapter).</p>
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3. Personal (Tourist) Exemptions (HTS Items 9804.00.65, .70, .72)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER IV

PERSONAL EXEMPTIONS EXTENDED TO RESIDENTS AND NONRESIDENTS

U.S. Notes

2. In the case of persons arriving from a contiguous country which maintains a free zone or free port, if the Secretary of the Treasury deems it necessary in the public interest and to facilitate enforcement of the requirement that the exemption in subheading 9804.00.70 shall apply only to articles acquired as an incident of the foreign journey, he shall prescribe by regulation or instruction, the application of which may be restricted to one or more ports of entry, that such exemption shall be allowed only to residents who have remained beyond the territorial limits of the United States for not less than a specified period, not to exceed 24 hours, and, after the expiration of 90 days after the date of such regulation or instruction, allowance of the said exemption shall be subject to the limitations so prescribed.

3. A person arriving in the United States:

(a) On duty as an employee of a vessel, vehicle or aircraft, engaged in international traffic, or

(b) From a trip during which he was so employed, shall not be entitled to the exemptions provided for in this subchapter (other than those in heading 9804.00.80), unless he is permanently leaving such employment without the intention of resuming it on the same or another carrier.

4. As used in subheadings 9804.00.70 and 9804.00.72, the term “*beneficiary country*” means a country listed in general notes 7(a) or 11(a).

Heading/ Subheading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty	
				1	2
				General	Special
		<p>Articles imported by or for the account of any person arriving in the United States who is a returning resident thereof (including American citizens who are residents of American Samoa, Guam or the Virgin Islands of the United States)(con.):</p> <p>Other articles acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under subheading 9804.00.65, 9804.00.70, and 9804.00.72 within 30 days preceding his arrival, and claims exemption under only one of such items on his arrival.</p> <p>Articles, accompanying a person, not over \$800, in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages and including not more than 200 cigarettes and 100 cigars</p>		Free	Free
9804.00.65	(1)				
9804.00.70	(1)	<p>Articles whether or not accompanying a person, not over \$1,600 in aggregate fair market value in the country of acquisition, including:</p> <p>(a) but only in the case of an individual who has attained the age of 21, not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in American Samoa, Guam or the Virgin Islands of the United States, and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions, and</p> <p>(b) not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in such insular possessions, and not more</p>			

						Free
						Free
						Free
						Free
						Free
9804.00.72	(1)			<p>than 100 cigars.</p> <p>If such person arrives directly or indirectly from such insular possessions, not more than \$800 of which shall have been acquired elsewhere than in such insular possessions (but this subheading does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions)</p> <p>Articles whether or not accompanying a person, not over \$800 in aggregate fair market value in the country of acquisition, including—</p> <p>(a) but only in the case of an individual who has attained the age of 21, not more than 1 liter of alcoholic beverages or not more than 2 liters if at least 1 liter is the product of one or more beneficiary countries, and</p> <p>(b) not more than 200 cigarettes, and not more than 100 cigars.</p> <p>If such person arrives directly from a beneficiary country (but this item does not permit the entry of articles not accompanying a person which were acquired elsewhere than in beneficiary countries)</p>		Free
						Free

**4. Noncommercial Importations of Limited Value (HTS Items 9816.00.20,
and 9816.00.40)**

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER XVI

U.S. Notes

1. For the purposes of this subchapter the rates of duty for articles provided in this subchapter shall be assessed in lieu of any other rates of duty, except free rates of duty on such articles, unless the Secretary of the Treasury or his delegate determines, in accordance with regulations, that the application of the rate of duty provided in this subchapter to any article in lieu of the rate of duty otherwise applicable thereto adversely affects the economic interest of the United States.

Heading/ Subheading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				1		2
				General	Special	
9816.00.20	1	Articles for personal or household use, or as bona fide gifts, not imported for the account of another person, valued in the aggregate at not over \$1,000 fair retail value in the country of acquisition, if the person claiming the benefit of subheading 9816.00.20 or 9816.00.40, or both has not received the benefits thereof within the 30 days immediately preceding his arrival. Accompanying a person, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam or the Virgin Islands of the United States)		3 percent of the fair retail value	4 percent of the fair retail value	
9816.00.40	1	Imported by or for the account of a person (whether or not accompanying him) arriving directly or indirectly from American Samoa, Guam or the Virgin Islands of the United States, acquired in such insular possessions as an incident of such person's physical presence		1.5 percent of the fair retail value	2 percent of the fair retail value	

5. Classification of Personal Effects of Participants in International Athletic Events (HTS Items 9817.60.00)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER XVII

U.S. Note

8. Any article exempt from duty under heading 9817.60.00 shall be free of taxes and fees that may otherwise be applicable, but shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service.

Heading/ Subheading	Stat. Suffix	Article Description	Units of Quantity	Rates of Duty		
				1		2
				General	Special	
9817.60.00		<p>Any of the following articles not intended for sale of distribution to the public; personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to, any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow</p>	X	Free	Free	

6. Products of U.S. Insular Possessions

General Note 3(a)(iv)

Products of Insular Possessions

(A) Except as provided in additional U.S. note 5 of chapter 91 and except as provided in additional U.S. note 2 of chapter 96, and except as provided in section 423 of the Tax Reform Act of 1986, and additional U.S. note 3(e) of chapter 71, goods imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column 1 of the tariff schedule, except that all such goods the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to goods described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(B) In determining whether goods produced or manufactured in any such insular possession contain foreign materials to the value of more than 70 percent, no material shall be considered foreign which either—

(1) at the time such goods are entered, or

(2) at the time such material is imported into the insular possession, may be imported into the customs territory from a foreign country, and entered free of duty; except that no goods containing material to which (2) of this subparagraph applies shall be exempt from duty under subparagraph (A) unless adequate documentation is supplied to show that the material has been incorporated into such goods during the 18-month period after the date on which such material is imported into the insular possession.

(C) Subject to the limitations imposed under sections 503(a)(2), 503(a)(3) and 503(c) of the Trade Act of 1974, goods designated as eligible under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such goods imported from a beneficiary developing country under title V of such Act.

(D) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded

such goods when they are imported from a beneficiary country under such Act.

(E) Subject to the provisions in section 204 of the Andean Trade Preference Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such goods when they are imported from a beneficiary country under such Act.

(F) No quantity of an agricultural product that is subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this paragraph.

Additional U.S. Note 3(a) to Chapter 71

(a) Notwithstanding any provision in additional U.S. note 5 to chapter 91, any article of jewelry provided for in heading 7113 which is the product of the Virgin Islands, Guam, or American Samoa (including any such article which contains any foreign component) shall be eligible for the benefits provided in paragraph (h) of additional U.S. note 5 to chapter 91, subject to the provisions and limitations of that note and of paragraphs (b), (c), and (d) of this note.

(b) Notwithstanding additional U.S. Note 5(h)(ii)(B) to chapter 91, articles of jewelry subject to this note shall be subject to a limitation of 10,000,000 units.

(c) Nothing in this note shall result in an increase or a decrease in the aggregate amount referred to in paragraph (b)(iii) of, or the quantitative limitation otherwise established pursuant to the requirements of, additional U.S. note 5 to chapter 91.

(d) Nothing in this note shall be construed to permit a reduction in the amount available to watch producers under paragraph (h)(iv) of additional U.S. note 5 to chapter 91.

(e) The Secretary of Commerce and the Secretary of the Interior shall issue such regulations, not inconsistent with the provisions of this note and additional U.S. note 5 to chapter 91, as the Secretaries determine necessary to carry out their respective duties under this note. Such regulations shall not be inconsistent with substantial transformation requirements but may define the circumstances under which articles of jewelry shall be deemed to be 'units' for purposes of the benefits, provisions, and limitations of additional U.S. note 5 to Chapter 91.

(f) Notwithstanding any other provision of law any article of jewelry provided for in heading 7113 that is assembled in the Virgin Islands, Guam, or American Samoa by a jewelry manufacturer or jewelry assembler that commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa after August 9, 2001, shall be treated as a product of the Virgin Islands, Guam, or American Samoa for purposes of this note and General Note 3(a)(iv) of this Schedule if such article is entered no later than 18 months after such

jewelry manufacturer or jewelry assembler commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa.

7. Rates of Duty on Certain Motor Vehicles

General Note 3(d)

(d) CERTAIN MOTOR VEHICLES MANUFACTURED IN FOREIGN TRADE ZONES.

(i) DUTY IMPOSED.—Notwithstanding any other provision of law, the duty imposed on a qualified article shall be the amount determined by multiplying the applicable foreign value content of such article by the applicable rate of duty for such article.

(ii) QUALIFIED ARTICLE.—For purposes of this subdivision, the term “qualified article” means an article that is—

(A) classifiable under any of subheadings 8702.10 through 8704.90 of the Harmonized Tariff Schedule of the United States,

(B) produced or manufactured in a foreign trade zone before January 1, 1996,

(C) exported therefrom to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301(4)), and

(D) subsequently imported from that NAFTA country into the customs territory of the United States—

(I) on or after the effective date of this subdivision, or

(II) on or after January 1, 1994, and before such effective date, if the entry of such article is unliquidated, under protest, or in litigation, or liquidation is otherwise not final on such effective date.

(iii) APPLICABLE FOREIGN VALUE CONTENT.

(A) APPLICABLE FOREIGN VALUE CONTENT.—For purposes of this subdivision, the term “applicable foreign value content” means the amount determined by multiplying the value of a qualified article by the applicable percentage.

(B) APPLICABLE PERCENTAGE.—The term “applicable percentage” means the FTZ percentage for the article plus 5 percentage points.

(iv) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subdivision—

(A) FTZ PERCENTAGE.—The FTZ percentage for a qualified article shall be the percentage determined in accordance with subparagraph (I), (II), or (III) of this paragraph, whichever is applicable.

(I) REPORT FOR YEAR PUBLISHED.—If, at the time a qualified article is entered, the FTZ Annual Report for the year in which the article was manufactured has been published, the FTZ percentage for the

article shall be the percentage of foreign status merchandise set forth in that report for the subzone in which the qualified article was manufactured, or if not manufactured in a subzone, the foreign trade zone in which the qualified article was manufactured.

(II) REPORT FOR YEAR NOT PUBLISHED.—If, at the time a qualified article is entered, the FTZ Annual Report for the year in which the article was manufactured has not been published, the FTZ percentage for the article shall be the percentage of foreign status merchandise set forth in the most recently published FTZ Annual Report for the subzone in which the article was manufactured, or if not manufactured in a subzone, the foreign trade zone in which the qualified article was manufactured.

(B) APPLICABLE RATE OF DUTY.—The term “applicable duty rate” means the rate of duty set forth in any of subheadings 8702.10 through 8704.90 of the Harmonized Tariff Schedule of the United States that is applicable to the qualified article and which would apply to that article if the article were directly entered for consumption into the United States from the foreign trade zone with non-privileged foreign status having been claimed for all foreign merchandise used in the manufacture or production of the qualified article.

(C) FOREIGN TRADE ZONE; SUBZONE.—The terms “foreign trade zone” and “subzone” mean a zone or subzone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(D) FTZ ANNUAL REPORT.—The term “FTZ Annual Report” means the Annual Report to the Congress published in accordance with section 16 of the Foreign Trade Zones Act (19 U.S.C. 81p(c)).

(E) NON-PRIVILEGED FOREIGN STATUS.—The term “non-privileged foreign status” means that privilege has not been requested with respect to an article pursuant to section 3 of the Foreign Trade Zones Act.

C. GENERALIZED SYSTEM OF PREFERENCES

Title V of the Trade Act of 1974, as amended

[19 U.S.C. 2461 et seq.; Public Law 93-618, as amended by Public Law 94-455, Public Law 96-39, Public Law 98-573, Public Law 99-47, Public Law 99-514, Public Law 99-570, Public Law 100-418, Public Law 101-179, Public Law 101-382, Public Law 103-66, Public Law 103-465, Public Law 104-188, Public Law 104-295, Public Law 106-36, Public Law 106-170, Public Law 106-200, Public Law 107-210, and Public Law 108-429]

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In

taking any such action, the President shall have due regard for—

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on U.S. producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.

(a) AUTHORITY TO DESIGNATE COUNTRIES.—

(1) **BENEFICIARY DEVELOPING COUNTRIES.**—The President is authorized to designate countries as beneficiary developing countries for purposes of this title

(2) **LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.**—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

(b) COUNTRIES INELIGIBLE FOR DESIGNATION.—

(1) **SPECIFIC COUNTRIES.**—The following countries may not be designated as beneficiary developing countries for purposes of this title:

- (A) Australia.
- (B) Canada.
- (C) European Union member states.
- (D) Iceland.
- (E) Japan.
- (F) Monaco.
- (G) New Zealand.
- (H) Norway.
- (I) Switzerland.

(2) **OTHER BASES FOR INELIGIBILITY.**—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

- (A) Such country is a Communist country, unless—
 - (i) the products of such country receive nondiscriminatory treatment,
 - (ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and
 - (iii) such country is not dominated or controlled by international communism.
- (B) Such country is a party to an arrangement of countries and

participates in any action pursuant to such arrangement, the effect of which is—

- (i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and
 - (ii) to cause serious disruption of the world economy.
- (C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on U.S. commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a U.S. citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a U.S. citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 or such country has not taken steps to support the efforts of the United States to combat terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G) and (H) (to the extent described in section 507(6)(D)) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefore.

(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

- (1) an expression by such country of its desire to be so designated;
- (2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;
- (3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
- (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;
- (5) the extent to which such country is providing adequate and effective protection of intellectual property rights;
- (6) the extent to which such country has taken action to—
 - (A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

(3) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

(f) CONGRESSIONAL NOTIFICATION.—

(1) NOTIFICATION OF DESIGNATION.—

(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination,

the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.

(a) ELIGIBLE ARTICLES.—

(1) DESIGNATION.—

(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502(d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) RULE OF ORIGIN.—

(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country 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.

(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

(A) Except as provided in paragraph (4), textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the U.S. insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(4) Certain hand-knotted or hand-woven carpets. Notwithstanding paragraph (1)(A), the President may designate as an eligible article or articles under subsection (a) carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) COMPETITIVE NEED LIMITATION.—

(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for 1996, \$75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$5,000,000.

(B) COUNTRY DEFINED.—For purposes of this paragraph, the term “country” does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason

of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.

(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) DE MINIMIS WAIVERS.—

(i) IN GENERAL.—The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, \$13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$500,000.

(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured

the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) OTHER BASES FOR WAIVER.—The President may waive the application of subsection (c)(2) if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with respect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to U.S. commerce,

and the President publishes that determination in the Federal Register.

(4) Limitations on waivers.—

(A) IN GENERAL.—The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

(B) OTHER WAIVER LIMITS.—The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of \$5,000 or more; or

(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

(C) CALCULATION OF LIMITATIONS.—There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this title during such calendar year; and

(ii) is in excess of the value of that article that would have been so

entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

(5) EFFECTIVE PERIOD OF WAIVER.—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating articles as eligible articles under subsection (a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered ¹for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

(f) SPECIAL RULE CONCERNING PUERTO RICO.—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico. (19 U.S.C. 2463)

SEC. 504. REVIEW AND REPORT TO CONGRESS.

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.

SEC. 505. DATE OF TERMINATION.

No duty-free treatment provided under this title shall remain in effect after December 31, 2006.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

SEC. 506A. DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.

(a) AUTHORITY TO DESIGNATE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act: and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

(2) MONITORING AND REVIEW OF CERTAIN COUNTRIES.—The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act.

(3) CONTINUING COMPLIANCE.—If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES.—

(1) IN GENERAL.—The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a), if after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) RULES OF ORIGIN.—The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 503(a)(2), except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such U.S. cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(c) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC.—For purposes of this title,

(1) the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.

(2) the term “former beneficiary sub-Saharan African country” means a

country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

SEC. 506B. TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES.

In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2015.

SEC. 507. DEFINITIONS.

For purposes of this title:

(1) **BENEFICIARY DEVELOPING COUNTRY.**—The term “beneficiary developing country” means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

(2) **COUNTRY.**—The term “country” means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

(3) **ENTERED.**—The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) **INTERNATIONALLY RECOGNIZED WORKER RIGHTS.**—The term “internationally recognized worker rights” includes—

- (A) the right of association;
- (B) the right to organize and bargain collectively;
- (C) a prohibition on the use of any form of forced or compulsory labor;
- (D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and
- (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) **LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.**—The term “least-developed beneficiary developing country” means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).

(6) **WORST FORMS OF CHILD LABOR.**—The term “worst forms of child labor” means—

- (A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or

compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) The use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

General Note 4 of the Harmonized Tariff Schedule

Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP)

(a) The following countries, territories and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) are designated beneficiary developing countries for the purposes of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.):

Independent Countries

Afghanistan	Ethiopia
Albania	Fiji
Algeria	Gabon
Angola	Gambia, The
Antigua and Barbuda	Georgia
Argentina	Ghana
Armenia	Grenada
Bahrain	Guatemala
Bangladesh	Guinea
Barbados	Guinea-Bissau
Belize	Guyana
Benin	Haiti
Bhutan	Honduras
Bolivia	India
Bosnia and Herzegovina	Indonesia
Botswana	Iraq
Brazil	Jamaica
Bulgaria	Jordan

Burkina Faso	Kazakhstan
Burundi	Kenya
Cambodia	Kiribati
Cameroon	Kyrgyzstan
Cape Verde	Lebanon
Central African Republic	Lesotho
Chad	Macedonia, Former Yugoslav, Republic of
Colombia	Madagascar
Comoros	Malawi
Congo (Brazzaville)	Mali
Congo (Kinshasa)	Malta
Costa Rica	Mauritania
Cote d'Ivoire	Mauritius
Croatia	Moldova
Djibouti	Mongolia
Dominica	Morocco
Dominican Republic	Mozambique
Ecuador	Namibia
Egypt	Nepal
El Salvador	Niger
Equatorial Guinea	Nigeria
Eritrea	South Africa
Oman	Sri Lanka
Pakistan	Suriname
Panama	Swaziland
Papua New Guinea	Tanzania
Paraguay	Thailand
Peru	Togo
Philippines	Tonga
Romania	Trinidad and Tobago
Russia	Tunisia
Rwanda	Turkey

St. Kitts and Nevis	Tuvalu
Saint Lucia	Uganda
Sao Tome and Principe	Uruguay
Senegal	Uzbekistan
Seychelles	Vanuatu
Sierra Leone	Venezuela
Solomon Islands	Yemen, Republic of
Somalia	Zambia
	Zimbabwe

Non-Independent Countries and Territories

Anguilla	Niue
British Indian Ocean Territory	Norfolk Island
Christmas Island (Australia)	Pitcairn Islands
Cocos (Keeling) Islands	Saint Helena
Cook Islands	Tokelau
Falkland Islands (Islas Malvinas)	Turks and Caicos Islands
French Polynesia	Virgin Islands, British
Gibraltar	Wallis and Futuna
Heard Island and McDonald Islands	West Bank and Gaza Strip
Montserrat	Western Sahara

Associations of Countries (treated as one country)

<i>Member Countries of the Cartagena Agreement (Andean Group)</i>	<i>Members of the Association of South East Asian Nations (ASEAN)</i>	<i>Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas</i>	<i>Member Countries of the West African Economic and Monetary Union (WAEMU)</i>	<i>Members Countries of the Southern African Development Community (SADC)</i>
Consisting of:	Currently qualifying:	Consisting of:	Consisting of:	Currently qualifying:
Bolivia	Cambodia	Antigua and Barbuda	Benin	Botswana
Colombia	Indonesia	Barbados	Burkina Faso	Mauritius
Ecuador	Philippines	Belize	Cote d'Ivoire	Tanzania
Peru	Thailand	Dominica	Guinea-Bissau	
Venezuela		Grenada	Mali	
		Guyana	Niger	
		Jamaica	Senegal	
		Montserrat	Togo	
		St. Kitts and Nevis		
		Saint Lucia		
		Saint Vincent and the Grenadines		
		Trinidad and Tobago		

(b)(i) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 502(a)(2) of the Trade Act of 1974, as amended:

Afghanistan	Lesotho
Angola	Madagascar
Bangladesh	Malawi
Benin	Mali
Bhutan	Mauritania
Burkina Faso	Mozambique
Burundi	Nepal
Cambodia	Niger
Cape Verde	Rwanda
Central African Republic	Samoa
Chad	Sao Tome and Principe

Comoros	Sierra Leone
Congo (Kinshasa)	Somalia
Djibouti	Tanzania
Equatorial Guinea	Togo
Ethiopia	Tuvalu
Gambia, The	Uganda
Guinea	Vanuatu
Guinea-Bissau	Republic of Yemen
Haiti	Zambia
Kiribati	

Whenever an eligible article which is the growth, product or manufacture of one of the countries designated as a least-developed beneficiary developing country is imported into the customs territory of the United States directly from such country, such article shall be entitled to receive the duty-free treatment provided for in subdivision (c) of this note without regard to the limitations on preferential treatment of eligible articles in section 503(c)(2)(A) of the Trade Act, as amended (19 U.S.C. 2464(c)(2)(A)).

(ii) Articles provided for in a provision for which a rate of duty "Free" appears in the "Special" subcolumn followed by the symbol "A+" in parentheses are those designated by the President to be eligible articles for purposes of the GSP pursuant to section 503(a)(1)(B) of the Trade Act of 1974, as amended. The symbol "A+" indicates that all least-developed beneficiary countries are eligible for preferential treatment with respect to all articles provided for in the designated provisions. Whenever an eligible article which is the growth, product, or manufacture of a designated least-developed developing country listed in subdivision (b)(i) of this note is imported into the customs territory of the United States directly from such country, such article shall be eligible for duty-free treatment as set forth in the "Special" subcolumn; provided that, in accordance with regulations promulgated by the Secretary of the Treasury the sum of (1) the cost or value of the materials produced in the least-developed beneficiary developing country or 2 or more countries which are members of the same association of countries which is treated as one country under section 507(2) of the Trade Act of 1974, plus (2) the direct costs of processing operations performed in such least-developed beneficiary developing country or such members countries, is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States. No article or material of a least-developed beneficiary developing country shall be eligible for such treatment by virtue of having merely undergone simple combining or packing operations, or mere dilution with water or mere dilution

with another substance that does not materially alter the characteristics of the article.

(c) Articles provided for in a provision for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbols "A" or "A*" in parentheses are those designated by the President to be eligible articles for purposes of the GSP pursuant to section 503 of the Trade Act of 1974. The following articles may not be designated as an eligible article for purposes of the GSP:

- (i) textile and apparel articles which are subject to textile agreements;
- (ii) watches, except as determined by the President pursuant to section 503(c)(1)(B) of the Trade Act of 1974, as amended;
- (iii) import-sensitive electronic articles;
- (iv) import-sensitive steel articles;
- (v) footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel, the foregoing which were not eligible articles for purposes of the GSP on April 1, 1984;
- (vi) import-sensitive semimanufactured and manufactured glass products;
- (vii) any agricultural product of chapters 2 through 52, inclusive, that is subject to a tariff-rate quota, if entered in a quantity in excess of the in-quota quantity for such product; and
- (viii) any other articles which the President determines to be import sensitive in the context of the GSP.

The symbol "A" indicates that all beneficiary developing countries are eligible for preferential treatment with respect to all articles provided for in the designated provision. The symbol "A*" indicates that certain beneficiary developing countries, specifically enumerated in subdivision (d) of this note, are not eligible for such preferential treatment with regard to any article provided for in the designated provision. Whenever an eligible article which is the growth, product, or manufacture of a designated beneficiary developing country listed in subdivision (a) of this note is imported into the customs territory of the United States directly from such country or territory, such article shall be eligible for duty-free treatment as set forth in the "Special" subcolumn, unless excluded from such treatment by subdivision (d) of this note; provided that, in accordance with regulations promulgated by the Secretary of the Treasury the sum of (1) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 507(2) of the Trade Act of 1974, plus (2) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States. No article or material of a beneficiary developing country shall be eligible for such treatment by virtue of having merely undergone simple combining or packing operations, or mere

dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(d) Articles provided for in a provision for which a rate of duty of "Free" appears in the "Special" subcolumn of rate of duty column 1 followed by the symbol "A*" in parentheses, if imported from a beneficiary developing country set out opposite the provisions enumerated below, are not eligible for the duty-free treatment provided in subdivision (c) of this note:

D. CARIBBEAN BASIN INITIATIVE (CBI)

Caribbean Basin Economic Recovery Act, as amended (including certain provisions from the U.S. – Caribbean Trade Partnership Act)

[19 U.S.C. 2701 et seq.; Public Law 98-67, title II, as amended by Public Law 98-573, Public Law 99-514, Public Law 99-570, Public Law 100-418, Public Law 100-647, Public Law 101-382, Public Law 103-182, Public Law 103-465, Public Law 104-188, Public Law 104-295, Public Law 106-200, Public Law 107-206, Public Law 107-210, and Public Law 108-429]

SEC. 201. SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

SUBTITLE A—DUTY-FREE TREATMENT

SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment (or other preferential treatment) for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 212. BENEFICIARY COUNTRY.

(a) DEFINITIONS; TERMINATION OF DESIGNATION

(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "HTS" means Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(D) The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(E) The terms "WTO" and "WTO member" have the meanings given

those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) COUNTRIES ELIGIBLE FOR DESIGNATION AS BENEFICIARY COUNTRIES; CONDITIONS. In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Cayman Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Turks and Caicos Islands
Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this title—

- (1) if such country is a Communist country;
- (2) if such country—
 - (A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,
 - (B) has taken steps to repudiate or nullify—
 - (i) any existing contract or agreement with, or
 - (ii) any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
 - (C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—
 - (i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,
 - (ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
 - (iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;
- (3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;
- (4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have,

a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) FACTORS DETERMINING DESIGNATION. In determining whether to designate any country a beneficiary country under this title, the President shall take into account--

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright

rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

(d) [Omitted]

(e) WITHDRAWAL OR SUSPENSION OF DESIGNATION AS BENEFICIARY COUNTRY OR DUTY-FREE TREATMENT OF SPECIFIC ARTICLES.

(1) (A) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a beneficiary country, or

(ii) withdraw, suspend, or limit the application of duty-free treatment under this subtitle to any article of any country, if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

(B) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a CBTPA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b)(2) and (3) to any article of any country, if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(B).

(2) (A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(3) If preferential treatment under section 213(b)(2) and (3) is withdrawn, suspended, or limited with respect to a CBTPA beneficiary country, such

country shall not be deemed to be a “party” for the purposes of applying section 213(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

(f) REPORTING REQUIREMENTS.—

(1) **IN GENERAL.** Not later than December 31, 2001, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including—

(A) with respect to subsections (b) and (c), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or CBTPA beneficiary country, as the case may be, under the criteria set forth in section 213(b)(5)(B).

(2) **PUBLIC COMMENT.**—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 213(b)(5)(B).

SEC. 213. ELIGIBLE ARTICLES.

(a) GROWTH, PRODUCT, OR MANUFACTURE OF BENEFICIARY COUNTRIES.

(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, and except as provided in subsection (b)(2) and (3), the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term “beneficiary country” includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations

providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase “direct costs of processing operations” includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(4) Notwithstanding section 311 of the Tariff Act of 1930 [19 U.S.C. 1311], the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(5) The duty-free treatment provided under this title shall apply to an article (other than an article listed in subsection (b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if—

(A) the article is imported directly from the beneficiary country into the customs territory of the United States,

(B) the article was by any means advanced in value or improved in condition in a beneficiary country, and

(C) if any materials are added to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.

(6) Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—

(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;

(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

(C) when imported into the customs territory of the United States such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and

(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.

(b) IMPORT-SENSITIVE ARTICLES.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title shall not apply to—

(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6403.59.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90, and 6404.19.20 of the HTS that was not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.];

(C) tuna, prepared or preserved in any manner, in airtight containers;

(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(E) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

(F) articles to which reduced rates of duty apply under subsection (h).

(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.

(A) ARTICLES COVERED. During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

(i) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES.— Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the

United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—

(I) entered under subheading 9802.00.80 of the HTS; or

(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(ii) OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES. Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States). Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(iii) CERTAIN KNIT APPAREL ARTICLES.

(I) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than t-shirts described in subclause (III)) cut and wholly

assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more CBTPA beneficiary countries), in an amount not exceeding the amount set forth in subclause (II).

(II) The amount referred to in subclause (I) is—

(aa) 500,000,000 square meter equivalents during the 1-year period beginning on October 1, 2002.

(bb) 850,000,000 square meter equivalents during the 1-year period beginning on October 1, 2003.

(cc) 970,000,000 square meter equivalents in each succeeding 1-year period through September 30, 2008.

(III) T-Shirts, other than underwear, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (IV).

(IV) the amount referred to in subclause (III) is as follows:

(aa) 4,872,000 dozen during the 1-year period beginning on October 1, 2001.

(bb) 9,000,000 dozen during the 1-year period beginning on October 1, 2002.

(cc) 10,000,000 dozen during the 1-year period beginning on October 1, 2003.

(dd) 12,000,000 dozen in each succeeding 1-year period through September 30, 2008.

(V) It is the sense of the Congress that the Congress should determine, based on the record of expansion of exports from the United States as a result of the preferential treatment of articles under this clause, the percentage by which the amount provided in subclauses (II) and (IV) should be compounded for the 1-year periods occurring after the 1-year period ending on September 30, 2004.

(iv) CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE. Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.

(II) LIMITATION. During the 1-year period beginning on

October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE. The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL QUANTITIES.—

(I) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA.

(II) At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under subclause (I) if—

(aa) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(bb) the President has obtained advice regarding the

proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(cc) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under division (bb);

(dd) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of division (cc), has expired; and

(ee) the President has consulted with such committees regarding the proposed action during the period referred to in division (cc).

(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of a CBTPA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(vii) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, 'bow buds', decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

(bb) In the case of an article described in clause (ii) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

(II) CERTAIN INTERLINING.—

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the

cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, “hymo” piece, or “sleeve header”, of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries shall not be ineligible for such treatment if the total weight of all such fibers or yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i), (ii), or (ix) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(V) THREAD. An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(viii) TEXTILE LUGGAGE.—Textile luggage—

(I) assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(ix) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA

BENEFICIARY COUNTRIES FROM UNITED STATES AND CBTPA BENEFICIARY COUNTRY COMPONENTS. Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause (i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.

(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (e), during the transition period, the articles to which this subparagraph applies shall enter the United States free of duty and free and any quantitative restrictions, limitations, or consultation levels.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—for purposes of subparagraph (A)(vi) the President shall consult with representatives of the CBTPA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENTS.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from a CBTPA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the CBTPA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the

meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from a CBTPA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term “transition period” in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the CBTPA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

(A) EQUIVALENT TARIFF TREATMENT.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii) the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a CBTPA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) EXCEPTION.—Clause (1) does not apply to any article accorded duty-free treatment under United States Note 2(b) to subchapter 11 of chapter 98 of the HTS.

(iii) CERTAIN FOOTWEAR. Notwithstanding paragraph (1)(B) and

clause (i) of this subparagraph, footwear provided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60, and 6403.99.90 of the HTS shall be eligible for the duty-free treatment provided for under this title if--

(I) the article of footwear is the growth, product, or manufacture of a CBTPA beneficiary country; and

(II) the article otherwise meets the requirements of subsection (a), except that in applying such subsection, "CBTPA beneficiary country" shall be substituted for "beneficiary country" each place it appears.

(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS.--If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (h) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

(4) CUSTOMS PROCEDURES.--

(A) IN GENERAL.--

(i) REGULATIONS.--Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(I) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.--

(I) IN GENERAL.--In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)--

(aa) has implemented and follows; or

(bb) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.--A country is described in this subclause if it is a CBTPA beneficiary country--

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

(B) CERTIFICATE OF ORIGIN.--The Certificate of Origin that otherwise

would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each CBTPA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2001, a report on the study conducted under this subparagraph.

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ANNEX.—The term “the Annex” means Annex 300-B of the NAFTA.

(B) CBTPA BENEFICIARY COUNTRY.—The term “CBTPA beneficiary country” means any “beneficiary country”, as defined in section 212(a)(1)(A) of this title, which the President designates as a CBTPA beneficiary country, taking into account the criteria contained in subsections (b) and (c) of section 212 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of

intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101 (d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974 [19 U.S.C. 2467(6)].

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 [22 U.S.C. 2291j] for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101 (d)(17) of the Uruguay Round Agreements Act [19 U.S.C. 3511(d)(17)]; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(C) CBTPA ORIGINATING GOOD.—

(i) IN GENERAL.—The term “CBTPA originating good” means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of this subsection—

(I) no country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a

CBTPA beneficiary country;

(III) any reference to a party shall be deemed to refer to a CBTPA beneficiary country or the United States;

(IV) any reference to parties shall be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination thereof).

(D) TRANSITION PERIOD.—The term “transition period” means, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of—

(i) September 30, 2008; or

(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in 108(b)(5) of Public Law (103-182) [19 U.S.C. 3317(b)(5)] enters into force with respect to the United States and the CBTPA beneficiary country.

(E) CBTPA.—The term “CBTPA” means the United States-Caribbean Basin Trade Partnership Act.

(F) FTAA.—The term “FTAA” means the Free Trade Area of the Americas.

(c) SUGAR AND BEEF PRODUCTS; STABLE FOOD PRODUCTION PLAN; SUSPENSION OF DUTY-FREE TREATMENT; MONITORING.

(1) As used in this subsection—

(A) The term “sugar and beef products” means—

(i) sugars, sirups, and molasses provided for in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the Harmonized Tariff Schedule of the United States, and

(ii) articles of beef or veal, however provided for in chapters 2 and 16 of the Harmonized Tariff Schedule of the United States.

(B) The term “Plan” means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this title to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef

products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this title;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this title to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—

(A) the beneficiary country, within the 90-day period beginning on the date of its designation as such a country under section 212, does not submit a Plan to the President for evaluation;

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2) (A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

(d) TARIFF-RATE QUOTAS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(e) PROCLAMATIONS SUSPENDING DUTY-FREE TREATMENT.

(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is provided under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] or section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862].

(2) In any report by the International Trade Commission to the President under section 202(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974, determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 203 of the Trade Act of 1974.

(f) PETITIONS TO INTERNATIONAL TRADE COMMISSION.

(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974,

(B) on the day a determination by the President not to take action under section 203 of such Act not to take action becomes final,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term “perishable product” means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheading 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; and

(D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(g) FEES NOT AFFECTED BY PROCLAMATION. No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural

Adjustment Act [7 U.S.C. 624].

(h) DUTY REDUCTION FOR CERTAIN LEATHER-RELATED PRODUCTS.

(1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(A) are the product of any beneficiary country; and

(B) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) The reduction required under paragraph (1) in the rate of duty on any article shall—

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first one-fifth of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(3) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed—

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

SEC. 214. MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS.

(a) [Omitted]

(b) [Omitted]

(c) If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 [26 U.S.C. 7652(c)] is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title. The President shall submit a report to the Congress on the measures he takes. [19 U.S.C. 2703 Other Provisions] (d) Section 1112 of the Trade Agreements Act of 1979 [19 U.S.C. 2582] is repealed.

(e) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico. [19 U.S.C. 1319 Other Provisions]

(f) For purposes of chapter 1 of title II of the Trade Act of 1974, the term “industry” shall include producers located in the United States insular possessions. [19 U.S.C. 2251 Other Provisions]

(g) Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1986) shall not be subject to the requirements of section 301 (other than toxic discharges), section 306 or section 403 of the Federal Water Pollution Control Act if—

(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities. [31 U.S.C. 1113 Other Provisions]

SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT. [19 U.S.C. 2704]

(a) **REPORTING REQUIREMENT.**—

(1) **IN GENERAL.**—The United States International Trade Commission (in this section referred to as the “Commission”) shall submit to Congress and the President, biennial reports regarding the economic impact of this title on United States industries and consumers and on the economy of the beneficiary countries.

(2) **FIRST REPORT.**—The first report shall be submitted not later than September 30, 2001.

(3) **TREATMENT OF PUERTO RICO, ETC.**—For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are considered to be United States industries.

(b) **REQUISITE AREAS OF COMMISSION ASSESSMENT.**

(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific

domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c) **TIME OF SUBMISSION OF REPORTS; PUBLIC PARTICIPATION.**

(1) Each report required under subsection (a) shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 216. IMPACT STUDY BY SECRETARY OF LABOR. [19 U.S.C. 2705] [Omitted; reporting requirement terminated in 2000 by PL 104-66]

SEC. 217. FEASIBILITY STUDY REGARDING A CARIBBEAN TRADE INSTITUTE. [Omitted]

SEC. 218. EFFECTIVE DATE.

(a) Effective date. This subtitle shall take effect on the date of the enactment of this Act [enacted Aug. 5, 1983].

[(b) Repealed.]

SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE. [19 U.S.C. 2707]

(a) **ESTABLISHMENT.**—The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the “Center”). The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) SCOPE OF THE CENTER.—The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine—

- (1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere;
- (2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and
- (3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) CONSULTATION; SELECTION CRITERIA.—The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to—

- (1) the institution's ability to carry out the programs and activities described in this section; and
- (2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) PROGRAMS AND ACTIVITIES.—The Center shall conduct the following activities:

- (1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.
- (2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.
- (3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.
- (4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.
- (5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center.
- (6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center [Dante B. Fascell North-South Center] at the University of Miami at Coral

Gables.

(e) DEFINITIONS.—For purposes of this section—

(1) NAFTA.—The term “NAFTA” means the North American Free Trade Agreement.

(2) WESTERN HEMISPHERE COUNTRIES.—The terms “Western Hemisphere countries”, “countries in the Western Hemisphere”, and “Western Hemisphere” means Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(f) FEES FOR SEMINARS AND PUBLICATIONS.—Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

(g) DURATION OF GRANT.—The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

(h) REPORT.—The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

(1) a statement identifying the institution or institutions selected as the Center;

(2) the reasons for selecting the institution or institutions as the Center; and

(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.

SUBTITLE B—TAX PROVISIONS

SEC. 221. PAYMENT OF EXCISE TAXES COLLECTED ON RUM TO PUERTO RICO AND THE UNITED STATES VIRGIN ISLANDS.

[Adds section 7652(e) of the Internal Revenue Code of 1954 [26 U.S.C. 7652] (relating to excise taxes on shipments of rum to the United States), applicable to articles imported into the United States after June 30, 1983:

[“(e) SHIPMENTS OF RUM TO THE UNITED STATES.—

[“(1) EXCISE TAXES ON RUM COVERED INTO TREASURIES OF PUERTO RICO AND VIRGIN ISLANDS.—All taxes collected under section 5001(a)(1) on rum imported

into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

[“(2) SECRETARY PRESCRIBES FORMULA.—The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

[“(3) RUM DEFINED.—For purposes of this subsection, the term ‘rum’ means any article classified under subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[“(4) COORDINATION WITH SUBSECTIONS (a) AND (b).—Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).”.]

SEC. 222. TREATMENT OF CARIBBEAN CONVENTIONS, ETC.

[Adds section 274(h)(6) of the Internal Revenue Code of 1954 [26 U.S.C. 274] (relating to attendance at conventions in certain Caribbean countries), applicable to conventions, seminars, or other meetings beginning after June 30, 1983:

[“(6) TREATMENT OF CONVENTIONS IN CERTAIN CARIBBEAN COUNTRIES.—

[“(A) IN GENERAL.—For purposes of this subsection, the term ‘North American area’ includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

[“(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

[“(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

[“(B) BENEFICIARY COUNTRY.—For purposes of this paragraph, the term ‘beneficiary country’ has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

[“(C) Authority to conclude exchange of information agreements.—

[“(i) IN GENERAL.—The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country

such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

[“(ii) NONDISCLOSURE OF QUALIFIED CONFIDENTIAL INFORMATION SOUGHT FOR CIVIL TAX PURPOSES.—An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

[“(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

[“(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

[“(iii) QUALIFIED CONFIDENTIAL INFORMATION DEFINED.—For purposes of this subparagraph, the term ‘qualified confidential information’ means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

[“(iv) CIVIL TAX PURPOSES.—For purposes of this subparagraph, the determination of whether information is sought only for civil purposes shall be made by the requesting party.

[“(D) COORDINATION WITH OTHER PROVISIONS. Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

[“(E) DETERMINATIONS PUBLISHED IN THE FEDERAL REGISTER. The following shall be published in the Federal Register—

[(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

[(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

[(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).]

SEC. 223. REPORT WITH RESPECT TO USE OF CARIBBEAN BASIN TAX HAVENS.
[Omitted]

Caribbean Basin Economic Recovery Expansion Act of 1990 (CBI II)

[20 U.S.C. 226; Public Law 101-382; title II]

SUBTITLE C—SCHOLARSHIP ASSISTANCE AND TOURISM PROMOTION

SEC. 231. COOPERATIVE PUBLIC AND PRIVATE SECTOR PROGRAM FOR PROVIDING SCHOLARSHIPS TO STUDENTS FROM THE CARIBBEAN AND CENTRAL AMERICA. [20 U.S.C. 226]

(a) **STATEMENT OF PURPOSE.**—It is the purpose of this section to encourage the establishment of partnerships between State governments, universities, community colleges, and businesses to support scholarships for talented socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States in order to—

(1) improve the diversity and quality of educational opportunities for such students;

(2) assist the development efforts of eligible countries by providing training and educational assistance to persons who can help address the social and economic needs of these countries;

(3) expand opportunities for cross-cultural studies and exchanges and improve the exchange of understanding and principles of democracy;

(4) promote positive and productive relationships between the United States and its neighbor countries in the Caribbean and Central American regions;

(5) give added visibility and focus to the “scholarship diplomacy” efforts of the United States Government by leveraging the monies available for this purpose through the development of partnerships among Federal, State, and local governments and the business and academic communities; and

(6) promote community involvement with the scholarship program as a tool for broadening and strengthening the “American experience” for foreign students.

(b) **ESTABLISHMENT OF SCHOLARSHIP PROGRAM.**—The Administrator of the Agency for International Development shall establish and administer a program of scholarship assistance, in cooperation with State governments, universities, community colleges, and businesses, to provide scholarships to enable socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States.

(c) **GRANTS TO STATES.**—In carrying out this section, the Administrator may make grants to States to provide scholarship assistance for undergraduate degree programs and for training programs of one year or longer in study areas related to the critical development needs of the students' respective countries.

(d) AGREEMENT WITH STATES.—The Administrator and each participating State shall agree on a program regarding the educational opportunities available within the State, the selection and assignment of scholarship recipients, and related issues. To the maximum extent practicable, each State shall be given flexibility in designing its program.

(e) FEDERAL SHARE.—The Federal share for each year for which a State receives payments under this section shall be not less than 50 percent.

(f) NON-FEDERAL SHARE.—The non-Federal share of payments under this section may be in cash, including the waiver of tuition or the offering of in-State tuition or housing waivers or subsidies, or in-kind fairly evaluated, including the provision of books or supplies.

(g) FORGIVENESS OF SCHOLARSHIP ASSISTANCE.—The obligation of any recipient to reimburse any entity for any or all scholarship assistance provided under this section shall be forgiven upon the recipient's prompt return to his or her country of domicile for a period which is at least one year longer than the period spent studying in the United States with scholarship assistance.

(h) PRIVATE SECTOR PARTICIPATION.—To the maximum extent practicable, each participating State shall enlist the assistance of the private sector to enable the State to meet the non-Federal share of payments under this section. Wherever appropriate, each participating State shall encourage the private sector to offer internships or other opportunities consistent with the purposes of this section to students receiving scholarships under this section.

(i) FUNDING.—Any funds used in carrying out this section shall be derived from funds allocated for Latin American and Caribbean regional programs under chapter 4 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2346 and following; relating to the economic support fund].

(j) DEFINITIONS.—As used in this section—

(1) The term “eligible country” means any country—

(A) which is receiving assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 and following; relating to development assistance] or chapter 4 of part II of that Act; and

(B) which is designated by the President as a beneficiary country pursuant to the Caribbean Basin Economic Recovery Act.

(2) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 233. PILOT PRECLEARANCE PROGRAM. [Omitted; program expired in 1994]

**Section 423 of the Tax Reform Act of 1986, as amended
(Treatment of Imports of Ethyl Alcohol)**

[19 U.S.C. 2703 note; Public Law 99-514, as amended by Public Law 100-418, Public Law 101-221, Public Law 101-382, Public Law 101-508, and Public Law 105-178]

SEC. 423. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.

(a) **IN GENERAL.**—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

(1) for purposes of general headnote 3(a) of the Tariff Schedules of the United States [currently General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States], to be—

- (A) the growth or product of an insular possession of the United States,
- (B) manufactured or produced in an insular possession from materials which are the growth, product, or manufacture of any such possession, or
- (C) otherwise eligible for exemption from duty under such headnote as the growth or product of an insular possession; or

(2) for purposes of section 213 of the Caribbean Basin Economic Recovery Act, to be—

- (A) an article that is wholly the growth, product, or manufacture of a beneficiary country,
- (B) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country,
- (C) a material produced in a beneficiary country, or
- (D) otherwise eligible for duty-free treatment under such Act as the growth, product, or manufacture of a beneficiary country; unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

(b) **EXCEPTION.**—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987, 1988, and 1989 and produced in—

- (A) an azeotropic distillation facility located in a beneficiary country, if that facility was established before, and in operation on, July 1, 1987,
- (B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

- (I) produced in the United States, and
- (II) owned by a corporation at least 50 percent of the total value of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

- (I) located in the United States under the possession or control of such corporation,
- (II) ready for shipment to, and installation in, a beneficiary country or an insular possession of the United States, and

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act), a stated capacity to produce not more than 42,000,000 gallons of such product per year, or

(C) a distillation facility operated by a corporation which, before the date of enactment of the Omnibus Trade Act of 1987—

(i) has completed engineering and design of a full-scale fermentation facility in the United States Virgin Islands, and

(ii) has obtained authorization from authorities of the United States Virgin Islands to operate a full-scale fermentation facility.

(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987, 1988, and 1989 to ethyl alcohol produced in a facility described in subparagraph (A), (B), or (C) of paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

(c) DEFINITIONS.—For purposes of this section—

(1) The term “ethyl alcohol or a mixture thereof” means (except for purposes of subsection (e)) ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States [currently heading 9901.00.50 of the HTS].

(2) Ethyl alcohol or a mixture thereof that is produced by a process of full fermentation in an insular possession or beneficiary country shall be treated as being an indigenous product of that possession or country.

(3)(A) Ethyl alcohol and mixtures thereof that are only dehydrated within an insular possession or beneficiary country (hereinafter in this paragraph referred to as “dehydrated alcohol and mixtures”) shall be treated as being indigenous products of that possession or country only if the alcohol or mixture, when entered, meets the applicable local feedstock requirement.

(B) The local feedstock requirement with respect to any calendar year is—

(i) 0 percent with respect to the base quantity of dehydrated alcohol and mixtures that is entered;

(ii) 30 percent with respect to the 35,000,000 gallons of dehydrated alcohol and mixtures next entered after the base quantity; and

(iii) 50 percent with respect to all dehydrated alcohol and mixtures entered after the amount specified in clause (ii) is entered.

(C) For purposes of this paragraph:

(i) The term “base quantity” means, with respect to dehydrated alcohol and mixtures entered during any calendar year, the greater of—

(I) 60,000,000 gallons; or

(II) an amount (expressed in gallons) equal to 7 percent of the United States domestic market for ethyl alcohol, as determined by the United States International Trade Commission, during the 12-month period ending on the preceding September 30; that is first entered during that calendar year.

(ii) The term "local feedstock" means hydrous ethyl alcohol which is wholly produced or manufactured in any insular possession or beneficiary country.

(iii) The term "local feedstock requirement" means the minimum percent, by volume, of local feedstock that must be included in dehydrated alcohol and mixtures.

(4) The term "beneficiary country" has the meaning given to such term under section 212 of the Caribbean Basin Economic Recovery Act [19 U.S.C. 2702].

(5) The term "United States person" has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986.

(6) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(d) AMENDMENT TO APPENDIX TO SCHEDULES.—[Former item 901.50 of the Appendix to the Tariff Schedules of the United States is currently heading 9901.00.50 of the HTS, which reads as follows: "Ethyl alcohol (provided for in subheadings 2207.10.60 and 2207.20) or any mixture containing such ethyl alcohol (provided for in heading 2710 or 3824) if such ethyl alcohol or mixture is to be used as a fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in subheading 2710.11.15, 2710.19.15 or 2710.19.21), or is suitable for any such uses.]

(e) DRAWBACKS.—

(1) For purposes of subsections (b) and (j)(2) of section 313 of the Tariff Act of 1930 [19 U.S.C. 1313], as amended by section 1888(2) of this Act, any ethyl alcohol [currently provided for in subheadings 2207.10.60 and 2207.20 of the HTS] or mixture containing such ethyl alcohol [currently provided for in heading 2710 or 3824 of the HTS] which is subject to the additional duty imposed by [heading 9901.00.50 of the HTS] may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol [currently provided for in subheadings 2207.10.60 and 2207.20 of the HTS] or mixture containing such ethyl alcohol [heading 2710 or 3824 of the HTS] only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

(2) Paragraph (1) shall not apply with respect to ethyl alcohol [currently provided for in subheadings 2207.10.60 and 2207.20 of the HTS] or mixture containing such ethyl alcohol [currently provided for in heading 2710 or 3824 of the HTS] that is exempt from the additional duty imposed by [heading 9901.00.50 of the HTS] by reason of—

- (A) subsection (b), or
- (B) any agreement entered into under section 102(b) of the Trade Act of 1974.
- (f) CONFORMING AMENDMENTS. [Omitted]
- (g) EFFECTIVE PERIOD.—
 - (1) The provisions of, and the amendments made by, this section (other than subsection (e)) shall apply to articles entered—
 - (A) after December 31, 1986, and
 - (B) before the expiration of the effective period of [heading 9901.00.50 of the HTS; currently 10/01/2007].
 - (2) The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

General Note 7(a) of the Harmonized Tariff Schedule

Products of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA).

(a) The following countries and territories or successor political entities are designated beneficiary countries for the purposes of the CBERA, pursuant to section 212 of that Act (19 U.S.C. 2702):

Antigua and Barbuda
Aruba
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Kitts and Nevis

Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Virgin Islands, British

General note 17(a) of the Harmonized Tariff Schedule

Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act (CBTPA).

(a) The Caribbean Basin countries that will be enumerated in this note in a Federal Register notice by the United States Trade Representative, having previously been designated by the President pursuant to section 211 of the CBTPA, shall be treated as beneficiary countries for purposes of this note on and after the effective date announced in such notice. The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

Barbados
Belize
Costa Rica
Dominican Republic
El Salvador
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Trinidad and Tobago

E. ANDEAN INITIATIVE

Andean Trade Preference Act, as amended

[19 U.S.C. 3201-3202; Public Law 102-182, title II, as amended by Public Law 102-583, Public Law 103-465, and Public Law 104-188, and Public Law 106-200, and Public Law 107-210, and Public Law 108-429]

SEC. 201. SHORT TITLE.

This title may be cited as the "Andean Trade Preference Act".

SEC. 202. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment (or other preferential treatment) for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 203. BENEFICIARY COUNTRY.

(a) DEFINITIONS.—For purposes of this title—

(1) The term "beneficiary country" means any country listed in subsection (b)(1) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title.

(2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(b) COUNTRIES ELIGIBLE FOR DESIGNATION; CONGRESSIONAL NOTIFICATION.—

(1) In designating countries as beneficiary countries under this title, the President shall consider only the following countries or successor political entities:

Bolivia
Ecuador
Colombia
Peru.

(2) Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(c) LIMITATIONS ON DESIGNATION.—The President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a U.S. citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. citizens,

(B) has taken steps to repudiate or nullify—

- (i) any existing contract or agreement with, or
 - (ii) any patent, trademark, or other intellectual property of, a U.S. citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by U.S. citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
- (C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—
- (i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,
 - (ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
 - (iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and
- promptly furnishes a copy of such determination to the Senate and House of Representatives;
- (3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by U.S. citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;
- (4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on U.S. commerce, unless the President—
- (A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and
 - (B) reports those assurances to the Congress;
- (5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to U.S. copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of U.S. citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(d) FACTORS AFFECTING DESIGNATION.—In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to protect its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to U.S. copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102-583] of the Foreign Assistance Act of 1961 for eligibility for U.S. assistance;

and

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

(e) WITHDRAWAL OR SUSPENSION OF DESIGNATION.—(1) (A) The President may—

(i) withdraw or suspend the designation of any country as a beneficiary country, or

(ii) withdraw, suspend, or limit the application of duty-free treatment under this title to any article of any country, if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(B) The President may, after the requirements of paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as an ATPDEA beneficiary country, or

(ii) withdraw, suspend, or limit then application of preferential treatment under 204(b)(1), (3), or (4) to any article of any country if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(6)(B).

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) REPORTING REQUIREMENTS.—

(1) In general. Not later than April 30, 2003, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to the Congress a report regarding the operation of this title, including--

(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or ATPEA [ATPDEA] beneficiary country, as the case may be, under the criteria set forth in

section 204(b)(6)(B).

(2) Public comment. Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(6)(B).

SEC. 204. ELIGIBLE ARTICLES.

(a) IN GENERAL.—(1) Unless otherwise excluded from eligibility by this title, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of—

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this Act, or a beneficiary country under the Caribbean Basin Economic Recovery Act or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this Act or the Caribbean Basin Economic Recovery Act),

is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term “beneficiary country” includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such U.S. cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out paragraph (1) including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase “direct costs of processing operations” includes, but is not limited to—

(A) all actual labor costs involved in the growth, production,

manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as

(i) profit, and (ii) general expense of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest, and salesmen's salaries, commissions or expenses.

(4) If the President, pursuant to section 223 of the Caribbean Basin Economic Recovery Expansion Act of 1990, considers that the implementation of revised rules of origin for products of beneficiary countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) would be appropriate, the President may include similarly revised rules of origin for products of beneficiary countries designated under this title in any suggested legislation transmitted to the Congress that contains such rules of origin for products of beneficiary countries under the Caribbean Basin Economic Recovery Act.

(b) EXCEPTIONS AND SPECIAL RULES. --

(1) CERTAIN ARTICLES THAT ARE NOT IMPORT-SENSITIVE.-- The President may proclaim duty-free treatment under this title for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of this section, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries:

(A) Footwear not designated at the time of the effective date of this title as eligible for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(B) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS.

(C) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply.

(D) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) EXCLUSIONS. — Subject to paragraph (3), duty-free treatment under this title may not be extended to—

(A) textiles and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) rum and tafia classified in subheading 2208.40 of the HTS;

(C) sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(D) tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

(A) IN GENERAL.— Apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if such articles are described in subparagraph (B).

(B) COVERED ARTICLES.— The apparel articles referred to in subparagraph (A) are the following:

(i) Apparel articles assembled from products of the United States or ATPDEA beneficiary countries or products not available in commercial quantities. Apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

(I) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(II) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in 1 or more ATPDEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary

countries) or components are in chief value of llama, alpaca, or vicuna.

(III) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

(ii) ADDITIONAL FABRICS. — At the request of any interested party, the President is authorized to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) if--

(I) the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 and the United States International Trade Commission;

(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such action, and the advice obtained under subclause (II);

(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).

(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—

(I) Subject to the limitation set forth in subclause (II), apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made

exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)).

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the 4 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term "applicable percentage" means 2 percent for the 1-year period beginning October 1, 2002, increased in each of the 4 succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2006, the applicable percentage does not exceed 5 percent.

(iv) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.— A handloomed, handmade, or folklore article of an ATPDEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(v) CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE.— Any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), or (iv), if the article is both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both.

(II) LIMITATION.— During the 1-year period beginning on October 1, 2003, and during each of the 3 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.— The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service

finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under this paragraph during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(vi) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.— An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products.

(II) CERTAIN INTERLINING.—

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.— An article that would otherwise be ineligible for preferential treatment under this subparagraph because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries shall not be ineligible for such treatment if the total weight of all

such yarns is not more than 7 percent of the total weight of the good.

(IV) SPECIAL ORIGIN RULE.— An article otherwise eligible for preferential treatment under clause (i) or (iii) shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(vii) TEXTILE LUGGAGE.—

(I) assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.— For purposes of subparagraph (B)(iv), the President shall consult with representatives of the ATPDEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENT.—

(i) PENALTIES FOR EXPORTERS.— If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to apparel articles from an ATPDEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.— Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPDEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United

States under the WTO.

(iii) **TRANSSHIPMENT DESCRIBED.**— Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (A) has been claimed for an apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (A).

(E) **BILATERAL EMERGENCY ACTIONS.**—

(i) In general. The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPDEA beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) **RULES RELATING TO BILATERAL EMERGENCY ACTION.**— For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term "transition period" in section 4 of the Annex shall mean the period ending December 31, 2006; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPDEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4 of the Annex.

(4) **TUNA.**—

(A) **GENERAL RULE.**— Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, shall enter the United States free of duty and free of any quantitative restrictions.

(B) **DEFINITIONS.**— In this paragraph—

(i) **UNITED STATES VESSEL.**— A "United States vessel" is—

(I) a vessel that has a certificate of documentation with a

fishery endorsement under chapter 121 of title 46, United States Code, or

(II) in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

(ii) ATPDEA vessel. An "ATPDEA vessel" is a vessel--

(I) which is registered or recorded in an ATPDEA beneficiary country;

(II) which sails under the flag of an ATPDEA beneficiary country;

(III) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(IV) of which the master and officers are nationals of an ATPDEA beneficiary country; and

(V) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

(5) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.— Any importer that claims preferential treatment under paragraph (1), (3), or (4) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.— In order to qualify for the preferential treatment under paragraph (1), (3), or (4) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows, or

(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to

the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.— A country is described in this subclause if it is an ATPDEA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (1), (3), or (4).

(B) CERTIFICATE OF ORIGIN.— The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (1), (3), or (4) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT ON COOPERATION OF ATPDEA COUNTRIES CONCERNING CIRCUMVENTION.— The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPDEA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Commissioner of Customs shall submit to the Congress, not later than October 1, 2003, a report on the study conducted under this subparagraph.

(6) DEFINITIONS. — In this subsection—

(A) ANNEX. — The term "the Annex" means Annex 300-B of the NAFTA.

(B) ATPDEA BENEFICIARY COUNTRY. The term "ATPDEA beneficiary country" means any "beneficiary country", as defined in section 203(a)(1) of this title, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

(v) The extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act and

(II) contributes to efforts in international fora to develop and

implement international rules in transparency in government procurement.

(viii) The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

(C) NAFTA.— The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(D) WTO.— The term "WTO" has the meaning given that term in section 2 of the Uruguay Round Agreements Act .

(E) ATPDEA.— The term "ATPDEA" means the Andean Trade Promotion and Drug Eradication Act.

(F) FTAA.— The term "FTAA" means the Free Trade Area for the Americas.

(c) SUSPENSION OF DUTY-FREE TREATMENT.—(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 1 of title II of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the U.S. International Trade Commission to the President under section 202(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation providing solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 unless the U.S. International Trade Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974, determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 that is in effect when duty-free treatment is proclaimed under section 202 of this title shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed under section 202 of this title, the President may reduce or terminate the application of such action to the importation of

such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 204 of the Trade Act of 1974.

(d) EMERGENCY RELIEF WITH RESPECT TO PERISHABLE PRODUCTS.—(1) If a petition is filed with the U.S. International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974,

(B) on the day a determination by the President not to take action under section 203(b)(2) of such Act becomes final,

(C) in the event of a report of the U.S. International Trade Commission containing a negative finding, on the day of the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term “perishable product” means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90

(except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS;
or

(D) concentrated citrus fruit juice provided for in sub-headings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(e) SECTION 22 FEES.—No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

(f) TARIFF-RATE QUOTAS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this Act.

SEC. 205. RELATED AMENDMENTS.

[(a) Amendment to Note 4 to subchapter IV of chapter 98 of the HTS relating to duty-free tourist allowances.

[(b) Amendment to general note 3(a)(iv) of the HTS relating to products of the insular possessions (reprinted elsewhere).]

SEC. 206. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ANDEAN TRADE PREFERENCE ACT.

(a) REPORTING REQUIREMENTS.

(1) The U.S. International Trade Commission (hereinafter in this section referred to as the “Commission”) shall prepare, and submit to the Congress, a report regarding the economic impact of this title on U.S. industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during—

(2) During the period that this title is in effect, the report required by paragraph (1) shall be submitted on December 31 of each year that the report required by section 215 of the Caribbean Basin Economic Recovery Act is not submitted.

(3) For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be U.S. industries.

(b) REPORT REQUIREMENTS.—(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this title on the U.S. economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

(B) the probable future effect that this title will have on the U.S. economy generally, as well as on such domestic industries, before the provisions of this title terminate; and

(C) the estimated effect that this title has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of U.S. products affected by this title, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this title.

(c) **SUBMISSION DATES; PUBLIC COMMENT.**—(1) Each report required under subsection (a) shall be submitted to the Congress before the close of the 9-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 207. IMPACT STUDY BY SECRETARY OF LABOR.

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this title has with respect to U.S. labor; and shall make an annual written report to Congress on the results of such review and analysis.

SEC. 208. TERMINATION OF PREFERENTIAL TREATMENT

No duty-free treatment extended to beneficiary countries under this title shall remain in effect after December 31, 2006.

F. AFRICAN GROWTH AND OPPORTUNITY ACT

[19 U.S.C. 2466a;2466b, 3701-3706, 3722-3723; Public Law 106-200, Public Law 107-210, Public Law 108-429, and Public Law 108-274]

**TRADE ACT OF 1974
GENERALIZED SYSTEM OF PREFERENCES**

[Excerpts]

SEC. 506A. DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.

(a) AUTHORITY TO DESIGNATE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

(2) MONITORING AND REVIEW OF CERTAIN COUNTRIES.—The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act.

(3) CONTINUING COMPLIANCE.—If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES.—

(1) IN GENERAL.—The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a), if after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) RULES OF ORIGIN.—The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 503(a)(2), except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such U.S. cost or value may be applied toward determining the percentage referred to in subparagraph (A)

of section 503(a)(2); and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(c) **BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC.**—For purposes of this title— (1) the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.

(2) the term “former beneficiary sub-Saharan African country” means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

SEC. 506B. TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES.

In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2015.

AFRICAN GROWTH AND OPPORTUNITY ACT, as amended

Title I—Extension of Certain Trade Benefits to Sub-Saharan Africa

SUBTITLE A—TRADE POLICY FOR SUB-SAHARAN AFRICA

SEC. 101. SHORT TITLE.

This title may be cited as the “African Growth and Opportunity Act”.

SEC. 102. FINDINGS.

Congress finds that—

(1) it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa;

(2) the 48 countries of sub-Saharan Africa form a region richly endowed with both natural and human resources;

(3) sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States;

(4) the region has experienced the strengthening of democracy as countries in sub-Saharan Africa have taken steps to encourage broader participation in the political process;

(5) certain countries in sub-Saharan Africa have increased their economic growth rates, taken significant steps towards liberalizing their economies, and made progress toward regional economic integration that can have positive benefits for the region;

(6) despite those gains, the per capita income in sub-Saharan Africa averages

approximately \$500 annually;

(7) trade and investment, as the American experience has shown, can represent powerful tools both for economic development and for encouraging broader participation in a political process in which political freedom can flourish;

(8) increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families;

(9) offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct investment in support of the positive economic and political developments under way throughout the region; and

(10) encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

SEC. 103. STATEMENT OF POLICY.

Congress supports—

(1) encouraging increased trade and investment between the United States and sub-Saharan Africa;

(2) reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and U.S. trade;

(3) expanding U.S. assistance to sub-Saharan Africa's regional integration efforts;

(4) negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa;

(5) focusing on countries committed to the rule of law, economic reform, and the eradication of poverty;

(6) strengthening and expanding the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses;

(7) facilitating the development of civil societies and political freedom in sub-Saharan Africa,

(8) establishing a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum; and

(9) the accession of the countries in sub-Saharan Africa to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

SEC. 104. ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—The President is authorized to designate a sub-Saharan African

country as an eligible sub-Saharan African country if the President determines that the country—

(1) has established, or is making continual progress toward establishing—

(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(C) the elimination of barriers to U.S. trade and investment, including by—

(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

(ii) the protection of intellectual property; and

(iii) the resolution of bilateral trade and investment disputes;

(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;

(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(2) does not engage in activities that undermine U.S. national security or foreign policy interests; and

(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) CONTINUING COMPLIANCE.—If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).

SEC. 105. UNITED STATES-SUB-SAHARAN AFRICA TRADE AND ECONOMIC COOPERATION FORUM.

(a) DECLARATION OF POLICY.—The President shall convene annual high-level meetings between appropriate officials of the U.S. Government and officials of the governments of sub-Saharan African countries in order to foster close economic ties between the United States and sub-Saharan Africa.

(b) ESTABLISHMENT.—Not later than 12 months after the date of the enactment of this Act, the President, after consulting with Congress and the governments concerned, shall establish a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum (in this section referred to as the “Forum”).

(c) REQUIREMENTS.—In creating the Forum, the President shall meet the following requirements:

(1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps towards meeting the eligibility requirements in section 104. The purpose of the meeting shall be to discuss expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this title including encouraging joint ventures between small and large businesses. The President shall also direct the Secretaries and the United States Trade Representative to invite to the meeting representatives from appropriate sub-Saharan African regional organizations and government officials from other appropriate countries in sub-Saharan Africa.

(2)(A) The President, in consultation with the Congress, shall encourage U.S. nongovernmental organizations to host annual meetings with nongovernmental organizations from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(B) The President, in consultation with the Congress, shall encourage U.S. representatives of the private sector to host annual meetings with representatives of the private sector from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(3) The President shall, to the extent practicable, meet with the heads of governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 104, not less than once every 2 years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than 12 months after the date of the enactment of this Act.

(d) DISSEMINATION OF INFORMATION BY USIS.—In order to assist in carrying out the purposes of the Forum, the U.S. Information Service shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this title.

(e) HIV/AIDS EFFECT ON THE SUB-SAHARAN AFRICAN WORKFORCE.—In selecting issues of common interest to the United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, the President shall instruct the U.S. delegates to the

Forum to promote a review by the Forum of the HIV/AIDS epidemic in each sub-Saharan African country and the effect of the HIV/AIDS epidemic on economic development in each country.

SEC. 106. REPORTING REQUIREMENT.

The President shall submit to the Congress, not later than 1 year after the date of the enactment of this Act, and annually thereafter through 2008, a comprehensive report on the trade and investment policy of the United States for sub-Saharan Africa, and on the implementation of this title and the amendments made by this title.

SEC. 107. SUB-SAHARAN AFRICA DEFINED.

For purposes of this title, the terms “sub-Saharan Africa”, “sub-Saharan African country”, “country in sub-Saharan Africa”, and “countries in sub-Saharan Africa” refer to the following or any successor political entities:

- Republic of Angola (Angola).
- Republic of Benin (Benin).
- Republic of Botswana (Botswana).
- Burkina Faso (Burkina).
- Republic of Burundi (Burundi).
- Republic of Cameroon (Cameroon).
- Republic of Cape Verde (Cape Verde).
- Centreal African Republic.
- Republic of Chad (Chad).
- Federal Islamic Republic of the Comoros (Comoros).
- Democratic Republic of Congo.
- Republic of the Congo (Congo).
- Republic of Cote d'Ivoire (Cote d'Ivoire).
- Republic of Djibouti (Djibouti).
- Republic of Equatorial Guinea (Equatorial Guinea).
- State of Eritrea (Eritrea).
- Ethiopia
- Gabonese Republic (Gabon).
- Republic of the Gambia (Gambia).
- Republic of Ghana (Ghana).
- Republic of Guinea (Guinea).
- Republic of Guinea-Bissau (Guinea-Bissau).
- Republic of Kenya (Kenya).
- Kingdom of Lesotho (Lesotho).
- Republic of Liberia (Liberia).
- Republic of Madagascar (Madagascar).
- Republic of Malawi (Malawi).
- Republic of Mali (Mali).
- Islamic Republic of Mauritania (Mauritania).
- Republic of Mauritius (Mauritius).
- Republic of Mozambique (Mozambique).
- Republic of Namibia (Namibia).
- Republic of Niger (Niger).
- Federal Republic of Nigeria (Nigeria).
- Republic of Rwanda (Rwanda).
- Democratic Republic of Sao TomeAEI and Principe (Sam TomeAEI and Principe).
- Republic of Senegal (Senegal).
- Republic of Seychelles (Seychelles).

Republic of Sierra Leone (Sierra Leone).
Somalia.
Republic of South Africa (South Africa).
Republic of Sudan (Sudan).
Kingdom of Swaziland (Swaziland).
United Republic of Tanzania (Tanzania).
Republic of Togo (Togo).
Republic of Uganda (Uganda).
Republic of Zambia (Zambia).
Republic of Zimbabwe (Zimbabwe).

SUBTITLE B—TRADE BENEFITS

SEC. 111. ELIGIBILITY FOR CERTAIN BENEFITS.

[Adds new section 506A to Title V of the Trade Act of 1974, reprinted above]

SEC. 112. TREATMENT OF CERTAIN TEXTILES AND APPAREL.

(a) Preferential treatment. Textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the Trade Act of 1974, shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113.

(b) Products covered. The preferential treatment described in subsection (a) shall apply only to the following textile and apparel products:

(1) Apparel articles assembled in one or more beneficiary sub-Saharan African countries. Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are—

(A) entered under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(B) entered under chapter 61 or 62 of the Harmonized Tariff Schedule of the United States, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, leaching, garment-dyeing, screen printing, or other similar processes.

(2) Other apparel articles assembled in one or more beneficiary sub-Saharan African countries. Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the

United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States).

(3) Apparel articles from regional fabric or yarns. Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)), subject to the following:

(A) Limitations on benefits.

(i) In general. Preferential treatment under this paragraph shall be extended in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(ii) Applicable percentage. For purposes of this subparagraph, the term "applicable percentage" means—

(I) 4.747 percent for the 1-year period beginning October 1, 2003, increased in each of the 5 succeeding 1-year periods by equal increments, so that for the 1-year period beginning October 1, 2007, the applicable percentage does not exceed 7 percent; and

(II) for each succeeding 1-year period until September 30, 2015, not to exceed 7 percent.

(B) Special rule for lesser developed countries.

(i) In general. Preferential treatment under this paragraph shall be

extended though September 30, 2007, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(ii) Applicable percentage. For purposes of the subparagraph, the term "applicable percentage" means—

(I) 2.3571 percent for the 1-year period beginning October 1, 2003;

(II) 2.6428 percent for the 1-year period beginning October 1, 2004;

(III) 2.9285 percent for the 1-year period beginning October 1, 2005; and

(IV) 1.6071 percent for the 1-year period beginning October 1, 2006.

(iii) Lesser developed beneficiary sub-saharan african country. For purposes of this subparagraph, the term "lesser developed beneficiary sub-Saharan African country" means—

(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than \$ 1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

(II) Botswana; and

(III) Namibia.

(iv) Separate limitation for Mauritius. For the 1-year period beginning October 1, 2004—

(I) the term "lesser developed beneficiary sub-Saharan African country" includes Mauritius; and

(II) the applicable percentage with respect to Mauritius shall be 5 percent of the applicable percentage described in clause (ii)(II).

(C) Surge mechanism.

(i) Import monitoring. The Secretary of Commerce shall monitor imports of articles described in this paragraph on a monthly basis to determine if there has been a surge in imports of such articles. In order to permit public access to preliminary international trade data and to facilitate the early identification of potentially disruptive import surges, the Director of the Office of Management and Budget may grant an exception to the publication dates established for the release of data on United States international trade in covered articles,

if the Director notifies Congress of the early release of the data.

(ii) Determination of damage or threat thereof. Whenever the Secretary of Commerce determines, based on the data described in clause (i), or pursuant to a written request made by an interested party, that there has been a surge in imports of an article described in this paragraph from a beneficiary sub-Saharan African country, the Secretary shall determine whether such article from such country is being imported in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing a like or directly competitive article. If the Secretary's determination is affirmative, the President shall suspend the duty-free treatment provided for such article under this paragraph. If the inquiry is initiated at the request of an interested party, the Secretary shall make the determination within 60 days after the date of the request.

(iii) Factors to consider. In determining whether a domestic industry has been seriously damaged, or is threatened with serious damage, the Secretary shall examine the effect of the imports on relevant economic indicators such as domestic production, sales, market share, capacity utilization, inventories, employment, profits, exports, prices, and investment.

(iv) Procedure.

(I) Initiation. The Secretary of Commerce shall initiate an inquiry within 10 days after receiving a written request and supporting information for an inquiry from an interested party. Notice of initiation of an inquiry shall be published in the Federal Register.

(II) Participation by interested parties. The Secretary of Commerce shall establish procedures to ensure participation in the inquiry by interested parties.

(III) Notice of determination. The Secretary shall publish the determination described in clause (ii) in the Federal Register.

(IV) Information available. If relevant information is not available on the record or any party withholds information that has been requested by the Secretary, the Secretary shall make the determination on the basis of the facts available. When the Secretary relies on information submitted in the inquiry as facts available, the Secretary shall, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Secretary.

(v) Interested party. For purposes of this subparagraph, the term "interested party" means any producer of a like or directly competitive article, a certified union or recognized union or group of workers which is representative of an industry engaged in the

manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles, a certified union or group of workers which is representative of an industry engaged in the manufacture, production, or sale of essential inputs for the like or directly competitive article, or a trade or business association representing companies engaged in the manufacture, production, or sale of such essential inputs.

(4) Sweaters knit-to-shape from cashmere or merino wool.

(A) Cashmere. Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the Harmonized Tariff Schedule of the United States.

(B) Merino wool. Sweaters, 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

(5) Apparel articles wholly assembled from fabric or yarn not available in commercial quantities in the United States.

(A) In general. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 to the NAFTA.

(B) Additional apparel articles. At the request of any interested party and subject to the following requirements, the President is authorized to proclaim the treatment provided under subparagraph (A) for yarns or fabrics not described in subparagraph (A) if—

(i) the President determines that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(ii) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 and the United States International Trade Commission;

(iii) within 60 calendar days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(I) the action proposed to be proclaimed and the reasons for such action; and

(II) the advice obtained under clause (ii);

- (iv) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclauses (I) and (II) of clause (iii), has expired; and
 - (v) the President has consulted with such committees regarding the proposed action during the period referred to in clause (iii).
- (6) Handloomed, handmade, folklore articles and ethnic printed fabrics.
- (A) In general. A handloomed, handmade, folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this section, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles or an ethnic printed fabric.
 - (B) Requirements for ethnic printed fabric. Ethnic printed fabrics qualified under this paragraph are—
 - (i) fabrics containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the Harmonized Tariff Schedule of the United States;
 - (ii) of the type that contains designs, symbols, and other characteristics of African prints—
 - (I) normally produced for and sold on the indigenous African market; and
 - (II) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;
 - (iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and
 - (iv) fabrics formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African country from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries.
- (7) Apparel articles assembled in one or more beneficiary sub-Saharan African countries from United States and beneficiary sub-Saharan African country components. Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under

heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).

(c) Treatment of quotas on textile and apparel imports from Kenya and Mauritius. The President shall eliminate the existing quotas on textile and apparel articles imported into the United States—

(1) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States; and

(2) from Mauritius within 30 days after that country adopts such a visa system. The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of the visa systems.

(d) Special rules.

(1) Findings and trimmings.

(A) General rule. An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if the value of such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled article. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trim, elastic strips, and zippers, including zipper tapes and labels. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

(B) Certain interlinings.

(i) General rule. An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(ii) Interlinings described. Interlinings eligible for the treatment described in clause (i) include only a chest type plate, a "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(iii) Termination of treatment. The treatment described in this subparagraph shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(C) Exception. In the case of an article described in subsection (b)(2), sewing thread shall not be treated as findings or trimmings under subparagraph (A).

(2) De minimis rule. An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains fibers or yarns not wholly formed in the United States or one or more

beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries if the total weight of all such fibers and yarns is not more than 10 percent of the total weight of the article.

(3) Certain components. An article otherwise eligible for preferential treatment under this section will not be ineligible for such treatment because the article contains—

- (A) any collars or cuffs (cut or knit-to-shape),
- (B) drawstrings,
- (C) shoulder pads or other padding,
- (D) waistbands,
- (E) belt attached to the article,
- (F) straps containing elastic, or
- (G) elbow patches,

that do not meet the requirements set forth in subsection (b), regardless of the country of origin of the item referred to in the applicable subparagraph of this paragraph.

(e) Definitions. In this section and section 113:

(1) Agreement on textiles and clothing. The term "Agreement on Textiles and Clothing" means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act.

(2) Beneficiary sub-Saharan African country, etc. The terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" have the same meaning as such terms have under section 506A(c) of the Trade Act of 1974.

(3) NAFTA. The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(4) Former sub-Saharan African country. The term "former sub-Saharan African country" means a country that, after being designated as a beneficiary sub-Saharan African country under this Act, ceased to be designated as such a beneficiary sub-Saharan country by reason of its entering into a free trade agreement with the United States.

(f) EFFECTIVE DATE.—This section takes effect on October 1, 2000, and shall remain in effect through September 30, 2008.

SEC. 113. PROTECTIONS AGAINST TRANSSHIPMENT.

(a) PREFERENTIAL TREATMENT CONDITIONED ON ENFORCEMENT MEASURES.—

(1) IN GENERAL.—The preferential treatment under section 112(a) shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country—

- (A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;

(B) has enacted legislation or promulgated regulations that would permit U.S. Customs Service verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country;

(C) agrees to report, on a timely basis, at the request of the U.S. Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;

(D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;

(E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and

(F) agrees to report, on a timely basis, at the request of the U.S. Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.

(2) COUNTRY OF ORIGIN DOCUMENTATION.—For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) CUSTOMS PROCEDURES AND ENFORCEMENT.—

(1) IN GENERAL.—

(A) REGULATIONS.—Any importer that claims preferential treatment under section 112 shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to U.S. law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) DETERMINATION.—

(i) IN GENERAL.—In order to qualify for the preferential treatment under section 112 and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii)—

(I) has implemented and follows: or

(II) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) COUNTRY DESCRIBED.—A country is described in this clause if it is a beneficiary sub-Saharan African country—

- (I) from which the article is exported; or
- (II) in which materials used in the production of the article originate or in which the article or such materials, undergo production that contributes to a claim that the article is eligible for preferential treatment.

(2) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 112 if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to U.S. law), if the article were imported from Mexico.

(3) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 112 to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this Act has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 112.

(5) MONITORING AND REPORTS TO CONGRESS.—The Customs Service shall monitor and the Commissioner of Customs shall submit to Congress, not later than March 31 of each year, a report on the effectiveness of the visa systems and the implementation of legislation and regulations described in subsection (a) and on measures taken by countries in sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in article 5 of the Agreement on Textiles and Clothing.

(c) CUSTOMS SERVICE ENFORCEMENT.—The Customs Service shall—

(1) make available technical assistance to the beneficiary sub-Saharan African countries—

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A); and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (c) the sum of \$5,894,913.

SEC. 114. TERMINATION.

[Adds new section 506B to Title V of the Trade Act of 1974, reprinted above]
[SEC. 115. CLERICAL AMENDMENTS.]

SEC. 116. FREE TRADE AGREEMENTS WITH SUB-SAHARAN AFRICAN COUNTRIES.

(a) **DECLARATION OF POLICY.**—Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) **PLAN REQUIREMENT.**—

(1) **IN GENERAL.**—The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) **ELEMENTS OF PLAN.**—The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.

(E) Subject matter anticipated to be covered by the negotiations and U.S. laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiations.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiation of the agreement or agreements.

(c) **REPORTING REQUIREMENT.**—Not later than 12 months after the date of the enactment of this Act, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

AGOA ACCELERATION ACT

[Excerpts]

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The African Growth and Opportunity Act (in this section and section 3 referred to as “the Act”) has helped to spur economic growth and bolster economic reforms in the countries of sub-Saharan Africa and has fostered stronger economic ties between the countries of sub-Saharan Africa and the United States; as a result, exports from the United States to sub-Saharan Africa reached record levels after the enactment of the Act, while exports from sub-Saharan Africa to the United States have increased considerably.

(2) The Act’s eligibility requirements have reinforced democratic values and the rule of law, and have strengthened adherence to internationally recognized worker rights in eligible sub-Saharan African countries.

(3) The Act has helped to bring about substantial increases in foreign investment in sub-Saharan Africa, especially in the textile and apparel sectors, where tens of thousands of new jobs have been created.

(4) As a result of the Agreement on Textiles and Apparel of the World Trade Organization, under which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa’s textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.

(5) The underdeveloped physical and financial infrastructure in sub-Saharan Africa continues to discourage investment in the region.

(6) Regional integration establishes a foundation on which sub-Saharan African countries can coordinate and pursue policies grounded in African interests and history to achieve sustainable development.

(7) Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the world, and most sub-Saharan African countries have sought to take advantage of the opportunities provided by the Act.

(8) Agricultural biotechnology holds promise for helping solve global food security and human health crises in Africa and, according to recent studies, has made contributions to the protection of the environment by reducing the application of pesticides, reducing soil erosion, and creating an environment more hospitable to wildlife.

(9) (A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of every four people in some countries, creating tremendous social, political, and economic

costs. African countries need continued United States financial and technical assistance to combat this epidemic.

(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.

(10) African countries continue to need trade capacity assistance to establish viable economic capacity, a wellgrounded rule of law, and efficient government practices.

SEC. 3. STATEMENT OF POLICY.

The Congress supports—

(1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;

(2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;

(3) development of sub-Saharan Africa's physical and financial infrastructure;

(4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

(A) reducing poverty and increasing economic growth;

(B) promoting peace, democracy, security, and human rights;

(C) promoting African integration by deepening linkages between African countries and by accelerating Africa's economic and political integration into the rest of the world;

(D) attracting investment, debt relief, and development assistance;

(E) promoting trade and economic diversification;

(F) broadening global market access for United States and African exports;

(G) improving transparency, good governance, and political accountability;

(H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;

(I) promoting the role of women in social and economic development by reinforcing education and training and by assuring their participation in political and economic arenas; and

(J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;

(6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;

(7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2102(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));

(8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;

(9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;

(10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and

(11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

SEC. 4. SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.

It is the sense of the Congress that—

(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d));

(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

SEC. 5. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.

It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act, relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

SEC. 9. DEVELOPMENT STUDY AND CAPACITY BUILDING.

(a) **REPORTS.**—The President shall, by not later than 1 year after the date of the enactment of this Act, conduct a study on each eligible sub-Saharan African country, that—

(1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;

(2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and

(3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.

(b) **DISSEMINATION OF INFORMATION.**—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

SEC. 10. ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM.

(a) **FINDINGS.**—The Congress finds the following:

(1) Ecotourism, which consists of—

(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) and animals, including species that are rare or endangered,

(B) promotion of conservation and provision for beneficial involvement of local populations, and

(C) visitation designed to have low negative impact upon the environment, is expected to expand 30 percent globally over the next decade.

(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

(3) According to the United States Department of State and the United Nations Environment Programme, sustainable tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa's natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

(b) ACTION BY THE PRESIDENT.—The President shall develop and implement policies to—

(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible sub-Saharan African countries;

(2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;

(3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development; and

(4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

SEC. 11. ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.

(a) **FINDINGS.**—The Congress finds the following:

(1) In order to increase exports from, and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase transport efficiencies and lower transport costs.

(2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.

(3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

(b) **ACTION BY THE PRESIDENT.**—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage investment in eligible sub-Saharan African countries, particularly with respect to the following:

(1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.

(2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.

(3) Agriculture, particularly in processing and capacity enhancement.

SEC. 12. FACILITATION OF TRANSPORTATION.

In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships.

These relationships should facilitate—

(1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;

(2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;

(3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and

(4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

SEC. 13. AGRICULTURAL TECHNICAL ASSISTANCE.

(a) IDENTIFICATION OF COUNTRIES.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

(b) PERSONNEL.—The President shall assign at least 20 fulltime personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

SEC. 14. TRADE ADVISORY COMMITTEE ON AFRICA.

The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975, under section 135(c) of the Trade Act of 1974, in order to facilitate the goals and objectives of the African Growth and Opportunity Act and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.

G. CUSTOMS VALUATION

Section 402 of the Tariff Act of 1930, as amended

[19 U.S.C. 1401a; Public Law 71-361, as amended by Public Law 96-39 and Public Law 96-490]

SEC. 402. VALUE.

(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection (b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are not restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term “price actually paid or payable” means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and the seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.—(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term “merchandise concerned” means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisal of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A) (i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and

insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned

(D) For purposes of determining the deductive value of imported merchandise, and sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost of the value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation

for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B);
and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsection, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of the merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of the merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or U.S. price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers, and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisal of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term “identical merchandise” means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirement under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised. Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term “packing costs” means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United

States.

(4) The term 'similar merchandise' means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirements set forth in subparagraph (A) (ii) and (iii). Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information", when required under this section for determining

(A) any amount—

(i) added under subsection (b)(1) to the price actually paid or payable,

(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) as profit or general expense;

(B) and difference taken into account for purposes of subsection (b)(2)(C); or

(C) any adjustment made under subsection (c)(2);

means information that establishes the accuracy of such amount, difference, or adjustment.

H. CUSTOMS USER FEES

Section 13031 of the Consolidated Budget Reconciliation Act of 1985, as amended

[19 U.S.C. 58c; Public Law 99-272, as amended by Public Law 99-509, Public Law 99-514, Public Law 100-203, Public Law 100-418, Public Law 100-449, Public Law 100-647, Public Law 101-207, Public Law 101-382, Public Law 101-508, Public Law 103-66, Public Law 103-182, Public Law 103-465, Public Law 104-295, Public Law 106-36, Public Law 106-476, Public Law 107-210, Public Law 108-357]

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

- (1) For the arrival of a commercial vessel of 100 net tons or more, \$397.
- (2) For the arrival of a commercial truck, \$5.
- (3) For the arrival of each railroad car carrying passengers or commercial freight, \$7.50.
- (4) For all arrivals made during a calendar year by a private vessel or private aircraft, \$25.
- (5)(A) Subject to subparagraph (B), for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)(i) of this section), \$5.
- (B) For the arrival of each passenger aboard a commercial vessel from a place referred to in subsection (b)(1)(A)(i) of this section, \$1.75.
- (6) For each item of dutiable mail for which a document is prepared by a customs officer, \$5.
- (7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, \$125 per year.
- (8) For the arrival of a barge or other bulk carrier from Canada or Mexico, \$100.
- (9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.21 percent nor less than 0.15 percent) and the amounts specified in subsection (b)(8)(A)(i) (but not to more than \$485 nor less than \$21) to rates and amounts which would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under subsection (f) with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

(D) Any fee charged under this paragraph, whether or not adjusted

under subparagraph (B), is subject to the limitations in subsection (b)(8)(A).

(10) For the processing of merchandise that is informally entered or released, other than at—

(A) a centralized hub facility,

(B) an express consignment carrier facility, or

(C) a small airport or other facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release, a fee of—

(i) \$2 if the entry or release is automated and not prepared by customs personnel;

(ii) \$6 if the entry or release is manual and not prepared by customs personnel; or

(iii) \$9 if the entry or release, whether automated or manual, is prepared by customs personnel.

For provisions relating to the informal entry or release of merchandise at facilities referred to in subparagraphs (A), (B), and (C), see subsection (b)(9).

(b) LIMITATIONS ON FEES.—(1)(A) Except as provided in subsection (a)(5)(B) of this section, no fee may be charged under subsection (a) of this section for customs services provided in connection with—

(i) the arrival of any passenger whose journey—

(I) originated in—

(aa) Canada,

(bb) Mexico,

(cc) a territory or possession of the United States, or

(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

(II) originated in the United States and was limited to—

(aa) Canada,

(bb) Mexico,

(cc) territories and possessions of the United States, and

(dd) such adjacent islands;

(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

(iii) the arrival of a ferry, except for a ferry whose operations begin on or after August 1, 1999, and that operates south of 27 degrees latitude and east of 89 degrees longitude; or

(iv) the arrival of any passenger on board a commercial vessel

traveling only between ports which are within the customs territory of the United States.

(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

(C) The exemption provided for in subparagraph (A)(i) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of \$100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of \$100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(4)(A) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

(i) who is in transit to a destination outside the customs territory of the United States, and

(ii) for whom customs inspectional services are not provided.

(B) In the case of a commercial vessel making a single voyage involving 2 or more U.S. ports with respect to which the passengers would otherwise be charged a fee pursuant to subsection (a)(5), such fee shall be charged only 1 time for each passenger.

(5) No fee may be charged under subsection (a)(1) for the arrival of—

(A) a vessel during a calendar year after a total of \$5,955 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under section (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of \$1,500 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraphs (2), (3), or (4) of subsection (a) for the arrival of any—

(A) commercial truck,

(B) railroad car, or

(C) private vessel,
that is being transported, at the time of the arrival, by any vessel that is
not a ferry.

(8)(A)(i) Subject to clause (ii), the fee charged under subsection (a)(9) for
the formal entry or release of merchandise may not exceed \$485 or be less than
\$25, unless adjusted pursuant to subsection (a)(9)(B).

(ii) A surcharge of \$3 shall be added to the fee determined after
application of clause (i) for any manual entry or release of
merchandise.

(B) No fee may be charged under subsection (a)(9) or (10) for the
processing of any article that is—

(i) provided for under any item in chapter 98 of the Harmonized
Tariff Schedule of the United States, except subheading 9802.00.60
or 9802.00.80,

(ii) a product of an insular possession of the United States, or

(iii) a product of any country listed in subdivision (c)(ii)(B) or
(c)(v) of general note 3 to such Schedule.

(C) For purposes of applying subsection (a)(9) or (10)—

(i) expenses incurred by the Secretary of the Treasury in the
processing of merchandise do not include costs incurred in—

(I) air passenger processing,

(II) export control, or

(III) international affairs, and

(ii) any reference to a manual formal or informal entry or release
includes any entry or release filed by a broker or importer that
requires the inputting of cargo selectivity data into the Automated
Commercial System by customs personnel, except when—

(I) the broker or importer is certified as an ABI cargo release
filer under the Automated Commercial System at any port within
the United States, or

(II) the entry or release is filed at ports prior to the full
implementation of the cargo selectivity data system by the
Customs Service at such ports.

(D) The fee charged under subsection (a)(9) or (10) with respect to the
processing of merchandise shall—

(i) be paid by the importer of record of the merchandise;

(ii) except as otherwise provided in this paragraph, be based on the
value of the merchandise as determined under section 402 of the
Tariff Act of 1930;

(iii) in the case of merchandise classified under subheading
9802.00.60 of the Harmonized Tariff Schedule of the United States,
be applied to the value of the foreign repairs or alterations to the
merchandise;

(iv) in the case of merchandise classified under heading 9802.00.80 of such Schedule, be applied to the full value of the merchandise, less the cost or value of the component U.S. products;

(v) in the case of agricultural products of the United States that are processed and packed in a foreign trade zone, be applied only to the value of material used to make the container for such merchandise, if such merchandise is subject to entry and the container is of a kind normally used for packing such merchandise; and

(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).

With respect to merchandise that is classified under subheading 9802.00.60 or heading 9802.00.80 of such Schedule and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a)(9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.

(E) For purposes of subsection (a)(9) and (10), merchandise is entered or released, as the case may be, if the merchandise is—

(i) permitted or released under section 448(b) of the Tariff Act of 1930,

(ii) entered or released from customs custody under section 484(a)(1)(A) of the Tariff Act of 1930, or

(iii) withdrawn from warehouse for consumption.

(9)(A) With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is \$ 2,000 or less (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930 except such items entered for transportation and exportation or immediate exportation at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following reimbursements and payments are required:

(i) In the case of a small airport or other facility—

(I) the reimbursement which such facility is required to make during the fiscal year under section 9701 of title 31, U.S. Code or section 236 of the Trade and Tariff Act of 1984; and

(II) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) for such fiscal year, in an amount equal to the reimbursement under subclause (I).

(ii) Subject to the provisions of subparagraph (B), in the case of an

express consignment carrier facility or centralized hub facility, \$.66 per individual airway bill or bill of lading.

(B)(i) Beginning in fiscal year 2004, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to an amount that is not less than \$.35 and not more than \$ 1.00 per individual airway bill or bill of lading. The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefore and shall allow for public comment on the proposed adjustment.

(ii) Notwithstanding section 451 of the Tariff Act of 1930 the payment required by subparagraph (A)(ii)(I) or (II) shall be the only payment required for reimbursement of the Customs Service in connection with the processing of an individual airway bill or bill of lading in accordance with such subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that the Customs Service may require such facilities to cover expenses of the Customs Service for adequate office space, equipment, furnishings, supplies, and security.

(iii)(I) The payment required by subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid on a quarterly basis by the carrier using the facility to the Customs Service in accordance with regulations Secretary of the Treasury.

(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall, in accordance with section 524 of the Tariff Act of 1930, be deposited in the Customs User Fee Account and shall be used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

(III) Notwithstanding section 524 of the Tariff Act of 1930, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.

(C) For purposes of this paragraph:

(i) The terms "centralized hub facility" and "express consignment carrier facility" have the respective meanings that are applied to such terms in part 128 of chapter I of title 19, Code of Federal Regulations. Nothing in this paragraph shall be construed as prohibiting the

Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).

(ii) The term "small airport or other facility" means any airport or facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year.

(10)(A) The fee charged under subsection (a)(9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with article 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a)(9) or (10)—

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(11) No fee may be charged under subsection (a)(9) or (10) with respect to products of Israel if an exemption with respect to the fee is implemented under section 112 of the Customs and Trade Act of 1990.

(12) No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Chile Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(13) No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Singapore Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(14) No fee may be charged under subsection (a) (9) or (10) with respect to

goods that qualify as originating goods under section 203 of the United States-Australia Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(c) DEFINITIONS.—For purposes of this section—

(1) The term “ferry” means any vessel which is being used—

(A) to provide transportation only between places that are no more than 300 miles apart, and

(B) to transport only—

(i) passengers, or

(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(2) The term “arrival” means arrival at a port of entry in the customs territory of the United States.

(3) The term “customs territory of the United States” has the meaning given to such term by general note 2 of the Harmonized Tariff Schedule of the United States.

(4) The term “customs broker permit” means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(5) The term “barge or other bulk carrier” means any vessel which—

(A) is not self-propelled, or

(B) transports fungible goods that are not packaged in any form.

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal

Register by no later than the date that is 60 days before such due date.

(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7).

(e)(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers.

(2)(A) This subsection shall not apply with respect to any airport, seaport, or other facility to which section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) applies.

(B) Subparagraph (C) of paragraph (6) shall not apply with respect to any foreign trade zone or subzone that is located at, or in the vicinity of, an airport, seaport, or other facility to which section 236 of the Trade and Tariff Act of 1984 applies.

(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any provision of law—

(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places.

(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

(C) the inspection or release of commercial cargo or other commercial

shipments being entered into, or withdrawn from, the customs territory of the United States.

(5) For purposes of this subsection, customs services shall be treated as being “adequately provided” if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

- (A) the unavailability of weather, mechanical, and other delays;
- (B) the necessity for prompt and efficient passenger and baggage clearance;
- (C) the perishability of cargo;
- (D) the desirability or unavailability of late night and early morning arrivals from various time zones;
- (E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and
- (F) the need for specific enforcement checks.

(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

- (A) for any—
 - (i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or
 - (ii) customs personnel provided, in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;
- (B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or
- (C) in connection with—
 - (i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or
 - (ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the “Customs User Fee Account”. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all

fees collected under subsection (a) except—

(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).

(2) Except as otherwise provided in this subsection, all funds in the Customs User Fee Account shall be available, to the extent provided for appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the U.S. Customs Service in conducting customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act, and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) (other than the fees under subsection (a)(9) and (10) and the excess fees determined by the Secretary under paragraph (5)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary—

(i) in—

(I) paying overtime compensation under section 5(a) of the Act of February 13, 1911,

(II) paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the total cost of all the premium pay for such year calculated under section 5(b) and the cost of the night and holiday premium pay that the Customs Service would have incurred for the same inspectional work on the day before the effective date of section 13813 of the Omnibus Budget Reconciliation Act of 1993,

(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

(V) paying foreign language proficiency awards under section 13812(b) of the Omnibus Budget Reconciliation Act of 1993,

(ii) to the extent funds remain available after making reimbursements under clause (i), in providing salaries for full-time and part-time inspectional personnel and equipment that enhance customs services for those persons or entities that are required to pay fees under paragraphs (1) through (8) of subsection (a) (distributed on a basis proportionate to the fees collected under paragraphs (1) through (8) of subsection(a)), and

(iii) to the extent funds remain available after making reimbursements under clause (ii), in providing salaries for up to 50 full-time equivalent inspectional positions to provide preclearance services.

The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i). Funds described in clause (ii) shall only be available to reimburse costs in excess of the highest amount appropriated for such costs during the period beginning with fiscal year 1990 and ending with the current fiscal year.

(B) Reimbursement of appropriations under this paragraph—

(i) shall be subject to apportionment or similar administrative practices;

(ii) shall be made at least quarterly; and

(iii) to the extent necessary, may be made on the basis of estimates made by the Secretary of the Treasury and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.

(C)(i) For fiscal year 1991 and subsequent fiscal years, the amount required to reimburse costs described in subparagraph (A)(i) shall be projected from actual requirements, and only the excess of collections over such projected costs for such fiscal year shall be used as provided in subparagraph (A)(ii).

(ii) The excess of collections over inspectional overtime and preclearance costs (under subparagraph (A)(i)) reimbursed for fiscal years 1989 and 1990 shall be available in fiscal year 1991 and subsequent fiscal years for the purposes described in subparagraph (A)(ii), except that \$30,000,000 of such excess shall remain without fiscal year limitation in a contingency fund and, in any fiscal year in

which receipts are insufficient to cover the costs described in subparagraph (A) (i) and (ii), shall be used for—

(I) the costs of providing the services described in subparagraph (A)(i), and

(II) after the costs described in subclause (I) are paid, the costs of providing the personnel and equipment described in subparagraph (A)(ii) at the preceding fiscal year level.

(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between—

(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267), as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

(II) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 5 of the Act of February 13, 1911, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, and under section 8331(3) of title 5, U.S. Code, as amended by section 13812(a)(1) of such Act of 1993, plus the actual cost that is incurred during that fiscal year for foreign language proficiency awards under section 13812(b) of such Act of 1993,

and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the difference calculated under this clause, or \$18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).

(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives summarizing the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii).

(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under

subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the U.S. Government for the commercial services provided by the U.S. Customs Service.

(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the "Customs Commercial and Homeland Security Automation Account". In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), \$ 350,000,000.

(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.

(6) Of the amounts collected in fiscal year 1999 under paragraphs (9) and (10) of subsection (a), \$50,000,000 shall be available to the Customs Service, subject to appropriations Acts, for automated commercial systems. Amounts made available under this paragraph shall remain available until expended.

(g) REGULATIONS AND ENFORCEMENT.—(1) The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding

sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

(h) [Omitted]

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a), nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

(3)(A) Fees may not be charged under paragraphs (9) and (10) subsection (a) after September 30, 2014.

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2014.

(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the

fee is charged under such paragraph; and

(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.

(k) **ADVISORY COMMITTEE.**—The Commissioner of Customs shall establish an advisory committee whose membership shall consist of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under subsection (a). The advisory committee shall not be subject to termination under section 14 of the Federal Advisory Committee Act. The advisory committee shall meet on a periodic basis and shall advise the Commissioner on issues related to the performance of the inspectional services of the U.S. Customs Service. Such advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Commissioner shall give consideration to the views of the advisory committee in the exercise of his or her duties.

Sections 111(f), 112, and 113 of the Customs and Trade Act of 1990

[19 U.S.C. 58c note, 19 U.S.C. 2082; Public Law 101-382, as amended by Public Law 101-508]

SEC. 111. CUSTOMS USER FEES.

* * * * *

(f) AGGREGATION OF MERCHANDISE PROCESSING FEES.—

(1) Notwithstanding any provision of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c), in the case of entries of merchandise made under the temporary monthly entry programs established by the Commissioner of Customs before July 1, 1989, for the purpose of testing entry processing improvements, the fee charged under section 13031(a)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 for each day's importations at each port by the same importer from the same exporter shall be the lesser of—

(A) \$400, or

(B) the amount determined by applying the ad valorem rate currently in effect under such section 13031(a)(9) to the total value of each day's importations at each port by the same importer from the same exporter.

(2) The fees described in paragraph (1) that are payable under the program described in paragraph (1) shall be paid with each monthly consumption entry.

Interest shall accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

SEC. 112. EXEMPTION OF ISRAELI PRODUCTS FROM CERTAIN USER FEES.

If the United States Trade Representative determines that the Government of Israel has provided reciprocal concessions in exchange for the exemption of the products of Israel from the fees imposed under section 13031(a) (9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 111), such fees may not be charged with respect to any product of Israel that is entered, or withdrawn from warehouse for consumption, on or after the 15th day (which day may not be before October 1, 1990) after the date on which the determination is published in the Federal Register.

SEC. 113. CUSTOMS SERVICE ADMINISTRATION.

(a) IN GENERAL. The Commissioner of Customs shall—

(1) develop and implement accounting systems that accurately determine and report the allocations made of Customs Service personnel and other resources among the various operational functions of the Service, such as passenger processing, merchandise processing and drug enforcement; and

(2) develop and implement periodic labor distribution surveys of major workforce activities (such as inspectors, import specialists, fines, penalties, and forfeiture officers, special agents, data transcribers, and Customs aides) to determine the costs of different types of passenger and merchandise processing transactions, such as informal and formal entries, and automated and manual entries.

(3)--(5) [Deleted]

(b) SURVEY REPORTS. The Commissioner of Customs shall no later than January 31, 1991, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the first survey implemented under subsection (a)(2).

Section 1893(f) of the Tax Reform Act of 1986, as amended

[49 U.S.C. 80503; Public Law 99-514, as amended by Public Law 103-272]

SEC. 1893. TECHNICAL AMENDMENTS RELATING TO CUSTOMS USER FEES.

* * * * *

(b) LIMITATIONS ON REIMBURSEMENT. (1) An owner or operator of an aircraft is required to reimburse the head of a department, agency, or instrumentality of the Government for the expenses of performing an inspection or quarantine service related to the aircraft at a place of inspection during regular service hours on a Sunday or holiday only to the same extent that an owner or operator makes reimbursement for the service during regular service hours on a weekday. The head

of the department, agency, or instrumentality may not assess an owner or operator of an aircraft for administrative overhead expenses for inspection of quarantine service provided by the department, agency, or instrumentality at an entry airport.

(2) This subsection does not require reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidate Omnibus Budget Reconciliation Act of 1985.

Section 892(c) of the American Jobs Creation Act of 2004

[Public Law 108-357]

SEC. 892. COBRA FEES.

* * * * *

(e) **STUDY OF ALL FEES COLLECTED BY DEPARTMENT OF HOMELAND SECURITY.**—The Secretary of the Treasury shall conduct a study of all the fees collected by the Department of Homeland Security, and shall submit to the Congress, not later than September 30, 2005, a report containing the recommendations of the Secretary on—

- (1) what fees should be eliminated;
- (2) what the rate of fees retained should be; and
- (3) any other recommendations with respect to the fees that the Secretary considers appropriate.

I. OTHER CUSTOMS LAWS

1. Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended

[19 U.S.C. 1304; Public Law 71-361, as amended by Public Law 98-573, Public Law 99-514, Public Law 100-418, Public Law 103-182, Public Law 104-295 and Public Law 106-36]

SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) **MARKING OF ARTICLES.**—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

- (1) Determine the character of words and phrases or abbreviations thereof

which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin or any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12,

1934 (U.S.C., 1934 edition, title 19, sections 1351, 1352, 1353, 1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in mold lettering, etching, engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) MARKING OF COMPRESSED GAS CYLINDERS.—No exception may be made under subsection (a)(3) with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) MARKING OF CERTAIN MANHOLE RINGS OR FRAMES, COVERS AND ASSEMBLIES THEREOF.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally

permanent method of marking.

(f) MARKING OF CERTAIN COFFEE AND TEA PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) MARKING OF SPICES.—The marking requirements of subsections (a) and (b) shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050, of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) MARKING OF CERTAIN SILK PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply either to—

(1) articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1997; or

(2) articles provided for in heading 5007 of the Harmonized Tariff Schedule of the United States as in effect on January 1, 1997.

(i) ADDITIONAL DUTIES FOR FAILURE TO MARK.—If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(j) DELIVERY WITHHELD UNTIL MARKED.—No imported article held in customs custody for inspection, examination, or appraisal shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (i) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(k) TREATMENT OF GOODS OF A NAFTA COUNTRY.—

(1) APPLICATION OF SECTION.—In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) shall be applied by substituting “reasonably know” for “necessarily know”;

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3) (E) or (I) or subparagraph (B) (i) or (ii) of this paragraph.

(2) PETITION RIGHTS OF NAFTA EXPORTERS AND PRODUCERS REGARDING MARKING DETERMINATIONS.—

(A) DEFINITIONS.—For purposes of this paragraph:

(i) The term “adverse marking decision” means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) INTERVENTION OR PETITION REGARDING ADVERSE MARKING DECISIONS.—If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written

request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) EFFECT OF DETERMINATION REGARDING DECISION.—If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) JUDICIAL REVIEW.—For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.

(I) PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than \$100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than \$250,000, or imprisoned for not more than 1 year, or both.

Rule of Origin for Textile and Apparel Products

Section 334 of the Uruguay Round Agreements Act, as amended

[19 U.S.C. 3592; Public Law 103-465 as amended by Public Law 104-295 and Public Law 106-200]

SEC. 334. RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS.

(a) REGULATORY AUTHORITY.—The Secretary of the Treasury shall prescribe rules

implementing the principles contained in subsection (b) of this section for determining the origin of textiles and apparel products. Such rules shall be promulgated in final form not later than July 1, 1995.

(b) Principles.—

(1) IN GENERAL.—Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if—

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and—

(i) the constituent staple fibers are spun in that country, territory, or possession, or

(ii) the continuous filament is extruded in that country, territory, or possession;

(C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession; or

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

(2) SPECIAL RULES.—

(A) Notwithstanding paragraph (1)(D) and except as paraded in subparagraphs (B) and (C);

(i) the origin of a good that is classified under one of the following HTS headings or subheadings shall be determined under subparagraph (A), (B), (C) of paragraph (1), as appropriate: 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6303, 6304, 6305, 6306, 6307.10, 6307.90, 6308, or 9404.90; and

(ii) a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit.

(B) Notwithstanding paragraph (1)(C), fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decatizing, permanent stiffening, weighting, permanent embossing, or moireing.

(C) Notwithstanding paragraph (1)(D) goods classified under HTS

heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(3) MULTICOUNTRY RULE.—If the origin of a good cannot be determined under paragraph (1) or (2), then that good shall be considered to originate in, and be the growth, product, or manufacture of—

(A) the country, territory, or possession in which the most important assembly or manufacturing process occurs, or

(B) if the origin of the good cannot be determined under subparagraph (A), the last country, territory, or possession in which important assembly or manufacturing occurs.

(4) COMPONENTS CUT IN THE UNITED STATES.—

(A) The value of a component that is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States—

(i) shall not be included in the dutiable value of such article, and

(ii) may be applied toward determining the percentage referred to in General Note 7(b)(i)(B) of the HTS, subject to the limitation provided in that note.

(B) No article (except a textile or apparel product) assembled in whole of components described in subparagraph (A), or of such components and components that are products of the United States, in a beneficiary country as defined in General Note 7(a) of the HTS shall be treated as a foreign article, or as subject to duty if—

(i) the components after exportation from the United States, and

(ii) the article itself before importation in the United States do not enter into the commerce of any foreign country other than such a beneficiary country.

(5) EXCEPTION FOR UNITED STATES-ISRAEL FREE TRADE AGREEMENT.—This section shall not affect, for purposes of the customs laws and administration of quantitative restrictions, the status of goods that, under rulings and administrative practices in effect immediately before the enactment of this Act, would have originated in, or been the growth, product, or manufacture of, a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987. For such purposes,

such rulings and administrative practices that were applied, immediately before the enactment of this Act, to determine the origin of textile and apparel products covered by such agreement shall continue to apply after the enactment of this Act, and on and after the effective date described in subsection (c) of this section, unless such rulings and practices are modified by the mutual consent of the parties to the agreement.

(c) EFFECTIVE DATE.—This section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, except that this section shall not apply to goods if—

(1) the contract for the sale of such goods to the United States is entered into before July 20, 1994;

(2) all of the material terms of sale in such contract, including the price and quantity of the goods, are fixed and determinable before July 20, 1994;

(3) a copy of the contract is filed with the Commissioner of Customs within 60 days after December 8, 1994, together with a certification that the contract meets the requirements of paragraphs (1) and (2); and

(4) the goods are entered, or withdrawn from warehouse, for consumption on or before January 1, 1998.

The origin of goods to which this section does not apply shall be determined in accordance with the applicable rules in effect on July 20, 1994.

2. Drawback

Section 313 of the Tariff Act of 1930, as amended

[19 U.S.C. 1313; Public Law 71-361, as amended by Act of June 26, 1936; Act of Aug. 8, 1951; Act of Aug. 8, 1953; Act of Aug. 6, 1956; Public Law 85-673; Public Law 90-630; Public Law 91-692; Public Law 96-609; Public Law 98-573; Public Law 99-514, Public Law 100-449, Public Law 101-382, Public Law 103-182, Public Law 103-465, Public Law 104-295, Public Law 106-36, Public Law 106-476, Public Law 108-77, and Public Law 108-429]

SEC. 313. DRAWBACK AND REFUNDS.

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and

quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—

(1) CONDITIONS FOR DRAWBACK.— Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise--

(A) upon which the duties have been paid,

(B) which has been entered or withdrawn for consumption,

(C) which is--

(i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

(ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and

(D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service, the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(2) DESIGNATION OF IMPORT ENTRIES.— For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1) (A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

(3) WHEN DRAWBACK CERTIFICATES NOT REQUIRED.— For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party, or if the drawback claimant is a drawback successor to the importer as defined in subsection (s)(3).

(d) FLAVORING EXTRACTS; MEDICINAL OR TOILET PREPARATIONS; BOTTLED DISTILLED SPIRITS AND WINES.—Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) IMPORTED SALT FOR CURING FISH.—Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) EXPORTATION OF MEATS CURED WITH IMPORTED FISH.—Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than \$100.

(g) MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS BUILT FOR FOREIGNERS.—The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) JET AIRCRAFT ENGINES.—Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than \$100.

(i) TIME LIMITATION ON EXPORTATION.— Unless otherwise provided for in this section, no drawback shall be allowed under the provisions of this section unless the completed article is exported, or destroyed under the supervision of the Customs Service, within five years after importation of the imported merchandise.

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) If imported merchandise, on which was paid any duty, tax, or fee

imposed under Federal law because of its importation—

(A) is, before the close of the 3-year period beginning on the date of importation

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise); then, notwithstanding any other provision of law, upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback under this subsection, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing

components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) (A) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a) of that Act shall not constitute an exportation for purposes of paragraph (2).

(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2). The preceding sentence shall not be construed to permit the substitution of unused drawback under paragraph (2) of this subsection with respect to merchandise described in paragraph (2) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

(k) USE OF DOMESTIC MERCHANDISE ACQUIRED IN EXCHANGE FOR IMPORTED MERCHANDISE OF SAME KIND AND QUALITY.—

(1) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(2) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for a drawback product of the same kind and quality shall be treated as the use of such drawback product if no certificate of delivery or certificate of manufacture and delivery pertaining to such drawback product is issued, other than that which documents the product's manufacture and delivery. As used in this paragraph, the term "drawback product" means any domestically produced product, manufactured with imported merchandise or any other merchandise (whether imported or domestic) of the same kind and quality, that is subject to drawback.

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the

Treasury shall prescribe, which may include, but need not be limited to, the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

(m) SOURCE OF PAYMENT.—Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER CERTAIN FREE TRADE AGREEMENTS.—

(1) For purposes of this subsection and subsection (o)—

(A) the term “NAFTA Act” means the North American Free Trade Agreement Implementation Act;

(B) the terms “NAFTA country” and “good subject to NAFTA drawback” have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; and

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B).

(D) the term “good subject to Chile FTA drawback” has the meaning given that term in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(4) (A) For purposes of subsections (a), (b), (f), (h), (j)(2), (p), and (q), if an article that is exported to Chile is a good subject to Chile FTA drawback, no customs duties on the good may be refunded, waived, or reduced, except as provided in subparagraph (B).

(B) The customs duties referred to in subparagraph (A) may be refunded, waived, or reduced by—

(i) 100 percent during the 8-year period beginning on January 1, 2004;

- (ii) 75 percent during the 1-year period beginning on January 1, 2012;
- (iii) 50 percent during the 1-year period beginning on January 1, 2013; and
- (iv) 25 percent during the 1-year period beginning on January 1, 2014.

(o) SPECIAL RULES FOR CERTAIN VESSELS AND IMPORTED MATERIALS.—

(1) For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback, the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

(3) For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of Chile or the Government of Chile, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, no customs duties on such materials may be refunded, waived, or reduced, except as provided in paragraph (4).

(4) The customs duties referred to in paragraph (3) may be refunded, waived or reduced by—

(A) 100 percent during the 8-year period beginning on January 1, 2004;

(B) 75 percent during the 1-year period beginning on January 1, 2012;

(C) 50 percent during the 1-year period beginning on January 1, 2013;

and

(D) 25 percent during the 1-year period beginning on January 1, 2014.

(p) SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES.—¹

¹Section 2420(e) of Public Law 106-36 provides that the amendments made to subsections 313(p)(1), 313(p)(2), 313(p)(3), 313(p)(3)(A)(1)(II), and 313(p)(3)(A)(ii) “shall take effect as if included in the amendment made by section 632(a)(6) of the North American Free Trade Agreement Implementation

- (1) IN GENERAL.—Notwithstanding any other provision of this section, if—
- (A) an article (hereafter referred to in this subsection as the “exported article”) of the same kind and quality as a qualified article is exported;
 - (B) the requirements set forth in paragraph (2) are met; and
 - (C) a drawback claim is filed regarding the exported article; drawback shall be allowed as described in paragraph (4).
- (2) REQUIREMENTS.—The requirements referred to in paragraph (1) are as follows:
- (A) The exporter of the exported article—
 - (i) manufactured or produced a qualified article in a quantity equal to or greater than the quantity of the exported article,
 - (ii) purchased or exchanged, directly or indirectly, a qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,
 - (iii) imported a qualified article in a quantity equal to or greater than the quantity of the exported article, or
 - (iv) purchased or exchanged, directly or indirectly, a qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.
 - (B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.
 - (C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.
 - (D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.
 - (E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).
 - (F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.
 - (G) The manufacturer, producer, importer, transferor, exporter, and

Act. For purposes of section 632(b) of that Act, the 3-year requirement set forth in section 313(r) of the Tariff Act of 1930 shall not apply to any drawback claim filed within 6 months after the date of the enactment of this Act for which that 3-year period would have expired.”

drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) DEFINITION OF QUALIFIED ARTICLE, ETC.—For purposes of this subsection—

(A) The term ‘qualified article’ means an article—

(i) described in—

(I) headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00 and 3811.90.00 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to the primary forms provided under Note 6 to chapter 39 of the Harmonized Tariff Schedule of the United States), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative,

(II) imported duty-paid, or

(III) an article of the same kind and quality as described in subparagraph (B), or any combination thereof, that is transferred, as so certified in a certificate of delivery or certificate of manufacture and delivery in a quantity not greater than the quantity of articles purchased or exchanged.

The transferred merchandise described in subclause (III), regardless of its origin, so designated on the certificate of delivery or certificate of manufacture and deliver shall be the qualified article for purposes of this section. A party who issues a certificate of delivery, or certificate of manufacture and delivery, shall also certify to the Commissioner of Customs that it has not, and will not, issue such certificates for a quantity greater than the amount eligible for drawback and that appropriate records will be maintained to demonstrate that fact.

(B) An article, including an imported, manufactured, substituted, or exported article, is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article. If an article is referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article on January 1, 2000, then whether or not the article has been reclassified under another eight-digit classification after January 1, 2000, the article shall be deemed to be an article that is referred

to under the same eight-digit classification of such Schedule as the qualified article for purposes of the preceding sentence.

(C) The term “drawback claimant” means the exporter of the exported article or the refiner, producer, or importer of either the qualified article or the exported article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) LIMITATION ON DRAWBACK.— The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A), had the claim qualified for drawback under subsection (j).

(q) PACKAGING MATERIAL.—

(1) Packaging material under subsections (c) and (j). Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1), or imported and duty paid, or substituted, and claimed for drawback under subsection (j)(2), shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on such imported material.

(2) Packaging material under subsections (a) and (b). Packaging material that is manufactured or produced under subsection (a) or (b) shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on the imported or substituted merchandise used to manufacture or produce such material.

(3) Contents. Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not they contain articles or merchandise, and whether or not any articles or merchandise they contain are eligible for drawback.

(4) Employing packaging material for its intended purpose prior to exportation. The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c), or paragraph (1)(B) or (2)(C)(i) of subsection (j).

(r) FILING DRAWBACK CLAIMS.—

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the

Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(3)(A) The Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—

(i) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and

(ii) the claimant files a request for such extension with the Customs Service—

(I) within 1 year from the last day of the 3-year period referred to in paragraph (1), or

(II) within 1 year after the date of the enactment of this paragraph, whichever is later.

(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 508(c)(3) shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

(C) For purposes of this paragraph, the term ‘major disaster’ has the meaning given that term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) for purposes of subsection (j)(2), a drawback successor may designate—

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the predecessor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the predecessor such merchandise; as the basis for drawback on merchandise possessed by the drawback predecessor after the date of succession.

(3) For purposes of this subsection, the term “drawback successor” means an entity to which another entity (in this subsection referred to as the

“predecessor”) has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this Act, with the retention period beginning on the date that such certificate is issued.

(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

(w) LIMITED APPLICABILITY FOR CERTAIN AGRICULTURAL PRODUCTS.—

(1) IN GENERAL.—No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).

(2) APPLICATION TO TOBACCO.—Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

(x) DRAWBACK FOR RECOVERED MATERIALS.—For purposes of subsections (a), (b), and (c), the term “destruction” includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. In determining the amount of duties to be refunded as drawback to a claimant under this subsection, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant shall be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used,

in the manufacture of the article.

(y) Articles shipped to the United States insular possessions. Articles described in subsection (j)(1) shall be eligible for drawback under this section if duty was paid on the merchandise upon importation into the United States and the person claiming the drawback demonstrates that the merchandise has entered the customs territory of the United States Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

3. Entry of Merchandise

Section 484 of the Tariff Act of 1930, as amended

[19 U.S.C. 1484; Public Law 71-361, as amended by Public Law 103-182, Public Law 104-295, Public Law 104-153, Public Law 106-200, Public Law 106-476, and Public Law 108-429]

SEC. 484. ENTRY OF MERCHANDISE.

(a) REQUIREMENT AND TIME.—

(1) Except as provided in sections 490, 498, 552, and 553, one of the parties qualifying as “importer of record” under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefor by filing with the Customs Service—

(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry, or substitute 1 or more reconfigured entries on an import activity summary statement, by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, and permit the filing of reconfigured entries, covering

entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month. Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 500, 501, or 504.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) RECONCILIATION.—²

(1) IN GENERAL.—A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 21 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as

the Secretary may prescribe.

(2) REGULATIONS REGARDING AD/CV DUTIES.—The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) SIGNING AND CONTENTS.—(1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"), or any other applicable law, including a trademark appearing on the goods or packaging.

(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from

the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisalment of such merchandise.

(h) **ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.**—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(i) **SPECIAL RULE FOR FOREIGN TRADE ZONE OPERATIONS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law and except as provided in paragraph (3), all merchandise (including merchandise of different classes, types, and categories), withdrawn from a foreign trade zone during any 7-day period, shall, at the option of the operator or user of the zone, be the subject of a single of a single estimated entry or release filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone. The estimated entry or release shall be treated as a single entry and a single release of merchandise for purposes of section 13031(a)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 all fee exclusions and limitations of such section 13031 shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(8)(A)(i) of such section. The entry summary for the estimated entry or release shall cover only the merchandise actually withdrawn from the foreign trade zone during the 7-day period.

(2) **OTHER REQUIREMENTS.**—The secretary of the Treasury may require that the operator or user of the zone—

(A) use an electronic data interchange approved by the Customs Service—

(i) to file the entries described in paragraph (1); and

(ii) to pay the applicable duties, fees, and taxes with respect to the entries; and

(B) satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

(3) **EXCEPTION.**—The provisions of paragraph (1) shall not apply to merchandise the entry of which is prohibited by law or merchandise for which the filing of an entry summary is required before the merchandise is released from customs custody.

(4) **FOREIGN TRADE ZONE; ZONE.**—In this subsection, the terms ‘foreign trade zone’ and ‘zone’ mean a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act.

(j) **TREATMENT OF MULTIPLE ENTRIES OF MERCHANDISE AS SINGLE TRANSACTION.**—In the case of merchandise that is purchased and invoiced as a single entity but—

(1) is shipped in an unassembled or disassembled condition in separate

shipments due to the size or nature of the merchandise, or

(2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment (at the instruction of the carrier), the Customs Service may, upon application by an importer in advance, treat such separate shipments for entry purposes as a single transaction."

(k) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations to carry out section 484(j) of the Tariff Act of 1930, as added by subsection (a).

4. Protests and Further Administrative Reviews

Sec. 514-516 of the Tariff Act of 1930, as amended.

[19 U.S.C. 1514-1516; Public Law 71-361, as amended by Public Law 91-271, Public Law 96-39, Public Law 96-417, Public Law 98-573, Public Law 99-514, Public Law 100-418, Public Law 100-449, Public Law 103-182, Public Law 104-295, Public Law 106-36, Public Law 108-77, and Public Law 108-429]

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE

(a) FINALITY OF DECISIONS; RETURN OF PAPERS.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties[.]), and section 520 (relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and, decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to—

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;
- (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
- (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;
- (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 500 or section 504;
- (6) the refusal to pay a claim for drawback; or
- (7) the refusal to reliquidate an entry under subsection (d) of section 520 of this Act; shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the

time prescribed by section 2636. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

(b) FINALITY AND CONCLUSIVENESS OF CUSTOMS OFFICERS' DETERMINATIONS.— With respect to determinations made under section 303 of this Act or title VII of this Act Which are reviewable under section 516A of this title, determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of The North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

(c) FORM, NUMBER, AND AMENDMENT OF PROTEST; FILING OF PROTEST.—

(1) A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 515(b), a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision

specified in subsection (a) of this section by—

- (A) the importers or consignees shown on the entry papers, or their sureties;
- (B) any person paying any charge or exaction;
- (C) any person seeking entry or delivery;
- (D) any person filing a claim for drawback;
- (E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or
- (F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within 180 days after but not before—

- (A) date of liquidation or reliquidation, or
- (B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 180 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) LIMITATION ON PROTEST OF RELIQUIDATION.—The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) ADVANCE NOTICE OF CERTAIN DETERMINATION.—Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) DENIAL OF PREFERENTIAL TREATMENT.—If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act—

- (1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and
- (2) the advance notice requirement in subsection (e) shall not apply to that person; until the person establishes to the satisfaction of the Customs Service

that its representations are in conformity with section 202.

(g) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER UNITED STATES-CHILE FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.

SEC. 515. REVIEW OF PROTESTS

(a) ADMINISTRATIVE REVIEW AND MODIFICATION OF DECISIONS.—Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 514 of this Act shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 514 of this Act, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. Such notice shall included a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 514 of the Tariff Act of 1930.

(b) REQUEST FOR ACCELERATED DISPOSITION OF PROTEST.—A request for accelerated disposition of a protest filed in accordance with section 514 of this Act may be mailed by certified or registered mail to the appropriate customs officer any time concurrent with or following the filing of such protest. For purposes of section 1581 of title 28 of the United States Code, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

(c) REQUEST FOR SET ASIDE OF DENIAL OF FURTHER REVIEW.—If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the

Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2536 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) VOIDING DENIAL OF PROTEST.—If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate port director within 90 days after the date of the protest denial, void the denial of the protest.

SEC. 516. PETITIONS BY THE DOMESTIC INTERESTED PARTIES

(a) REQUEST FOR CLASSIFICATION AND RATE OF DUTY; PETITION.—

(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

- (A) a description of the merchandise,
- (B) the appraised value, the classification, or the rate of duty that it believes proper, and
- (C) the reasons for its belief.

(2) As used in this section, the term “interested party” means a person who—

- (A) a manufacturer, producer, or wholesaler in the United States;
- (B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or
- (C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States, of goods of the same class or kind as the designated imported merchandise.

Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).

(3) Any producer of a raw agricultural product who is considered under section 771(4)(E) [19 U.S.C. § 1677(4)(E)] to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an

interested party producing such processed agricultural product.

(b) DETERMINATION ON PETITION.—If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of this determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) CONTEST BY PETITIONER OF APPRAISED VALUE, CLASSIFICATION, OR RATE OF DUTY.—If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) APPRAISAL, CLASSIFICATION, AND LIQUIDATION OF ENTRIES OF MERCHANDISE COVERED BY PUBLISHED DECISIONS OF THE SECRETARY.—Notwithstanding the filing of an action pursuant to chapter 169 of title 28 of the United States Code, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) CONSIGNEE OR HIS AGENT AS PARTY IN INTEREST BEFORE THE COURT OF INTERNATIONAL TRADE.—The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Court of International Trade.

(f) APPRAISEMENT, CLASSIFICATION, AND ASSESSMENT OF DUTY OF MERCHANDISE COVERED BY PUBLISHED DECISION OF THE SECRETARY IN

ACCORDANCE WITH FINAL JUDICIAL DECISION OF COURT OF INTERNATIONAL TRADE OR COURT OF APPEALS FOR THE FEDERAL CIRCUIT SUSTAINING CAUSE OF ACTION IN WHOLE OR IN PART; SUSPENSION OF LIQUIDATION OF ENTRIES; PUBLICATION.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) REGULATIONS IMPLEMENTING REQUIRED PROCEDURES.—Regulations shall be prescribed by the Secretary to implement the procedures required under this Section.

5. Copyrights and Trademark Enforcement

Section 101 of the Copyright Revision Act of 1976

[17 U.S.C. 602; Public Law 94-553]

SEC. 602. INFRINGING IMPORTATION OF COPIES OR PHONORECORDS.

(a) Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to—

(1) importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for any organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no

more than one copy of any audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies of phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

Section 526 of the Tariff Act of 1930, as amended

[19 U.S.C. 1526; Public Law 71-361, as amended by Public Law 93-596, Public Law 95-410, Public Law 103-182, and Public Law 104-153]

SEC. 526. MERCHANDISE BEARING AMERICAN TRADEMARK.

(a) IMPORTATION PROHIBITED.—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of the Act entitled “An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same,” approved February 20, 1905, as amended, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) SEIZURE AND FORFEITURE.—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) INJUNCTION AND DAMAGES.—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of such Act of February 20, 1905, as amended.

(d) EXEMPTIONS; PUBLICATIONS IN FEDERAL REGISTER; FORFEITURE; RULES AND

REGULATIONS.—

(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946, do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) MERCHANDISE BEARING COUNTERFEIT MARK; SEIZURE AND FORFEITURE; DISPOSITION OF SEIZED GOODS.—Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise, or

(3) more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(f) CIVIL PENALTIES.—

(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

Section 431 of the Tariff Act of 1930, as amended

[19 U.S.C. 1431; Public Law 71-361, as amended by Public Law 98-573, Public Law 100-690, Public Law 103-182, Public Law 104-153, and Public Law 104-295]

SEC. 431. MANIFEST.

(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c) PUBLIC DISCLOSURE OF CERTAIN MANIFEST INFORMATION.

(1) Except as provided in subparagraph (2), the following information, when contained in a vessel manifest or aircraft manifest, shall be available to public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

- (B) The general character of the cargo.
- (C) The number of packages and gross weight.
- (D) The name of the vessel, aircraft, or carrier.
- (E) The seaport or airport of loading.
- (F) The seaport or airport of discharge.
- (G) The country of origin of the shipment.
- (H) The trademarks appearing on the goods or packages.

(2) The information listed in paragraph (1) shall not be available for public disclosure if—

(A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

(B) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and

(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).

(2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—

(A) the Customs Service may require with respect to letters and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term “letters and documents” means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

- (ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and
- (iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

6. Penalties, Prohibitions and Import Restrictions

(A) Penalties Prohibitions and Import Restrictions

Sections 592 and 592A of the Tariff Act of 1930, as amended

[19 U.S.C. 1592 and 1592A; Public Law 71-361, as amended by Act of Aug. 5, 1935, Public Law 95-410, Public Law 96-417, Public Law 103-182, Public Law 103-465, Public Law 104-295, Public Law 106-36, Public Law 108-77, Public Law 108-78, and Public Law 108-286]

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) Prohibition.—

(1) **GENERAL RULE.**—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

- (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false,
- (ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) **EXCEPTION.**—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligible conduct.

(b) PROCEDURES.—

(1) PRE-PENALTY NOTICE.—

(A) **IN GENERAL.**—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—

- (i) describe the merchandise;
- (ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;
- (iii) specify all laws and regulations allegedly violated;
- (iv) disclose all the material facts which establish the alleged

violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, taxes, and fees, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

- (i) the domestic value of the merchandise, or
 - (ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or
- (B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.
- (4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—
- (A) if the violation resulted from fraud—
 - (i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or
 - (ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or
 - (B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) PRIOR DISCLOSURE REGARDING NAFTA CLAIMS.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer—

- (A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and
- (B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily makes a corrected declaration and pays any duties owing.

(7) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT.—

(A) An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT.—

(A) In general. An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) Time periods for making corrections. In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written

statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES, TAXES, OR FEES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) the Customs Service shall require that such lawful duties, taxes and fees be restored, whether or not a monetary penalty is assessed.

(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(f) FALSE CERTIFICATIONS REGARDING EXPORTS TO NAFTA COUNTRIES.—

(1) IN GENERAL.—Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

(2) APPLICABLE PROVISIONS.—The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that—

(A) subsection (d) does not apply, and

(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA

Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(g) **FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—**

(1) **IN GENERAL.—** Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 508(f)(1)(B) of this Act that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) **IMMEDIATE AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—** No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

(3) **EXCEPTION.—** A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a Chile FTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.

SEC. 592A. SPECIAL PROVISIONS REGARDING CERTAIN VIOLATIONS.

(a) **PUBLICATION OF NAMES OF CERTAIN VIOLATORS.—**

(1) **PUBLICATION.—**The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 592, and

(B) if a petition with respect to that claim has been filed under section 618, against whom a final decision has been issued under such section after exhaustion of administrative remedies, citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) **VIOLATIONS.—**The violations of the customs laws referred to in

paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) REMOVAL FROM LIST.—Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS AND OTHERS.—After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(b) LIST OF HIGH RISK COUNTRIES.—

(1) LIST.—The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Federal Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS OF RECORD.—The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labeling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(3) DEFINITION.—For purposes of this subsection, the term “country” means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

7. Convict and Forced Labor Made Goods

[19 U.S.C. 1307, Public Law 71-361 as amended by Public Law 106-200]

SEC. 307. CONVICT MADE GOODS; IMPORTATION PROHIBITED

All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or

manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

“Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.

8. Prohibition on Importation of Dog and Cat Fur Products

[19 U.S.C. 1308, Public Law 71-361 as amended by Public Law 106-476]

SEC. 308. PROHIBITION ON IMPORTATION OF DOG AND CAT FUR PRODUCTS.

(a) DEFINITIONS.—In this section:

(1) CAT FUR.—The term “cat fur” means the pelt or skin of any animal of the species *Felis catus*.

(2) INTERSTATE COMMERCE.—The term “interstate commerce” means the transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

(3) CUSTOMS LAWS.—The term “customs laws of the United States” means any other law or regulation enforced or administered by the United States Customs Service.

(4) DESIGNATED AUTHORITY.—The term “designated authority” means the Secretary of the Treasury, with respect to the prohibitions under subsection (b)(1)(A), and the President (or the President's designee), with respect to the prohibitions under subsection (b)(1)(B).

(5) DOG FUR.—The term “dog fur” means the pelt or skin of any animal of the species *Canis familiaris*

(6) DOG OR CAT FUR PRODUCT.—The term “dog and cat fur product” means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(7) PERSON.—The term “person” includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(8) UNITED STATES.—The term “United States” means the customs territory of the United States, as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(b) PROHIBITIONS.—

(1) IN GENERAL.—It shall be unlawful for any person to—

(A) import into, or export from the United States any dog or cat fur product; or

(B) introduce into interstate commerce, manufacture for introduction

into interstate commerce, sell, trade, or advertise in interstate commerce, offer to sell, or transport or distribute in interstate commerce in the United States, any dog or cat fur product.

(2) EXCEPTION.—This subsection shall not apply to the importation, exportation, or transportation, for noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

(c) PENALTIES AND ENFORCEMENT.—

(1) CIVIL PENALTIES.—

(A) IN GENERAL.—Any person who violates any provision of this section or any regulation issued under this section may, in addition to any other civil or criminal penalty that may be imposed under title 18, United States Code, or any other provision of law, be assessed a civil penalty by the designated authority of not more than—

- (i) \$10,000 for each separate knowing and intentional violation;
- (ii) \$5,000 for each separate grossly negligent violation; or
- (iii) \$3,000 for each separate negligent violation.

(B) DEBARMENT.—The designated authority may prohibit a person from importing, exporting, transporting, distributing, manufacturing, or selling any fur product in the United States, if the designated authority finds that the person has engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil penalties for knowing and intentional or grossly negligent violations of any provision of this section or any regulation issued under this section

(C) FACTORS IN ASSESSING PENALTIES.—In determining the amount of civil penalties under this paragraph, the designated authority shall take into account the degree of culpability, any history or prior violations under this section, ability to pay, the seriousness of the violation, and such other matters as fairness may require.

(D) NOTICE.—No penalty may be assessed under this paragraph against a person unless the person is given notice and opportunity for a hearing with respect to such violation in accordance with section 554 of title 5, United States Code.

(2) FORFEITURE.—Any dog or cat fur product manufactured, taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, imported, or exported contrary to the provisions of this section or any regulation issued under this section shall be subject to forfeiture to the United States.

(3) ENFORCEMENT.— The Secretary of the Treasury shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(A), and the President shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(B).

(4) REGULATIONS.—Not later than 270 days after the date of the enactment of this section [enacted Nov. 9, 2000], the designated authorities shall , after

notice and opportunity for comment, issue regulations to carry out the provisions of this section. The regulations of the Secretary of the Treasury shall provide for a process by which testing laboratories, whether domestic or foreign, can qualify for certification by the United States Customs Service by demonstrating the reliability of the procedures used for determining the type of fur contained in articles intended for sale or consumption in interstate commerce. Use of a laboratory certified by the United States Customs Service to determine the nature of fur contained in an item to which subsection (b) applies is not required to avoid liability under this section but may, in a case in which a person can establish that the goods imported were tested by such a laboratory and that the item was not found to be a dog or cat fur product, prove dispositive in determining whether that person exercised reasonable care for purposes of paragraph (6).

(5) REWARD.—The designated authority shall pay a reward of not less than \$500 to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, or forfeiture of property for any violation of this section or any regulation issued under this section.

(6) AFFIRMATIVE DEFENSE.—Any person accused of a violation under this section has a defense to any proceeding brought under this section on account of such violation if that person establishes by a preponderance of the evidence that the person exercised reasonable care—

(A) in determining the nature of the products alleged to have resulted in such violation; and

(B) in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products.

(7) COORDINATION WITH OTHER LAWS.—Nothing in this section shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the customs laws of the United States.

(d) PUBLICATION OF NAMES OF CERTAIN VIOLATORS.—The designated authorities shall, at least once each year, publish in the Federal Register a list of the names of any producer, manufacturer, supplier, seller, importer, or exporter, whether or not located within the customs territory of the United States or subject to the jurisdiction of the United States, against whom a final administrative determination with respect to the assessment of a civil penalty for a knowing and intentional or a grossly negligent violation has been made under this section.

(e) REPORTS.—In order to enable Congress to engage in active continuing oversight of this section, the designated authorities shall provide the following:

(1) PLAN FOR ENFORCEMENT.—Within 3 months after the date of the enactment of this section, the designated authorities shall submit to Congress a plan for the enforcement of the provisions of this section, including training and procedures to ensure that United States Government personnel are equipped with state-of-the-art technologies to identify potential dog or cat fur

products and to determine the true content of such products.

(2) **REPORT ON ENFORCEMENT EFFORTS.**—Not later than 1 year after the date of the enactment of this section, and on an annual basis thereafter, the designated authorities shall submit a report to Congress on the efforts of the United States Government to enforce the provisions of this section and the adequacy of the resources to do so. The report shall include an analysis of the training of United States Government personnel to identify dog and cat fur products effectively and to take appropriate action to enforce this section. The report shall include the findings of the designated authorities as to whether any government has engaged in a pattern or practice of support for trade in products the importation of which are prohibited under this section.

9. Cigarette Imports

Title VIII—Requirements Application to Imports of Certain Cigarettes

[19 U.S.C. 1681, et seq., Public Law 71-361, as amended by Public Law 106-476]

SEC. 801. DEFINITIONS.

In this title:

(1) **SECRETARY.**—Except as otherwise indicated, the term “Secretary” means the Secretary of the Treasury.

(2) **PRIMARY PACKAGING.**—The term “primary packaging” refers to the permanent packaging inside of the innermost cellophane or other transparent wrapping and labels, if any. Warnings or other statements shall be deemed ‘permanently imprinted’ only if printed directly on such primary packaging and not by way of stickers or other similar devices.

SEC. 802. REQUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES.

(a) **GENERAL RULE.**—Except as provided in subsection (b), cigarettes may be imported into the United States only if —

(1) the original manufacturer of those cigarettes has timely submitted, or has certified that it will timely submit to the Secretary of Health and Human Services the lists of the ingredients added to the tobacco in the manufacture of such cigarettes as described in section 7 of the Federal Cigarette Labeling and Advertising Act;

(2) the precise warning statements in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act are permanently imprinted on both

(A) the primary packaging of all those cigarettes; and

(B) any other pack, box, carton, or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers;

(3) the manufacturer or importer of those cigarettes is in compliance with respect to those cigarettes being imported into the United States with a rotation

plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act;

(4) if such cigarettes bear a United States trademark registered for such cigarettes, the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the United States; and

(5) the importer has submitted at the time of entry all of the certificates described in subsection (c).

(b) EXEMPTIONS.—Cigarettes satisfying the conditions of any of the following paragraphs shall not be subject to the requirements of subsection (a):

(1) PERSONAL-USE CIGARETTES.—Cigarettes that are imported into the United States in personal use quantities that are allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States.

(2) CIGARETTES IMPORTED INTO THE UNITED STATES FOR ANALYSIS.—Cigarettes that are imported into the United States solely for the purpose of analysis in quantities suitable for such purpose, but only if the importer submits at the time of entry a certificate signed, under penalties of perjury, by the consignee (or a person authorized by such consignee) providing such facts as may be required by the Secretary to establish that such consignee is a manufacturer of cigarettes, a Federal or State government agency, a university, or is otherwise engaged in bona fide research and stating that such cigarettes will be used solely for analysis and will not be sold in domestic commerce in the United States.

(3) CIGARETTES INTENDED FOR NONCOMMERCIAL USE, REEXPORT, OR REPACKAGING.—Cigarettes—

(A) for which the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the United States; and

(B) for which the importer submits a certificate signed by the manufacturer or export warehouse (or a person authorized by such manufacturer or export warehouse) to which such cigarettes are to be delivered (as provided in subparagraph (A)) stating, under penalties of perjury, with respect to those cigarettes, that it will not distribute those cigarettes into domestic commerce unless prior to such distribution all steps have been taken to comply with paragraphs (1), (2), and (3) of subsection (a), and, to the extent applicable, section 5754(a)(1) (B) and (C) of the Internal Revenue Code of 1986.

For purpose of this section, a trademark is registered in the United States if it is registered in the United States Patent and Trademark Office under the provisions of title I of the Act of July 5, 1946 (popularly known as the ‘Trademark Act of 1946’), and a copy of the certificate of registration of such mark has been filed with the Secretary. The Secretary shall make available to interested parties a current list of

the marks so filed.

(c) CUSTOMS CERTIFICATIONS REQUIRED FOR CIGARETTE IMPORTS.—The certificates that must be submitted by the importer of cigarettes at the time of entry in order to comply with subsection (a)(5) are—

(1) a certificate signed by the manufacturer of such cigarettes or an authorized official of such manufacturer stating under penalties of perjury, with respect to those cigarettes, that such manufacturer has timely submitted, and will continue to submit timely, to the Secretary of Health and Human Services the ingredient reporting information required by section 7 of the Federal Cigarette Labeling and Advertising Act;

(2) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that—

(A) the precise warning statements in the precise format required by section 4 of the Federal Cigarette Labeling and Advertising Act are permanently imprinted on both—

(i) the primary packaging of all those cigarettes; and

(ii) any other pack, box, carton, or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers; and

(B) with respect to those cigarettes being imported into the United States, such importer has complied, and will continue to comply, with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act; and

(3)(A) if such cigarettes bear a United States trademark registered for cigarettes, a certificate signed by the owner of such United States trademark registration for cigarettes (or a person authorized to act on behalf of such owner) stating under penalties of perjury that such owner (or authorized person) consents to the importation of such cigarettes into the United States; and

(B) a certificate signed by the importer or an authorized official of such importer stating under penalties of perjury that the consent referred to in subparagraph (A) is accurate, remains in effect, and has not been withdrawn.

The Secretary may provide by regulation for the submission of certifications under this section in electronic form if, prior to the entry of any cigarettes into the United States, the person required to provide such certifications submits to the Secretary a written statement, signed under penalties of perjury, verifying the accuracy and completeness of all information contained in such electronic submissions.

SEC. 803. ENFORCEMENT.

(a) CIVIL PENALTY.—Any person who violates a provision of section 802 shall, in addition to the tax and any other penalty provided by law, be liable for a civil penalty for each violation equal to the greater of \$1,000 or 5 times the amount of

the tax imposed by chapter 52 of the Internal Revenue Code of 1986 on all cigarettes that are the subject of such violation.

(b) FORFEITURES.—Any tobacco product, cigarette papers, or tube that was imported into the United States or is sought to be imported into the United States in violation of, or without meeting the requirements of, section 802 shall be forfeited to the United States. Notwithstanding any other provisions of law, any product forfeited to the United States pursuant to this title shall be destroyed.

10. National Customs Automation Program

Part I, Subpart B of Title IV (Sections 411-414) of the Tariff Act of 1930, as amended

[19 U.S.C. 1411, Public Law 103-182 as amended by Public Law 104-295, Public Law 106-36, and Public Law 107-210]

SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the “Program”) which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

- (A) The electronic entry of merchandise.
- (B) The electronic entry summary of required information.
- (C) The electronic transmission of invoice information.
- (D) The electronic transmission of manifest information.
- (E) Electronic payments of duties, fees, and taxes.
- (F) The electronic status of liquidation and reliquidation.
- (G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

- (A) The electronic filing and status of protests.
- (B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.
- (C) The electronic filing of import activity summary statements and reconciliation.
- (D) The electronic filing of bonds.
- (E) The electronic penalty process.
- (F) The electronic filing of drawback claims, records, or entries.
- (G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. The Secretary may, by regulation, require the electronic submission of information described in subsection

(a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart..

(c) FOREIGN-TRADE ZONES.—Not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the Program.

SEC. 412. PROGRAM GOALS.

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

- (1) is uniform and consistent;
- (2) is as minimally intrusive upon the normal flow of business activity as practicable; and
- (3) improves compliance.

SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.

(a) OVERALL PROGRAM PLAN.—

(1) IN GENERAL.—Before the 180th day after the date of the enactment of the North American Free Trade Agreement Implementation Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

- (A) a general description of the ultimate configuration of the Program;
- (B) a description of each of the existing components of the Program listed in section 411(a)(1); and
- (C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

- (A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and
- (B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—
 - (i) importers, brokers, and other users of the Program, and
 - (ii) Customs Service occupations, operations, processes, and systems.

(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

- (A) develop an implementation plan;
- (B) test the component in order to assess its viability;
- (C) evaluate the component in order to assess its contribution toward achieving the program goals; and
- (D) transmit to the Committees the implementation plan, the testing

results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) IMPLEMENTATION.—

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) EVALUATION AND REPORT.—The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year.

(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) COMMITTEES.—For purposes of this section, and the term “Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 414. REMOTE LOCATION FILING.

(a) CORE ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a “remote location”) if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) REQUIREMENTS.—

(A) IN GENERAL.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) RESTRICTION ON EXEMPTION FROM REQUIREMENTS.—The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) CONDITIONS ON FILING UNDER THIS SECTION.—The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) ALTERNATIVE FILING.—Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) ADDITIONAL ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) FILING OF ADDITIONAL INFORMATION.—

(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the “appropriate location” is

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) DEFINITIONS.—As used in this section:

(1) The term “designated location” means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term “Program participant” means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

11. Commercial Operations

Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987

[19 U.S.C. 2071 note; Public Law 100-203]

SEC. 9503. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.

(c) **ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—**

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the “Advisory Committee on Commercial Operations of the United States Customs Service” (hereafter in this subsection referred to as the “Advisory Committee”).

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

Section 301 of the Customs Procedural Reform and Simplification Act of 1978, as amended

[19 U.S.C. 2075; Public Law 95-410, as amended by Public Law 97-456, Public Law 98-573, Public Law 99-272, Public Law 99-509, Public Law 100-203, Public Law 100-690, Public Law 101-207, Public Law 101-382, and Public Law 107-210]

SEC. 301. CUSTOMS SERVICE APPROPRIATIONS AUTHORIZATION.

(a) **IN GENERAL.—**

(1) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the United States

Department of the Treasury for the United States Customs Service only such sums as may hereafter be authorized by law.

(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations.

(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

(A) \$ 1,365,456,000 for fiscal year 2003.

(B) \$ 1,399,592,400 for fiscal year 2004.

(2) FOR COMMERCIAL OPERATIONS.—

(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

(i) \$ 1,642,602,000 for fiscal year 2003.

(ii) \$ 1,683,667,050 for fiscal year 2004.

(B) The monies authorized to be appropriated under subparagraph (A) for any fiscal year, except for such sums as may be necessary for the salaries and expenses of the Customs Service that are incurred in connection with the processing of merchandise that is exempt from the fees imposed under section 13031(a)(9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985, shall be appropriated from the Customs User Fee Account.

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:

(A) \$ 170,829,000 for fiscal year 2003.

(B) \$ 175,099,725 for fiscal year 2004.

(c) MANDATORY 10-DAY DEFERMENT.—No part of any sum that is appropriated under the authority of subsection (b) may be used to implement any procedure relating to the time of collection of estimated duties that shortens the maximum 10-day deferment procedure in effect on January 1, 1981.

(d) OVERTIME PAY LIMITATIONS; WAIVER.—No part of any sum that is appropriated under subsection (b) for fiscal years after September 30, 1984, may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding \$25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

(e) PAY COMPARABILITY AUTHORIZATION.—For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for salaries of the United States Customs Service such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(f) USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.— If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

(g) ALLOCATION OF RESOURCES; NOTICE TO CONGRESSIONAL COMMITTEES.—

(1) The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs personnel assigned to the headquarters office of any Customs district designated by statute before April 7, 1986. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.

(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

(A) result in any significant reduction in force of employees other than by means of attrition;

(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

(C) eliminate or relocate any office of the United States Customs Service;

(D) eliminate any port of entry; or

(E) significantly reduce the number of employees assigned to any office

of the United States Customs Service or any port of entry.

(3) The total number of employees of the United States Customs Service shall be equivalent to at least 17,174 full-time employees.

J. FOREIGN TRADE ZONES

Act of June 18, 1934, as amended

[19 U.S.C. 81a-u; Act of June 18, 1934, as amended by Act of June 17, 1950, Public Law 85-791, Public Law 91-271, Public Law 96-609, Public Law 98-573, Public Law 99-514, Public Law 100-418, Public Law 100-449, Public Law 100-647, Public Law 101-382, Public Law 103-182, Public Law 104-201, Public Law 104-295, Public Law 106-36, and 108-77]

SEC. 1. DEFINITIONS.

When used in this chapter—

(a) The term “Secretary” means the Secretary of Commerce;

(b) The term “Board” means the Board which is established to carry out the provisions of this Act [19 U.S.C. §§ 81a et seq.]. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, and the Secretary of the Treasury;

(c) The term “State” includes any State, the District of Columbia, and Puerto Rico;

(d) The term “corporation” means a public corporation and a private corporation, as defined in this Act;

(e) The term “public corporation” means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term “private corporation” means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;

(g) The term “applicant” means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;

(h) The term “grantee” means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;

(i) The term “zone” means a “foreign-trade zone” as provided in this Act.

SEC. 2. ESTABLISHMENT OF ZONES.

(a) BOARD AUTHORIZATION TO GRANT ZONES.—The Board is authorized, subject to the conditions and restrictions of this Act and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

(b) NUMBER OF ZONES PER PORT OF ENTRY.—Each port of entry shall be entitled to at least one zone, but when a port of entry is located within the confines of more

than one State such port of entry shall be entitled to a zone in each of such States, and when two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto. Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

(c) PREFERENCE TO PUBLIC CORPORATION.—In granting applications preference shall be given to public corporations.

(d) OWNERSHIP OF HARBOR FACILITIES BY STATE.—In case of any State in which harbor facilities of any port of entry are owned and controlled by the State and in which State harbor facilities of any other port of entry are owned and controlled by a municipality, the Board shall not grant an application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934).
SEC. 3. ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.

(a) HANDLING OF MERCHANDISE IN ZONE; SHIPMENT OF FOREIGN MERCHANDISE INTO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.— Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided*, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more

products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further*, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further*, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further*, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: *Provided further*, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24 chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: *Provided further*, That articles produced or manufactured in a zone and exported therefrom shall on subsequent

importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned: *Provided, further,* That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day, after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: *Provided, further,* That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988 without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested. *Provided further,* That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act [19 U.S.C. § 3805 note], that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs duty may be waived or reduced by (1) 100 percent during the 8-year period beginning on January 1, 2004; (2) 75 percent during the 1-year period beginning on January 1, 2012; (3) 50 percent during the 1-year period beginning on

January 1, 2013; and (4) 25 percent during the 1-year period beginning on January 1, 2014.

(b) **APPLICABILITY TO BICYCLE COMPONENT PARTS.**— The exemption from the customs laws of the United States provided under subsection (a) shall not be available on or before December 31, 1992, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(c) **ARTICLES MANUFACTURED OR PRODUCED FROM DENATURED DISTILLED SPIRITS WITHDRAWN FREE OF TAX FROM DISTILLED SPIRITS PLANT; PRODUCTS UNFIT FOR BEVERAGE PURPOSES.**—

(1) Notwithstanding the provisions of the fifth proviso of subsection (a), any article (within the meaning of section 5002(a)(14) of the Internal Revenue Code of 1986) may be manufactured or produced from denatured distilled spirits which have been withdrawn free of tax from a distilled spirits plant (within the meaning of section 5002(a)(1) of the Internal Revenue Code of 1986), and articles thereof, in a zone.

(2) Notwithstanding the provisions of the fifth proviso of subsection (a), distilled spirits which have been removed from a distilled spirits plant (as defined in section 5002(a)(1) of the Internal Revenue Code of 1986) upon payment or determination of tax may be used in the manufacture or production of medicines, medicinal preparation, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, in a zone. Such products will be eligible for drawback under the internal revenue laws under the same conditions applicable to similar manufacturing or production operations occurring in customs territory.

(d) **FOREIGN TRADE ZONES.**— In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.

(e) **PRODUCTION EQUIPMENT.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, if all applicable customs laws are complied with (except as otherwise provided in this subsection), merchandise which is admitted into a foreign trade zone for use within such zone as production equipment or as parts for such equipment, shall not be subject to duty until such merchandise is completely assembled, installed, tested, and used in the production for which it was admitted.

(2) **ADMISSION PROCEDURES.**—The person who admits the merchandise described in paragraph (1) into the zone shall, at the time of such admission,

certify to the Customs Service that the merchandise is admitted into the zone pursuant to this subsection for use within the zone as production equipment or as parts for such equipment and that the merchandise will be entered and estimated duties deposited when use of the merchandise in production begins.

(3) ENTRY PROCEDURES.—At the time use of the merchandise in production begins, the merchandise shall be entered, as provided for in section 484 of the Tariff Act of 1930, and estimated duties shall be deposited with the Customs Service. The merchandise shall be subject to tariff classification according to its character, condition, and quantity, and at the rate of duty applicable, at the time use of the merchandise in production begins.

(4) FOREIGN TRADE ZONE.—For purposes of the subsection, the term ‘foreign trade zone’ includes a subzone.

SEC. 4. CUSTOMS OFFICERS AND GUARDS.

The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory.

SEC. 5. VESSELS ENTERING OR LEAVING ZONE; COASTWISE TRADE.

Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in this Act, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in this Act shall be construed in any manner so as to permit vessels under foreign flags to carry goods or merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States.

SEC. 6. APPLICATION FOR ESTABLISHMENT OF ZONE; EXPANSION OF ZONE.

(a) APPLICATION FOR ESTABLISHMENT; REQUIREMENTS.—Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) AMENDMENT OF APPLICATION; EXPANSION OF ZONE.—The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the

same manner as an original application.

SEC. 7. GRANTING OF APPLICATION.

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this Act, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

SEC. 8. RULES AND REGULATIONS.

The Board shall prescribe such rules and regulations not inconsistent with the provisions of this Act or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out this Act.

SEC. 9. COOPERATION OF BOARD WITH OTHER AGENCIES.

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, sanitary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.

SEC. 10. COOPERATION OF OTHER AGENCIES WITH BOARD.

For the purpose of facilitating the investigations of the Board and its work in the granting of the privilege, in the establishment, operation, and maintenance of a zone, the President may direct the executive departments and other establishments of the Government to cooperate with the Board, and for such purpose each of the several departments and establishments is authorized, upon direction of the President, to furnish to the Board such records, papers, and information in their possession as may be required by him, and temporarily to detail to the service of the Board such officers, experts, or engineers as may be necessary.

SEC. 11. AGREEMENTS AS TO USE OF PROPERTY.

If the title to or the right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions approved by the Board and such department or officer, as may be agreed upon.

SEC. 12. FACILITIES TO BE PROVIDED AND MAINTAINED.

Each grantee shall provide and maintain in connection with the zone —

- (a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;
- (b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;
- (c) Adequate facilities for coal or other fuel and for light and power;
- (d) Adequate water and sewer mains;
- (e) Adequate quarters and facilities for the officers and employees of the

United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board.

SEC. 13. PERMISSION TO OTHERS TO USE ZONE.

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: *Provided*, That such permission shall not constitute a vested right as against the United States nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: *And provided further*, That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone: *And provided further*, That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in this Act.

SEC. 14. OPERATION OF ZONE AS PUBLIC UTILITY; COST OF CUSTOMS SERVICE.

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the additional customs service required under this Act shall be paid by the operator of the zone.

SEC. 15. RESIDENTS OF ZONE.

(a) **PERSONS ALLOWED TO RESIDE IN ZONE.**—No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary to the Board.

(b) **RULES AND REGULATIONS FOR EMPLOYEES ENTERING AND LEAVING ZONE.**—The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) **EXCLUSION FROM ZONE OF GOODS OR PROCESS OF TREATMENT.**—The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) **RETAIL TRADE WITHIN ZONE.**—No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory.

(e) EXEMPTION FROM STATE AND LOCAL AD VALOREM TAXATION OF TANGIBLE PERSONAL PROPERTY.—Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

SEC. 16. ACCOUNTS AND RECORDKEEPING.

(a) MANNER OF KEEPING ACCOUNTS.—The form and manner of keeping the accounts of each zone shall be prescribed by the Board.

(b) ANNUAL REPORT BY GRANTEE.—Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports on zone operations.

(c) REPORT TO CONGRESS.—The Board shall make a report to Congress annually containing a summary of zone operations.

SEC. 17. TRANSFER OF GRANT.

The grant shall not be sold, conveyed, transferred, set over, or assigned.

SEC. 18. REVOCATION OF GRANTS.

(a) PROCEDURE FOR REVOCATION.—In the event of repeated willful violations of any of the provisions of this Act by the grantee, the Board may revoke the grant after four months notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE.—In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the giving of testimony and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) NATURE OF ORDER OF REVOCATION; APPEAL.—An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the court of appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.

SEC. 19. OFFENSES.

In case of a violation of this Act, or any regulation under this Act, by the grantee, any officer, agent or employee thereof responsible for or permitting any such

violation shall be subject to a fine of not more than \$1,000. Each day during which a violation continues shall constitute a separate offense.

SEC. 20. SEPARABILITY OF PROVISIONS.

If any provision of this Act or the application of such provision to certain circumstances be held invalid, the remainder of this Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 21. RIGHT TO ALTER, AMEND, OR REPEAL CHAPTER.

The right to alter, amend, or repeal this Act is hereby reserved.

K. IMPLEMENTATION OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT AND THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES GENERAL NOTE 6 ON AIRCRAFT

General Note 6 of the Harmonized Tariff Schedule

Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft

(a) Whenever a product is entered under a provision for which the rate of duty "Free (C)" appears in the "Special" sub column and a claim for such rate of duty is made, the importer—

(i) shall maintain such supporting documentation as the Secretary of the Treasury may require; and

(ii) shall be deemed to certify that the imported article is a civil aircraft, or has been imported for use in a civil aircraft and will be so used.

The importer may amend the entry or file a written statement to claim a free rate of duty under this note at any time before the liquidation of the entry becomes final, except that, notwithstanding section 505(c) of the Tariff Act of 1930, any refund resulting from any such claim shall be without interest.

(b)(i) For purposes of the tariff schedule, the term "civil aircraft" means any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof)—

(A) that is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(B)(1) that is manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (hereafter referred to as the "FAA") under section 44704 of title 49, United States Code, or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for such an FAA certificate;

(2) for which an application for such certificate has been submitted to, and accepted by, the Administrator of the FAA by an existing type and

production certificate holder pursuant to section 44702 of title 49, United States Code, and regulations promulgated thereunder; or

(3) for which an application for such approval or certificate will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the Administrator of the FAA.

(ii) The term "civil aircraft" does not include any aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) purchased for use by the Department of Defense or the United States Coast Guard, unless such aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) satisfies the requirements of subdivisions (i)(A) and (i)(B)(1) or (2).

(iii) Subdivision (i)(B)(3) shall apply only to such quantities of the parts, components, and subassemblies as are required to meet the design and technical requirements stipulated by the Administrator. The Commissioner of Customs may require the importer to estimate the quantities of parts, components, and subassemblies covered for purposes of such subdivision.