

subchapter, 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.

(Pub. L. 93-618, title V, §502, as added Pub. L. 104-188, title I, §1952(a), Aug. 20, 1996, 110 Stat. 1917; amended Pub. L. 104-295, §35(a), Oct. 11, 1996, 110 Stat. 3538; Pub. L. 106-200, title IV, §412(a), May 18, 2000, 114 Stat. 298; Pub. L. 107-210, div. D, title XLI, §4102(a), Aug. 6, 2002, 116 Stat. 1040.)

#### PRIOR PROVISIONS

A prior section 2462, Pub. L. 93-618, title V, §502(a)-(c), (e), Jan. 3, 1975, 88 Stat. 2066-2069; Pub. L. 94-455, title XVIII, §1802, Oct. 4, 1976, 90 Stat. 1763; Pub. L. 96-39, title XI, §§1106(g)(1), (2), 1111(a)(1), (2), July 26, 1979, 93 Stat. 312, 313, 315; Pub. L. 98-573, title V, §503, Oct. 30, 1984, 98 Stat. 3019; Pub. L. 99-47, §8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99-514, title XVIII, §1887(a)(5), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 99-570, title IX, §9002(a), Oct. 27, 1986, 100 Stat. 3207-166; Pub. L. 101-179, title III, §301, Nov. 28, 1989, 103 Stat. 1311; Pub. L. 101-382, title I, §131, Aug. 20, 1990, 104 Stat. 643; Pub. L. 103-66, title XIII, §13802(a), Aug. 10, 1993, 107 Stat. 667; Pub. L. 103-149, §4(b)(9), Nov. 23, 1993, 107 Stat. 1506, related to beneficiary developing countries, prior to the general amendment of this subchapter by Pub. L. 104-188.

#### AMENDMENTS

2002—Subsec. (b)(2)(F). Pub. L. 107-210 inserted “or such country has not taken steps to support the efforts of the United States to combat terrorism” before period at end.

2000—Subsec. (b)(2). Pub. L. 106-200, §412(a)(2), in concluding provisions substituted “(G), and (H) (to the extent described in section 2467(6)(D) of this title)” for “and (G)”.

Subsec. (b)(2)(H). Pub. L. 106-200, §412(a)(1), added subpar. (H).

1996—Subsec. (b)(2)(F). Pub. L. 104-295, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 35(b) of Pub. L. 104-295 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1996.”

#### DELEGATION OF FUNCTIONS

Proc. No. 6942, Oct. 17, 1996, 61 F.R. 54719, provided in par. (5) that powers of the President granted in subsec. (f)(2) of this section to notify a country of the President's intention to terminate that country's status as a beneficiary developing country for purposes of the Generalized System of Preferences were delegated to the United States Trade Representative.

### § 2463. Designation of eligible articles

#### (a) Eligible articles

##### (1) Designation

##### (A) In general

Except as provided in subsection (b) of this section, the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this subchapter by Executive order

or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section.

#### (B) Least-developed beneficiary developing countries

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) of this section and articles described in paragraphs (2) and (3) of subsection (b) of this section, the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title 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) of this section, an article has been formally considered for designation as an eligible article under this subchapter 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 subchapter 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 2467(2) of this title, 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 subchapter, 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) of this section 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 subchapter on January 1, 1994, as this subchapter 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 United States 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 subchapter on January 1, 1995, as this subchapter 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 subchapter for any period during which such article is the subject of any action proclaimed pursuant to section 2253 of this title or section 1862 or 1981 of this title.

**(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 subchapter.

**(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) of this section 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 subchapter 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 subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

**(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) of this section, 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 2467(2) of this title, 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 2461 and 2462 of this title, 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) of this section 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) of this section was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 1332 of this title 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 2461 and 2462(c) of this title 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) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section 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, United States 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 subchapter during the preceding calendar year.

**(B) Other waiver limits**

(i) 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 subchapter 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 subchapter 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 subchapter during that year.

(ii) Not later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary devel-

oping country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—

(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year; or

(II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar 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 subchapter 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) of this section 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) of this section, the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this subchapter. The provisions of sections 2151, 2152, 2153, and 2154 of this title shall be complied with as though action under section 2461 of this title and this section were action under section 2133 of this title to carry out a trade agreement entered into under section 2133 of this title.

### (f) Special rule concerning Puerto Rico

No action under this subchapter may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of this title on coffee imported into Puerto Rico.

(Pub. L. 93-618, title V, § 503, as added Pub. L. 104-188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1921; amended Pub. L. 106-36, title I, § 1001(a)(7), June 25, 1999, 113 Stat. 130; Pub. L. 106-200, title I, § 111(b), May 18, 2000, 114 Stat. 258; Pub. L. 108-429, title I, § 1555(a), (b), Dec. 3, 2004, 118 Stat. 2578, 2579; Pub. L. 109-432, div. D, title VIII, § 8001, Dec. 20, 2006, 120 Stat. 3195.)

#### REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(4), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

#### PRIOR PROVISIONS

A prior section 2463, Pub. L. 93-618, title V, § 503, Jan. 3, 1975, 88 Stat. 2069; Pub. L. 96-39, title XI, § 1111(a)(3), July 26, 1979, 93 Stat. 315; Pub. L. 98-573, title V, § 504, Oct. 30, 1984, 98 Stat. 3020; Pub. L. 99-47, § 8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99-514, title XVIII, § 1889(7), Oct. 22, 1986, 100 Stat. 2926; Pub. L. 100-418, title I, § 1903, Aug. 23, 1988, 102 Stat. 1313; Pub. L. 101-382, title II,

§ 226, Aug. 20, 1990, 104 Stat. 660; Pub. L. 103-465, title IV, § 404(e)(3), Dec. 8, 1994, 108 Stat. 4961, related to eligible articles, prior to the general amendment of this subchapter by Pub. L. 104-188.

#### AMENDMENTS

2006—Subsec. (d)(4)(B). Pub. L. 109-432 designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

2004—Subsec. (b)(1)(A). Pub. L. 108-429, § 1555(b), substituted “Except as provided in paragraph (4), textile” for “Textile”.

Subsec. (b)(4). Pub. L. 108-429, § 1555(a), added par. (4).

2000—Subsec. (c)(2)(D). Pub. L. 106-200 amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Subparagraph (A) shall not apply to any least-developed beneficiary developing country.”

1999—Subsec. (a)(2)(A)(ii). Pub. L. 106-36 added subcl. (II) and concluding provisions and struck out former subcl. (II) which read as follows: “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.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-429, title I, § 1555(c), Dec. 3, 2004, 118 Stat. 2579, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974 [subsec. (b)(4) of this section], as added by subsection (a).”

### § 2464. 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.

(Pub. L. 93-618, title V, § 504, as added Pub. L. 104-188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1925; amended Pub. L. 106-200, title IV, § 412(c), May 18, 2000, 114 Stat. 299.)

#### PRIOR PROVISIONS

A prior section 2464, Pub. L. 93-618, title V, § 504, Jan. 3, 1975, 88 Stat. 2070; Pub. L. 96-39, title XI, §§ 1106(g)(3), 1111(a)(4), July 26, 1979, 93 Stat. 313, 315; Pub. L. 98-573, title V, § 505, Oct. 30, 1984, 98 Stat. 3020; Pub. L. 99-47, § 8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99-514, title XVIII, § 1887(a)(6), Oct. 22, 1986, 100 Stat. 2923, related to limitations on preferential treatment, prior to the general amendment of this subchapter by Pub. L. 104-188.

#### AMENDMENTS

2000—Pub. L. 106-200 inserted before period at end “, 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”.

### § 2465. Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after July 31, 2013.

(Pub. L. 93-618, title V, § 505, as added Pub. L. 104-188, title I, § 1952(a), Aug. 20, 1996, 110 Stat.