

Subtitle C—Regulations  
Relating to Foreign Trade  
Agreements



## CHAPTER XX—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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## PART 2001—CREATION, ORGANIZATION, AND FUNCTIONS

Sec.

- 2001.0 Scope and purpose.
- 2001.1 Creation and location.
- 2001.2 Organization.
- 2001.3 Functions.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

SOURCE: 40 FR 18419, Apr. 28, 1975, unless otherwise noted.

### § 2001.0 Scope and purpose.

(a) This chapter sets out terms of reference of the Office of the United States Trade Representative (hereinafter the "Office"), and the procedures whereby it carries out its general responsibilities under the trade agreements program.

(b) One of the primary purposes of these regulations is to inform the public of the unit known as the Trade Policy Staff Committee, which replaces and assumes the functions formerly performed by The Trade Staff Committee and the Trade Information Committee. One of the functions of the Trade Policy Staff Committee is to afford an opportunity for interested parties to present oral and written statements concerning the trade agreements program and related matters.

### § 2001.1 Creation and location.

(a) The Office was established as an agency in the Executive Office of the President by Executive Order 11075 of January 15, 1963 (28 FR 473), as amended by Executive Order 11106 of April 18, 1963 (28 FR 3911), and Executive Order 11113 of June 13, 1963 (28 FR 6183). The Office subsequently was reestablished as an agency in the Executive Office of the President by section 141 of the Trade Act of 1974 (Pub. L. 93-618, 88 Stat. 1978, hereinafter referred to as the "Trade Act"), and was delegated certain functions under the Trade Act by Executive Order 11846 of March 27, 1975.<sup>1</sup>

(b) The Office is located at 1800 G Street NW., Washington, DC 20506.

### § 2001.2 Organization.

(a) The Office is headed by the United States Trade Representative (hereinafter, the "Trade Representative") as provided in section 141(b)(1) of the Trade Act. The Trade Representative reports directly to the President and the Congress as described in § 2001.3(a)(2) of this part, and has the rank of Ambassador Extraordinary and Plenipotentiary.

(b) The Office also consists of two Deputy Trade Representatives (hereinafter "Deputy Trade Representatives") as provided in section 141(b)(2) of the Trade Act, each of whom holds the rank of Ambassador, and of a professional and nonprofessional staff.

(c) The Trade Policy Committee, an interagency committee composed of the heads of specified Executive departments and offices, was established by section 3 of Executive Order 11846 (see Appendix), as authorized by section 242(a) of the Trade Expansion Act of 1962, as amended,<sup>2</sup> under the chairmanship of the United States Trade Representative, as provided by section 141(c)(1)(E) of the Trade Act. Two subordinate bodies of the Trade Policy Committee, the Trade Policy Committee Review Group, and the Trade Policy Staff Committee, provided for in §§ 2002.1 and 2002.2 respectively, are established by, and under the direction and administrative control of the Trade Representative.

### § 2001.3 Functions.

(a) The Trade Representative:

(1) Except where otherwise provided by statute, Executive order, or instructions of the President, is the chief representative of the United States for each negotiation under the trade agreements program as defined in section 1 of Executive Order 11846, and participates in other negotiations which may have a direct and significant impact on trade;

(2) Reports directly to the President and the Congress, and is responsible to the President and the Congress, with respect to the administration of the trade agreements program as defined in section 1 of Executive Order 11846;

<sup>1</sup> 40 FR 14291, March 31, 1975.

<sup>2</sup> 76 Stat. 902, 19 U.S.C. 1872; Pub. L. 93-618, 88 Stat. 1978, section 602(b).

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(3) Advises the President and the Congress with respect to tariff and nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

(4) Performs the functions of the President under section 102 of the Trade Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, and prepares for the President's transmission to Congress all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements (except that where implementation of an agreement on nontariff barriers to, and other distortions of trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law prepares and transmits to the Trade Representative any proposed legislation necessary for such implementation);

(5) Is responsible for making reports to Congress with respect to the matters set forth in paragraphs (a) (1) and (2) of this section and prepares, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Trade Act ;

(6) Is chairman of the Trade Policy Committee, and designates the chairman of the Trade Policy Committee Review Group and the Trade Policy Staff Committee, which are provided for in part 2002 of these regulations;

(7) Is responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program;

(8) Performs the functions of the President under section 131(c) of the Trade Act concerning requests for, and receipt of, advice from the International Trade Commission with respect to modifications of barriers to (and other distortions of) international trade;

(9) Performs the functions of the President under section 132 of the Trade Act with respect to advice of departments of the Federal government and other sources, and under section

133 of the Trade Act with respect to certain public hearings;

(10) Performs the functions of the President under section 135 of the Trade Act with respect to advisory committees, (including functions under the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, which are applicable to such committees, except that of reporting annually to Congress), and, acting through the Secretaries of Commerce, Labor, and Agriculture, as appropriate, performs the functions of the President in establishing and organizing general policy advisory committees and sector advisory committees under section 135(c) of the Trade Act;

(11) Determines ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Trade Act, taking into account advice from the International Trade Commission and in consultation with the Trade Policy Committee;

(12) Requests, where appropriate, information from the International Trade Commission in connection with import relief findings or actions under sections 202(d) and 203(i) (1) and (2) of the Trade Act;

(13) Acting through the Section 301 Committee provided for in §2002.3 of this chapter as appropriate, provides opportunities for the presentation of views under sections 301(d) and 301(e) of the Trade Act, with respect to certain foreign restrictions, acts, practices or policies and United States actions in response thereto;

(14) At the request of a complainant, made in accordance with §2003.3 of these regulations, under section 301(d)(2) of the Trade Act, or of an interested person under section 301(e)(2), provides for appropriate public hearings by the Trade Policy Staff Committee on alleged foreign restrictions, acts, policies, or practices under section 301(d)(2), and on any action by the United States with respect to the import treatment of any foreign product or the treatment of any foreign service under section 301(e)(2);

(15) Requests, where appropriate, the views of the International Trade Commission as to the probable impact on the economy of the United States of

any action under section 301(a) of the Trade Act;

(16) Is responsible, in consultation with the Secretary of State, for the administration of the generalized system of preferences under Title V of the Trade Act;

(17) Is responsible for such other functions as the President may direct.

(b)(1) Each Deputy Trade Representative shall have as his principal function the conduct of trade negotiations under this Act, and shall have such other functions as the Trade Representative may direct;

(2) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Trade Policy Committee Review Group provided for in § 2002.1;

(3) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Adjustment Assistance Coordinating Committee established by section 281 of the Trade Act.

[40 FR 18419, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975]

## PART 2002—OPERATION OF COMMITTEES

Sec.

2002.0 Trade Policy Committee.

2002.1 Trade Policy Committee Review Group.

2002.2 Trade Policy Staff Committee.

2002.3 Section 301 Committee.

2002.4 Participation by other agencies.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

### § 2002.0 Trade Policy Committee.

(a) The Trade Policy Committee was created by section 3 of Executive Order 11846 of March 27, 1975 (40 FR 14291, March 31, 1975), as authorized by section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Trade Act.

(b) The Trade Policy Committee is composed of:

- (1) The Special Representative for Trade Negotiations, Chairman;
- (2) The Secretary of State;
- (3) The Secretary of the Treasury;
- (4) The Secretary of Defense;

(5) The Attorney General;

(6) The Secretary of the Interior;

(7) The Secretary of Agriculture;

(8) The Secretary of Commerce;

(9) The Secretary of Labor;

(10) The Assistant to the President for Economic Affairs;

(11) The Executive Director of the Council on International Economic Policy.

In addition, the Committee may invite the participation in its activities of any agency or office not listed above when matters of interest to such agency or office are under consideration.

(c) The Trade Policy Committee meets at such times and with respect to such functions as the President or the Chairman of the Committee directs. It has the functions conferred by the Trade Expansion Act of 1962, as amended, upon the interagency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of Executive Order 11846 (see Appendix), and such other functions as the President or the chairman may from time to time direct. Recommendations and advice of the Committee are submitted to the President by the chairman.

[40 FR 18420, Apr. 28, 1975]

### § 2002.1 Trade Policy Committee Review Group.

(a) The Trade Executive Committee, established by regulations appearing by 36 FR 23620, December 11, 1971 (15 CFR 2002.1), is abolished and there is hereby established as a subordinate body of the Trade Policy Committee the Trade Policy Committee Review Group (hereinafter referred to as the "Review Group"). The Review Group consists of a Deputy Trade Representative, designated by the Trade Representative, as chairman, and of high level officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State and Treasury, and the Executive Director of the Council on International Economic Policy. The Special Representative or the Deputy Special Representative, as appropriate, and each head of an agency or office, may designate from his respective agency or office high level officials to serve as alternate members of

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the Review Group in the event the regular member is unable to attend any meeting of the Review Group.

(b) The Review Group performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Coordinates interagency activities concerning the trade agreements program and related matters;

(2) Recommends policies and actions, and transmits appropriate materials, to the Special Representative concerning the trade agreements program and related matters, or, when appropriate, approves such policies and actions; and

(3) As appropriate, reviews and approves recommendations of the Trade Policy Staff Committee on policies and actions concerning any proposed trade agreements, the trade agreements program, and related matters.

(4) [Reserved]

(5) Performs such other functions as the Special Representative or a Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct. 18, 1977]

### § 2002.2 Trade Policy Staff Committee.

(a) The Trade Staff Committee and the Trade Information Committee, established by regulations appearing at 36 FR 23620, December 11, 1971 (15 CFR 2002.2, and 2002.3, respectively) are abolished and there is hereby established as a subordinate body of the Trade Policy Committee and the Trade Policy Review Group the Trade Policy Staff Committee (hereinafter referred to as "the Committee"). The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy," so that the sentence reads: The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from

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their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy, and by the Chairman of the International Trade Commission. Each Secretary or head of an agency or office and the Chairman of the Commission may designate from his respective agency officials to serve as alternate members of the Committee in the event the regular member is unable to attend any meeting of the Committee. The Special Representative may from time to time designate officials from his agency other than the chairman, to serve as acting chairmen of the Committee. The representative of the International Trade Commission shall be a nonvoting member of the Committee.

(b) The Committee performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Monitors the trade agreements programs, reviews the information received pursuant to paragraphs (b) (2) through (8) of this section, and transmits summaries of such information together with recommendations of action to the Special Representative, or through him to the Trade Policy Review Group or the Trade Policy Committee, concerning the trade agreements program and related matters, or when appropriate approves such policies and actions.

(2) Obtains information and advice from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the Office of the Special Representative for Trade Negotiations, and from such other sources as the Special Representative, a Deputy Special Representative, or the Chairman of the Committee may deem appropriate concerning any proposed trade agreement and other aspects of the trade agreements program and related matters, and concerning the Generalized System of Preferences in accordance with Title V of the Trade Act;

(3) Provides an opportunity, by the holding of public hearing and by such

other means as the Special Representative, the Deputy Special Representative or the Chairman of the Committee deems appropriate, for interested persons to present their views concerning any article on a list published pursuant to section 131 of the Trade Act, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to a proposed trade agreement;

(4) Provides an opportunity, by the holding of public hearings and by such other means as the Special Representative, a Deputy Special Representative, or the Chairman of the Committee deems appropriate, for any interested party to present by oral or written statement his views concerning articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences;

(5) [Reserved]

(6) Provides an opportunity where deemed appropriate by the Special Representative, the Deputy Special Representative, or the Chairman, by the holding of public hearings upon request by an interested party, and by such other means as the Special Representative, the Deputy Special Representative or the Chairman deems appropriate, for any interested party to present an oral or written statement concerning any other aspect of the trade agreements program and related matters;

(7) Reviews all materials required to be furnished by the International Trade Commission to the President through the Special Representative, and transmits such materials, together, where appropriate with recommendations of action with respect thereto, to the Special Representative or a Deputy Special Representative.

(8) Reviews reports of hearings and reviews conducted by the section 301 Committee provided for in §2002.3 and recommendations resulting therefrom, and makes recommendations to the Special Representative with respect thereto.

(9) When circumstances warrant, terminates section 301 reviews provided for in §2002.3

(10) Receives and reviews requests pertaining to the duty-free treatment

accorded to articles under the Generalized System of Preferences, and handles such requests and reviews in accordance with Part 2007 of these regulations;

(11) Issues regulations governing the conduct of its public hearings and the performance of such of its other functions as it deems necessary;

(12) Performs such other functions as the Special Representative or the Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct. 18, 1977]

#### § 2002.3 Section 301 Committee.

(a) There is hereby established, as a subordinate body of the Trade Policy Staff Committee, the Section 301 Committee. The Chairman of the Section 301 Committee shall be designated by the Deputy Special Representative from the Office of the Special Representative for Trade Negotiations. The Committee shall consist of the Chairman and, with respect to each complaint, such members as may be designated by agencies which have an interest in the issues raised by the particular complaint and whose participation is invited by the Chairman of the Committee.

(b) The Section 301 Committee performs the following functions unless such functions are assigned to a different body by the Special Representative, or his designee:

(1) Reviews complaints received pursuant to section 301 of the Trade Act of 1974.

(2) Provides an opportunity by the holding of public hearings upon request by a complainant or an interested party, as appropriate, and by such other means as the Special Representative, a Deputy Special Representative or the Chairman of the section 301 Committee deems appropriate, for any interested party to present his views to the section 301 Committee concerning foreign restrictions, acts, policies, and practices affecting U.S. commerce, and United States actions in response thereto, as provided for in section 301 of the Trade Act (Pub. L. 93-618, 88 Stat. 1978).

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(3) Reports to the Trade Policy Staff Committee the results of reviews and hearings conducted with respect to complaints received pursuant to section 301 of the Trade Act.

(4) On the basis of its review of petitions filed under section 301 and of the views received through hearings or otherwise on such petitions, makes recommendations to the TPSC for review by that committee.

[40 FR 39497, Aug. 28, 1975, as amended at 42 FR 55611, Oct 18, 1977]

### § 2002.4 Participation by other agencies.

The chairman of the Trade Policy Committee, the Trade Policy Committee Review Group, the Section 301 Committee, and the Trade Policy Staff Committee may invite the participation in the activities of their committees of any other agencies when matters of interest to such agencies are under consideration.

[40 FR 18420, Apr. 28, 1975. Redesignated and amended at 40 FR 39497, Aug. 28, 1975]

## PART 2003—REGULATIONS OF TRADE POLICY STAFF COMMITTEE

Sec.

2003.0 Office, mailing address, telephone number, and hours.

2003.1 Notice of public hearings.

2003.2 Testimony and submission of written briefs.

2003.3 [Reserved]

2003.4 Presentation of oral testimony at public hearings.

2003.5 Information open to public inspection.

2003.6 Information exempt from public inspection.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

SOURCE: 40 FR 18421, Apr. 28, 1975, unless otherwise noted.

### § 2003.0 Office, mailing address, telephone number, and hours.

(a) The office of the Committee is at room 729, 1800 G Street NW., Washington, DC 20506.

(b) All communications to the Committee should be addressed to the "Secretary, Trade Policy Staff Com-

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mittee, Office of the Special Representative for Trade Negotiations, room 729, 1800 G Street, NW., Washington, DC 20506."

(c) The telephone number of the office of the Committee is (202) 395-3395.

(d) The regular hours of the office of the Committee are from 9 a.m. to 5:30 p.m. on each business day, Monday through Friday.

### § 2003.1 Notice of public hearings.

The Committee shall publish in the FEDERAL REGISTER a notice of a proposed public hearing, the subject matter of the proposed public hearing, the period during which written briefs may be submitted, the period during which requests may be submitted to present oral testimony, and the time and place of the proposed public hearing, in the following instances:

(a) Upon publication of lists of articles by the President under section 131(a), or sections 503(a) and 131(a), of the Trade Act as a result of which public hearings are required to be held by section 133 of the Trade Act with respect to any matter relevant to a proposed trade agreement, or with respect to any matter relevant to the granting of generalized tariff preferences for the listed articles;

(b) Whenever the Special Representative or the Deputy Special Representative determines that public hearings in connection with the review of a request submitted pursuant to Part 2007 of these regulations, pertaining to the duty-free treatment accorded to articles under the GSP, are in the public interest.

(c) Upon instructions of the Special Representative.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975]

### § 2003.2 Testimony and submission of written briefs.

(a) Participation by an interested party in a public hearing announced under § 2003.1 shall require the submission of a written brief before the close of the period announced, in the public notice for its submission. Such brief may be, but need not be, supplemented by the presentation of oral testimony in accordance with § 2003.4.

(b) A written brief by an interested party concerning any aspect of the trade agreements program or any related matter not subject to paragraph (a) of this section, and submitted pursuant to a public notice shall be submitted before the close of the period announced in the public notice for its submission.

(c) A written brief shall state clearly the position taken and shall describe with particularity the evidence supporting such position. It shall be submitted in not less than twenty (20) copies which shall be legibly typed, printed, or duplicated.

(d) In order to assure each party an opportunity to contest the information provided by other interested parties, the Committee will entertain rebuttal briefs filed by any party within a time limit specified by the Committee. Rebuttal briefs shall conform, in form and number, to the provisions of paragraph (c) of this section. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearings and should be as concise as possible.

(e) A written brief by an interested party concerning any aspect of the Trade Agreements Program or any related matter not subject to paragraph (a) or (b) of this section may be submitted at any time.

(f) The requirements in paragraphs (a) through (d) of this section may be waived by the Special Representative, the Deputy Special Representative, or the Chairman of the Committee for reasons of equity and the public interest.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

**§ 2003.3 [Reserved]**

**§ 2003.4 Presentation of oral testimony at public hearings.**

(a) A request by an interested party to present oral testimony at a public hearing shall be submitted in writing before the close of the period announced in the public notice for its submission, and shall state briefly the interest of the applicant and the position to be taken by the applicant. Such request will be granted only if a writ-

ten brief has been prepared and submitted in accordance with § 2003.2. The requirements of this subpart may be waived by the Special Representative, the Deputy Special Representative or the Chairman of the Committee for reasons of equity and the public interest.

(b) After receipt and consideration of a request to present oral testimony at a public hearing, the Secretary of the Committee shall notify the applicant whether the request conforms to the requirements of paragraph (a) of this section, and if so, the time and place for the hearing and for his appearance, and the amount of time allotted for his oral testimony, and if not, will give the reasons why the request does not conform to the requirements.

(c) In presenting testimony, the interested party should supplement the information contained in the written brief, and should be prepared to answer questions relating to such information.

(d) A stenographic record shall be made of every public hearing.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

**§ 2003.5 Information open to public inspection.**

(a) With the exception of information subject to § 2003.6, an interested party may, upon request, inspect at the office of the Committee:

(1) Any written request, brief, or similar submission of information;

(2) Any stenographic record of a public hearing;

(3) Other public written information concerning the trade agreements program and related matters.

(b) [Reserved]

**§ 2003.6 Information exempt from public inspection.**

(a) The Committee shall exempt from public inspection business information submitted by an interested party if the Committee determines that such information concerns or relates to trade secrets and commercial and financial information the disclosure of which is not authorized by the interested party furnishing such information and is not required by law.

(b) A party requesting that the Committee exempt from public inspection

business information submitted in writing shall clearly mark each page "BUSINESS CONFIDENTIAL" at the top.

(c) The Committee may deny a request that it exempt from public inspection any particular business information if it determines that such information is not entitled to exemption under paragraph (a) of this section. In the event of such denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw his submission.

## PART 2004—FREEDOM OF INFORMATION POLICIES AND PROCEDURES

Sec.

- 2004.1 General.
- 2004.2 Availability of records.
- 2004.3 [Reserved]
- 2004.4 Records which may be exempt from disclosure.
- 2004.5 Classified records and information from other agencies.
- 2004.6 Release or denial of request for records.
- 2004.7 Appeals.
- 2004.8 Time limits.
- 2004.9 Fees schedule.
- 2004.10 Fee payments.
- 2004.11 Current index.
- 2004.12 Annual report to Congress.

AUTHORITY: Pub. L. 93-618, 88 Stat. 1978, (5 U.S.C. 552), as amended by Pub. L. 93-502; (19 U.S.C. 2171).

SOURCE: 40 FR 30934, July 24, 1975, unless otherwise noted.

### § 2004.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, U.S.C. as amended.

### § 2004.2 Availability of records.

(a) All identifiable records of the Office of the Special Representative shall be made available to the public upon compliance with the procedures established in this part, except to the extent that a determination is made to withhold a record subject to exemption under 5 U.S.C. 552(b).

(b) All requests for records must be in writing and shall be addressed to Freedom of Information Officer, Office of the Special Representative for Trade

Negotiations, 1800 G Street, NW., Washington, DC 20506. Requests should reasonably identify the particular record or records sought. Such a description, if possible, should include date, format, subject matter, office originating or receiving the record, and the name of any person to whom the record is known to relate.

### § 2004.3 [Reserved]

### § 2004.4 Records which may be exempt from disclosure.

(a) The following categories of records maintained by the Office of the STR may be exempted from disclosure:

(1) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order.

(2) Records related solely to the internal personnel rules and practices of the agency.

(3) Records specifically exempted from disclosure by statute, including but not limited to information relating to trade negotiations exempted under trade negotiations exempted under Public Law 93-618, section 135(g)(1) (A) and B and section 135(g)(2).

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Records which are inter-agency or intra-agency memorandums, letters, telegrams, or airgrams which would not be available by law to a party other than an agency in litigation with the agency.

(6) Records such as personnel and medical files and similar files the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Such other records that fall within exceptions noted in 5 U.S.C. 552(b) (7), (8) and (9).

(b) Any reasonably segregable non-exempt portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under paragraph (a) of this section. Normally a portion of a record shall be considered reasonably segregable when segregation can

produce an intelligible record which is not distorted out of context and does not contradict the record being withheld.

**§ 2004.5 Classified records and information from other agencies.**

(a) A Classification Review Committee is hereby established within STR to make determinations on the applicability of the exemption for classified documents. The Committee will be chaired by a staff official designated by the Special Representative and will consist of the Chairman and 2 STR Officials designated by him who have authority to classify and declassify documents.

(b) The applicability of the exemption for classified information requires a determination that the record in question is specifically authorized under the criteria established by Executive Order 11652 to be kept classified and is in fact properly classified pursuant to that order. This determination shall be made whenever possible before the initial denial under § 204.4(a)(1). It must in any case be made prior to the decision of an appeal under § 2004.7. No denial should be based solely on the existence of a classification marking on the record, and there shall be a substantive review of the validity of the classification to the maximum extent feasible within the time limits for a denial under § 2004.4.

(c) When a request for a STR record encompasses classified information originated or received from another department or agency, the request for that information shall be referred to the originator or other source. The person requesting the record will be advised of the date and the addressee of the referral.

(d) The Classification Review Committee will, at the request of another agency, make recommendations on the release of material concerning "national defense or foreign policy" originally classified by another agency but which is of significant subject-matter interest to STR.

**§ 2004.6 Release or denial of request for records.**

Written requests for inspection or copying of records shall be granted or

denied only by the Freedom of Information Officer or his designee. Responses to written requests shall be in writing, shall specify the reasons for any denial therefore, and shall advise the person requesting of the right to appeal any denial to the Freedom of Information Appeals Committee.

**§ 2004.7 Appeals.**

(a) A Freedom of Information Appeals Committee is hereby established, consisting of the Special Representative or his designee as chairman, and 3 STR staff officials designated by the Special Representative, none of whom were members of the Classification Committee which originally made the determination on the requested information.

(b) Review of an initial denial under § 2004.6 may be requested by the person who submitted the original request for a record. The review (hereinafter the appeal) must be requested in writing within 30 days of the date that the person requesting the record is informed either:

(1) That the request is denied completely, or

(2) That all records which are being furnished in response to his request have been released and he has been so informed.

(c) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releaseable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in § 2004.9. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decision and of the provisions of judicial review of STR's denial of the request.

(d) In the event a determination is not issued within the appropriate time limit and the person making the request chooses to initiate a court action against STR, the determination process shall continue and the Freedom of Information Appeals Committee may review any initial denial of the requested record.

## § 2004.8

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### § 2004.8 Time limits.

(a) An initial response under § 2004.6 shall be made within 10 days (exempting Saturdays, Sundays, and legal public holidays) after the receipt of a request for a record under this part by the Freedom of Information Officer or his designee. An appeal under § 2004.7 shall be decided within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such an appeal by the Appeals Committee.

(b) The time limits for initial decision and for an appeal decision begins on the date the request or appeal is actually received by STR. If requests or appeals not properly marked “Freedom of Information Request” or “Freedom of Information Act Appeal” on the request or appeal are inadvertently delayed in reaching the Freedom of Information Officer or the Appeals Committee they will not be deemed received by STR until actually received by the Freedom of Information Officer or Appeals Committee. In such event, the person making the request or appeal will be furnished a notice of the effective date of receipt.

(c) In unusual circumstances as specified in this paragraph, the Freedom of Information Officer or his designee may extend the time limits in paragraph (a) of this section by written notice to the person requesting a record under this part, which notice shall set forth the reasons for such extension and the date on which a determination or appeal decision is expected to be dispatched. No such notice shall specify a date which would result in an extension of either the initial determination period, or the appeal period, or both, for more than 10 working days. As used in this paragraph “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from overseas posts or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultations, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest therein.

(d) Where the responsible official believes that further consideration of a request may result in the release of additional records or portions thereof, the expiration of the time period allocated by the Freedom of Information Officer or his designee does not require the termination of that consideration, and it should be continued with a view to maximum disclosure of requested records within a reasonable period of time.

### § 2004.9 Fees schedule.

(a) Fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended:

(1) *Search for records.* Five dollars per hour when the search is conducted by a clerical employee. Eight dollars per hour when the search is conducted by a professional employee. No charge for searches of less than one hour.

(2) *Duplication of records.* Records will be duplicated at a rate of \$.15 per page for all copying of 4 pages or more.

(3) *Other.* When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Freedom of Information Act Officer is authorized to establish an appropriate fee based on “direct costs” as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Freedom of Information Officer or his designee or the Freedom of Information Appeals Committee determines that a record which has been requested, but which is exempt from disclosure under the Act, is to be withheld. Processing

of a request for records will not be undertaken until the person requesting a record has paid in full for search and duplication charges for any previous document request under the Act.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the person requesting the record has not indicated in advance his willingness to pay fees as high as are anticipated, the person so requesting shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting the record to consult with the Administrative Officer of STR in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the person requesting the record. Dispatch of such a notice or request shall suspend the running of the period for response by the Office of the STR until a reply is received from the person requesting the record.

(d) Fees must be paid in full prior to issuance of requested copies.

#### § 2004.10 Fee payments.

(a) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasurer of the United States and mailed to "the Administrative Officer", STR, 1800 G St. NW., Washington, DC 20506.

(b) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(c) The STR Administrative Officer, may in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section which it is deemed to be in either the interest of STR or in the public interest.

#### § 2004.11 Current index.

The Office of the STR maintains and makes available for public inspection and copying a current index providing

identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is retained as a record and is required by §2004.2 to be made available or published. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

#### § 2004.12 Annual report to Congress.

(a) On or before March 1st of each calendar year, a report of STR's activities over the preceding calendar year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

(b) The above report will include:

(1) The number of determinations made by STR not to comply with requests for records made to it under the Act and the reasons for each such determination;

(2) The number of appeals made by persons under the Act, the results of such appeals, and the reasons for the action by STR upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each;

(4) The results of each (Civil Service Commission) proceeding conducted pursuant to the Act, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by STR regarding the Act;

(6) A copy of the fee schedule and the total amount of fees collected by STR for making records available under the Act; and

(7) Such other information as indicates efforts by STR to administer fully the Act. (This should include, to the extent possible, data on the costs to STR of administering the Act.)

(c) STR, based in part on the information compiled for its annual report to Congress, will provide upon request

assistance to the Department of Justice in the preparation of its annual report (also due each March 1st) to Congress concerning judicial cases arising under the provisions of the Act.

### PART 2005—SAFEGUARDING INDIVIDUAL PRIVACY

Sec.

- 2005.0 Purpose and scope.
- 2005.1 Rules for determining if an individual is the subject of a record.
- 2005.2 Requests for access.
- 2005.3 Access to the accounting of disclosures from records.
- 2005.4 Requests for copies of records.
- 2005.5 Requests to amend records.
- 2005.6 Request for review.
- 2005.7 Schedule of fees.

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 48331, Oct. 14, 1975, unless otherwise noted.

#### § 2005.0 Purpose and scope.

The purpose of these regulations is to provide certain safeguards for an individual against the invasion of his or her personal privacy by the Office of the Special Representative for Trade Negotiations (hereinafter frequently referred to as “STR”). These regulations are promulgated pursuant to the requirements for all Federal Agencies contained in 5 U.S.C. 552a(f).

#### § 2005.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by STR contains a record pertaining to them should address their inquiries to the Administrative Officer, Office of the Special Representative for Trade Negotiations, Washington, DC 20506. The written inquiry should contain a specific reference to the system of records maintained by the STR listed in the STR Notice of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of STR systems of records subject to the Privacy Act will be published in the FEDERAL REGISTER and copies of the notices will be available upon request to the Administrative Officer when so published. A compilation of such notices will also be made and pub-

lished by the Office of Federal Register, in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient identifying information to allow STR to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, STR reserves the right to solicit from the person requesting access to a record additional identifying information.

(c) Ordinarily the person requesting will be informed whether the named system of records contains a record pertaining to such person within 10 days of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Administrative Officer will inform the person making the request the reasons for the delay and the date of which a response may be anticipated.

#### § 2005.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by STR must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section. Individuals who are employed by the STR may make their request on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9 am and 5:30 pm. Such requests for access by individuals employed by STR need not be made in writing.

(b) *Procedures—(1) Content of the request.* The request for access to a record in a system of records shall be addressed to the Administrative Officer at the address cited above, and shall name the system of records or contain a description (as concise as possible) of such system of records. The request

should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the person requesting access which is maintained by STR in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The request should contain necessary information to verify the identity of the person requesting access (see paragraph (b)(2)(vi) of this section). In addition, such person should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g. maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the STR Notice of Systems of Records.

(i) If the request for access follows a prior request under §2005.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence or a copy of the STR response to that request is attached. If the individual specifically desires a copy of the record, the request should so specify under §2005.4.

(2) *STR action on request.* A request for access will ordinarily be answered within 10 days, except when the Administrative Officer determines otherwise, in which case the person making the request will be informed of the reasons for the delay and an estimated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as request or a statement that there is not a record in the systems of records maintained by STR;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, alternative arrangements may be made with the official specified in paragraph (b)(1) of this section.

(iii) A statement, when appropriate, that examination in person will be the

sole means of granting access only when the Administrative Officer has determined that it would not unduly impede the right of access of the person making the request.

(iv) The amount of fees charged, if any (see §§2005.6 and 2005.7). (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the STR official having operational control over the record; and

(vi) The documentation required by STR to verify the identity of the person making the request. At a minimum, STR verification standards include the following:

(A) *Current or former STR Employees.* Current or former STR employees requesting access to a record pertaining to them in a system of records maintained by STR may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former STR employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former STR employees.* Individuals other than current or former STR employees requesting access to a record pertaining to them in a system of records maintained by STR must produce identification documentation of the type described in paragraph (b)(2)(vi)(A) of this section, prior to being granted access. The extent of the identification documentation required will depend on the type of record for which access is requested. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements will be specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be made accessible by mail, the Administrative Officer shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the person making the request of information required to be made available to the public by 5 U.S.C. 552. When, in the opinion of the Administrative Officer the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to \$5,000. In addition, depending upon the sensitivity of the records to which access is sought, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the person making the request.

(E) *Access by the parent of a minor, or by a legal guardian.* A parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by STR in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by STR wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by STR determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Administrative officer prior to finally denying the individual access.

(vii) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual to whom they pertain in such manner and following such procedures as the Administrative Officer shall direct. When STR in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, STR may transmit such information to a physician named by the individual.

(viii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceedings.

**§ 2005.3 Access to the accounting of disclosures from records.**

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 2005.2.

**§ 2005.4 Requests for copies of records.**

Rules governing requests for copies of records are the same as those for the granting of access to the records (including verification of identity) outlined in § 2005.2. (See also § 2005.7 for rules regarding fees.)

**§ 2005.5 Requests to amend records.**

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by STR must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of STR.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Administrative Officer. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the individual and STR will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to §2005.2(b)(2)(vi) herein, further verification of identity is not required as long as the communication does not suggest that a need for verification has reappeared. If the individual's identity has not been previously verified, STR may require identification validation as described in §2005.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Administrative Officer at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit STR not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by STR of personal information merely to permit verification of records, the burden of persuading STR to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, untimeliness, or incompleteness of the record.

(2) *STR action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. In the event a decision cannot be made within this time frame, the individual making the request will be informed within 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the STR whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within STR (see §2005.6).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

**§ 2005.6 Request for review.**

(a) Individuals wishing to request a review of the decision by STR with regard to an initial request to amend a record in accordance with the provisions of §2005.5, should submit the request for review in writing and, to the extent possible, include the information specified in §2005.5(a). Individuals desiring assistance in the preparation of their request for review should contact the Administrative Officer at the address provided herein.

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(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from STR in which the request to amend was denied and also the reasons why the individual believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons, as required by § 2005.5, set forth by STR in its decision denying the amendment. Appeals filed without a complete statement by the person making the request setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, such person's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, STR reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by STR within 180 days of the mailing by STR of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Administrative Officer, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Freedom of Information Appeals Committee (established in 15 CFR 2004.7) Office of the Special Representative for Trade Negotiations, room 719, 1800 G St. NW., Washington, DC 20506.

(d) Final determinations on requests for reviews within STR will be made by the Freedom of Information Appeals Committee, chaired by the Special Representative for Trade Negotiations. Additional information may be requested by the Committee from the person requesting a review if necessary to make a determination.

(e) The FOI Appeals Committee will inform the person making the request in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by STR of the individual's request for review, unless the Committee extends the 30 day period for good cause. The extension and the reasons therefor will

be sent by STR to the individual within the initial 30 day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with STR setting forth the individual's reasons for his disagreement with the decision upon the request for review. The STR Administrative Officer has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, setting forth its reasons for not making the requested changes, if STR chooses to file such a statement. A copy of the individual's statement, and if it chooses, STR's statement, will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

### § 2005.7 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Administrative Officer may, at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records. Records will be duplicated at a rate of \$.10 per page for all copying of 4 pages or more.

There is no charge for duplicating 3 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, the person making the request shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the person requesting to consult with the Administrative Officer in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of individuals making the request.

(3) Fees must be paid in full prior to issuance of requested copies. In the event the person requesting is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Administrative Officer, Office of the Special Representative for Trade Negotiations, 1800 G St., NW., Washington, DC, 20506.

(5) A receipt for fees paid will be given upon request.

#### **PART 2006—PROCEDURES FOR FILING PETITIONS FOR ACTION UNDER SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED**

Sec.

- 2006.0 Submission of petitions requesting action under section 301.
- 2006.1 Information to be included in petition.
- 2006.2 Adequacy of the petition.
- 2006.3 Determinations regarding petitions.
- 2006.4 Requests for information made to Foreign Governments or Instrumentalities.
- 2006.5 Consultations with the Foreign Government.
- 2006.6 Formal dispute settlement.
- 2006.7 Public hearings.

- 2006.8 Submission of written briefs.
- 2006.9 Presentation of oral testimony at public hearings.
- 2006.10 Waiver of requirements.
- 2006.11 Consultations before making determinations.
- 2006.12 Determinations; time limits.
- 2006.13 Information open to public inspection.
- 2006.14 Information not available.
- 2006.15 Information exempt from public inspection.

AUTHORITY: Sec. 309(a)(1), Trade Act of 1974, as amended by sec. 1301 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1176 (19 U.S.C. 2419).

SOURCE: 55 FR 20595, May 18, 1990, unless otherwise noted.

#### **§ 2006.0 Submission of petitions requesting action under section 301.**

(a) Section 301 of the Trade Act of 1974, as amended (the "Trade Act") requires the United States Trade Representative, subject to the specific direction, if any, of the President regarding such action, to take appropriate and feasible action in response to a foreign government's violation of a trade agreement, or any other international agreement the breach of which burdens or restricts United States commerce; and authorizes the Trade Representative, subject to the specific direction of the President, if any, to take action to obtain the elimination of acts, policies, and practices of foreign countries that are unjustifiable, unreasonable, or discriminatory and burden or restrict United States commerce. Section 302 of the Trade Act provides for petitions to be filed with the Trade Representative requesting that action be taken under section 301. Petitions filed under section 302 will be treated as specified in these regulations.

(b) Petitions may be submitted by an interested person. An interested person is deemed to be any party who has a significant interest affected by the act, policy, or practice complained of, for example: A producer, a commercial importer, or an exporter of an affected product or service; a United States person seeking to invest directly abroad, with implications for trade in goods or services; a person who relies on protection of intellectual property rights; a trade association, a certified union or recognized union or group of workers

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which is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product or service so affected; or any other private party representing a significant economic interest affected directly by the act, policy or practice complained of in the petition.

(c) The petitioner shall submit 20 copies of the petition in English, clearly typed, photocopied, or printed to: Chairman, Section 301 Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

To ensure proper docketing, petitions may be filed only during the following hours on days when the Federal Government is open for business: between 9 a.m. and 12 noon and 1 p.m. to 5 p.m.

(d) Recorded information on section 302 petitions and investigations may be obtained by calling (202) 395-3871.

**§ 2006.1 Information to be included in petition.**

(a) *General information.* Petitions submitted pursuant to section 302 of the Trade Act shall clearly state on the first page that the petition requests that action be taken under section 301 of the Trade Act and shall contain allegations and information reasonably available to petitioner in support of the request, in the form specified below. Petitioners for whom such information is difficult or impossible to obtain shall provide as much information as possible, and assistance in filing their petition may be obtained through the Chairman of the Section 301 Committee. All petitions shall:

(1) Identify the petitioner and the person, firm or association, if any, which petitioner represents and describe briefly the economic interest of the petitioner which is directly affected by the failure of a foreign government or instrumentality to grant rights of the United States under a trade agreement, or which is otherwise directly affected economically by an act, policy, or practice which is actionable under section 301.

(2) Describe the rights of the United States being violated or denied under the trade agreement which petitioner seeks to enforce or the other act, pol-

icy or practice which is the subject of the petition, and provide a reference to the particular part of section 301 related to the assertion in the petition.

(3) Include, wherever possible, copies of laws or regulations which are the subject of the petition. If this is not possible, the laws and regulations shall be identified with the greatest possible particularity, such as by citation.

(4) Identify the foreign country or instrumentality with whom the United States has an agreement under which petitioner is asserting rights claimed to be denied or whose acts, policies or practices are the subject of the petition.

(5) Identify the product, service, intellectual property right, or foreign direct investment matter for which the rights of the United States under the agreement claimed to be violated or denied are sought, or which is subject to the act, policy or practice of the foreign government or instrumentality named in paragraph (a)(4) of this section.

(6) Demonstrate that rights of the United States under a trade agreement are not being provided; or show the manner in which the act, policy or practice violates or is inconsistent with the provisions of a trade agreement or otherwise denies benefits accruing to the United States under a trade agreement, or is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

(7) Provide information concerning

(i) The degree to which U.S. commerce is burdened or restricted by the denial of rights under a trade agreement or by any other act, policy, or practice which is actionable under section 301,

(ii) The volume of trade in the goods or services involved, and

(iii) A description of the methodology used to calculate the burden or restriction on U.S. commerce.

(8) State whether petitioner has filed or is filing for other forms of relief under the Trade Act or any other provision of law. If the foreign government practice at issue is the subject of investigation under any other provision of law, the USTR may determine not to initiate an investigation; or if the same

matter is subsequently subject to investigation under some other provision of law, USTR may terminate the section 302 investigation.

(b) *Additional specific information*—(1) *Subsidies*. If the petition includes an assertion that subsidy payments are having an adverse effect upon products or services of the United States in United States' markets or in other foreign markets, it shall include an analysis supporting any claim that the subsidy complained of is inconsistent with any trade agreement and describe the manner in which it burdens or restricts United States commerce.

(2) *Certain unreasonable practices*. If the petition asserts that an unreasonable practice defined in section 301(d) (3) denies fair and equitable opportunities for the establishment of an enterprise, or denies adequate and effective protection of intellectual property rights, or denies fair and equitable market opportunities, and burdens or restricts U.S. commerce, the petition should include, to the extent possible, identification of reciprocal opportunities in the United States that may exist for foreign nationals and firms; and

(i) If the petition asserts that fair and equitable opportunities for the establishment of an enterprise in a foreign country are denied, the petition shall

(A) Describe in detail the nature of any foreign direct investment proposed by the United States person, including estimates of trade in goods and services that could reasonably be expected to result from that investment,

(B) Indicate the manner in which the foreign government is denying the United States person a fair and equitable opportunity for the establishment of an enterprise,

(C) State whether action by the foreign government is in violation of or inconsistent with the international legal rights of the United States, citing the relevant provisions of any international agreements to which the United States and the foreign government are party, and

(D) To the extent possible, provide copies of all relevant foreign government statutes, regulations, directives, public policy statements and cor-

respondence with the United States person with respect to the proposed investment.

(ii) If the petition asserts that fair and equitable provision of adequate and effective protection of intellectual property rights in a foreign country is denied, the petition shall

(A) Identify the intellectual property right for which protection has been sought,

(B) Indicate how persons who are not citizens or nationals of such foreign country are denied the opportunity to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights, or mask works, and

(C) Provide information on the relevant laws of the foreign country and an analysis of how the foreign country's law or policies conform to provisions of international law or international agreements to which both the United States and the foreign country are parties;

(iii) If the petition asserts that fair and equitable market opportunities are denied through the toleration by a foreign government of systematic private anticompetitive activities, the petition shall specifically

(A) Identify the private firms in the foreign country whose systematic anticompetitive activities have the effect of restricting access of United States goods to purchasing by those firms, inconsistent with commercial considerations,

(B) Describe in detail the private activities in question,

(C) State whether evidence of such activities has been provided (by petitioner or others) to the appropriate foreign government authorities, and describe the evidence indicating that the foreign government is aware of and supports, encourages, or tolerates such activities,

(D) Describe the duration and pervasiveness of such activities,

(E) Indicate whether such activities are inconsistent with the laws of the foreign country involved, making specific reference to any laws in question, and

(F) Indicate whether the foreign government's enforcement of (or failure to enforce) its relevant laws with respect

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to the private activities at issue is inconsistent with its enforcement practices in other situations;

(iv) If the petition asserts that an act, policy or practice, or combination thereof constitutes export targeting, the petition shall

(A) Identify the specific enterprise, industry, or group thereof which has been assisted in becoming more competitive in the export of the affected product or products,

(B) Describe the elements of the foreign government's plan or scheme consisting of coordinated actions to assist that enterprise, industry, or group, and

(C) Provide information on how and to what degree exports of the affected products by that enterprise, industry, or group have become more competitive as a result of the foreign government's plan or scheme; and

(v) If the petition asserts that an act, policy or practice, or combination thereof constitutes a persistent pattern of conduct that denies workers the right of association or the right to organize and bargain collectively, or permits forced or compulsory labor, or fails to provide a minimum age for employment of children or standards for minimum wages, hours, and occupational safety and health of workers, the petition shall

(A) Describe the rights or standards denied and provide information on the laws, policies and practices of the foreign country involved, if any, that relate to such rights or standards, and

(B) Indicate, to the extent such information is available to petitioner, whether the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing these rights or standards.

### § 2006.2 Adequacy of the petition.

If the petition filed pursuant to section 302 does not conform substantially to the requirements of §§ 2006.0 and 2006.1, the Chairman of the Section 301 Committee may decline to docket the petition as filed and, if requested by petitioner, return it to petitioner with guidance on making the petition conform to the requirements, or may nevertheless determine that there is sufficient information on which to proceed

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to a determination whether to initiate an investigation.

### § 2006.3 Determinations regarding petitions.

Within 45 days after the day on which the petition is received, the Trade Representative shall determine, after receiving the advice of the Section 301 Committee, whether to initiate an investigation.

(a) If the Trade Representative determines not to initiate an investigation, the Section 301 Chairman shall notify the petitioner of the reasons and shall publish notice of the negative determination and a summary of the reasons therefor in the FEDERAL REGISTER.

(b) If the Trade Representative determines to initiate an investigation regarding the petition, the Section 301 Chairman shall publish a summary of the petition in the FEDERAL REGISTER, and provide an opportunity for the presentation of views concerning the issues, including a public hearing if requested. A hearing may be requested by the petitioner or any interested person, including but not limited to a domestic firm or worker, a representative of consumer interests, a United States product exporter, or any industrial user of any goods or services that may be affected by actions taken under section 301 with respect to the act, policy or practice that is the subject of the petition.

### § 2006.4 Requests for information made to Foreign Governments or Instrumentalities.

If the U.S. Trade Representative receives a petition alleging violations of any international agreement, he will notify the foreign government or instrumentality of the allegations and may request information, in English, necessary to a determination under section 304(a)(1)(A) of the Trade Act. The Trade Representative may proceed on the basis of best information available if, within a reasonable time, no information is received in response to the request.

### § 2006.5 Consultations with the Foreign Government.

(a) If the Trade Representative determines to initiate an investigation on

the basis of a petition he shall, on behalf of the United States, request consultations with the foreign country concerned regarding the issues involved in such an investigation. In preparing United States presentations for consultations and dispute settlement proceedings, the Trade Representative shall seek information and advice from the petitioner and any appropriate private sector representatives, including committees established pursuant to section 135 of the Trade Act.

(b) To ensure an adequate basis for consultation, the Trade Representative may, after consulting with the petitioner, delay requests for consultations for up to 90 days in order to verify or improve the petition. If consultations are delayed, the time limits referred to in §2006.12 below shall be extended for the period of such delay.

**§ 2006.6 Formal dispute settlement.**

If the issues in a petition are covered by a trade agreement between the United States and the foreign government involved and a mutually acceptable resolution cannot be reached within the consultation period provided for in the agreement, or by 150 days after consultations begin, whichever is earlier, the Trade Representative shall institute the formal dispute settlement proceedings, if any, provided for in the trade agreement.

**§ 2006.7 Public hearings.**

(a) A public hearing for the purpose of receiving views on the issues raised in a petition shall be held by the Section 301 Committee:

(1) Within 30 days after the date that an investigation is initiated under section 302(a)(2) if a hearing is requested in the petition (or later, if agreed to by the petitioner); or

(2) Within a reasonable period if, after the investigation is initiated, a timely request is made by the petitioner, or any other interested person as defined in §2006.3(b).

(b) Prior to making a recommendation on what action, if any, should be taken in response to issues raised in the petition, the Section 301 Committee shall hold a public hearing upon the written request of any interested person. An interested person should

submit an application to the Section 301 Chairman stating briefly the interest of the person requesting the hearing, the firm, person, or association he represents, and the position to be taken. A hearing so requested shall be held:

(1) Prior to determining what action should be taken under section 301, and after at least 30 days' notice; or

(2) Within 30 days after the determination of action is made, if the Trade Representative determines that expeditious action is required.

(c) After receipt of a request for a public hearing under sections 302(a)(4)(B) or 304(b)(1)(A) of the Trade Act, the Chairman of the Section 301 Committee will notify the applicant whether the request meets the requirements of this part, and if not, the reasons therefor. If the applicant has met the requirements of this part, he will receive at least 30 days' notice of the time and place of the hearing.

(d) Notice of public hearings to be held under sections 302(a)(4)(B) and 304(b)(1)(A) shall be published in the FEDERAL REGISTER by the Chairman of the Section 301 Committee.

**§ 2006.8 Submission of written briefs.**

(a) In order to participate in the presentation of views either at a public hearing or otherwise, an interested person must submit a written brief before the close of the period of submission announced in the public notice. The brief may be, but need not be, supplemented by the presentation of oral testimony in any public hearing scheduled in accordance with §2006.7.

(b) The brief shall state clearly the position taken and shall describe with particularity the supporting rationale. It shall be submitted in 20 copies, which must be legibly typed, printed, or duplicated.

(c) In order to assure each interested person an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any interested person within a time limit specified in the public notice. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or

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hearing and should be as concise as possible.

**§ 2006.9 Presentation of oral testimony at public hearings.**

(a) A request by an interested person to present oral testimony at a public hearing shall be submitted in writing before the close of the period of submission announced in the public notice and shall state briefly the interest of the applicant. Such request will be granted if a brief has been submitted in accordance with § 2006.8.

(b) After consideration of a request to present oral testimony at a public hearing, the Chairman of the Section 301 Committee will notify the applicant whether the request conforms to the requirements of § 2006.8(a) and, if it does not, will give the reasons. If the applicant has submitted a conforming request he shall be notified of the time and place for the hearing and for his oral testimony.

**§ 2006.10 Waiver of requirements.**

To the extent consistent with the requirements of the Trade Act, the requirements of §§ 2006.0 through 2006.3 and 2006.8 may be waived by the Trade Representative or the Chairman of the Section 301 Committee upon a showing of good cause and for reasons of equity and the public interest.

**§ 2006.11 Consultations before making determinations.**

Prior to making a determination on what action, if any, should be taken in regard to issues raised in the petition, the Trade Representative shall obtain advice from any appropriate private sector advisory representatives, including committees established pursuant to section 135 of the Trade Act, unless expeditious action is required, in which case he shall seek such advice after making the determination. The Trade Representative may also request the views of the International Trade Commission regarding the probable economic impact of the proposed action.

**§ 2006.12 Determinations; time limits.**

On the basis of the petition, investigation and consultations, and after receiving the advice of the Section 301 Committee, the Trade Representative

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shall determine whether U.S. rights under any trade agreement are being denied, or whether any other act, policy, or practice actionable under section 301 exists and, if so, what action (if any) should be taken under section 301. These determinations shall be made:

(a) In the case of an investigation involving a trade agreement (other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979), within 30 days after the dispute settlement procedure concludes, or 18 months after the initiation of the investigation, whichever is earlier.

(b) In all other cases, within 12 months after initiating an investigation.

**§ 2006.13 Information open to public inspection.**

(a) With the exception of information subject to § 2006.15, an interested person may, upon advance request, inspect at a public reading room in the Office of the United States Trade Representative:

(1) Any written petition, brief, or similar submission of information (other than that to which confidentiality applies) made in the course of a section 302 proceeding;

(2) Any stenographic record of a public hearing held pursuant to section 302 or 304.

(b) In addition, upon written request submitted in accordance with section 308 of the Trade Act, any person may obtain from the Section 301 Chairman the following, to the extent that such information is available to the Office of the U.S. Trade Representative or other Federal agencies:

(1) Information on the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular goods, services, investment, or intellectual property rights;

(2) Information on United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) Information on past and present domestic and international proceedings

or actions with respect to the policy or practice concerned.

(c) An appropriate fee will be charged for duplication of documents requested under § 2006.13.

**§ 2006.14 Information not available.**

If the Office of the U.S. Trade Representative does not have, and cannot obtain from other Federal agencies, information requested in writing by any person, the Section 301 Chairman shall, within 30 days after the receipt of the request:

(a) Request the information from the foreign government involved; or

(b) Decline to request the information and inform the person in writing of the reasons for the refusal.

**§ 2006.15 Information exempt from public inspection.**

(a) The Chairman of the Section 301 Committee shall exempt from public inspection business information submitted in confidence if he determines that such information involves trade secrets or commercial and financial information the disclosure of which is not authorized by the person furnishing such information nor required by law.

(b) An interested person requesting that the Chairman exempt from public inspection confidential business information submitted in writing must certify in writing that such information is business confidential, the disclosure of such information would endanger trade secrets or profitability, and such information is not generally available. The information submitted must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each copy, and shall be accompanied by a nonconfidential summary of the confidential information.

(c) The Section 301 Chairman may use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use in any investigation under section 302, or make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

(d) The Section 301 Chairman may deny a request that he exempt from

public inspection any particular business information if he determines that such information is not entitled to exemption under law. In the event of a denial, the interested person submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw the submission.

**PART 2007—REGULATIONS OF THE U.S. TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES AND COUNTRIES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM (15 CFR PART 2007))**

Sec.

2007.0 Requests for reviews.

2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.

2007.3 Timetable for reviews.

2007.4 Publication regarding requests.

2007.5 Written briefs and oral testimony.

2007.6 Information open to public inspection.

2007.7 Information exempt from public inspection.

2007.8 Other reviews of article eligibilities.

AUTHORITY: 19 U.S.C. 2461-65, 88 Stat. 2066-2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98-573, 98 Stat. 3018-3024; E.O. 11846 of March 27, 1975 (40 FR 14291), E.O. 12188 of January 2, 1980 (45 FR 989).

SOURCE: 51 FR 5037, Feb. 11, 1986, unless otherwise noted.

**§ 2007.0 Requests for reviews.**

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19

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U.S. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in §2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under §2007.0 *et seq.*, an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th

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Street, NW., Washington, DC 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of §2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraph (a) or (b) of this section.

### **§ 2007.1 Information required of interested parties in submitting requests for modifications in the last of eligible articles.**

(a) *General Information Required.* A request submitted pursuant to this part, hereinafter also referred to as a petition, except requests submitted pursuant to §2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c). Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included with other products in a basket category of the TSUS, provide a detailed description of the product or products of interest;

(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Requests to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2501, 502(c))

such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase in GSP status is granted);

(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Analysis of cost including materials, labor and overhead;

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(10) Profitability of firms producing the product;

(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

**§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.**

(a)(1) If a request submitted pursuant to § 2007.0(a) does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(2) If a request submitted pursuant to § 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsection 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsection 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the

reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the FEDERAL REGISTER those requests which will be considered for full examination in the annual review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the U.S. International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting annual reviews, the TPSC shall hold public hearings in order to provide the opportunity for public testimony on petitions and requests filed pursuant to paragraphs (a) and (b) of § 2007.0.

(e) As appropriate, the USTR on behalf of the President will request advice from the USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be

designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

#### § 2007.3 Timetable for reviews.

(a) *Annual review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by FEDERAL REGISTER notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, FEDERAL REGISTER announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests filed pursuant to paragraph (a) or (b) of §2007.0 which indicate the existence of unusual circumstances warranting an immediate review may be considered separately. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

(c) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 (19 U.S.C. 2464(c)(2)) requires that, not later than January 4, 1987 and periodically thereafter, the President conduct

a general review of eligible articles based on the considerations in sections 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the FEDERAL REGISTER. The first general review was initiated on February 14, 1985 and will be completed by January 3, 1987.

The initiation of the review and deadlines for submission of comments and statements were announced in the FEDERAL REGISTER on February 14, 1985 (50 FR 6294).

#### § 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to §2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the FEDERAL REGISTER.

(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the FEDERAL REGISTER including:

(1) A list of actions taken in response to requests; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under §2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.

(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under §2007.0(b), the GSP Subcommittee will notify the party submitting the request in writing of the reasons why the requested action was not taken.

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### § 2007.5 Written briefs and oral testimony.

Sections 2003.2 and 2003.4 of this chapter shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this part. For the purposes of this section, the term “interested party” as used in §§ 2003.2 and 2003.4 shall be interpreted as including parties submitting petitions and requests pursuant to § 2007.0(a) or (b) as well as any other person wishing to file written briefs or present oral testimony.

### § 2007.6 Information open to public inspection.

With exception of information subject to § 2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

### § 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page “Submitted in Confidence” at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

### § 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade

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data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are “sufficiently competitive” to warrant a reduced competitive need limit. Those articles determined to be “sufficiently competitive” will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S imports of the article, or \$25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. gross national product (GNP), using 1984 as the base year). All other articles will continue to be subject to the original competitive need limits of 50 percent or \$25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of General Reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)) and requests for a determination of no domestic production under section 504(d)(1) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(d)(1)).

(2) *Factors To Be Considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(ii) 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;

(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;

(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(vii) 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 and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(viii) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(ix) 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

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

## **PART 2008—REGULATIONS TO IMPLEMENT E.O. 12065; OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

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2008.18 Information Security Oversight Committee.

2008.19 Classification Review Committee.

AUTHORITY: E.O. 12065.

SOURCE: 44 FR 55329, Sept. 26, 1979, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 2008.1 References.**

(a) Executive Order 12065, "National Security Information," dated June 28, 1978.

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978.

#### **§ 2008.2 Purpose.**

The purpose of this regulation is to ensure, consistent with the authorities listed in section 1-1 of Executive Order 12065, that national security information originated or held by the Office of the Special Representative for Trade Negotiations is protected but only to the extent, and for the period, necessary to safeguard the national security.

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### § 2008.3 Applicability.

This regulation governs the Office of the Special Representative for Trade Negotiations. In consonance with the authorities listed in section 1-1, it establishes the general policy and certain procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the Office of the Special Representative for Trade Negotiations.

### Subpart B—Classification

#### § 2008.4 Basic policy.

It is the policy of the Office of the Special Representative for Trade Negotiations to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

#### § 2008.5 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

#### § 2008.6 Duration of original classification.

(a) Except as permitted below, in paragraphs (b) and (c) of this section, information or material which is classified after December 1, 1978, shall be marked at the declassification no more than six years following its original classification.

(b) Original classification may be extended beyond six years only by officials with Top Secret classification authority and agency heads listed in section 1-2 of the order. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(1) The information is “foreign government information” as defined by the authorities in section 1.1;

(2) The information reveals intelligence sources and methods;

(3) The information pertains to communications security;

(4) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(5) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(6) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;

(7) The continued protection of the information is specifically required by statute.

(c) Even when the extension of authority is exercised, the period of original classification shall not be greater than twenty years from the date of original classification, except that the original classification of “foreign government information” pursuant to paragraph (b)(1) of this section may be for a period of thirty years.

#### § 2008.7 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the Information Security Oversight Committee. Action on such challenges shall be taken 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

### Subpart C—Derivative Classification

#### § 2008.8 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

#### § 2008.9 Classification guides.

Classification guides shall be issued by the Management Office pursuant to section 2-2 of the order. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be identified readily.

### Subpart D—Declassification and Downgrading

#### § 2008.10 Declassification authority.

The Special Representative for Trade Negotiations is authorized to declassify documents in accordance with section 3-3 of Executive Order 12065 and shall designate additional officials at the lowest practicable level to exercise declassification and downgrading authority.

#### § 2008.11 Mandatory review for declassification.

(a) *Requests for mandatory review.* (1) Requests for mandatory review for declassification under section 3-501 of Executive Order 12065 must be in writing and should be addressed to:

Attn.: General Counsel (Mandatory Review Request), Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or

the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the Special Trade Representative's determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the Office of the Special Representative for Trade Negotiations Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records:* \$5.00 per hour when the search is conducted by a clerical employee; \$8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents:* Documents will be reproduced at a rate of \$.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) When fees chargeable under this section will amount to more than \$25, and the requestor has not indicated in advance a willingness to pay fees higher than that amount, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the Office of the Special Representative for Trade Negotiations until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United

## § 2008.12

States, or a postal money order. Remittances shall be made payable to U.S. Treasurer and mailed to the Office of the Special Representative for Trade Negotiations, 1800 G St., NW., Washington, DC.

(4) A receipt for fees paid will be given only upon request. No refund of fees paid for services actually rendered will be made.

(5) The Office of the Special Representative for Trade Negotiations may waive all or part of any fee provided for in this section when it is deemed to be in the interest of either the Agency or the general public.

## § 2008.12 Foreign government information.

The Office of the Special Representative for Trade Negotiations shall, in consultation with the Archivist and in accordance with the provisions of section 3-404 of Executive Order 12065, develop systematic review guidelines for review of foreign government information for declassification thirty years from the date of original classification.

## § 2008.13 Systematic review guidelines.

Within 180 days after the effective date of the order, the Office of the Special Representative for Trade Negotiations shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic review of classified information originated by the Office of the Special Representative for Trade Negotiations twenty years from the date of original classification. These guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond twenty years is needed. Information not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically twenty years from the date of original classification.

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### Subpart E—Safeguards

#### § 2008.14 Storage.

The Office of the Special Representative for Trade Negotiations shall store all classified material in accordance with ISOO Directive of October 5, 1978 (43 FR 46281).

#### § 2008.15 General restrictions on access.

Access to classified information shall be restricted as required by section 4-1 of Executive Order 12065.

#### § 2008.16 Security education program.

(a) The Office of the Special Representative for Trade Negotiations will inform agency personnel having access to classified information of all requirements of Executive Order 12065 and ISOO Directive I.

(b) The Director, Office of Management, shall be charged with the implementation of this security education program and shall issue detailed procedures for the use of the agency personnel in fulfilling their day-to-day security responsibilities.

#### § 2008.17 Historical researchers and former Presidential appointees.

The requirement in section 4-101 of Executive Order 12065 with respect to access to classified information may be waived for historical researchers and former Presidential appointees in accordance with section 4-301 of that order.

### Subpart F—Implementation and Review

#### § 2008.18 Information Security Oversight Committee.

The Office of the Special Representative for Trade Negotiations Information Security Oversight Committee shall be co-chaired by the General Counsel of the Office of the Special Representative for Trade Negotiations and the Director, Office of Management. The chairs shall also be responsible with the Committee for conducting and active oversight program to ensure effective implementation of

Executive Order 12065, and ISOO implementing directives. The Committee shall:

(a) Establish a security education program to inform personnel who have access to classified information with the requirements of Executive Order 12065, and ISOO implementing directives.

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

(c) Act on all suggestions and complaints concerning the administration of the information security program.

(d) Establish and monitor policies and procedures within the Office of the Special Representative for Trade Negotiations to ensure the orderly and effective declassification of documents.

(e) Recommend to the Special Trade Representative appropriate administrative action to correct abuses or violations of any provision of Executive Order 12065.

(f) Consider and decide other questions concerning classification and declassification that may be brought before it.

#### § 2008.19 Classification Review Committee.

The Classification Review Committee shall be chaired by the Special Trade Representative. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of Executive Order 12065. The Committee shall consist of Special Representative, two Deputies and the General Counsel.

### PART 2009—PROCEDURES FOR REPRESENTATIONS UNDER SECTION 422 OF THE TRADE AGREEMENTS ACT OF 1979

Sec.

2009.0 Submission of representation.

2009.1 Information required in representation.

#### § 2009.0 Submission of representation.

(a) Any—(1) Part to the Agreement; or

(2) Foreign country that is not a Party to the Agreement but is found by the United States Trade Representative, (“Trade Representative”) to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement, may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement on Technical Barriers to Trade.

(b) All representations under section 422 of the Trade Agreements Act of 1979 (“section 422”) shall be addressed to the United States Trade Representative, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Alternatively, such a representation may be made by diplomatic correspondence and may be accepted by the Trade Representative.

(c) “The Agreement”, a “Party to the Agreement” and “standards-related activity” are defined as in section 451 of the Act (19 U.S.C. 2561).

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551-2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

#### § 2009.1 Information required in representation.

(a) Each representation submitted under section 422 should state clearly on the first page that the representation is a request for action with respect to the obligations of the United States under the Agreement, and should contain the following information:

(1) The foreign country making the representation, the division of the foreign country’s government representing that country’s interest, the person(s) within the division who is (are) coordinating the foreign country’s representation.

(2) A description of the standards-related activity at issues, including, whenever possible, copies of the standards-related activity’s provisions.

(3) Identification of the foreign goods or services affected by the standards-related activity at issue.

(4) A statement of how the standards-related activity concerned is alleged to

violate the obligations of the United States under the Agreement. This statement should indicate with particularity which such obligations are alleged to be violated.

(5) Indication as to whether the foreign country has officially petitioned, filed or complained for relief concerning the same subject matter as this representation to any international forum.

(b) Each representation submitted under section 422 of the Act must contain information sufficient to provide a reasonable indication that the standards-related activity concerned is having a significant trade effect, including (but not limited to) the volume of trade in the goods concerned.

(c) Representations should be submitted in 10 copies.

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551–2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

## PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

### Subpart A—Certificates of Quota Eligibility

Sec.

- 2011.101 General.
- 2011.102 Definitions.
- 2011.103 Entry into the United States.
- 2011.104 Waiver.
- 2011.105 Form and applicability of certificate.
- 2011.106 Agreements with foreign countries.
- 2011.107 Issuance of certificates to foreign countries.
- 2011.108 Execution and issuance of certificates by the certifying authority.
- 2011.109 Suspension or revocation of individual certificates.
- 2011.110 Suspension of certificate system.

### Subpart B—Specialty Sugar

- 2011.201 General.
- 2011.202 Definitions.
- 2011.203 Issuance of specialty sugar certificates.
- 2011.204 Entry of specialty sugars.
- 2011.205 Application for a specialty sugar certificate.
- 2011.206 Suspension or revocation of individual certificates.
- 2011.207 Suspension of the certificate system.

2011.208 Paperwork Reduction Act assigned number.

AUTHORITY: 19 U.S.C. 3601, Presidential Proclamation No. 6763, Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

SOURCE: 55 FR 40648, Oct. 4, 1990, unless otherwise noted.

### Subpart A—Certificate of Quota Eligibility

#### § 2011.101 General.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries that have been allocated a share of the U.S. sugar tariff-rate quota. Except as otherwise provided in this subpart, sugar imported from a foreign country may not be entered unless such sugar is accompanied by a certificate of quota eligibility. This subpart applies only to the ability to enter sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

[61 FR 26784, May 29, 1996]

#### § 2011.102 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Additional U.S. Note 5* means additional U.S. Note 5 to chapter 17 of the HTS, including any amendments thereto.

(b) *Appropriate customs official* means the district or area Director of the U.S. Customs Service, his or her designee, or any other customs officer of similar authority and responsibility for the customs district in which the port of entry is located.

(c) *Certificate of quota eligibility* or *certificate* means a certificate issued by the Secretary to a foreign country that, when duly executed and issued by the certifying authority of such foreign country, authorizes the entry into the

United States of sugar produced in such country.

(d) *Certifying authority* means a person designated by the government of a foreign country who is authorized to execute and issue certificates of quota eligibility on behalf of such foreign country.

(e) *Enter* or *Entry* means to enter or withdraw from warehouse, or the entry or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) *Foreign country* means, for any quota period, any foreign country or area with which an agreement or arrangement described in section 2011.106 is in effect for that quota period and to which the United States Trade Representative has allocated a particular quantity of the quota.

(g) *HTS* means the Harmonized Tariff Schedule of the United States.

(h) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(i) *Person* means an individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(j) *Quota* means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5.

(k) *Quota period* means the period October 1 of a calendar year through September 30 of the following calendar year.

(l) *Raw value* has the meaning provided in additional U.S. Note 5.

(m) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in the Secretary's place.

(n) *Sugar* means sugars, syrups, and molasses described in subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS, but does not include for any foreign country for any quota period specialty sugars as defined in subpart B of this part if a quantity of the quota for that

quota period has been reserved for specialty sugars and an amount of that quota quantity has been allocated to that country.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

#### § 2011.103 Entry into the United States.

(a) *General*. Except as otherwise provided in §§ 2011.104, 2011.109, and 2011.110, no sugar that is the product of a foreign country may be permitted entry unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) *Determinations of weight*. (1) For purposes of determining the amount of sugar which may be entered into the United States under a certificate of quota eligibility, sugar shall be entered on the basis of the actual weight of the sugar, as determined by the appropriate customs official. No adjustments in weight shall be made for the differences in polarization.

(2) The actual weight of the sugar entered into the United States may not exceed the weight specified on the certificate of quota eligibility by more than five percent. Such tolerance may be modified by the Secretary if the Secretary finds that such modification is appropriate to carry out the provisions of this subpart. Notice of any such modification shall be published by the Secretary in the FEDERAL REGISTER.

(3) This paragraph (b) shall not affect the manner in which the amount of sugar (raw value) entered is determined for purposes of administering the quota.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

#### § 2011.104 Waiver.

(a) *General*. The Secretary may waive, with respect to individual shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5, and that

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such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

(b) *Request for waiver.* The request for a waiver must be made to the Secretary in writing. The request need not follow any specific format. However, the request should set forth in detail all pertinent information relating to the shipment in question and the basis upon which the waiver should be granted.

(c) *Issuance of waiver.* The Secretary shall notify, in writing, the applicant for the waiver and the Secretary of the Treasury of any waiver granted under the authority of this section. The Secretary may attach any terms, conditions or limitations to the waiver which he or she determines are appropriate.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

### § 2011.105 Form and applicability of certificate.

(a) *Contents.* Each certificate shall be numbered and identified by the foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate shall provide spaces into which the following information must be inserted by the certifying authority of the foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information, if known, may also be specified on the certificate by the certifying authority: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States. The certificate shall also provide an area where the certifying authority of the foreign country shall affix a seal or other form of authentication and sign and date the certificate.

(b) *Other limitations.* The Secretary may attach such other terms, limitations, or conditions to individual cer-

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tificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

(c) *Applicability of the certificate.* The certificate of quota eligibility shall only be applicable to the shipment of sugar for which it was executed and issued by the certifying authority.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

### § 2011.106 Agreements with foreign countries.

Agreements or arrangements providing for the certificate system may be entered into by the United States Government with the governments of foreign countries. Such agreements or arrangements may provide for the designation of certifying authorities, the designation of seals or other forms of authentication, the transmittal and exchange of pertinent information, and other appropriate means or forms of cooperation.

### § 2011.107 Issuance of certificates to foreign countries.

(a) *Amount and timing.* The Secretary may issue certificates of quota eligibility to foreign countries for any quota period in such amounts and at such times as he or she determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

(b) *Adjustments.* The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made

pursuant to the provisions of subdivision (b) of additional U.S. Note 5 to reflect:

- (1) The amount of sugar entered into warehouse during previous quota periods;
- (2) Anticipated differences in actual weight and weight determined on a raw value basis; and
- (3) Other relevant factors.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

**§2011.108 Execution and issuance of certificates by the certifying authority.**

(a) *Execution.* The certificate of quota eligibility shall be executed by the certifying authority by:

- (1) Entering on the certificate the information required under §2011.105 of this subpart; and
- (2) Affixing a seal or other form of authentication to the certificate.

(b) *Issuance.* The executed certificate shall be issued by the certifying authority to the shipper or consignee specified on the certificate.

(c) *Modifications by the certifying authority.* The terms and conditions set forth in the certificate may not be modified, added to, or deleted by the certifying authority without the prior written approval of the Secretary.

(d) A certificate shall not be considered valid unless it is executed and issued in accordance with this section.

**§2011.109 Suspension or revocation of individual certificates.**

(a) *Suspension or revocation.* The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5.

(b) *Reinstatement.* The Secretary may reinstate or reissue any certificate which was previously suspended, re-

voked, modified, or otherwise limited under the authority of this section.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

**§2011.110 Suspension of certificate system.**

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that such action gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Secretary, in consultation with the United States Trade Representative, may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition.

**Subpart B—Specialty Sugar**

**§2011.201 General.**

This subpart sets forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from specialty sugar source countries. Specialty sugars imported from specialty sugar source countries may not be entered unless accompanied by a specialty sugar certificate. This subpart applies only to the ability to enter specialty sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate

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(subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

[61 FR 26785, May 29, 1996]

§ 2011.202 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Appropriate Customs official* means the District or Area Director of Customs, his or her designee, or any other Customs officer of similar authority and responsibility for the Customs district in which the port of entry is located.

(b) *Certificate* means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar.

(c) *Certifying Authority* means the Team Leader, Import Quota Programs, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(d) *Date of entry* means the date on which the appropriate Customs entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate Customs Officer.

(e) *Importer* means any person in the United States importing specialty sugar into the United States.

(f) *Person* means any individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) *Quota* means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

(h) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in his place.

(i) *Specialty sugar* means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar,

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perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, dragees for cooking and baking, fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, and other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States, all of which in addition:

(1) Are sugars, syrups, or molasses described in subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, or 2106.90.44 of the Harmonized Tariff Schedule of the United States,

(2) Are the product of a specialty sugar source country, and

(j) *Specialty sugar source country* means any country or area to which the United States Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from specialty sugar source countries may be entered only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

(b) A certificate may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations or restrictions as the Certifying Authority, in his discretion, deems necessary. The Certifying Authority will issue a certificate if sufficient evidence has been provided to permit the Certifying Authority to make a reasonable determination that the sugar proposed to be imported under the certificate fits the definition of specialty sugars in this subpart.

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugar, but only permits entry of such sugar if the amount allocated to the specialty sugar source country is not already filled.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

**§ 2011.204 Entry of specialty sugars.**

An importer or the importer's agent must present a certificate to the appropriate customs official at the date of entry of specialty sugars. Entry of specialty sugars shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

[61 FR 26785, May 29, 1996]

**§ 2011.205 Application for a specialty sugar certificate.**

Applicants for certificates for the import of specialty sugars must apply in writing to the Certifying Authority. Such letter of application shall contain the following information:

(a) The name and address of the applicant;

(b) A statement of the anticipated quantity of specialty sugars to be imported, if known;

(c) The appropriate six digit HTS subheading number;

(d) A description of the specialty sugar the importer expects to import during the period of the certificate, including the manufacturer's or exporter's usual trade name or designation and use of such specialty sugar, and the importer's use of such specialty sugar;

(e) Sufficient evidence to permit the Certifying Authority to make a reasonable determination that such sugars are specialty sugars within the definition of specialty sugars in this subpart;

(f) The name of the anticipated consumer of the specialty sugars, if known at time of application; and

(g) The anticipated date of entry, if known at time of application.

The Certifying Authority may waive any provision of this section for good cause if he or she determines that such a waiver will not adversely affect the implementation of this subpart.

**§ 2011.206 Suspension or revocation of individual certificates.**

(a) *Suspension or revocation.* The Certifying Authority may suspend, revoke, modify or add limitations to any certificate which has been issued if he or she determines that such action or actions is necessary to ensure the effective operation of the quota for specialty sugars or determines that the importer has failed to comply with the requirements of this subpart.

(b) *Reinstatement.* The Certifying Authority may reinstate or restore any certificate which was previously suspended, revoked, modified or otherwise limited under the authority of this section.

(c) The determination of the Certifying Authority under paragraph (a) that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director shall provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, DC 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) during the pendency of any appeal.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

**§ 2011.207 Suspension of the certificate system.**

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota is no longer in force or that this subpart is no longer

**§ 2011.208**

necessary to implement the quota. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Certifying Authority may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate Customs officials in order to ensure an orderly transition.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

**§ 2011.208 Paperwork Reduction Act assigned number.**

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. Chapter 25 and OMB control number 0551-0014 has been assigned with corresponding clearance effective through April 30, 1997.

[61 FR 26785, May 29, 1996]

**PART 2012—IMPLEMENTATION OF  
TARIFF-RATE QUOTAS FOR BEEF**

Sec.

2012.1 Purpose.

2012.2 Definitions.

2012.3 Export certificates.

AUTHORITY: Proclamation No. 6763; sec. 404, Pub. L. 103-465, 108 Stat. 4809.

SOURCE: 60 FR 15230, Mar. 23, 1995, unless otherwise noted.

**§ 2012.1 Purpose.**

The purpose of this part is to provide for the implementation of the tariff-rate quota for beef established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103-465). In particular, this part provides for the

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administration of export certificates where a country that has an allocation of the in-quota quantity under the tariff-rate quota has chosen to use export certificates.

**§ 2012.2 Definitions.**

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Beef* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 3 to chapter 2 of the HTS.

(b) *Allocated country* means a country to which an allocation of a particular quantity of beef has been assigned under additional U.S. note 3 to chapter 2 of the HTS.

(c) *Enter* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating country* means any allocated country that USTR has determined is, and notified the U.S. Customs Service as being eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

**§ 2012.3 Export certificates.**

(a) Beef may only be entered as a product of a participating country if the importer makes a declaration to the Customs Service, in the form and manner determined by the Customs Service, that a valid export certificate is in effect with respect to the beef.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the exporter, the product description and quantity, and the calendar year for which the export certificate is in effect;

(3) Be distinct and uniquely identifiable; and

(4) Be used in the calendar year for which it is in effect.

**PART 2013 DEVELOPING AND  
LEAST-DEVELOPING COUNTRY  
DESIGNATIONS UNDER THE  
COUNTERVAILING DUTY LAW**

AUTHORITY: Section 267, Pub. L. 103-465; 108 Stat. 4915 (19 U.S.C. 1677(36)).

**§ 2013.1 Designations.**

In accordance with section 771(36) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677(36), imports from members of the World Trade organization are subject to *de minimis* standards and negligible import standards as set forth in the following list:

De Minimis=3%; Negligible Imports=4%; Section 771(36)(B):

Angola  
Bangladesh  
Benin  
Bolivia  
Burkina Faso  
Burma  
Burundi  
Cameroon  
Cent. Afr. Rep.  
Chad  
Congo  
Côte d'Ivoire  
Dem. Rep. of the Congo  
Djibouti  
Egypt  
Gambia  
Ghana  
Guinea  
Guinea-Bissau  
Guyana  
Haiti  
India  
Indonesia  
Kenya  
Lesotho  
Madagascar  
Malawi  
Maldives  
Mali  
Mauritania  
Mozambique  
Nicaragua  
Niger  
Nigeria  
Pakistan  
Rwanda  
Senegal  
Sierra Leone  
Solomon Isl.  
Sri Lanka  
Tanzania  
Togo  
Uganda  
Zambia  
Zimbabwe

De Minimis=2%; Negligible Imports=4%;  
Section 771(36)(A):

Antigua & Barbuda  
Argentina  
Bahrain  
Barbados  
Belize  
Botswana  
Brazil  
Chile  
Colombia  
Costa Rica  
Dominica  
Dominican Republic  
Ecuador  
El Salvador  
Fiji  
Gabon  
Grenada  
Guatemala  
Honduras  
Jamaica  
Malaysia  
Malta  
Mauritius  
Morocco  
Namibia  
Panama  
Papua New Guinea  
Paraguay  
Peru  
Philippines  
South Africa  
St. Kitts & Nevis  
St. Lucia  
St. Vincent & Grenadines  
Slovenia  
Suriname  
Swaziland  
Thailand  
Tunisia  
Trinidad & Tobago  
Uruguay  
Venezuela

De Minimis=1%; Negligible Imports=3%:

Australia  
Austria  
Belgium  
Brunei  
Canada  
Cyprus  
Denmark  
European Communities  
Finland  
France  
Germany  
Greece  
Hong Kong  
Iceland  
Ireland  
Israel  
Italy  
Japan  
Korea  
Kuwait  
Liechtenstein

Luxembourg  
 Macao  
 Mexico  
 Netherlands  
 New Zealand  
 Norway  
 Portugal  
 Qatar  
 Singapore  
 Spain  
 Sweden  
 Switzerland  
 Turkey  
 United Arab Emirates  
 United Kingdom

[63 FR 29948, June 2, 1998]

## PART 2014—IMPLEMENTATION OF TARIFF-RATE QUOTA FOR IM- PORTS OF LAMB MEAT

Sec.

2014.1 Purpose.  
 2014.2 Definitions.  
 2014.3 Export certificates.

AUTHORITY: 19 U.S.C. 2253(g); Proclamation 7208, 64 FR 37387, July 9, 1999; Proclamation 7214, 64 FR 42265, Aug. 4, 1999.

SOURCE: 65 FR 40049, June 29, 2000, unless otherwise noted.

### § 2014.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for imports of lamb meat established in Proclamation 7208 (64 FR 37387) (July 9, 1999) and modified in Proclamation 7214 (64 FR 42265) (Aug. 4, 1999). In particular, this part provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under the tariff-rate quota has chosen to use export certificates.

### § 2014.2 Definitions.

Unless the context otherwise requires, for the purpose of this part, the following terms shall have the meanings assigned as follows:

(a) *Lamb meat* means fresh, chilled, or frozen lamb meat, provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the HTS.

(b) *In-quota lamb meat* means lamb meat that is entered under the in-quota rate of duty.

(c) *Participating country* means any country to which an allocation of a

particular quantity of lamb meat has been assigned under Proclamation 7208 that USTR has determined is, and has notified to the United States Customs Service as being, eligible to use export certificates.

(d) *Enter or Entered* means to enter or withdraw from warehouse for consumption.

(e) *HTS* means the Harmonized Tariff schedule of the United States.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

(g) *Quota Year* means the period between July 22, 1999 and July 21, 2000, inclusive, and such subsequent periods as set forth in Presidential Proclamations 7208 and 7214 during which lamb meat is exported.

### § 2014.3 Export certificates.

(a) In-quota lamb meat may only be entered as a product of a participating country if the United States importer makes a declaration to the United States Customs Service, in the form and manner determined by the United States Customs Service, that a valid export certificate is in effect with respect to that lamb meat product.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the exporter, the product description and quantity, and the quota year for which the export certificate is in effect;

(3) Be distinct and uniquely identifiable; and

(4) Be used for the quota year for which it is in effect.

## PART 2015—IMPLEMENTATION OF TARIFF-RATE QUOTAS FOR SUGAR-CONTAINING PRODUCTS

Sec.

2015.1 Purpose.  
 2015.2 Definitions.  
 2015.3 Export certificates.

AUTHORITY: Sec. 404, Pub. L. 103–465, 108 Stat. 4809; Proclamation 6763, 3 CFR, 1994 Comp., p. 147; Proclamation 7235, 64 FR 55611, October 13, 1999.

SOURCE: 64 FR 67153, Dec. 1, 1999, unless otherwise noted.

### § 2015.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for sugar-containing products established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103-465). In particular, this part provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under a tariff-rate quota has chosen to use export certificates.

### § 2015.2 Definitions.

For the purpose of this subpart, the following terms shall have the following meanings:

(a) *In-quota sugar-containing products* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 8 to chapter 17 of the HTS that is entered under the in-quota rate of duty.

(b) *Allocated country* means a country to which an allocation of a particular quantity of sugar-containing products has been assigned.

(c) *Enter* or *Entered* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating Country* means any allocated country that USTR has determined is, and has notified the U.S. Customs Service as being, eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

### § 2015.3 Export certificates.

(a) To claim the in-quota rate of duty on sugar-containing products of a participating country, the United States importer must make a declaration to the United States Customs Service, in the form and manner determined by the United States Customs Service, that a valid export certificate is in effect with respect to those sugar-containing products.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the party to whom the certificate is issued, the product description and quantity, shipment date, and the quota year for which the export certificate is in effect;

(3) Have a distinct and uniquely identifiable number; and

(4) Be used in the quota year for which it is in effect.

## PART 2016—PROCEDURES TO PETITION FOR WITHDRAWAL OR SUSPENSION OF COUNTRY ELIGIBILITY OR DUTY-FREE TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED

Sec.

2016.0 Requests for reviews.

2016.1 Action following receipt of petitions.

2016.2 Timetable for reviews.

2016.3 Publication regarding requests.

2016.4 Information open to public inspection.

2016.5 Information exempt from public inspection.

AUTHORITY: 19 U.S.C. 3201, *et seq.*; sec. 3103(d), Pub. L. 107-210; 116 Stat. 933; E.O. 13277, 67 FR 70303.

SOURCE: 68 FR 43924, July 25, 2003, unless otherwise noted.

### § 2016.0 Requests for reviews

(a) Any person may submit a request (hereinafter "petition") that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions should: include the name of the person or the group requesting the review; identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or

articles were selected; indicate the specific section 203(c) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion that the petitioner believes warrant(s) review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(b) Any person may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) be withdrawn, suspended, or limited. Such petitions should: Include the name of the person or the group requesting the review; identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petitioner believes warrant(s) review; and include all available supporting information. The Andean Subcommittee may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that The Office of the United States Trade Representative (USTR) will publish annually in the FEDERAL REGISTER in advance of each review. Foreign governments may make submission in the form of diplomatic correspondence and should observe the deadlines for each

annual review published in the FEDERAL REGISTER.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether: the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4)) should be withdrawn, suspended, or limited.

(e) Petitions requesting the action described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considered outside of the schedule for the annual review announced in the FEDERAL REGISTER. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

**§ 2016.1 Action following receipt of petitions.**

(a) USTR shall publish in the FEDERAL REGISTER a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC may, as appropriate, convene the Trade Policy Review Group (TPRG) to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-

level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles. The President (or if that function is delegated to the USTR, the USTR) shall announce in the FEDERAL REGISTER any such action he proposes to take. The USTR shall announce in the FEDERAL REGISTER notice of the results of the preliminary review, together with a schedule for receiving public input regarding such proposed action consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any person to submit written comments supporting, opposing or otherwise commenting on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the application of benefits under the ATPA to countries or articles. The Chairman of the TPSC may, as appropriate, convene the TPRG to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary. The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the application of the ATPA's benefits to countries or articles.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or Cab-

net-level officials, shall review all relevant information submitted in connection with a petition or otherwise available.

#### § 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by FEDERAL REGISTER notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: Announcement published in the FEDERAL REGISTER of the results of preliminary review;

(c) Decemeber/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

#### § 2016.3 Publication regarding requests.

Following the Presidential decision and where required, the publication of a Presidential proclamation modifying the application of benefits under the ATPA to countries or articles in the FEDERAL REGISTER, USTR will publish a summary of the decisions made in the FEDERAL REGISTER, including:

(a) For petitions on which decisions were made, a description of the outcome of the review; and

(b) A list of petitions on which no decision was made, and thus which are pending further review.

#### § 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, on request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or other submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

**§ 2016.5 Information exempt from public inspection.**

(a) Information submitted in confidence shall be exempt from public inspection if USTR determines that the disclosure of such information is not required by law.

(b) A person requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "BUSINESS CONFIDENTIAL" at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if USTR determines that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

APPENDIX A TO CHAPTER XX—ADMINISTRATION OF THE TRADE AGREEMENTS PROGRAM

Text of Executive Order No. 11846 of Mar. 27, 1975 (40 FR 14291).

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Pub. L. 93-618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *The Trade Agreements Program.* The "trade agreements program" includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, section 350 of the Tariff Act of 1930, as amended, the Trade Expansion Act of 1962, as amended, or the Act.

SEC. 2. *The Special Representative for Trade Negotiations.* (a) The Special Representative for Trade Negotiations, hereinafter referred to as the Special Representative, in addition to the functions conferred upon him by the Act, including section 141 thereof, and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) The Special Representative, except where otherwise expressly provided by stat-

ute, Executive order, or instructions of the President, shall be the chief representative of the United States for each negotiation under the trade agreements program and shall participate in other negotiations which may have a direct and significant impact on trade.

(c) The Special Representative shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Act. At the request of the Special Representative, other agencies shall assist in the preparation of that report.

(d) The Special Representative, except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order, and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act, including those established or delegated by this Order, the Special Representative shall also consult with the East-West Foreign Trade Board.

(f) The Special Representative shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order 11030, as amended, except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative, and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

SEC. 3. *The Trade Policy Committee.* (a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Act, there is established the Trade Policy Committee hereinafter referred to as the Committee. The Committee shall be composed of:

- (1) The Special Representative, who shall be Chairman.
- (2) The Secretary of State.
- (3) The Secretary of the Treasury.

- (4) The Secretary of Defense.
- (5) The Attorney General.
- (6) The Secretary of the Interior.
- (7) The Secretary of Agriculture.
- (8) The Secretary of Commerce.
- (9) The Secretary of Labor.
- (10) The Assistant to the President for Economic Affairs.

(11) The Executive Director of the Council on International Economic Policy. Each member of the Committee may designate an officer of his agency, whose status is not below that of an Assistant Secretary, to serve in his stead, when he is unable to attend any meetings of the Committee. The Chairman, as he deems appropriate, may invite representatives from other agencies to attend the meetings of the Committee.

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended, upon the inter-agency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c) The recommendations made by the Committee under section 242(b)(1) of the Trade Expansion Act of 1962, as amended, with respect to basic policy issues arising in the administration of the trade agreements program, as approved or modified by the President, shall guide the administration of the trade agreements program. The Special Representative or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under section 242(b)(2) of the Trade Expansion Act of 1962, as amended, the Committee shall, through the Special Representative, request the advice of the Adjustment Assistance Coordinating Committee, established by section 281 of the Act.

(e) The Committee shall advise the President as to what action, if any, he should take under section 337(g) of the Tariff Act of 1930, as amended by section 341 of the Act, relating to unfair practices in import trade.

(f) The Trade Expansion Act Advisory Committee established by Section 4 of Executive Order 11075 of January 15, 1963, is abolished and all of its records are transferred to the Trade Policy Committee.

**SEC. 4. Trade Negotiations Under Title I of the Act.** (a) The functions of the President under section 102 of the Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff

barriers to, and other distortions of, trade, are hereby delegated to the Special Representative.

(b) The Special Representative, after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under section 131(c) of the Act with respect to advice of the International Trade Commission and under section 132 of the Act with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative. The functions of the President under section 133 of the Act with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative, who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under section 135 of the Act with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I), except that of reporting annually to Congress, which are applicable to advisory committees under the Act are delegated to the Special Representative. In establishing and organizing general policy advisory committees or sector advisory committees under section 135(c) of the Act, the Special Representative shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Act are hereby delegated to the Special Representative. The International Trade Commission is requested to advise the Special Representative with respect to determining such ad valorem amounts and equivalents. The Special Representative shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under section 131 of the Act, and other advice or reports by the International Trade Commission to the President or the Special Representative, the release or disclosure of which is not specifically authorized

or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

**SEC. 5. *Import Relief and Market Disruption.***

(a) The Special Representative is authorized to request from the International Trade Commission the information specified in sections 202(d) and 203(i) (1) and (2) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under section 203(g) of the Act, regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962, regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

**SEC. 6. *Unfair Trade Practices.*** (a) The Special Representative, acting through an interagency committee which he shall designate for such purpose, shall provide the opportunity for the presentation of views, under sections 301(d)(1) and 301(e)(1) of the Act, with respect to unfair or unreasonable foreign trade practices and with respect to the United States response thereto.

(b) The Special Representative shall provide for appropriate public hearings under section 301(e)(2) of the Act; and, shall issue regulations concerning the filing of requests for, and the conduct of, such hearings.

(c) The Special Representative is authorized to request, pursuant to section 301(e)(3) of the Act, from the International Trade Commission, its views as to the probable impact on the economy of the United States of any action under section 301(a) of the Act.

**SEC. 7. *East-West Foreign Trade Board.*** (a) In accordance with section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

- (1) The Secretary of State.
- (2) The Secretary of the Treasury.
- (3) The Secretary of Agriculture.
- (4) The Secretary of Commerce.
- (5) The Special Representative for Trade Negotiations.
- (6) The Director of the Office of Management and Budget.
- (7) The Executive Director of the Council on International Economic Policy.

(8) The President of the Export-Import Bank of the United States.

(9) The Assistant to the President for Economic Affairs.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by section 411 of the Act and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with sections 402 and 409 of the Act (dealing with freedom of emigration) and section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order 11789 of June 25, 1974, as amended by section 6(d) of Executive Order 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

**SEC. 8. *Generalized System of Preferences.*** (a) The Special Representative, in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act.

(b) The Committee, through the Special Representative, shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

**SEC. 9. *Prior Executive Orders.*** (a) Executive Order 11789 of June 25, 1974, and Section 6(d) of Executive Order 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of the Executive Order 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order 11075, and Executive Order 11106 of April 18, 1963 and Executive Order 11113 of June 13, 1963, are hereby revoked.

[40 FR 18422, Apr. 28, 1975]