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Part IV

The President

Proclamation 8323—To Provide for Duty-free Treatment Under the Earned Import Allowance Program, And for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 8323 of November 25, 2008

To Provide for Duty-free Treatment Under the Earned Import Allowance Program, And for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA-DR Act''), as added by section 2 of Public Law 110–436, 122 Stat. 4976, provides for preferential tariff treatment of eligible apparel articles wholly assembled in an eligible country and imported directly from an eligible country, if such articles are accompanied by an earned import allowance certificate issued under a program established by the Secretary of Commerce.

2. Section 404(e)(1) of the CAFTA-DR Act, as amended, provides that the program providing this preferential treatment shall be in effect for the 10-year period beginning on the date on which the President certifies to the appropriate congressional committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 of December 20, 2007, have taken effect.

3. On August 7, 2008, the United States Trade Representative (USTR) published a notice in the *Federal Register* (73 *FR* 46057) announcing that August 15, 2008, would be the effective date for sections A, B, C, and D of the Annex to Presidential Proclamation 8213.

4. I have determined, and hereby certify, that the provisions of Proclamation 8213 referenced in section 404(e)(1) of the CAFTA-DR Act, as amended, have taken effect.

5. Section 6002 of the Africa Investment Incentive Act of 2006 (division D, title VI of Public Law 109–432) (the ''2006 Act'') amended section 112(c) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(c)) to modify the preferential tariff treatment accorded to designated lesser developed beneficiary sub-Saharan African countries.

6. Pursuant to section 6002 of the 2006 Act, in Proclamation 8114 of March 19, 2007, I proclaimed modifications to the Harmonized Tariff Schedule of the United States (HTS) to provide the tariff treatment authorized by the 2006 Act. The HTS provisions proclaimed in Proclamation 8114 were modified by Proclamation 8157 of June 28, 2007, and Proclamation 8240 of April 17, 2008, to provide the tariff treatment authorized by the 2006 Act.

7. Section 3 of Public Law 110–436 amends section 112(c) of the AGOA to modify the tariff treatment applicable to lesser developed beneficiary sub-Saharan African countries, and to provide that Mauritius is to be treated as a lesser developed beneficiary sub-Saharan African country for purposes of the AGOA.

8. Accordingly, in order to reflect the amendments to section 112(c) of the AGOA, I have determined that it is appropriate to modify the HTS to reflect the tariff treatment provided to lesser developed beneficiary sub-Saharan African countries and to provide that Mauritius is to be treated as a lesser developed beneficiary sub-Saharan African country for purposes of the AGOA.

9. Section 203(e)(1)(A)(i) of the Andean Trade Preference Act, as amended (ATPA) (19 U.S.C. 3202(e)(1)(A)(i)), authorizes the President to withdraw or suspend the designation of any country as a beneficiary country for purposes of the ATPA if, after such designation, the President determines that as a result of changed circumstances such country should be barred from designation as a beneficiary country.

10. Section 3103 of the Andean Trade Promotion and Drug Eradication Act (Title XXXI of the Trade Act of 2002, Public Law 107–210) (ATPDEA) amended section 203(e)(1) of the ATPA (19 U.S.C. 3202(e)(1)) by adding a new subparagraph (B)(i) authorizing the President to withdraw or suspend the designation of any country as a beneficiary country for purposes of the ATPDEA if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the eligibility criteria set forth in section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(b)(6)(B)).

11. Section 203(e)(2)(A) of the ATPA, as amended (19 U.S.C. 3202(e)(2)(A)) requires the President to publish notice of the action he proposes to take at least 30 days before taking action under section 203(e)(1) (19 U.S.C. 3202(e)(1)).

12. On October 1, 2008, the USTR, at my direction, published a notice in the *Federal Register* (73 *FR* 57158) announcing that I proposed to suspend the designation of Bolivia as a beneficiary country for purposes of the ATPA and the ATPDEA based on Bolivia's failure to satisfy the eligibility criteria set forth in section 203(d)(11) and section 204(b)(6)(B)(v) of the ATPA, as amended (19 U.S.C. 3202(d)(11), 3203(b)(6)(B)(v)).

13. I have determined that Bolivia no longer satisfies the eligibility criterion in section 203(d)(11) of the ATPA, as amended. Therefore, pursuant to section 203(e)(1)(A)(i) of the ATPA, I have determined that, as a result of this changed circumstance, Bolivia's designation as an ATPA beneficiary country should be suspended.

14. I have determined that Bolivia is no longer performing satisfactorily under the eligibility criterion in section 204(b)(6)(B)(v) of the ATPA, as amended. Therefore, pursuant to section 203(e)(1)(B)(i) of the ATPA, I have determined that, as a result of this changed circumstance, Bolivia's designation as an ATPDEA beneficiary country should be suspended.

15. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the ''NAFTA Implementation Act''), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

16. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA country and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA, and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

17. The United States and Canada have agreed to modify certain NAFTA rules of origin and to apply the modified rules to their bilateral trade. It is therefore necessary to modify the NAFTA rules of origin set out in Proclamation 6641.

18. Section 1230 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432) temporarily modified the rate of duty on triphenyl phosphine. Modifications to the HTS are necessary to provide the intended tariff treatment.

19. Presidential Proclamation 7011 of June 30, 1997, implemented the World Trade Organization Ministerial Declaration on Trade in Information Technology Products for the United States. Annex 1 to that proclamation failed to include certain products. Technical corrections and conforming changes to the HTS are necessary to provide the intended tariff treatment for those products.

20. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) (the ''1974 Act''), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 404 of the CAFTA-DR Act, as amended, section 104 of the AGOA, section 202 of the NAFTA Implementation Act, section 203 of the ATPA, as amended, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide the tariff treatment for eligible articles provided for in section 404 of the CAFTA-DR Act, as added by Public Law 110–436, the HTS is modified as set forth in Annex A to this proclamation.

(2) In order to reflect changes to the tariff treatment for certain apparel products under the AGOA, U.S. note 5 to subchapter XIX of chapter 98 of the HTS, subheadings 9819.15.10 through 9819.15.42, inclusive, and the superior text thereto are deleted from the HTS, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 31, 2008.

(3) For purposes of section 112(c) of the AGOA, as amended, Mauritius is included as a lesser developed beneficiary sub-Saharan African country effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 31, 2008.

(4) The designation of Bolivia as a beneficiary country for purposes of the ATPA and ATPDEA is suspended effective on December 15, 2008. Accordingly, effective on that date, general note 11(a) to the HTS is modified by deleting ''Bolivia'' from the list of ATPA beneficiary countries. Further, general note 11(d) to the HTS is modified by deleting ''Bolivia'' from the list of ATPDEA beneficiary countries. In addition, U.S. note 1 to subchapter XXII of chapter 98 of the HTS is modified by removing ''Bolivia'' from the list of ATPDEA beneficiary countries.

(5) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as set forth in Annex B to this proclamation.

(6) (a) The modifications to the HTS set forth in Annex A to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set forth in Annex A.

(b) The modifications to the HTS set forth in Annex B to this proclamation shall enter into effect on the date that the USTR announces in a notice published in the *Federal Register* that Canada has completed its applicable domestic procedures to give effect to corresponding modifications to be applied to goods of the United States and shall be effective with respect to goods of Canada entered, or withdrawn from warehouse for consumption, on or after the date indicated in the notice.

(7) In order to provide the intended tariff treatment to triphenyl phosphine and to correct the error identified in paragraph 19, the HTS is modified as provided in Annex C to this proclamation.

(8) The modifications to the HTS made in Annex C to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set out in that Annex.

(9) The USTR shall notify the Congress of this proclamation and my certification as provided in section 404(e) of the CAFTA-DR Act, as amended.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of November, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

ANNEX A

TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES REGARDING CERTAIN IMPORTED APPAREL ARTICLES

Effective with respect to goods of a party to the Dominican Republic-Central America-United States Free Trade Agreement ("DR-CAFTA") as defined in general note 29(a) to the Harmonized Tariff Schedule of the United States ("HTS") which are entered, or withdrawn from warehouse for consumption, on or after December 1, 2008, Chapter XXII of chapter 98 of the HTS is hereby modified as follows:

1. The following new U.S. note is inserted in numerical sequence in such subchapter:

"27. Earned import allowance program.

(a) For purposes of heading 9822.06.05, eligible apparel articles wholly assembled in and imported directly from the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflect the amount of credits equal to the total square meter equivalents (SMEs) of fabric in such apparel articles, in accordance with the earned import allowance program established by the Secretary of Commerce. For purposes of determining the quantity of SMEs under this note, the conversion factors listed in "Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008," or its successor publications, of the United States Department of Commerce shall apply.

(b) For purposes of subdivision (a) of this note, the term "eligible apparel articles" means the following articles classified in chapter 62 of the tariff schedule (and meeting the requirements of the rules relating to chapter 62 of the tariff schedule contained in general note 29(n) of such schedule) of cotton (but not of denim): trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts and pants."

2. The following new subheading is inserted in numerical sequence in such subchapter, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 General", respectively:

"9822.06.05	: Eligible apparel articles of chapter 62 assembled in	:	:	:
	: the Dominican Republic and imported directly therefrom,	:	:	:
	: under the terms of U.S. note 27 to this subchapter.....	: Free"	:	:

ANNEX B

TO MODIFY CERTAIN RULES OF ORIGIN FOR PURPOSES OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Effective with respect to goods originating in the territory of Canada, under the terms of general note 12 to the Harmonized Tariff Schedule of the United States ("HTS"), that are entered, or withdrawn from warehouse for consumption, on or after the date announced by the United States Trade Representative and published in the *Federal Register*, subdivision (t) of such general note is hereby modified as follows:

1. The Note immediately above tariff classification rule ("TCR") 1 for chapter 58 is modified to read as follows:

> "**Note:** The following TCRs 1 and 1A apply only to goods of Canada under the terms of this note."

2. TCR 1 is modified by striking "warp" and inserting in lieu thereof "woven-warp", and by striking "5515" and inserting in lieu thereof "5516".

3. The following new TCR is inserted immediately below TCR 1:

> "1A. A change to subheading 5801.36 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, headings 5501 through 5502, subheadings 5503.10 through 5503.20 or 5503.40 through 5503.90 or headings 5504 through 5516."

ANNEX C

(A) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, subheading 9030.90.64 is modified by deleting "9030.82" and inserting in lieu thereof "9030.40 or 9030.82" and by renumbering it as 9030.90.66.

(B) Conforming changes, effective on July 1, 1997:

1. Tariff classification rule 70 for chapter 90, as set forth in general note 12(t) is modified by deleting "9030.90.64" and by inserting in lieu thereof "9030.90.66".

2. General note 25(m)(9) and (152) are each modified by deleting "9030.90.64" and by inserting in lieu thereof "9030.90.66".

3. General Note 25(m)(152) is modified by deleting "9030.82" in the description opposite 9030.90.64 and replacing it with "9030.40 or 9030.82"

(C) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 4, 2007, heading 9902.23.23 is modified by deleting "2931.00.90" and inserting in lieu thereof "2931.00.60".

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