

## SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-210, div. C, title XXXI, §3101, Aug. 6, 2002, 116 Stat. 1023, provided that: "This title [amending sections 2703, 3201 to 3203, 3206, and 3721 of this title and enacting provisions set out as notes under this section and sections 2703, 3202, 3206, and 3721 of this title] may be cited as the 'Andean Trade Promotion and Drug Eradication Act'."

## SHORT TITLE

Pub. L. 102-182, title II, §201, Dec. 4, 1991, 105 Stat. 1236, provided that: "This title [enacting this chapter] may be cited as the 'Andean Trade Preference Act'."

## TERMINATION OF PREFERENTIAL TREATMENT

For termination of preferential treatment, see section 3206 of this title.

## FINDINGS

Pub. L. 107-210, div. C, title XXXI, §3102, Aug. 6, 2002, 116 Stat. 1023, provided that: "Congress makes the following findings:

"(1) Since the Andean Trade Preference Act [19 U.S.C. 3201 et seq.] was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

"(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

"(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

"(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

"(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

"(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

"(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

"(8) Temporarily enhancing trade benefits for Andean beneficiary countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world."

## § 3202. Beneficiary country

## (a) Definitions

For purposes of this chapter—

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

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

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

## (b) Countries eligible for designation; congressional notification

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

Bolivia  
Ecuador  
Colombia  
Peru.

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

## (c) Limitations on designation

The President shall not designate any country a beneficiary country under this chapter—

(1) if such country is a Communist country;  
(2) if such country—

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

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international

law with respect to such citizen, corporation, partnership, or association, or

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

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

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

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President—

(A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

(B) reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

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

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 2467(4) of this title) to workers in the country (including any designated zone in that country).

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

#### (d) Factors affecting designation

In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account—

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

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

(3) the extent to which such country has assured the United States it will provide equi-

table and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title);

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

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

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

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

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

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

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 2291(h)(2)(A)<sup>1</sup> of title 22 for eligibility for United States assistance; and

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

#### (e) Withdrawal or suspension of designation

(1)(A) The President may—

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

(ii) withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

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

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

(ii) withdraw, suspend, or limit the application of preferential treatment under section 3203(b)(1), (3), or (4) of this title to any article of any country,

if, after such designation, the President determines that, as a result of changed circum-

<sup>1</sup> See References in Text note below.

stances, the performance of such country is not satisfactory under the criteria set forth in section 3203(b)(6)(B) of this title.

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

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

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

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

(iii) publish in the Federal Register—

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

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

#### (f) Reporting requirements

##### (1) In general

Not later than June 30, 2010, and annually thereafter during the period this chapter is in effect, the United States Trade Representative shall submit to the Congress a report regarding the operation of this chapter, including—

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

(B) the performance of each beneficiary country or ATPEA<sup>2</sup> beneficiary country, as the case may be, under the criteria set forth in section 3203(b)(6)(B) of this title.

##### (2) Public comment

Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 3203(b)(6)(B) of this title.

(Pub. L. 102-182, title II, § 203, Dec. 4, 1991, 105 Stat. 1236; Pub. L. 103-465, title VI, § 621(a)(3), Dec. 8, 1994, 108 Stat. 4992; Pub. L. 104-188, title I, § 1954(a)(2), Aug. 20, 1996, 110 Stat. 1927; Pub. L. 106-200, title II, § 211(c)(2), May 18, 2000, 114 Stat. 287; Pub. L. 107-210, div. C, title XXXI, § 3103(b), (e), Aug. 6, 2002, 116 Stat. 1033; Pub. L. 111-124, § 2(c), Dec. 28, 2009, 123 Stat. 3484; Pub. L. 111-344, title II, § 201(d), Dec. 29, 2010, 124 Stat. 3616.)

#### REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(3), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Subsec. (h) of section 2291 of title 22, referred to in subsec. (d)(11), was repealed by Pub. L. 102-583, § 6(b)(2), Nov. 2, 1992, 106 Stat. 4932. For successor provisions to former subsec. (h), see sections 2291j and 2291k of Title 22, Foreign Relations and Intercourse.

This chapter, referred to in subsec. (d)(12), was in the original “this Act” and was translated as reading “this title”, meaning title II of Pub. L. 102-182 which enacted this chapter, to reflect the probable intent of Congress.

<sup>2</sup>So in original. Probably should be “ATPEA”.

#### AMENDMENTS

2010—Subsec. (f)(1). Pub. L. 111-344 substituted “annually” for “every 2 years” in introductory provisions.

2009—Subsec. (f)(1). Pub. L. 111-124 substituted “June 30, 2010” for “April 30, 2003”.

2002—Subsec. (e)(1). Pub. L. 107-210, § 3103(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 107-210, § 3103(e), substituted “Reporting requirements” for “Report” in heading and amended text generally. Prior to amendment, text read as follows: “Not later than January 31, 2001, the President shall submit to the Congress a complete report regarding the operation of this chapter, including the results of a general review of beneficiary countries based on the considerations described in subsections (c) and (d) of this section. In reporting on the considerations described in subsection (d)(11) of this section, the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this chapter.”

2000—Subsec. (f). Pub. L. 106-200 substituted “Report” for “Triennial report” in heading and “Not later than January 31, 2001” for “On or before the 3rd, 6th, and 9th anniversaries of December 4, 1991” in text.

1996—Subsec. (c)(7). Pub. L. 104-188 substituted “2467(4) of this title” for “2462(a)(4) of this title”.

1994—Subsec. (d)(4). Pub. L. 103-465 substituted “WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title)” for “General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2503(a) of this title”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104-188, set out as an Effective Date note under section 2461 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) of Pub. L. 103-465, set out as a note under section 1677k of this title.

#### DELEGATION OF AUTHORITY

Functions of President under subsec. (e)(2)(A) of this section, related to publishing notice of proposal to suspend designation of Bolivia as beneficiary country, were delegated to United States Trade Representative by Memorandum of the President of the United States, Sept. 25, 2008, 73 F.R. 56701.

For delegation of functions of President under div. C of Pub. L. 107-210, amending this section, see section 2 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

Functions of President under subsec. (e)(2)(A), related to publishing notice of proposed actions, delegated to United States Trade Representative, see Proc. No. 7616, Oct. 31, 2002, 67 F.R. 67283, set out as a note under section 3203 of this title.

#### PETITIONS FOR REVIEW

Pub. L. 107-210, div. C, title XXXI, § 3103(d), Aug. 6, 2002, 116 Stat. 1033, provided that:

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Aug. 6, 2002], the President shall promulgate regulations regarding the review of eligibility of articles and countries under the Andean Trade Preference Act [19 U.S.C. 3201 et seq.], consistent with section 203(e) of such Act [19 U.S.C. 3202(e)], as amended by this title.

“(2) CONTENT OF REGULATIONS.—The regulations shall be similar to the regulations regarding eligibility

under the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] with respect to the timetable for reviews and content, and shall include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment under the Andean Trade Preference Act, conducting reviews of such requests, and implementing the results of the reviews.”

[For delegation of functions of President under section 3103(d) of Pub. L. 107-210, set out above, see section 2(a) of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.]

#### PRESIDENTIAL DESIGNATION OF BENEFICIARY COUNTRIES

The following countries were designated as beneficiary countries for purposes of this chapter:

Bolivia, Proc. No. 6456, July 2, 1992, 57 F.R. 30097; designation suspended by Proc. No. 8323, Nov. 25, 2008, 73 F.R. 72679, effective Dec. 15, 2008.

Colombia, Proc. No. 6455, July 2, 1992, 57 F.R. 30069.

Peru, Proc. No. 6585, Aug. 11, 1993, 58 F.R. 43239.

### § 3203. Eligible articles

#### (a) In general

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

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

(B) the sum of—

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this chapter, or a beneficiary country under the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.] or 2 or more such countries, plus

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

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

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

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

(A) simple combining or packaging operations, or

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

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

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

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

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

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

#### (b) Exceptions and special rules

##### (1) Certain articles that are not import-sensitive

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

(A) Footwear not designated at the time of the effective date of this chapter as eligible for purposes of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.].

(B) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS.

(C) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such