

to which duty-free treatment under title V of the Trade Act of 1974 [this subchapter] (as amended by this subtitle) would have applied if the entry had been made on or after October 1, 1996, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

“(2) LIMITATION ON REFUNDS.—No refund shall be made pursuant to this subsection before October 1, 1996.

“(3) ENTRY.—As used in this subsection, the term ‘entry’ includes a withdrawal from warehouse for consumption.

“(c) REQUESTS.—Liquidation or reliquidation may be made under subsection (b) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act [Aug. 20, 1996], that contains sufficient information to enable the Customs Service—

“(1) to locate the entry; or

“(2) to reconstruct the entry if it cannot be located.”

## § 2462. Designation of beneficiary developing countries

### (a) Authority to designate countries

#### (1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

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

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

### (b) Countries ineligible for designation

#### (1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

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

#### (2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

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

(II) has taken steps to repudiate or nullify an existing contract or agreement with 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, including patents, trademarks, or copyrights, so owned, or

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

unless clause (ii) applies.

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

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

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

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

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

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of 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.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 4605(j)(1)(A) of title 50 or such country has not taken steps to support the efforts of the United States to combat terrorism.

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

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

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 2467(6)(D) of this title) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

**(c) Factors affecting country designation**

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

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

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

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

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

**(d) Withdrawal, suspension, or limitation of country designation**

**(1) In general**

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

**(2) Changed circumstances**

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

**(3) Advice to Congress**

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

**(e) Mandatory graduation of beneficiary developing countries**

If the President determines that a beneficiary developing country has become a “high income” country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

**(f) Congressional notification**

**(1) Notification of designation**

**(A) In general**

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President’s intention to make such designation, together with the considerations entering into such decision.

**(B) Designation as least-developed beneficiary developing country**

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President’s intention to make such designation.

**(2) Notification of termination**

If the President has designated any country as a beneficiary developing country under this

subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

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

#### PRIOR PROVISIONS

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

#### AMENDMENTS

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

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

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

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

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-295, §35(b), Oct. 11, 1996, 110 Stat. 3538, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1996.”

#### DELEGATION OF FUNCTIONS

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

### § 2463. Designation of eligible articles

#### (a) Eligible articles

##### (1) Designation

##### (A) In general

Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this sub-

chapter by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

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

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

#### (C) Three-year rule

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

### (2) Rule of origin

#### (A) General rule

The duty-free treatment provided under this subchapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

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

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

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

#### (B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

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