

Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

DELEGATION OF AUTHORITY

For delegation of certain authority of the President under this section to the Committee for the Implementation of Textile Agreements and the United States Trade Representative, see Ex. Ord. No. 13191, §§ 1-3, Jan. 17, 2001, 66 F.R. 7271, set out as a note under section 2703 of this title.

INCREASE IN LIMITATION ON CERTAIN BENEFITS

Pub. L. 107-210, div. C, title XXXI, § 3108(b), Aug. 6, 2002, 116 Stat. 1039, provided that: "The applicable percentage under clause (ii) of section 112(b)(3)(A) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(3)(A)) shall be increased—

"(1) by 2.17 percent for the 1-year period beginning on October 1, 2002, and

"(2) by equal increments in each succeeding 1-year period provided for in such clause, so that for the 1-year period beginning October 1, 2007, the applicable percentage is increased by 3.5 percent,

except that such increase shall not apply with respect to articles eligible under subparagraph (B) of section 112(b)(3) of that Act."

PROC. NO. 7350. TO IMPLEMENT THE AFRICAN GROWTH AND OPPORTUNITY ACT AND TO DESIGNATE ERITREA AS A BENEFICIARY DEVELOPING COUNTRY FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

Proc. No. 7350, Oct. 2, 2000, 65 F.R. 59321, provided in par. (5) that the United States Trade Representative is authorized to determine whether Kenya and Mauritius have satisfied the requirements of section 3721(c)(d) of this title, is directed to set forth the determination in a notice to be published in the Federal Register and to cause the existing quotas on textile and apparel articles imported into the United States from such country to be eliminated within 30 days after the determination, and is authorized to exercise the authority provided to the President under section 2483 of this title to embody modifications and technical or conforming changes in the Harmonized Tariff Schedule of the United States.

§ 3722. Protections against transshipment

(a) Preferential treatment conditioned on enforcement measures

(1) In general

The preferential treatment under section 3721(a) of this title shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country—

(A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;

(B) has enacted legislation or promulgated regulations that would permit United States Customs Service verification teams to have

the access necessary to investigate thoroughly allegations of transshipment through such country;

(C) agrees to report, on a timely basis, at the request of the United States Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;

(D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;

(E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and

(F) agrees to report, on a timely basis, at the request of the United States Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.

(2) Country of origin documentation

For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) Customs procedures and enforcement

(1) In general

(A) Regulations

Any importer that claims preferential treatment under section 3721 of this title shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) Determination

(i) In general

In order to qualify for the preferential treatment under section 3721 of this title and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii)—

(I) has implemented and follows; or

(II) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) Country described

A country is described in this clause if it is a beneficiary sub-Saharan African country—

(I) from which the article is exported; or

(II) in which materials used in the production of the article originate or in which the article or such materials, undergo production that contributes to a claim that the article is eligible for preferential treatment.

(2) Certificate of Origin

The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 3721 of this title if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(3) Penalties for exporters

If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 3721 of this title to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) Transshipment described

Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this chapter¹ has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 3721 of this title.

(5) Monitoring and reports to Congress

The Customs Service shall monitor and the Commissioner of U.S. Customs and Border Protection shall submit to Congress, not later than March 31 of each year, a report on the effectiveness of the visa systems and the implementation of legislation and regulations described in subsection (a) and on measures taken by countries in sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in Article 5 of the Agreement on Textiles and Clothing.

(c) Customs Service enforcement

The Customs Service shall—

(1) make available technical assistance to the beneficiary sub-Saharan African countries—

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A); and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (c) the sum of \$5,894,913.

(Pub. L. 106-200, title I, §113, May 18, 2000, 114 Stat. 263; Pub. L. 114-125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(4), was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 106-200, May 18, 2000, 114 Stat. 252, which is classified principally to this chapter, to reflect the probable intent of Congress. For complete classification of title I to the Code, see Short Title note set out under section 3701 of this title and Tables.

CHANGE OF NAME

“Commissioner of U.S. Customs and Border Protection” substituted for “Commissioner of Customs” in subsec. (b)(5) on authority of section 802(d)(2) of Pub. L. 114-125, set out as a note under section 211 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

DELEGATION OF AUTHORITY

Authority of President under subsec. (b)(3) of this section delegated to the Committee for the Implementation of Textile Agreements by section 4 of Ex. Ord. No. 13191, Jan. 17, 2001, 66 F.R. 7271, set out as a note under section 2703 of this title.

PROC. NO. 7350. TO IMPLEMENT THE AFRICAN GROWTH AND OPPORTUNITY ACT AND TO DESIGNATE ERITREA AS A BENEFICIARY DEVELOPING COUNTRY FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

Proc. No. 7350, Oct. 2, 2000, 65 F.R. 59321, provided in par. (4) that the United States Trade Representative is authorized to determine whether each designated beneficiary sub-Saharan African country has satisfied the requirements of section 3722(a) of this title, relating to the establishment of procedures to protect against unlawful transshipments and section 3722(b)(1)(B) of this title relating to the implementation of procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the North American Free Trade Agreement (NAFTA), is directed to set forth the determination in a notice to be published in the Federal Register which notice shall modify the Harmonized Tariff Schedule of the United States (HTS) by listing the countries that satisfy the requirements of sections 3722(a) and 3722(b)(1)(B) of this title, and is authorized to exercise the authority provided to the President under section 2483 of this title to embody modifications and technical or conforming changes in the HTS.

¹ See References in Text note below.

§ 3723. Free trade agreements with sub-Saharan African countries

(a) Declaration of policy

Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) Plan requirement

(1) In general

The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) Elements of plan

The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.

(E) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiations.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiation of the agreement or agreements.

(c) Reporting requirement

Not later than 12 months after May 18, 2000, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

(Pub. L. 106-200, title I, §116, May 18, 2000, 114 Stat. 266.)

COORDINATION OF EFFORTS TO DEVELOP FREE TRADE AGREEMENTS WITH SUB-SAHARAN AFRICAN COUNTRIES

Pub. L. 114-328, div. A, title XII, §1293, Dec. 23, 2016, 130 Stat. 2560, as amended by Pub. L. 115-232, div. A, title XII, §1289, Aug. 13, 2018, 132 Stat. 2081, provided that:

“(a) COORDINATION BETWEEN THE UNITED STATES TRADE REPRESENTATIVE AND OTHER AGENCIES.—The United States Trade Representative shall consult and coordinate with other relevant Federal agencies to assist countries identified under paragraph (1) of section 110(b) of the Trade Preferences Extension Act of 2015 (Public Law 114-27; 129 Stat. 370; 19 U.S.C. 3705 note) in the most recent report required by that section, including through the deployment of resources from those agencies to such countries and through trade capacity building, in addressing the plan developed under paragraph (3) of that section.

“(b) COORDINATION OF USAID WITH FREE TRADE AGREEMENT POLICY.—

“(1) AUTHORIZATION OF FUNDS.—Funds made available to the United States Agency for International Development under section 496 of the Foreign Assistance Act of 1961 (22 U.S.C. 2293) after the date of the enactment of this Act [Dec. 23, 2016] may be used, in consultation with the United States Trade Representative—

“(A) to assist eligible countries, including by deploying resources to such countries, in addressing the plan developed under section 116(b) of the African Growth and Opportunity Act (19 U.S.C. 3723(b)); and

“(B) to assist eligible countries in the implementation of the commitments of those countries under agreements with the United States and under the WTO Agreement (as defined in section 2(9) of the Uruguay Round Agreements Act (19 U.S.C. 3501(9))) and agreements annexed to the WTO Agreement.

“(2) DEFINITIONS.—In this subsection:

“(A) ELIGIBLE COUNTRY.—The term ‘eligible country’ means a sub-Saharan African country that receives—

“(i) benefits under the African Growth and Opportunity Act (19 U.S.C. 3701 et seq.); and

“(ii) funding from the United States Agency for International Development.

“(B) SUB-SAHARAN AFRICAN COUNTRY.—The term ‘sub-Saharan African country’ has the meaning given that term in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706).

“(c) COORDINATION WITH MILLENNIUM CHALLENGE CORPORATION.—

“(1) IN GENERAL.—After the date of the enactment of this subsection [Aug. 13, 2018], with respect to those countries identified under section 110(b)(1) of the Trade Preferences Extension Act of 2015 (Public Law 114-27; 129 Stat. 370; 19 U.S.C. 3705 note) that also meet the country description in paragraph (2), the United States Trade Representative shall consult and coordinate with the Millennium Challenge Corporation and the United States Agency for International Development for the purpose of developing and carrying out the plan required by section 116(b) of the African Growth and Opportunity Act (19 U.S.C. 3723(b)).

“(2) COUNTRY DESCRIPTION.—A country is described in this paragraph if the country—

“(A) has entered into a Millennium Challenge Compact pursuant to section 609 of the Millennium Challenge Act of 2003 (22 U.S.C. 7708); or

“(B) is selected by the Board of Directors of the Millennium Challenge Corporation under subsection (c) of section 607 of that Act (22 U.S.C. 7706) from among the countries determined to be eligible countries under subsection (a) of that section.”

§ 3724. Assistant United States Trade Representative for African Affairs

It is the sense of the Congress that—