

SUBCHAPTER VII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

§ 2491. Short title

This subchapter may be cited as the “Narcotics Control Trade Act”.

(Pub. L. 93-618, title VIII, §801, as added Pub. L. 99-570, title IX, §9001, Oct. 27, 1986, 100 Stat. 3207-164.)

§ 2492. Tariff treatment of products of uncooperative major drug producing or drug-transit countries

(a) Required action by President

Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this subchapter—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.], or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b) Certifications; Congressional action

(1)(A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 2291h of title 22, that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B),

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States

Government personnel or their dependents or from being transported, directly or indirectly, into the United States,

(III) in preventing and punishing the laundering in that country of drug-related profits or drug-related moneys, and

(IV) in preventing and punishing bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(i) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagraph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a

major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

(2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 2291(e)(4)¹ of title 22? In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has that government, as a matter of government policy, encouraged or facilitated the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has that government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has that government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has that government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has that government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (1), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

¹ See References in Text note below.

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) Duration of action

The action taken by the President under paragraph (1), (2), or (3) of subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) Presidential action regarding aviation

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (A), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the terms “air transportation”, “air carrier”, “foreign air carrier” and “foreign air transportation” have the meanings such terms have under section 40102(a) of title 49.

(e) Standards and guidelines for determining major drug-transit countries

For each calendar year, the Secretary of State, after consultation with the appropriate

committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 2495(3)(A) and (B) of this title.

(Pub. L. 93-618, title VIII, §802, as added Pub. L. 99-570, title IX, §9001, Oct. 27, 1986, 100 Stat. 3207-164; amended Pub. L. 100-204, title VIII, §806(a), Dec. 22, 1987, 101 Stat. 1398; Pub. L. 100-690, title IV, §4408, Nov. 18, 1988, 102 Stat. 4281; Pub. L. 101-231, §17(h)(1)-(4), Dec. 13, 1989, 103 Stat. 1965; Pub. L. 106-36, title I, §1001(a)(8), June 25, 1999, 113 Stat. 131.)

REFERENCES IN TEXT

The Caribbean Basin Economic Recovery Act, referred to in subsec. (a)(1), is title II of Pub. L. 98-67, Aug. 5, 1983, 97 Stat. 384, as amended, which is classified principally to chapter 15 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsec. (e) of section 2291 of title 22, referred to in subsec. (b), (2)(A), was repealed and subsec. (i) was redesignated (e) by Pub. L. 102-583, §6(b)(2), (3), Nov. 2, 1992, 106 Stat. 4932.

CODIFICATION

In subsec. (d)(4), “section 40102(a) of title 49” substituted for “section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1999—Subsec. (b)(1)(A). Pub. L. 106-36 substituted “section 2291h of title 22” for “section 2291(e) of title 22” in introductory provisions.

1989—Subsec. (b)(1)(A)(i)(IV). Pub. L. 101-231, §17(h)(1), substituted “illicit production” for “production”.

Subsec. (b)(1)(B)(iii). Pub. L. 101-231, §17(h)(2), substituted “education and treatment programs” for “treatment”.

Subsec. (b)(1)(B)(v). Pub. L. 101-231, §17(h)(3), substituted “essential precursor chemicals” for “precursor chemicals”.

Subsec. (b)(2)(D). Pub. L. 101-231, §17(h)(4), substituted “illicit production” for “production”.

1988—Subsec. (b)(1). Pub. L. 100-690, §4408(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Subsection (a) of this section shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 2291(e) of title 22, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing corruption by government officials and the laundering in that country of drug-related profits or drug-related monies.”

Subsec. (b)(2). Pub. L. 100-690, §4408(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 2291(e)(4) of title 22. The President shall also consider whether such govern-

“(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States;

“(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

“(i) the enactment and enforcement of laws prohibiting such conduct,

“(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

“(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts; and

“(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.”

Subsec. (b)(3), (4). Pub. L. 100-690, §4408(b), substituted “45 days” for “30 days” wherever appearing.

Subsec. (e). Pub. L. 100-690, §4408(c), added subsec. (e). 1987—Subsec. (a)(4) to (6). Pub. L. 100-204, §806(a)(1), added pars. (4) and (5) and redesignated former par. (4) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: “take any combination of the actions described in paragraphs (1), (2), and (3).”

Subsec. (b). Pub. L. 100-204, §806(a)(2), inserted “corruption by government officials and” after “preventing and punishing” in par. (1) and added par. (2)(C).

Subsec. (c). Pub. L. 100-204, §806(a)(3), inserted “paragraph (1), (2), or (3) of” after “under”.

Subsec. (d). Pub. L. 100-204, §806(a)(4), added subsec. (d).

§ 2493. Sugar quota

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 2492(b) of this title as determined by the President.

(Pub. L. 93-618, title VIII, §803, as added Pub. L. 99-570, title IX, §9001, Oct. 27, 1986, 100 Stat. 3207-165.)

§ 2494. Progress reports

The President shall include as a part of the annual report required under section 2291h of title 22 an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 2492(b) of this title.

(Pub. L. 93-618, title VIII, §804, as added Pub. L. 99-570, title IX, §9001, Oct. 27, 1986, 100 Stat. 3207-166; amended Pub. L. 106-36, title I, §1001(a)(9), June 25, 1999, 113 Stat. 131.)

AMENDMENTS

1999—Pub. L. 106-36 substituted “section 2291h of title 22” for “section 2291(e)(1) of title 22”.

§ 2495. Definitions

For purposes of this subchapter—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term “major drug producing country” means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana;

(3) the term “major drug-transit country” means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term “narcotic and psychotropic drugs and other controlled substances” has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

(Pub. L. 93-618, title VIII, §805, as added Pub. L. 99-570, title IX, §9001, Oct. 27, 1986, 100 Stat. 3207-166; amended Pub. L. 101-231, §17(h)(5), Dec. 13, 1989, 103 Stat. 1965; Pub. L. 106-36, title I, §1001(a)(10), June 25, 1999, 113 Stat. 131.)

AMENDMENTS

1999—Par. (2). Pub. L. 106-36 struck out “and” at end. 1989—Par. (2). Pub. L. 101-231 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the term ‘major drug producing country’ means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and”.

SUBCHAPTER VIII—SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE

§ 2497. Supplemental agricultural disaster assistance

(a) Definitions

In this section:

(1) Actual production history yield

The term “actual production history yield” means the weighted average of the actual production history for each insurable commodity or noninsurable commodity, as calculated under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or the noninsured crop disaster assistance program, respectively.

(2) Actual production on the farm

The term “actual production on the farm” means the sum of the value of all crops produced on the farm, as determined under subsection (b)(6)(B).

(3) Adjusted actual production history yield

The term “adjusted actual production history yield” means—