

DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

AUGUST 31, 2005.—Ordered to be printed

Filed, under authority of the order of the Senate of July 29, 2005.

Mr. GRASSLEY, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 1307]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 1307) to implement the Dominican Republic-Central America-United States Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Report and Other Materials of the Committee	2
A. Report of the Committee on Finance	2
B. Summary of Congressional Consideration of the Dominican Republic-Central America-United States Free Trade Agreement	2
1. Background	2
2. Trade Promotion Authority Procedures in General	3
3. Notification Prior to Negotiations	4
4. Notification of Intent to Enter Into an Agreement	5
5. Development of the Implementing Legislation	5
6. Formal Submission of the Agreement and Implementing Legislation	8
7. Committee and Floor Consideration	8
C. Trade Relations with the Dominican Republic and Central America	9
1. United States-Dominican Republic-Central America Trade and Investment	9
2. Tariffs and Trade Agreements	11
3. U.S. International Trade Commission Study	12

D. Overview of the Dominican Republic-Central America-United States Free Trade Agreement	13
1. Overview of the Agreement	13
2. USTR Summary of the Agreement	13
E. General Description of the Bill to Implement the Dominican Republic-Central America-United States Free Trade Agreement	40
Title I—Approval of, and General Provisions Relating to, the Agreement	41
Title II—Customs Provisions	42
Title III—Relief From Imports	48
Title IV—Miscellaneous	54
F. Vote of the Committee in Reporting the Bill	55
II. Budgetary Impact of the Bill	55
III. Regulatory Impact of the Bill and Other Matters	59
IV. Changes in Existing Law Made by the Bill, as Reported	59

I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (S. 1307) to implement the Dominican Republic-Central America-United States Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

B. SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

1. Background

President George W. Bush announced his intention to explore the possibility of entering into a free trade agreement with Central America (*i.e.* Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) on January 16, 2002. On August 6, 2002, President Bush signed the Trade Act of 2002 (Pub. L. 107–210), which grants the President the authority to enter into trade agreements and provides expedited procedures for consideration of legislation implementing trade agreements that meet certain specified objectives. On October 1, 2002, Ambassador Robert B. Zoellick, United States Trade Representative, formally notified Congress of the President's intention to enter into negotiations for a free trade agreement with Central America. On January 8, 2003, Ambassador Zoellick and ministers from the Central American countries announced the launch of those negotiations. On August 4, 2003, Ambassador Zoellick notified Congress of the President's intention to enter into negotiations for a free trade agreement with the Dominican Republic and to seek to integrate the Dominican Republic into the free trade agreement with Central America. On November 18, 2003, Ambassador Zoellick announced that those negotiations would start in January 2004. The first round of negotiations with the Government of the Dominican Republic took place in Santo Domingo from January 12–16, 2004.

On February 20, 2004, President Bush notified Congress of his intention to enter into a free trade agreement with Central America. On March 24, 2004, President Bush notified Congress of his intention to enter into a free trade agreement with the Dominican Republic. On May 28, 2004, Ambassador Zoellick and trade ministers from the Central American countries signed the U.S.-Central

day after the U.S. Senate passed the U.S.-Morocco Free Trade Agreement Implementation Act by a vote of 85 to 13, Senator Charles E. Grassley, Chairman of the Senate Committee on Finance, called upon President Bush to send CAFTA to Congress “at the earliest opportunity.” Chairman Grassley also vowed to work with the President and Members of the Senate to lay the groundwork for a successful vote later that year. On August 5, 2004, the Dominican Republic joined the agreement in a subsequent signing of the Dominican Republic-Central America-United States Free Trade Agreement (the “Agreement” or “CAFTA-DR agreement”) by all parties. On October 4, 2004, Ambassador Zoellick transmitted to Congress a description of changes to existing U.S. laws required to comply with the terms of the CAFTA-DR agreement.

On September 20, 2004, Chairman Grassley wrote letters to the President of the Dominican Republic, His Excellency Leonel Fernández Reyna, and to the President of the Senate of the Dominican Republic, The Honorable Andrés Bautista García, to express concerns regarding the incompatibility of a proposal contained in tax reform legislation (i.e. to impose a 25 percent tax on beverages containing high-fructose corn syrup (“HFCS”)) with the obligations of the Dominican Republic as a member of the World Trade Organization (“WTO”) and as a party to the CAFTA-DR agreement. Chairman Grassley shared the letters with Ambassador Zoellick and raised concerns about proceeding with implementation of the CAFTA-DR agreement should the HFCS beverage tax become law. In October 2004, the Dominican Republic passed the tax reform legislation into law, including the 25 percent HFCS beverage tax. On November 3, 2004, Chairman Grassley identified passage of the CAFTA-DR agreement as a priority for the Finance Committee during the first session of the 109th Congress. On November 16, 2004, Ambassador Zoellick sent Chairman Grassley a letter confirming that the 25 percent HFCS beverage tax was incompatible with the commitments of the Dominican Republic under the CAFTA-DR agreement and outlined plans to drop the Dominican Republic from the Agreement should the HFCS beverage tax remain in place. On November 17, 2004, Chairman Grassley vowed to strongly oppose any trade agreement with the Dominican Republic as long as the HFCS beverage tax remained in place. In early January 2005, President Fernández signed into law legislation repealing the 25 percent HFCS beverage tax, thereby bringing the Dominican Republic into compliance with its WTO obligations and CAFTA-DR commitments. Chairman Grassley welcomed this development on January 5, 2005, and pledged to work toward implementation of the Agreement. On January 25, 2005, Chairman Grassley stated that he hoped for Senate passage of the CAFTA-DR agreement by the summer of 2005.

2. Trade promotion authority procedures in general

Article I, section 8 of the Constitution of the United States vests Congress with the authority to regulate international trade. Congress has periodically delegated a portion of this authority to the President, in order to advance the economic interests of the United States. This delegation represents a compact between Congress and the executive by which Congress guarantees it will vote on a trade agreement entered into by the executive without amendment and

the executive guarantees close consultation with Congress during the negotiation of the trade agreement in order to achieve objectives identified by Congress. Thorough and timely consultation by the executive with Congress is the essential bedrock upon which Congress' delegation of constitutional authority rests. This compact has successfully resulted in the negotiation and implementation of numerous trade agreements that have substantially contributed to the economic growth and prosperity of the United States for decades.

The most recent incarnation of this compact is found in the Bipartisan Trade Promotion Authority Act of 2002, which was included in the Trade Act of 2002 (the "Act") (Pub. L. 107-210). The Act includes prerequisites for congressional consideration of a trade agreement under expedited procedures (known as Trade Promotion Authority ("TPA") procedures), which are found in sections 2103 through 2106 of the Act (19 U.S.C. §§ 3803-3806) and section 151 of the Trade Act of 1974 (19 U.S.C. § 2191). Section 2103 of the Act authorizes the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 2102 of the Act outlines the negotiating objectives the President is to achieve if the President intends to use TPA procedures to implement a trade agreement. Section 151 of the Trade Act of 1974 sets out expedited procedures for congressional consideration of a trade agreement without amendment. The President's authority under section 2103 extends to trade agreements entered into on or before June 30, 2007.

3. Notification prior to negotiations

Under section 2104(a)(1) of the Act, the President must provide written notice to the Congress at least 90 calendar days before initiating negotiations. On October 1, 2002, Ambassador Zoellick sent letters to The Honorable Robert C. Byrd, President Pro Tempore, United States Senate, and The Honorable J. Dennis Hastert, Speaker, United States House of Representatives, to notify Congress of the President's intention to initiate negotiations for a free trade agreement with the CAFTA countries. Those negotiations were initiated on January 8, 2003. On August 4, 2003, Ambassador Zoellick sent letters to The Honorable Ted Stevens, President Pro Tempore, United States Senate, and The Honorable J. Dennis Hastert, Speaker, United States House of Representatives, to notify Congress of the President's intention to initiate negotiations for a free trade agreement with the Dominican Republic and to integrate the Dominican Republic into CAFTA. Negotiations with the Dominican Republic were initiated in January 2004.

Section 2104(a)(2) of the Act requires the President, before and after submission of the notice, to consult regarding the negotiations with the relevant committees of Congress and the Congressional Oversight Group established under section 2107 of the Act. The Administration engaged in extensive consultations with the Committee on Finance and the Congressional Oversight Group ("COG"), including appearances by Ambassador Zoellick at meetings of the COG on January 7, 2003, April 11, 2003, July 24, 2003, May 6, 2004, and September 8, 2004, and by Deputy USTR Peter Allgeier

and Deputy USTR Josette Shiner at meetings of the COG on February 2, 2005.

4. Notification of intent to enter into an agreement

Section 2105(a)(1)(A) of the Act requires the President, at least 90 days before entering into an agreement, to notify Congress of his intention to enter into the agreement. On February 20, 2004, President Bush notified Congress of his intention to enter into a free trade agreement with the governments of the CAFTA countries. The CAFTA agreement was signed on May 28, 2004. On March 24, 2004, President Bush notified Congress of his intention to enter into a free trade agreement with the Government of the Dominican Republic. The CAFTA-DR agreement, which integrates the Dominican Republic into the CAFTA agreement, was signed by all parties on August 5, 2004.

5. Development of the implementing legislation

Section 2105(a)(1)(B) of the Act requires the President, within 60 days of signing an agreement, to submit to Congress a description of changes to existing U.S. laws that the President considers would be required to bring the United States into compliance with such agreement. On October 4, 2004, Ambassador Zoellick transmitted to Congress a description of changes to existing U.S. laws required to comply with the terms of the CAFTA-DR agreement.

Under TPA procedures, Congress and the Administration work together to produce the legislation to implement a free trade agreement. Draft legislation is developed in close consultation between the Administration and the committees with jurisdiction over the laws that must be enacted or amended to implement the agreement. The committees may then hold informal meetings to consider the draft legislation and to make non-binding recommendations to the Administration, if any. The Administration then finalizes implementing legislation for formal submission to Congress and referral to the committees of jurisdiction. These procedures are meant to ensure close cooperation between the executive and legislative branches of government to develop legislation that faithfully implements the agreement. The final legislation should include only those provisions that are necessary or appropriate to implement faithfully the agreement.

On November 3, 2004, Chairman Grassley identified passage of the CAFTA-DR agreement as a priority for the Finance Committee during the first session of the 109th Congress. On March 14, 2005, the Finance Committee set a date for hearing testimony on the CAFTA-DR agreement. On April 6, 2005, Chairman Grassley hosted a Finance Committee Members Meeting with the Ministers of Trade and Ministers of Labor from the CAFTA-DR countries. At that meeting, participants discussed a White Paper released by the Inter-American Development Bank that outlined additional steps that CAFTA-DR countries could take to improve labor laws in those countries. The recommendations contained in the White Paper were endorsed by the Ministers for Trade and Ministers for Labor from the CAFTA-DR countries.

The Finance Committee held its hearing on the CAFTA-DR agreement on Wednesday, April 13, 2005. During the hearing, a broad and diverse group of witnesses from the agriculture, busi-

ness, and environmental communities expressed strong support for the Agreement. Additional witnesses representing labor and sugar interests expressed concerns with the Agreement. One week later, on April 21, 2005, the House Committee on Ways and Means considered testimony on the CAFTA–DR agreement. On April 27, 2005, Chairman Grassley hosted a rally with Secretary of Agriculture Mike Johanns and a wide array of representatives from U.S. business and agriculture to demonstrate broad support for the Agreement. On May 9, 2005, Chairman Grassley hosted a media event with representatives from U.S. food processing companies which highlighted the importance of comprehensive trade agreements to many sectors of the U.S. economy.

Prior to informal committee consideration of draft implementing legislation for the Agreement, a number of Senators expressed concern that the CAFTA–DR agreement would harm the existing U.S. sugar program. The Administration argued that these concerns were unfounded as the Agreement provides for only a minimal increase in sugar imports from CAFTA–DR countries and includes a number of unprecedented protections for the U.S. sugar industry. Still, for several months, the U.S. sugar industry and a number of U.S. Senators vowed to oppose the CAFTA–DR agreement unless the Agreement was renegotiated to exclude any new sugar imports. However, the vast majority of U.S. agriculture producers and food processors supported the CAFTA–DR agreement precisely because the Agreement is comprehensive, *i.e.* with no sector of agriculture excluded from the Agreement. These groups fear that, if the United States excludes an import sensitive agricultural commodity from a trade agreement, our negotiating partners would reciprocate by seeking to exclude U.S. agricultural exports from an agreement that are import sensitive to them. Chairman Grassley agreed that the CAFTA–DR agreement should be comprehensive, *i.e.* with no exclusions, and thus successfully resisted efforts to remove sugar from the Agreement.

The Finance Committee subsequently met in open executive session on Tuesday, June 14, 2005, to informally consider draft implementing legislation for the CAFTA–DR agreement. Committee Members filed 34 amendments to the draft implementing legislation. Sixteen of these amendments sought to exclude sugar from the Agreement (and thus require renegotiation of the Agreement). However, few amendments were offered. And none of the amendments which sought to exclude sugar from the agreement were offered or debated, presumably due to a lack of majority support. In fact, only two amendments were offered. The first amendment offered (*i.e.* Amendment #32) extended Trade Adjustment Assistance (“TAA”) programs to include service workers and firms in the services sector. The amendment also doubled the annual authorization of the TAA for Workers program, from \$220 million to \$440 million, as well as the annual authorization of the TAA for Firms program, from \$16 million to \$32 million. In addition, the amendment contained data collection and reporting requirements. Chairman Grassley noted that Amendment #32 would essentially establish an entirely new program that was not contemplated by the underlying trade agreement, and thus the amendment was not necessary or appropriate to implement the CAFTA–DR agreement. Chairman Grassley also raised concerns regarding certain aspects of the sub-

stance of Amendment #32. Chairman Grassley offered to work with the proponents of Amendment #32 to further develop the substance of the amendment in a more appropriate legislative forum. The Chairman's offer was not accepted, and despite the concerns raised by the Chairman, Amendment #32 was approved by voice vote, a quorum being present.

The second amendment offered (*i.e.* Amendment #30) called for renegotiation of the dispute settlement provisions in the Agreement to provide that violations of the Agreement would be subject to identical remedies regardless of subject matter. However, the negotiating objectives that Congress attached to TPA procedures call for violations of a trade agreement to be subject to equivalent, rather than identical remedies. This distinction, which is found in section 2102 of the Act, recognizes that some non-compliance practices may be better addressed through cooperation and technical assistance rather than through rote application of trade sanctions. Amendment #30 thus contravened this negotiating objective. In addition, because the amendment required renegotiation of the CAFTA–DR agreement, it was on its face neither necessary nor appropriate in implementing the Agreement. The Chairman called for a roll call vote on the amendment, a quorum being present. Amendment #30 was not approved by the Committee on a vote of 10 ayes (one by proxy), 10 nays (five by proxy).

With all of the amendments disposed of, the Chairman subsequently called for a vote on the Committee's informal recommendation, as amended, a quorum being present. The Committee voted to approve the informal recommendation, as amended, to implement the CAFTA–DR agreement, by recorded vote, a quorum being present, 11 ayes, 8 nays (with one additional nay vote by proxy). Ayes: Grassley, Hatch, Lott, Kyl, Thomas, Santorum, Frist, Smith, Bunning, Lincoln, Wyden. Nays: Snowe, Crapo, Baucus, Rockefeller, Conrad, Jeffords, Bingaman (proxy), Kerry, Schumer.

The next day, on Wednesday, June 15, 2005, the House Ways and Means Committee met to consider informally the draft implementing legislation. The Ways and Means Committee voted 25–16 for approval of a Chairman's amendment in the nature of a substitute to the draft implementing legislation. The Chairman's amendment added two non-binding provisions to the draft implementing legislation: (1) a provision to create periodic reporting and meeting requirements on labor provisions of the CAFTA–DR agreement, particularly with respect to capacity-building efforts; and, (2) a provision to require the President to prepare a report that would examine after one year whether the CAFTA–DR agreement has had a net negative effect on the services industry—if there were a finding of negative effects on the services industry, the provision would further require the President to recommend how the TAA programs should be amended to respond to such negative effects.

The Senate Finance Committee and House Ways and Means Committee subsequently sent their respective recommendations to the President. The committees did not conduct a formal “mock conference” to reconcile the different versions of informal non-binding recommendations that had been approved by the two committees. Committee precedent does not mandate that a formal “mock conference” take place to reconcile differences in informal recommendations. For example, the two committees approved dif-

ferent versions of draft implementing legislation for the North American Free Trade Agreement, but there is no record of a formal mock conference taking place to reconcile the differences. In contrast, the committees did proceed with a formal mock conference to reconcile different versions of draft implementing legislation for the Uruguay Round Agreements Act. The need for a formal “mock conference” depends upon the type and degree of differences between the informal recommendations. In this case, the Office of the United States Trade Representative consulted with each committee, and based upon those consultations, the President reconciled the two versions of the draft implementing bill by including the provision relating to periodic reporting requirements on the labor provisions of the Agreement and omitting those provisions relating to TAA programs for service workers.

6. Formal submission of the agreement and implementing legislation

When the President formally submits a trade agreement to Congress under section 2105 of the Act, the President must include in the submission the final legal text of the agreement, together with implementing legislation, a statement of administrative action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), a statement setting forth the reasons of the President regarding how and to what extent the agreement makes progress in achieving the applicable policies, purposes, priorities, and objectives set forth in the Act, and a statement setting forth the reasons of the President regarding how the agreement serves the interests of U.S. commerce.

The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to Committees with jurisdiction over its provisions. President George W. Bush transmitted the final text of the CAFTA–DR agreement, along with implementing legislation, a Statement of Administrative Action, and other supporting information, as required under section 2105 of the Act, to Congress on June 23, 2005. The identical legislation was introduced that same day in both the House (H.R. 3045) and the Senate (S. 1307).

To qualify for TPA procedures, the implementing bill itself must contain provisions formally approving the agreement and the statement of administrative action. Further, the implementing bill must contain only those provisions necessary or appropriate to implement the Agreement. The implementing bill reported here—which approves the CAFTA–DR agreement and the accompanying Statement of Administrative Action and contains provisions necessary or appropriate to implement the CAFTA–DR agreement into U.S. law—was referred to the Senate Committee on Finance.

7. Committee and floor consideration

When the requirements of the Act are satisfied, implementing revenue bills such as the Dominican Republic–Central America–United States Free Trade Agreement Implementation Act (“Implementation Act”) are subject to the legislative procedures of section 151 of the Trade Act of 1974. The following schedule for congressional consideration applies under these procedures:

(i) House committees have up to 45 calendar days in session in which to report the bill; any committee which does not do so in that period will be automatically discharged from further consideration.

(ii) A vote on final passage by the House must occur on or before the 15th calendar day in session after the committees report the bill or are discharged from further consideration.

(iii) Senate committees must act within 15 calendar days in session of receiving the implementing revenue bill from the House or within 45 calendar days in session of Senate introduction of the implementing bill, whichever is later, or they will be discharged automatically.

(iv) The full Senate then must vote within 15 calendar days in session on the implementing bill.

Thus, Congress has a maximum of 90 calendar days in session to complete action on the bill. Once the implementing bill has been formally submitted by the President and introduced, no amendments to the bill are in order in either House of Congress. Floor debate in each House is limited to no more than 20 hours, to be equally divided between those favoring the bill and those opposing the bill.

Although the Implementation Act is a revenue measure, and thus must ultimately originate in the House, the Senate Finance Committee led congressional action on the measure. The Finance Committee met in open executive session on Tuesday, June 28, 2005, to consider favorably reporting S. 1307. In order to allow Members ample opportunity to voice their views on the Implementation Act in committee, the Chairman held the meeting open until the following day. On Wednesday, June 29, 2005, the Chairman reconvened the open executive session of the Committee, during which the Committee favorably reported S. 1307 by voice vote, a quorum being present (Senator Thomas voted no). Later that day the Senate agreed to a motion to proceed to consider S. 1307 by a vote of 61–34. Pursuant to TPA procedures, on Thursday, June 30, 2005, the Senate voted to approve S. 1307 by a vote of 54–45, whereupon the bill was held at the desk. The House Ways and Means Committee took up H.R. 3045 on Thursday, June 30, 2005, and voted 25–16 to report the measure favorably. The Chairman of the House Ways and Means Committee did not report H.R. 3045 until Monday, July 25, 2005. The House passed H.R. 3045 on Thursday, July 28, 2005, by a vote of 217–215, whereupon the bill was transmitted to the Senate. The Senate took up H.R. 3045 that same day, passing the bill by a vote of 55–45. H.R. 3045 was signed into law by President Bush on August 2, 2005 (Public Law 109–53).

C. TRADE RELATIONS WITH THE DOMINICAN REPUBLIC AND CENTRAL AMERICA

1. United States-Dominican Republic-Central America trade and investment

The CAFTA–DR countries together make up the 2nd largest market for U.S. exports in Latin America, behind only Mexico. U.S. exports total more than \$15 billion annually, making it the 10th largest export market worldwide. The United States is the largest

trading partner of the CAFTA countries, accounting for some 56 percent of exports from the CAFTA countries and 44 percent of imports into the CAFTA countries. The United States is also the largest trading partner of the Dominican Republic, accounting for 80 percent of exports from the Dominican Republic and 50 percent of imports into the Dominican Republic. Over the past 5 years, U.S. exports to the CAFTA-DR countries grew by over 25 percent, while U.S. imports from the CAFTA-DR countries grew by more than 15 percent.

The following tables summarize the top U.S. merchandise exports to the CAFTA-DR countries and the top U.S. merchandise imports from the CAFTA-DR countries during the past six years.

U.S. EXPORTS TO THE CAFTA-DR COUNTRIES, 1999-2004

[In millions of U.S. dollars]

Top 15 product descriptions, by HTS chapter	1999	2000	2001	2002	2003	2004
85. Electrical Machinery	1,390.8	1,329.2	1,229.2	1,664.1	1,812.9	1,938.0
84. Machinery	1,250.8	1,293.6	1,249.2	1,206.6	1,092.3	1,141.1
52. Cotton yarns and fabrics	172.7	287.9	594.7	762.5	812.4	1,076.1
61. Knit apparel	1,609.5	2,121.8	1,680.4	1,269.0	1,163.2	999.5
27. Fuels	255.8	431.7	327.8	387.2	1,004.8	988.8
98. Special classifications	666.2	644.4	706.8	695.0	796.3	937.3
39. Plastics	458.6	574.8	675.0	763.1	799.6	870.7
60. Knit fabrics	80.7	92.5	251.0	515.9	785.3	836.8
10. Cereals	441.5	459.8	506.6	559.2	603.2	742.5
62. Woven apparel	1,594.2	1,596.7	1,050.4	890.6	731.0	572.0
48. Paper and paperboard	484.3	501.0	507.3	507.6	517.2	553.9
90. Optical and medical instruments	269.4	291.4	318.6	337.8	394.2	376.9
87. Vehicles	382.8	392.2	312.5	330.2	312.0	343.1
55. Manmade fibers, yarns, and fabrics	57.2	66.1	166.8	238.2	282.8	278.6
58. Special fabrics and trimmings	133.2	186.2	331.2	402.1	214.4	247.9
Subtotal for top 15 products	9,247.6	10,269.2	9,907.4	10,529.2	11,321.6	11,903.2
Subtotal for all other products	2,904.4	2,932.9	3,117.2	3,002.4	3,050.1	3,076.8
Total U.S. exports to the DR-CAFTA countries	12,152.0	13,202.2	13,024.6	13,531.6	14,371.7	14,980.0

Note.—HTS is the Harmonized Tariff Schedule of the United States.

Source.—U.S. International Trade Commission Dataweb.

U.S. IMPORTS FROM THE CAFTA-DR COUNTRIES, 1999-2004

[In millions of U.S. dollars]

Top 15 product descriptions, by HTS chapter	1999	2000	2001	2002	2003	2004
61. Knit apparel	4,266.6	4,894.2	5,020.4	5,307.8	5,593.7	5,998.5
62. Woven apparel	3,898.3	4,151.7	4,046.8	3,822.5	3,628.8	3,562.6
85. Electrical machinery	691.1	895.9	892.0	1,040.1	1,352.3	1,375.7
8. Fruits and nuts	795.6	878.3	991.9	1,013.4	1,049.2	1,064.6
90. Optical and medical instruments	448.9	550.5	664.1	729.9	939.5	909.4
9. Coffee and tea	595.2	735.1	398.2	394.1	463.6	512.7
71. Precious metals	304.3	240.5	315.1	404.6	420.2	499.5
98. Special classifications	236.4	242.5	264.7	388.6	355.2	378.8
24. Tobacco	296.4	307.1	303.2	313.9	305.6	334.5
3. Fish	294.0	351.9	321.7	325.5	295.2	294.4
17. Sugar	221.9	185.2	174.3	187.1	254.0	256.6
27. Fuels	94.2	161.4	102.9	167.1	186.8	182.5
39. Plastics	83.9	88.2	110.4	124.9	170.3	178.6
84. Machinery	1,484.1	849.5	122.2	144.1	137.8	176.4
72. Steel	51.7	80.8	36.4	83.7	105.7	173.2
Subtotal for top 15 products	13,762.8	14,612.8	13,764.2	14,447.4	15,257.7	15,897.8

U.S. IMPORTS FROM THE CAFTA-DR COUNTRIES, 1999-2004—Continued

[In millions of U.S. dollars]

Top 15 product descriptions, by HTS chapter	1999	2000	2001	2002	2003	2004
Subtotal for all other products	1,533.3	1,537.0	1,540.2	1,565.3	1,604.1	1,764.8
Total U.S. imports from the DR-CAFTA countries	15,296.1	16,149.7	15,304.4	16,012.7	16,861.8	17,662.6

Note.—HTS is the Harmonized Tariff Schedule of the United States.

Source.—U.S. International Trade Commission Dataweb.

The United States is the largest foreign investor in each of the CAFTA-DR countries. Total U.S. foreign direct investment (“FDI”) in the CAFTA-DR countries averaged between \$4 billion and \$5 billion annually during the period 1999–2003. The CAFTA countries are negligible sources of FDI in the United States. The Dominican Republic accounted for \$57 million of FDI in the United States in 2002.

2. Tariffs and trade agreements

In 2002 and 2003, about 80 percent of U.S. imports from the CAFTA-DR countries entered the United States duty free. Today, about 99 percent of U.S. imports of food and agriculture products from the CAFTA-DR countries enter the United States duty free. In contrast, U.S. exports of food and agriculture products to the CAFTA-DR countries face an average 11 percent tariff, with some tariffs ranging as high as 150 percent. With respect to manufactured goods, a number of important U.S. exports to the CAFTA-DR countries face tariffs ranging from 10 to 20 percent. Under the Agreement, duties on 80 percent of U.S. exports of manufactured goods to the CAFTA-DR countries would be eliminated immediately, with the rest phased out over a period of up to 10 years. For agricultural goods, duties on over 50 percent of U.S. exports to the CAFTA-DR countries would be eliminated immediately, with the rest phased out over a period of up to 20 years. For the CAFTA-DR countries, 100 percent of non-textile and non-agricultural exports would enter the United States duty free immediately. For other products, the United States retains safeguards during the applicable period of duty phase-out under the Agreement.

The CAFTA-DR countries are each members of the WTO. They also participate in the following regional trade agreements: Central America Common Market (“CACM”) (all but the Dominican Republic); Costa Rica-Caribbean Community (“CARICOM”) Free Trade Agreement (signed 2004) (CARICOM members are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago); Costa Rica-Canada Free Trade Agreement (effective 2002); Central America-Chile Free Trade Agreement (signed 1999, effective 2002 with respect to Costa Rica and El Salvador, others pending implementation); Central America-Panama Free Trade Agreement (signed 2002); Central America-Dominican Republic Free Trade Agreement (signed 1998, effective 2001 with respect to El Salvador, Guatemala, and Honduras, and effective 2002 with respect to Costa Rica); El Salvador, Guatemala, and Honduras Free Trade Agreement with Mexico (effective 2001); Nicaragua-Mexico

Free Trade Agreement (effective 1998); and the Dominican Republic-CARICOM Free Trade Agreement (signed 1998).

Each of the CAFTA-DR countries receives unilateral trade preferences from the United States (under the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act; in addition, all but Nicaragua are designated beneficiary countries under the Generalized System of Preferences) and the European Union (under the European Union's Generalized System of Preferences; in addition, the Dominican Republic is included among the African, Caribbean, and Pacific ("ACP") countries that traditionally have enjoyed nonreciprocal preferential access to the European Union market).

3. U.S. International Trade Commission study

In August 2004, the United States International Trade Commission ("ITC") released the results of its investigation (Investigation No. TA-2104-13) into the probable economic effects of a United States-Central America-Dominican Republic Free Trade Agreement (USITC Publication 3717). The ITC concluded that the economy-wide effects of the Agreement's tariff reductions alone are likely to result in an increase in overall U.S. welfare in the range of \$135.3 million to \$248.2 million. The ITC projected that U.S. exports to the CAFTA-DR countries would increase by about \$2.7 billion, and U.S. imports from the CAFTA-DR countries would increase by about \$2.8 billion. The ITC further concluded that as a result of the Agreement, total U.S. exports to the world are likely to increase by approximately \$1.9 billion and total U.S. imports from the world are likely to increase by about \$1.2 billion, with minimal impact on U.S. employment and output. In other words, the ITC found that full implementation of the CAFTA-DR agreement would likely reduce the overall U.S. trade deficit by about \$700 million.

At the sectoral level, the ITC report concluded that some sectors of the U.S. economy are likely to experience increased import competition from the CAFTA-DR countries, while other sectors are likely to experience increased export opportunities to the markets of the CAFTA-DR countries. The ITC provided more detailed analyses for the following sectors: textiles and apparel, sugar and sugar-containing products ("SCPs"), and grains (*i.e.* corn and rice). The ITC concluded that the Agreement is likely to result in a moderate increase in the quantity of U.S. imports of textiles and apparel from the CAFTA-DR countries, with most of the increase displacing imports from other countries. Consequently, the ITC concluded that the Agreement is likely to result in only a small increase in total U.S. imports of textiles and apparel. Second, the ITC concluded that the Agreement is likely to result in a small increase in imports of sugar and SCPs into the United States. In particular, the ITC found that increases in the volume of sugar imports under the Agreement likely will not trigger the suspension of domestic marketing allotments under the current U.S. sugar program. The ITC estimated that the U.S. price of sugar would decline by about 1 percent as a result of increased sugar imports under the Agreement. Third, the ITC concluded that by the end of the 15-20 year phase-out of tariff-rate quotas on corn and rice imports in the CAFTA-DR countries, U.S. exports would increase by at least 20 percent, or \$120 million (based on 2003 prices), offering significant

market opportunities for U.S. corn growers and U.S. rice growers. The ITC also examined the impact of the Agreement on the services sector. The ITC found that the Agreement improves upon commitments scheduled by the CAFTA–DR countries under the WTO General Agreement on Trade in Services (“GATS”) by, in many instances, guaranteeing market access and national treatment in areas where the countries previously had no commitments. The ITC further found that in addition to according substantial market access across the entire CAFTA–DR services regime, the Agreement also provides improved regulatory transparency and establishes a secure and predictable framework for U.S. investors operating in the CAFTA–DR countries.

D. OVERVIEW OF THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

1. Overview of the agreement

The Dominican Republic-Central America-United States Free Trade Agreement establishes a plurilateral free trade area that eliminates tariffs on most merchandise trade. The Agreement liberalizes trade in services and contains provisions that cover investment, intellectual property, environment, labor, government procurement, and competition policy. The Agreement also contains a mechanism for settling disputes that arise under the Agreement. Throughout the Agreement there are important provisions that promote plurilateral consultation and cooperation, procedural and substantive due process, administrative and judicial review, transparency, and the rule of law.

2. USTR summary of the agreement

The Office of United States Trade Representative (“USTR”) prepared a summary of the CAFTA–DR agreement, which was distributed to Members of the Senate Finance Committee to aid in their consideration of legislation to implement the Agreement. This summary, which is available on the USTR website, is reprinted below:

THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

SUMMARY OF THE AGREEMENT

This summary briefly describes key provisions of the Dominican Republic-Central America-United States Free Trade Agreement (“Agreement” or “CAFTA–DR”) that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively “Central America”) and the Dominican Republic.

PREAMBLE

The Preamble to the Agreement provides the Parties’ underlying objectives in entering into the Agreement and provides context for the provisions that follow.

CHAPTER ONE: INITIAL PROVISIONS

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are all party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

CHAPTER TWO: GENERAL DEFINITIONS

Chapter Two defines certain terms that recur in various chapters of the Agreement.

CHAPTER THREE: NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Chapter Three and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from another Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Four) traded between the Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Three provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. Schedule to Annex 3.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect. Annex 3.3.6 of the Agreement establishes additional tariff commitments that apply between the Central American Parties and the Dominican Republic. These commitments largely reflect tariff commitments these Parties have under an earlier free trade agreement between them.

Waiver of Customs Duties. Chapter Three provides that Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. However, Costa Rica, the Dominican Republic, El Salvador, and Guatemala are permitted to maintain such measures through 2009, provided they do so in accordance with the WTO Subsidies and Countervailing Measures (SCM) Agreement. Honduras and Nicaragua are permitted to maintain such measures indefinitely, provided they do so in accordance with the SCM Agreement. Chapter Three defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Parties.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under anti-dumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. The Central American Parties and the Dominican Republic agreed not to require a person of another Party to have or maintain a relationship with a “dealer” as a condition for allowing the importation of a good. These Parties also agreed not to prohibit or restrict the importation of any good of another Party as a remedy for a violation or alleged violation of any law, regulation, or other measure relating to the relationship between a “dealer” in its territory and a person of another Party.

Distinctive Products. The Central American Parties and the Dominican Republic agreed to recognize Bourbon Whiskey and Tennessee Whiskey as “distinctive products” of the United States, meaning these Parties will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. Chapter Three also establishes a Committee on the Trade in Goods to consider matters arising under Chapters Three, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters covered by Chapters Three, Four, and Five.

Agriculture

TRQs. Chapter Three requires that TRQs be administered in a manner that is transparent, non-discriminatory, responsive to market conditions and minimally burdensome on trade and allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for another CAFTA-DR country. Under Article 3.14, no Party may introduce or maintain a subsidy on agricultural goods destined for another Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must

refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume “trigger”. The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party’s Schedule to Annex 3.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

No Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs created in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) the exporting Party’s trade surplus in specific sugar goods. (A Party’s “trade surplus” is the amount by which its exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that a Party’s exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established in the TRQs are modest—107,000 metric tons in the first year. The maximum quantities increase to approximately 151,000 metric tons in year 15 of the Agreement. The United States will also establish a quota for specialty sugar goods of Costa Rica in the amount of 2,000 metric tons annually. Second, unlike other commodities, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to CAFTA–DR country exporters in place of imports of sugar.

Ethanol. In the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement, the United States agreed to continue to treat the Central American countries and the Dominican Republic as beneficiary countries under the Caribbean Basin Initiative (CBI) preference program with respect to ethanol imports. Accordingly, the Central American countries and the Dominican Republic will continue to share in the duty-free quota that the United States makes available to CBI beneficiary countries. The United States also agreed to establish country-specific allocations for Costa Rica and El Salvador, but did not increase the total quantity allowed under the CBI quota.

Additional Provisions. Chapter Three provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 90 days of entry into force of the Agreement and will provide a forum for promoting cooperation in the implementation

and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. The Chapter also provides for the establishment of an Agriculture Review Commission. The Commission will be established 14 years after entry into force of the Agreement and will review the implementation and operation of the Agreement as it relates to trade in agricultural goods, including whether to extend the agricultural safeguard mechanism. Further, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after entry into force of the Agreement.

Textiles and apparel

Chapter Three also sets out various provisions specifically addressing trade in textile and apparel goods.

Tariff Elimination. Duties on nearly all originating textile or apparel goods will be eliminated when the Agreement enters into force. Moreover, the preferential duty treatment under the Agreement may, on a reciprocal basis, be made retroactive to January 1, 2004.

Safeguards. The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than three years. The ability to impose textile safeguards lapses five years after the entry into force of the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure must provide the exporting Party with mutually agreed-upon compensation in the form of trade concessions for textile or apparel goods that have substantially equivalent value to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. Under the Agreement, a textile or apparel good will generally qualify as an “originating good” only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of the United States or another CAFTA–DR Party, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4.1 of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an “originating good,” including a de minimis exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule

for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Annex 3.25 of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or the other CAFTA-DR countries. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is originating for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States or the other CAFTA-DR countries. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Appendix 4.1-B of the Agreement provides that for purposes of determining whether woven apparel (of chapter 62 of the HTS) is originating, materials used in the production of the article that are produced in Canada or Mexico will be treated as if the materials were produced in a CAFTA-DR country, provided that Canada and Mexico, respectively: (i) provide reciprocal treatment for U.S.-produced inputs under their free trade agreements with the other CAFTA-DR countries; and (ii) agree with the United States to textile verification procedures that are substantially similar to the procedures under the CAFTA-DR.

This treatment of woven apparel made with Canadian or Mexican materials is subject to an overall quantitative limit, which is set initially at 100 million square meter equivalents, and to sublimits for trousers and skirts, jeans, and tailored wool apparel. The overall limit may increase to a maximum of 200 square meter equivalents, with corresponding increases in the sublimits, based on the percentage increase in U.S. imports of originating woven apparel from the other CAFTA-DR countries. The overall limit may also increase as a result of negotiations between the Parties following entry into force of the Agreement.

Customs Cooperation. Chapter Three commits each Party to cooperate to enforce or assist in enforcing laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of laws of the Parties or agreements affecting trade in textile and apparel goods. The Parties also agreed that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. Such a verification may include site visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appro-

priate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, any Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from another Party in implementing the customs cooperation provisions.

Additional Provisions. Chapter Three provides for duty-free treatment for goods that an importing Party and exporting Party agree qualify as handmade, hand-loomed, or traditional folklore goods. Separately, the Chapter establishes that, for the first two years of the Agreement, the United States will charge duties that are half the NTR/MFN rate for a limited quantity of tailored wool apparel goods assembled in Costa Rica regardless of the origin of the fabric used to make the goods. Moreover, for the first ten years of the Agreement, the United States shall provide preferential tariff treatment to cotton and man-made fiber apparel goods assembled in Nicaragua that do not qualify as “originating” goods. The United States also agreed that goods assembled in CAFTA–DR countries from U.S. components with U.S. thread that do not qualify as “originating” goods will be subject to NTR/MFN duties on only the value of the assembled good minus the value of U.S. components used in the good.

CHAPTER FOUR: RULES OF ORIGIN AND ORIGIN PROCEDURES

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an “originating good” under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties’ territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as an “originating good”:

- When the good is wholly obtained or produced in the territory of one or more of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or
- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or more of the Parties; or (2) meets any applicable “regional value content” requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or
- When the good is produced in one or more Parties entirely from “originating” materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as “originating,” meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calcu-

lating that percentage: (1) the “build-down method” (based on the value of non-originating materials used); and (2) the “build-up method” (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The de minimis rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party’s customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Verification. For purposes of determining whether a good is an originating good, each Party must ensure that its customs authority may conduct verifications. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the Chapter.

Additional Rules. Chapter Four further delineates specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods. The Chapter provides that Parties may not treat a good as originating if the good undergoes production outside the territories of the Parties or does not remain under the control of customs authorities in the territory of a non-Party. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Three.

CHAPTER FIVE: CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party’s customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of another

Party, regarding whether a product qualifies as an “originating” good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. The Chapter provides a transition period of between one and three years to comply with several of these obligations in the case of the Central American Parties and the Dominican Republic.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other’s customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing the importation of goods.

CHAPTER SIX: SANITARY AND PHYTOSANITARY MEASURES

Chapter Six defines the Parties’ obligations to each other regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties’ understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party’s SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations.

Dispute Settlement. Neither Party may invoke the Agreement’s dispute settlement procedures for a matter arising under Chapter Six. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

CHAPTER SEVEN: TECHNICAL BARRIERS TO TRADE

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term “technical barriers to trade” (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards (“technical

regulations”), and procedures used to determine whether a particular good meets such standards, *i.e.*, “conformity assessment” procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for a Committee on Technical Barriers to Trade to oversee implementation of the Chapter and facilitate cooperation. The Committee’s specific functions include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party’s request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Seven further provides that Parties shall recognize conformity assessment bodies in the territories of the other Parties on no less favorable terms than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, including obligations on each Party to: (i) allow persons of the other Parties to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the TBT Agreement directly to the other Parties; (iii) describe in writing the objectives of and reasons for regulatory proposals; and (iv) consider comments on regulatory proposals and respond in writing to significant comments it receives.

CHAPTER EIGHT: TRADE REMEDIES

Safeguards. Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect the Parties’ rights or obligations under the WTO’s safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a “like” or “directly competitive” good. Unlike agricultural and textile or apparel safeguard measures, which will apply bilaterally, safeguard measures

under Chapter Eight will apply with respect to all imports of an originating good, other than imports from a Party whose import market share is *de minimis* (i.e., a market share of less than three percent of total imports of the originating good, unless the import market share of all such Parties exceeds nine percent).

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms—a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for a total of four years, including any extensions of the measure. A Party may extend a measure if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Annex 8.3 sets out the procedural and substantive investigation requirements that Parties must follow in conducting safeguard investigations.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Parties whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from another Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.

Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures. The Chapter provides that the United States will continue to treat the other CAFTA–DR countries as CBI beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBI beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

CHAPTER NINE: GOVERNMENT PROCUREMENT

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services,

and suppliers from the other Parties. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

General Principles. Chapter Nine establishes a basic rule of “national treatment,” meaning that each Party’s procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Parties in a manner that is “no less favorable” than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party’s schedule. Specifically, the Chapter applies to procurements by listed “central” (*i.e.*, national or U.S. Federal) government agencies of goods and services valued at \$58,550 or more and construction services valued at \$6,725,000 or more. The equivalent thresholds for purchases by listed “sub-central” government entities (*i.e.*, Central American and Dominican Republic municipalities and U.S. state government agencies) are \$477,000 and \$6,725,000, for goods and services and construction services, respectively. For the three-year period following entry into force of the Agreement, the Chapter applies, in the case of the Central American Parties and the Dominican Republic, to purchases of goods and services by central government agencies valued at \$117,100 or more and by sub-central government agencies valued at \$650,000 or more and purchases of construction services by either central or sub-central government agencies valued at \$8,000,000 or more. The Chapter’s thresholds for listed “government enterprises” are either \$250,000 or \$538,000 for goods and services, and \$6,725,000 for construction services, except that for the three-year period following entry into force of the Agreement, the threshold for construction services in the Central American Parties and the Dominican Republic is \$8,000,000. All thresholds are subject to adjustment every two years for inflation. (Separate annexes to Chapter Nine establish special coverage rules with respect to procurement between (i) the Central American Parties, and (ii) each Central American Party and the Dominican Republic.)

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular

supplier, good, or service. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

Award Rules. Chapter Nine requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine builds on the anti-corruption provisions of Chapter Eighteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal procurement actions ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

CHAPTER TEN: INVESTMENT

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in another Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovations that were incorporated in the free trade agreements with Chile and Singapore as well as others.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S., Central American, and Dominican Republic nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; (2) limits on "performance requirements"; (3) free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a "minimum standard of treatment" in conformity with customary international law; (6) and the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of di-

rectors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor. "Investment agreements" and "investment authorizations" are particular types of arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter 10.

Chapter Ten affords public access to information on the Chapter's investor-State proceedings. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept amicus submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of frivolous claims. Finally, an annex to Chapter Ten calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten also provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health and the environment, are not expropriatory.

CHAPTER ELEVEN: CROSS-BORDER TRADE IN SERVICES

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another Party (*e.g.*, electronic delivery of services from the United States to Costa Rica);
- in the territory of a Party by a person of that Party to a person of another Party (*e.g.*, a Guatemalan company provides services to U.S. visitors in Guatemala); and

- by a national of a Party in the territory of another Party (e.g., a U.S. lawyer provides legal services in El Salvador).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Parties. Thus, each Party must treat service suppliers of another Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by a Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (e.g., that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, thereafter maintain the measure at least at that level of openness.

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, MFN treatment, and additional benefits to express delivery services of the other Parties. The Chapter provides that the Central American Parties and the Dominican Republic may not adopt or maintain any restriction on express delivery services that was not in place on the date the Agreement was signed. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments

under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment. An annex to Chapter Eleven sets out specific commitments that individual Parties have agreed to undertake.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority"—that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

CHAPTER TWELVE: FINANCIAL SERVICES

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of another Party; (2) investors of another Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. As between the Central American Parties and the Dominican Republic, obligations pertaining to banking services, or as between Guatemala and the Dominican Republic, financial services generally, do not apply until two years after entry into force of the Agreement.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberal-

izes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Twelve also includes provisions on regulatory transparency, “new” financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of another Party, other than regulated financial institutions, that make or operate investments in the Party’s territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

CHAPTER THIRTEEN: TELECOMMUNICATIONS

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territories of the other Parties. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a “public telecommunications service” is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of “information services” (e.g., services that enable users to create, store, or process information over a network). A “major supplier” is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Thirteen establishes rules promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of another Party that seek to access or use a public telecommunications network in the Party’s territory can do so on reasonable and non-discriminatory terms (e.g., El Salvador must ensure that its public phone companies do not provide preferential access to Salvadoran banks or Internet service providers, to the detriment of U.S. competitors);
- give another Party’s telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party’s territory;

- ensure that telecommunications suppliers of another Party that seek to build physical networks in the Party's territory have access to key physical facilities where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of another Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of "major suppliers."

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and
- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Costa Rica. Costa Rica's obligations with respect to telecommunications are contained in a separate annex to Chapter 13. The annex recognizes the unique nature of Costa Rica's social policy on telecommunications and commits Costa Rica to undertake certain obligations as of January 1, 2006. These obligations include ensuring that enterprises have access to, and use of, public telecommunications services, and that suppliers of public communications services are provided interconnection with major suppliers.

CHAPTER FOURTEEN: ELECTRONIC COMMERCE

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (e.g., creation, production, first sale) there or are associated with certain categories of persons of another Party or a non-Party (e.g., authors, performers, producers). Nor may a Party provide less favorable

treatment to digital products that have a nexus to another Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Cooperation. Chapter Fourteen provides for future cooperation between the Parties, including exchanging information in areas such as data privacy and cyber-security.

CHAPTER FIFTEEN: INTELLECTUAL PROPERTY RIGHTS

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Under Chapter Fifteen the Parties are obligated to ratify or accede to several agreements on intellectual property rights, including, by the date of entry into force of the Agreement, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and, within specified time frames, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Fifteen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Parties must provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering

with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Fifteen, Parties must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection—five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product could not be used without that company's consent in granting approval to market a combination product. The Chapter also requires Parties to implement measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, the Parties, in determining damages, must take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement.

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. Most obligations in the Chapter take effect upon the Agreement's entry into force. However, the Central Amer-

ican Parties and the Dominican Republic may delay giving effect to certain specified obligations for periods ranging from six months to four years from the date of entry into force of the Agreement.

CHAPTER SIXTEEN: LABOR

Chapter Sixteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. Chapter Sixteen draws on the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however, in that it contains the most comprehensive set of commitments and undertakings regarding trade-related labor rights. As described below, the Chapter (i) includes detailed provisions to ensure that labor law enforcement is fair, equitable, and transparent; (ii) requires Parties to provide for public input on labor matters; and (iii) establishes a detailed framework that will assist Parties to develop the institutional capacity to fulfill the goals of the Chapter.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO Declaration as listed in the Chapter. Each Party also must strive to ensure that it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from another Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective enforcement of its labor laws, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Sixteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade between the Parties. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. In Chapter Sixteen, the Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must

be open to the public, except where the administration of justice otherwise requires. Chapter Sixteen also commits each Party to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Sixteen provides for cooperative consultations if a Party believes that another Party is not complying with the obligations in this Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its labor law, the complaining Party may, after an initial 60-day consultation period under Chapter Sixteen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its labor laws.

Cooperation and Capacity Building. Chapter Sixteen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Parties and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of any communications from the public relating to the provisions of the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, bilateral and regional cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

CHAPTER SEVENTEEN: ENVIRONMENT

Chapter Seventeen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Seventeen draws on the North American Agreement on Environmental Cooperation and the environmental provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however. In particular, the CAFTA-DR is the first U.S. FTA that includes a process for public submissions on environmental enforcement matters in the body of the FTA.

General Principles. Under Chapter Seventeen, the Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage trade with or investment from an-

other Party. Chapter Seventeen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Effective Enforcement. In Chapter Seventeen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting trade between the Parties. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources in a bona fide manner. For the United States, “environmental laws” includes federal environmental statutes and regulations enforceable by the federal government.

Procedural Matters. Chapter Seventeen commits each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party’s competent authorities to investigate alleged violations of its environmental laws and that each Party’s competent authorities give such requests due consideration. Chapter Seventeen also commits each Party to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for damage to the environment.

Public Submissions. Chapter Seventeen commits each Party to provide for the receipt and consideration of public submissions on matters related to the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if one member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. Pursuant to a separate understanding between the Parties, a new environmental unit within the Secretariat for Central American Economic Integration (SIECA) will serve as the secretariat for the receipt of public submissions.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations if a Party believes that another Party is not complying with its obligations under the Chapter. If the matter concerns a Party’s compliance with its obligation not to fail to effec-

tively enforce its environmental law, the complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its environmental laws.

Institutional arrangements and cooperation. Chapter Seventeen establishes a cabinet-level Environment Affairs Council to oversee the implementation and operation of the Chapter. Opportunities will be provided at Council meetings for the public to express views on the implementation of Chapter Seventeen and cooperative work between the Parties. The Parties also agree under Chapter Seventeen to continue to seek ways to enhance the mutual supportiveness of multilateral agreements and trade agreements to which they are all party, and to consult as appropriate on negotiations in the WTO regarding multilateral environmental agreements. In addition, to facilitate cooperation efforts, the Parties will enter into a separate environmental cooperation agreement.

CHAPTER EIGHTEEN: TRANSPARENCY

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Parties' nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Eighteen also affirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, Parties are obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

CHAPTER NINETEEN: ADMINISTRATION OF THE AGREEMENT AND
TRADE CAPACITY BUILDING

Chapter Nineteen creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission will be comprised of the Parties' trade ministers. It will meet annually and make decisions by consensus. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Chapter Nineteen requires each Party to designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

Chapter Nineteen also establishes a Committee on Trade Capacity Building, comprised of representatives of each Party. The overall objective of the Committee is to assist the Central American Parties and the Dominican Republic to implement the Agreement and adjust to liberalized trade. Particular functions of the Committee include: seeking the prioritization of trade capacity building projects at the national and regional level within Central America and the Dominican Republic; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with each country's national trade capacity building strategy; and monitoring and assessing progress in implementing trade capacity building projects.

CHAPTER TWENTY: DISPUTE SETTLEMENT

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (e.g., the WTO agreements), the complaining government may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with another Party on any actual or proposed measure that it believes might affect the operation of the Agreement. Any other Party having a substantial trade interest in the matter may participate in the consultations. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. Any party that participated in the consultations may participate in the panel proceedings as a complaining Party. Any other Party may participate in the panel proceedings as a third party.

The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow

an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the disputing Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. This period can be extended to 180 days in certain circumstances. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the disputing Parties cannot resolve the dispute after they receive the panel's final report, the disputing Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the disputing Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to

a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for appropriate labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever occurs first.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

CHAPTER TWENTY-ONE: EXCEPTIONS

Chapter Twenty-One sets out general provisions that apply to the entire Agreement with the following exception. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Balance of Payments. Chapter Twenty-One establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

Disclosure of Information. The Chapter also provides that a Party may withhold information from another Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

CHAPTER TWENTY-TWO: FINAL PROVISIONS

Chapter Twenty-Two provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to applicable domestic procedures, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two provides for the entry into force of the Agreement, and establishes procedures under which a Party may withdraw from the Agreement. The Chapter provides that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. Finally, the Chapter provides that the original texts of the Agreement shall be deposited with the Organization of American States.

E. GENERAL DESCRIPTION OF THE BILL TO IMPLEMENT THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

Sec. 1. Short title; table of contents

This section provides that the short title of the act implementing the Dominican Republic-Central America-United States Free Trade Agreement (the "Agreement") is the "Dominican Republic-Central America-United States Free Trade Agreement Implementation Act" ("Implementation Act"). Section 1 also provides the table of contents for the Implementation Act.

Sec. 2. Purposes

This section provides that the purposes of the Implementation Act are: to approve and implement the Agreement; to strengthen and develop economic relations between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua; to establish free trade between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, through the reduction and elimination of barriers to trade in goods and services and to investment; and to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

Sec. 3. Definitions

This section defines the terms "Agreement," "CAFTA-DR country," "Commission," "HTS," and "textile or apparel good."

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS
RELATING TO, THE AGREEMENT

Sec. 101. Approval and entry into force of the agreement

This section provides congressional approval for the Agreement and its accompanying Statement of Administrative Action. Section 101 also provides that, once the President determines that other countries that have signed the Agreement have taken measures necessary to comply with their obligations under the Agreement, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

Sec. 102. Relationship of the agreement to United States and state law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law; this would include provisions of federal law enacted or amended by the bill.

Section 102 provides that no state law may be declared invalid on the ground that the law is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law invalid. Section 102 also precludes any private right of action against the federal government or a state government based on the provisions of the Agreement.

Sec. 103. Implementing actions in anticipation of entry into force and initial regulations

This section provides that, following the enactment of the Implementation Act, the President may proclaim such actions, and other appropriate officers of the federal government may issue such regulations, as may be necessary to ensure that provisions of the legislation that take effect on the date the Agreement enters into force are appropriately implemented on such date. Section 103 provides that, with respect to any action proclaimed by the President that is not subject to the consultation and layover provisions contained in section 104, such action may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register. The 15-day restriction is waived, however, to the extent that it would prevent an action from taking effect on the date the Agreement enters into force. Section 103 also provides that, to the maximum extent feasible, initial regulations necessary or appropriate to carry out the actions required by the Implementation Act or the Statement of Administrative Action shall be issued within one year of the date the Agreement enters into force. In accordance with the accompanying Statement of Administrative Action, any agency unable to issue a regulation within one year must provide a report 30 days prior to the end of the one-year period to the Finance Committee outlining the reasons for the delay and stating the expected date for issuance of the regulation.

Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions

This section sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. Under the consultation and layover provisions, the President must obtain the advice of the relevant private sector advisory committees and the U.S. International Trade Commission on a proposed action. The President must submit a report to the Senate Committee on Finance and the House Committee on Ways and Means setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector advisors and the International Trade Commission. Section 104 sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Senate Committee on Finance and the House Committee on Ways and Means on the action.

Sec. 105. Administration of dispute settlement proceedings

This section authorizes the President to establish or designate within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. This section also authorizes the appropriation of funds to support this office.

Sec. 106. Arbitration of claims

This section authorizes the United States to use binding arbitration to resolve claims by investors of Agreement countries under article 10.16.1 (a)(i)(C) or article 10.16.1(b)(i)(C) of the Agreement, pursuant to the investor-state dispute settlement procedures set forth in section B of chapter 10 of the Agreement.

Sec. 107. Effective dates; effect of termination

This section provides that the provisions of the Implementation Act take effect on the date that the Agreement enters into force with the exceptions of sections 1 through 3 and Title I, which take effect on the date of enactment. During any period in which a country ceases to be a CAFTA–DR country, the provisions of the Implementation Act will no longer have effect with respect to that country. This section also provides that the provisions of the Implementation Act will cease to have effect if the United States withdraws from the Agreement or if the Agreement terminates.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications

This section provides that the President may proclaim the modification, continuation, or imposition of duties, or the continuation of duty-free treatment, as the President determines to be necessary or appropriate to carry out terms of the Agreement. Section 201 requires the President to terminate the designation of each CAFTA–DR country as a beneficiary country for purposes of the Generalized System of Preferences (“GSP”) on the date the Agreement enters into force with respect to that country.

This section also requires the President to terminate the designation of each CAFTA–DR country as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2701 *et seq.*)

(“CBERA”) on the date the Agreement enters into force with respect to that country. However, there are three exceptions by which each such country shall continue to be considered a beneficiary country under CBERA. The exceptions are: (1) that the ITC will continue to treat a CAFTA–DR country as a beneficiary country under CBERA for the purpose of not cumulating imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports in antidumping and countervailing duty investigations; (2) that the CAFTA–DR countries will continue to be treated as beneficiary countries under CBERA for the purpose of implementing the duty-free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement; and, (3) that the status quo will be maintained for each CAFTA–DR country with respect to existing taxpayer deductions for business travel to CBERA countries.

Section 201(b) authorizes the President, subject to the consultation and layover provisions of section 104, to proclaim the continuation, modification, or addition of tariffs, or the continuation of duty-free treatment, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to CAFTA–DR countries provided for by the Agreement.

With respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, section 201(c) authorizes the President to substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

Sec. 202. Additional duties on certain agricultural goods

Section 202 implements the agricultural safeguard provisions of article 3.15 and Annex 3.15 of the Agreement. Article 3.15 permits the United States to impose an “agricultural safeguard measure,” in the form of additional duties, on imports of certain goods of Agreement countries specified in the Schedule of the United States to Annex 3.15 of the Agreement that exceed the volume thresholds set out in that Annex. The categories of goods that may be subject to an agricultural safeguard measure are: certain dairy products, certain peanut butter, and certain peanuts.

Under the Agreement, the sum of the duties assessed under an agricultural safeguard plus the applicable rate of duty in the Schedule of the United States to Annex 3.3 of the Agreement may not exceed the general normal trade relations/most-favored nation (“NTR/MFN”) rate of duty. Pursuant to section 202(a)(5), no additional duty may be applied on a good under the agricultural safeguard if, at the time of entry, the good is subject to a bilateral safeguard measure under the procedures set out in subtitle A of Title III of the Implementation Act or to a global safeguard measure under the procedures set out in chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*). The agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to the good under the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(b) provides for the Secretary of the Treasury to impose agricultural safeguard duties if the Secretary determines that the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to that country for the good in that calendar year in the Schedule of the United States to Annex 3.3 of the Agreement. Under the Agreement, an agricultural safeguard measure may be maintained only until the end of the calendar year in which it is imposed.

Sec. 203. Rules of origin

This section implements the general rules of origin set forth in chapter 4 of the Agreement. Under the general rules, there are three basic means by which a good of an Agreement country can qualify as an originating good, and thus be eligible for preferential treatment when imported into the United States.

First, a good is originating if it is “wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries.” For purposes of section 203 only, the term “CAFTA–DR country” is defined to include the United States. For all other sections of the Implementation Act, the United States is not included within the definition of “CAFTA–DR country.” Second, the general rules of origin provide that a good is “originating” if the good is produced in one or more of the CAFTA–DR countries and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of one or more of the CAFTA–DR countries exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 sets forth additional rules concerning whether a good meets the Agreement’s specific requirements to qualify as an originating good. Section 203(c) implements provisions of Annex 4.1 of the Agreement that require that certain goods have at least a specified percentage of “regional value content” to qualify as originating goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Section 203(d) addresses how materials are to be valued when calculating the regional value content of a good under section 203(c) and for purposes of applying the *de minimis* rules of section 203(f). Section 203(g) addresses how to determine whether fungible goods and materials qualify as originating goods.

Section 203(o)(1) authorizes the President to proclaim as part of the HTS the provisions set out in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs provisions of the Implementation Act consistent with the Agreement. Section 203(o)(3) authorizes the President to modify certain of the Agreement’s rules of origin by proclamation, subject to the consultation and layover provisions of section 104 of the bill. But section 203(o)(3) limits the President’s authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4.1 of the Agreement)—those rules of origin may be modi-

fied by proclamation only within one year of enactment and only for the purpose of correcting typographical, clerical, or other non-substantive technical errors.

Section 203 also implements the fabrics, yarns, and fibers “short supply” provisions of the Agreement. Section 203(o)(2) provides authority for the President to carry out the provision in article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list (the “Short Supply List” of Annex 3.25) that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (*i.e.* the African Growth and Opportunity Act (“AGOA”), the Andean Trade Preference Act (“ATPA”), and CBERA) before the Agreement enters into force. Section 203(o)(4) implements the provisions of article 3.25 of the Agreement that provide for the United States to make modifications to the Short Supply List of Annex 3.25 of the Agreement after the Agreement enters into force. Under section 203(o)(4)(C), an “interested entity” (*i.e.* a potential or actual purchaser or seller or the government of a CAFTA–DR country) may request that the President determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries and add the material to the Short Supply List of Annex 3.25 in a restricted or unrestricted quantity.

Section 203(o)(4)(C) provides that if the President determines that the material is not commercially available in a timely manner in the region, or if no interested entity has objected, the President may issue a proclamation adding the material to the Short Supply List in a restricted or unrestricted quantity. Under section 203(o)(4)(C), the President may issue a proclamation within 30 days of the submission of a request, or within 44 days if there is insufficient information to make the determination within 30 days. This section states that such proclamations shall take effect on the date on which they are published in the Federal Register. Section 203(o)(4)(C) also provides that within six months of adding a fabric, yarn, or fiber to the Short Supply List of Annex 3.25 in a restricted quantity, the President may eliminate the restriction upon determining that the material is not available in commercial quantities in a timely manner in the CAFTA–DR countries. Under section 203(o)(4)(D), in the unlikely event that the President takes no action in response to a request to add a material to the Short Supply List of Article 3.25, the material is automatically added in an unrestricted quantity beginning 45 days after the request was submitted or, if the President has determined under section 203(4)(C) that sufficient information is not available to make the determination within 30 days, then beginning 60 days after the request was submitted.

Under section 203(o)(4)(E), an interested entity may request that the President limit the amount of any fabric, yarn, or fiber that the United States has included in an unrestricted quantity on the Short Supply List of Annex 3.25, or the interested entity may request that the material be removed from the list. An interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. The President must determine within 30 days of the request whether the material is available in commercial quantities in a timely man-

ner in the CAFTA–DR countries. If the determination is affirmative, the President is authorized to issue a proclamation carrying out the request; such a proclamation may take effect no earlier than six months after it is published in the Federal Register.

Other provisions in section 203 provide specific rules with respect to determining origin for accessories, spare parts, or tools; packaging materials; indirect materials; and goods classifiable as goods put up in sets.

Sec. 204. Customs user fees

This section provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under the Agreement. Processing of goods qualifying as originating goods will be financed by money from the General Fund of the Treasury.

Sec. 205. Retroactive application for certain liquidations and reliquidations of textile or apparel goods

This section provides that the United States must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date that the Agreement enters into force with respect to that country, provided that the goods would have been considered originating goods if the Agreement had been in force at that time. The Secretary of the Treasury shall refund any excess customs duties paid with respect to such entries.

Sec. 206. Disclosure of incorrect information; false certifications of origin; denial of preferential tariff treatment

This section provides for the imposition of penalties on exporters and producers that issue false CAFTA–DR certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply, under certain circumstances, where an exporter or producer voluntarily corrects an error and pays any duties owing.

Sec. 207. Reliquidation of entries

This section implements U.S. obligations under article 4.15.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. § 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

Sec. 208. Recordkeeping requirements

This section sets forth the requirement that a U.S. exporter or producer who completes and issues a CAFTA–DR certification of origin for a good exported from the United States must keep copies and records of the certification and, if requested pursuant to rules and regulations promulgated by the Secretary of the Treasury, render these materials for examination and inspection. Under section 208, the copies and records must be kept by the exporter or producer for five years.

Sec. 209. Enforcement relating to trade in textile or apparel goods

Under article 3.24 of the Agreement, the United States may request that a government of an Agreement country conduct a

verification to determine the accuracy of claims of origin for textile or apparel goods and to determine that exporters and producers are complying with applicable laws and regulations regarding trade in textile and apparel goods. The United States may assist in the verification or, at the request of the other government, conduct the investigation itself. The United States may take appropriate action during and after a verification pursuant to article 3.24 of the Agreement.

Section 209 implements article 3.24 of the Agreement. Under section 209(a), if the Secretary of the Treasury requests that the government of a CAFTA-DR country conduct a verification, the President may direct the Secretary to take “appropriate action” while the verification is underway. Under section 209(b), such an “appropriate action” includes: the suspension of preferential tariff treatment under the Agreement for any textile or apparel goods exported or produced by the person subject to the verification if the Secretary determines that there is insufficient information to support any claim for preferential tariff treatment; the denial of preferential tariff treatment under the Agreement for any textile or apparel goods exported or produced by the person subject to the verification if the Secretary determines that the person has provided incorrect information to support a claim for preferential tariff treatment; the detention of textile or apparel goods if the Secretary considers that there is insufficient information with which to determine their country of origin; and the denial of entry to such goods if the Secretary determines that the person subject to the verification has provided incorrect information as to the country of origin of such goods.

Under section 209(c), following the completion of a verification the President may also direct the Secretary of the Treasury to take “appropriate action.” Under section 209(d), such an “appropriate action” includes: the denial of preferential tariff treatment under the Agreement for any textile or apparel goods exported or produced by the person that is the subject of a verification if the Secretary determines either that there is insufficient information to support a claim for preferential treatment or that the person has provided incorrect information to support a claim for preferential treatment; and the denial of entry of any textile or apparel goods exported or produced by the person that is the subject of the verification if the Secretary determines either that there is insufficient information to determine the country of origin of the textile or apparel goods or that the person has provided incorrect information regarding their country of origin. Unless the President sets an earlier termination date, any such action may remain in place until the Secretary obtains sufficient information to determine whether the exporter or producer that was subject to the verification is complying with applicable customs laws, regulations, and procedures, or whether an accurate claim was made that textile or apparel goods qualify for preferential tariff treatment or originate in an Agreement country.

The Secretary of the Treasury may, under section 209(e), publish the name of any person that the Secretary has determined is engaged in intentional circumvention of applicable laws or regulations affecting trade in textile or apparel goods, or any person that has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Sec. 210. Regulations

This section authorizes the Secretary of the Treasury to prescribe regulations necessary to carry out the rules of origin and customs user fee provisions in the Implementation Act, as well as the President's proclamation authority with respect to fabrics, yarns, or fibers.

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions

This section defines the terms “CAFTA–DR article,” “CAFTA–DR textile or apparel article,” “*de minimis* supplying country,” and “relevant CAFTA–DR article,” for purposes of the general bilateral safeguard provision contained in chapter 8 of the Agreement and the textile and apparel bilateral safeguard provision contained in chapter 3 of the Agreement. The term “CAFTA–DR article” is defined as an article that qualifies as an originating good under section 203(b) of the Implementation Act. The term “CAFTA–DR textile or apparel article” is defined as a textile or apparel good that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. § 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement, that qualifies as an originating good under section 203(b) of the Implementation Act.

The term “*de minimis* supplying country” is defined as a CAFTA–DR country whose share of imports of the relevant CAFTA–DR article into the United States does not exceed 3 percent of the total volume of such imports during the most recent 12-month period for which data are available that precedes the filing of a general bilateral safeguard petition. However, if there is more than one CAFTA–DR country that satisfies the foregoing criterion, an additional limitation applies—*i.e.* a CAFTA–DR country shall not be considered to be a *de minimis* supplying country if the aggregate share of imports from all CAFTA–DR countries that satisfy the foregoing criterion exceeds 9 percent of total imports of the relevant CAFTA–DR article during the applicable 12-month period. Finally, the term “relevant CAFTA–DR article” is defined as a CAFTA–DR article with respect to which a general bilateral safeguard petition has been filed.

SUBTITLE A.—RELIEF FROM IMPORTS BENEFITTING FROM THE AGREEMENT

Sec. 311. Commencing of action for relief

This section requires the filing of a petition with the U.S. International Trade Commission (“Commission”) by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry in order to commence a bilateral safeguard investigation.

Section 311(b) provides that, upon the filing of a petition, the Commission shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a CAFTA–DR article is being imported into the United States in such increased quantities, and under such conditions, that imports of the CAFTA–DR article con-

stitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 311(c) extends certain provisions (both substantive and procedural) contained in subsections (b), (c), and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. § 2252(b), (c), and (i)) to any bilateral safeguard initiated under the Agreement. These provisions include, *inter alia*, the requirement that the Commission publish notice of the commencement of an investigation; the requirement that the Commission hold a public hearing at which interested parties and consumers have the right to be present, to present evidence, and to respond to the presentations of other parties and consumers; the factors to be taken into account by the Commission in making its determinations; and authorization for the Commission to promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties in an investigation.

Section 311(d) precludes the initiation of a bilateral safeguard investigation with respect to any CAFTA–DR article for which import relief has already been provided under this bilateral safeguard provision.

Sec. 312. Commission action on petition

This section establishes deadlines for Commission determinations following the initiation of a bilateral safeguard investigation. Section 312(b) applies certain statutory provisions that address an equally divided vote by the Commission in a global safeguard investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) to Commission determinations under this section. If the Commission renders an affirmative injury determination, or a determination that the President can consider to be an affirmative determination in the event of a divided vote by the Commission, section 312(c) requires that the Commission also find and recommend to the President the amount of import relief that is necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Section 312(d) specifies the information to be included by the Commission in a report to the President regarding its determination. Upon submitting the requisite report to the President, section 312(e) requires the Commission to make public promptly such report, except for confidential information contained in the report.

Sec. 313. Provision of relief

This section directs the President, not later than 30 days after receiving the report from the Commission, to provide relief from imports of the article subject to an affirmative determination by the Commission, or a determination that the President considers to be an affirmative determination in the event of a divided vote by the Commission, to the extent that the President determines necessary to remedy or prevent the injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the provision

of the import relief will not provide greater economic and social benefits than costs.

Section 313(c) specifies the nature of the import relief that the President may impose to include: the suspension of any further reduction in duty provided for under Annex 3.3 of the Agreement; and an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of (1) the NTR/MFN duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the Agreement enters into force. Section 313(c) also requires that, if the period for which import relief is provided exceeds one year, the President shall provide for the progressive liberalization (described in article 8.2.3 of the Agreement) of such relief at regular intervals during the period of its application.

Section 313(d) provides that any import relief that the President imposes in a bilateral safeguard action may not, in the aggregate, exceed four years. If the initial period of import relief is less than four years, the President may extend the effective period of such import relief to a total of no more than four years if the Commission first determines and reports to the President whether import relief continues to be necessary to remedy or prevent serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition. If the Commission reports an affirmative determination, or a determination that the President considers to be an affirmative determination in the event of a divided vote by the Commission, then the President can extend the effective period of import relief to a total of no more than four years if the President determines that import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition.

Section 313(e) provides that upon termination of import relief under the bilateral safeguard provision, the rate of duty to be applied in the calendar year of termination is the rate of duty that would have been in effect one year after the provision of import relief according to the Schedule of the United States to Annex 3.3 of the Agreement. The rate of duty to be applied thereafter shall be, at the discretion of the President, either (1) the applicable rate of duty for that article set out in the Schedule of the United States to Annex 3.3 of the Agreement, or (2) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 3.3 of the Agreement for the elimination of the tariff.

Section 313(f) provides that no import relief may be provided under the bilateral safeguard mechanism on any article that is subject to import relief under the global safeguard mechanism provided for in chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*). Section 313(f) further provides that no import relief may be provided under the bilateral safeguard mechanism on imports of a CAFTA–DR article from a CAFTA–DR country that is a de minimis supplying country with respect to that article.

Sec. 314. Termination of relief authority

This section provides that the President's authority to impose import relief under the bilateral safeguard mechanism ends after the date that is 10 years after the date on which the Agreement enters into force, or, if the period for tariff elimination (set out in the Schedule of the United States to Annex 3.3 of the Agreement) for an article subject to import relief is greater than 10 years, after the date on which such period ends.

Sec. 315. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant CAFTA-DR countries new concessions as compensation for the imposition of import relief in a bilateral safeguard investigation in order to maintain the general level of reciprocal concessions under the Agreement.

Sec. 316. Confidential business information

This section applies the same procedures for the treatment and release of confidential business information by the Commission in a global safeguard investigation under chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*) to bilateral safeguard investigations under subtitle A of Title III of the Implementation Act.

SUBTITLE B.—TEXTILE AND APPAREL SAFEGUARD MEASURES

Sec. 321. Commencement of action for relief

This section requires the filing of a request with the President by an interested party in order to commence action for relief under the textile and apparel safeguard provision. Upon the filing of a request, the President shall review the request to determine, from the information presented in the request, whether to commence consideration of the request. Section 321(b) provides that, if the President determines that the request provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

The Committee notes that our regulatory processes should be administered in an open and transparent manner that can serve as a model for our trading partners. For example, in addition to publishing a summary of a request for safeguard relief, the Committee notes that the President plans to make available the full text of the request on the website of the International Trade Administration of the U.S. Department of Commerce, subject to the protection of business confidential information. The Committee encourages this and similar efforts to enhance government transparency. In particular, the Committee encourages the President to issue regulations on procedures for: requesting a textile and apparel safeguard measure under section 321(a) of the Implementation Act; making a determination under section 322(a) of the Implementation Act; providing safeguard relief under section 322(b) of the Implementa-

tion Act; and, extending safeguard relief under section 323(b) of the Implementation Act.

Sec. 322. Determination and provision of relief

This section provides that following the President's commencement of consideration of a request, the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a CAFTA-DR textile or apparel article of a specified CAFTA-DR country is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(a) provides that in making a determination the President shall examine the effect of increased imports on the domestic industry's output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive. Section 322(a) also provides that the President shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof. The President must make a determination no later than 30 days after the completion of any consultations held pursuant to article 3.23.4 of the Agreement.

Section 322(b) authorizes the President, in the event of an affirmative determination of serious damage or actual threat thereof, to provide import relief to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition. Section 322(b) also specifies the nature of the import relief that the President may impose to consist of an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of (1) the NTR/MFN duty rate imposed on like articles at the time the import relief is provided, or (2) the NTR/MFN duty rate imposed on like articles on the day before the date on which the Agreement enters into force.

Sec. 323. Period of relief

Section 323(a) provides that any import relief that the President imposes under the textile and apparel safeguard mechanism may not, in the aggregate, exceed three years. If the initial period of import relief is less than three years, then under section 323(b) the President may extend the effective period of such import relief to a total of no more than three years if the President determines that the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition, and that there is evidence that the domestic industry is making a positive adjustment to import competition.

Sec. 324. Articles exempt from relief

This section precludes the President from providing import relief under the textile and apparel safeguard mechanism with respect to any article to which import relief has already been provided under subtitle B of Title III of the Implementation Act, or any article that is subject to import relief under either the bilateral safeguard

mechanism under subtitle A of Title III of the Implementation Act or the global safeguard mechanism set forth in chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. § 2251 *et seq.*).

Sec. 325. Rate after termination of import relief

This section provides that the duty rate applicable to a textile or apparel article after termination of the import relief shall be the duty rate that would have been in effect but for the provision of such import relief.

Sec. 326. Termination of relief authority

This section provides that the President's authority to provide import relief under the textile and apparel safeguard mechanism terminates after the date that is five years after the date on which the Agreement enters into force.

Sec. 327. Compensation authority

This section authorizes the President, under section 123 of the Trade Act of 1974 (19 U.S.C. § 2133), to grant a CAFTA–DR country new concessions as compensation for the imposition of import relief in a textile and apparel safeguard proceeding, in order to maintain the general level of reciprocal concessions under the Agreement.

Sec. 328. Confidential business information

This section precludes the President from releasing information received in a textile and apparel safeguard proceeding that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. This section also provides that, to the extent a party provides confidential business information, the party shall also provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

SUBTITLE C.—CASES UNDER TITLE II OF THE TRADE ACT OF 1974

Sec. 331. Findings and action on goods of CAFTA–DR countries

If the Commission initiates an investigation under the global safeguard mechanism provided for in chapter 1 of Title II of the Trade Act of 1974, and the Commission reports to the President an affirmative determination in that investigation, or a determination that the President can consider to be an affirmative determination in the event of a divided vote by the Commission, then section 331(a) requires the Commission to include in its report to the President a finding as to whether imports of the investigated article from each CAFTA–DR country that qualify as originating goods under the Agreement's rules of origin are a substantial cause of serious injury or threat thereof. Pursuant to section 331(b), the President may then exclude from any global import relief goods of a CAFTA–DR country with respect to which the Commission made a negative finding under section 331(a).

TITLE IV—MISCELLANEOUS

Sec. 401. Eligible products

This section amends section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. § 2518(4)(A)) to implement the government procurement provisions of the Agreement.

Sec. 402. Modifications to the Caribbean Basin Economic Recovery Act

This section amends sections 212 and 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. §§ 2702–03) (“CBERA”) to reflect that parties to the Agreement are no longer eligible to be designated as beneficiary countries under CBERA or under the Caribbean Basin Trade Partnership Act (“CBTPA”), which amended CBERA. Section 402 further provides, however, that the remaining CBERA and CBTPA beneficiary countries (*i.e.* non CAFTA–DR countries) may continue to utilize inputs from a CAFTA–DR country in satisfying the rules of origin under CBERA and CBTPA. Section 402 is thus intended to avoid disrupting the existing benefit structure under CBERA and CBTPA for the remaining CBERA and CBTPA beneficiary countries (*i.e.* non CAFTA–DR countries).

Section 402(d) provides that if, under the non-preferential rules of origin that the United States applies in the normal course of trade, a good is determined to be a good of a CAFTA–DR country that has implemented the Agreement, then the good is not eligible for preferential tariff treatment under CBTPA. However, section 402(d) includes an exception with respect to a good that is co-produced in Haiti and the Dominican Republic. Specifically, if a good is determined to be a good of the Dominican Republic under U.S. non-preferential rules of origin, and the good either contains inputs of Haiti or underwent processing in Haiti, the resulting apparel item will continue to be eligible for CBTPA preferential treatment. This exception is thus intended to avoid disrupting investment in co-production relationships in Haiti and the Dominican Republic.

Sec. 403. Periodic reports and meetings on labor obligations and labor capacity-building provisions

This section provides that not later than two years after the Agreement enters into force, and not later than the end of each two-year period thereafter during the succeeding 14 years, the President shall report to Congress on the progress of the CAFTA–DR countries in implementing the labor provisions of the Agreement and the April 2005 report of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic entitled “The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity.” Section 403 also provides that the Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the CAFTA–DR countries to discuss the operation of the labor provisions of the Agreement, progress on the labor commitments made by the CAFTA–DR countries, the work of the International Labor Organization (“ILO”) in the CAFTA–DR countries, and such other matters as the Secretary of Labor and the labor ministers of the CAFTA–DR countries deem appropriate.

F. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on June 29, 2005, S. 1307 was ordered favorably reported, without amendment, by voice vote, a quorum being present (Senator Thomas voted no).

II. BUDGETARY IMPACT OF THE BILL

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 2005.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1307, the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Annabelle Bartsch.

Sincerely,

Douglas Holtz-Eakin,
Director.

Enclosure.

S. 1307—Dominican Republic-Central America-United States Free Trade Agreement Implementation Act

Summary: S. 1307 would approve the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) between the government of the United States and the governments of the Dominican Republic and five Central American countries. The agreement, which was entered into with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua on May 28, 2004, and with the Dominican Republic on August 5, 2004, would provide for tariff reductions and other changes in law related to implementation of the agreement.

The Congressional Budget Office estimates that implementing the agreement would reduce revenues by \$3 million in 2006, about \$1.1 billion over the 2006–2010 period, and about \$4.4 billion over the 2006–2015 period, net of income and payroll tax offsets. CBO estimates it also would increase direct spending by \$35 million in 2006, \$245 million over the 2006–2010 period, and \$621 million over the 2006–2015 period.

CBO has determined that S. 1307 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not directly affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1307 over the 2005–2015 period is shown in the following table.

By fiscal year in millions of dollars—											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN REVENUES											
Estimated Revenues	0	— 3	— 5	— 7	— 525	— 556	— 582	— 608	— 646	— 689	— 733
CHANGES IN DIRECT SPENDING											
Effect on Farm Program:											
Estimated Budget Authority	0	24	35	41	49	55	55	57	59	61	64
Estimated Outlays	0	24	35	41	49	55	55	57	59	61	64
Merchandise Processing Fee:											
Estimated Budget Authority	0	11	15	16	17	17	18	19	20	21	0
Estimated Outlays	0	11	15	16	17	17	18	19	20	21	0
Trade Adjustment Assistance:											
Estimated Budget Authority	0	*	*	*	*	*	*	*	*	*	*
Estimated Outlays	0	*	*	*	*	*	*	*	*	*	*
Total Changes:											
Estimated Budget Authority	0	27	39	45	64	70	75	77	79	81	64
Estimated Outlays	0	27	39	45	64	70	75	77	79	81	64

Notes.—Less than \$500,000. Negative changes in revenues and positive changes in direct spending correspond to increases in budget deficits.

Basis of estimate

Revenues

Under the agreement, tariffs on U.S. imports from the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination on January 1, 2006, to gradual elimination over 20 years. According to the U.S. International Trade Commission (USITC), the United States collected \$518 million in customs duties in 2004 on \$17.7 billion of imports from those six countries. Those imports consist mostly of various types of apparel articles and produce. Nearly 80 percent of all imports from the region entered the United States duty-free because the United States has normal trading relations with those six countries or because the goods are imported under one of several U.S. trade programs. However those programs are scheduled to expire in the next three years. The Generalized System of Preferences will expire on September 30, 2006, and the Caribbean Basin Initiative will expire on September 30, 2008.

CAFTA–DR would afford imports from the region preferential treatment similar to what they currently receive. Based on data from USITC and CBO’s most recent forecast of U.S. imports, CBO estimates that phasing out tariff rates as outlined in the agreement would reduce revenues by \$3 million in 2006, about \$1.1 billion over the 2006–2010 period, and about \$4.4 billion over the 2006–2015 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from the region that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from the six countries would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from the region would displace imports from other countries.

Direct spending

Effect on Department of Agricultural Sugar Programs. CAFTA–DR would provide the six countries with guaranteed minimum access to the U.S. sugar market. Imports of sugar from these countries would be tariff-free and could increase over time. By increasing the amount of sugar supplied to the U.S. by exporting countries, CBO estimates that the cost of the federal sugar program would likely increase.

Federal government programs support the income of sugar growers primarily by limiting the supply of sugar through domestic marketing allotments—permission to market domestically produced sugar—and import quotas. In addition, a system of nonrecourse price-support loans is used to guarantee sugar growers a minimum price, if the domestic and import restrictions do not result in a sufficiently high market price. The nonrecourse loan program allows producers to pledge their sugar as collateral against a loan from the government at the price-support loan rate. The “nonrecourse” aspect allows them to forfeit their sugar to the government in lieu of repaying the loan when prices are low, resulting in a quantity of sugar being removed from the market, thus supporting the price. The government attempts to limit the supply of sugar through domestic allotments and import quotas to avoid costs in the price-support loan system in most years. Unexpected market events have resulted in substantial costs for the price-support loan program in some recent years (for example, sugar program costs were \$465 million in 2000 and \$61 million in 2004).

In addition, trade agreements and other commitments have provided other sugar-producing countries with minimum access guarantees to our markets, and tariffs on over-quota U.S. imports from Mexico are scheduled to drop to zero in 2008. Furthermore, if the total amount of U.S. sugar imports in any year exceeds (or is estimated to exceed) a legislated quantity of 1,532 million short tons (excluding some categories, for instance, re-exported sugar), domestic marketing allotments must be canceled under current law, meaning that marketing of domestically produced sugar would be unrestrained.

CBO estimates that by providing additional import access guarantees in compliance with CAFTA–DR, the sugar program will likely cost an additional \$500 million over the 2006–2015 period.

Annual estimates are shown in the table above. As with programs for most agricultural commodities, conditions in domestic and world markets are highly variable, making estimates of program costs for sugar somewhat uncertain. Actual costs could be either higher or lower in any given year, and these estimated costs represent our best estimate of expected costs over the estimation period. Consistent with the current budget resolution (H. Con. Res. 95), this estimate is relative to CBO's March 2005 assumptions about sugar market conditions. More current information concerning that market indicates that the cost of this legislation would likely be lower in 2006 and possibly lower in 2007, with no significant change in later years.

Merchandise Processing Fee. This legislation would exempt certain goods imported from the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua from merchandise processing fees collected by the Department of Homeland Security. Such fees are recorded as offsetting receipts (a credit against direct spending). Based on the value of goods imported from those countries in 2004, CBO estimates that implementing this provision would reduce fee collections by about \$3 million in fiscal year 2006 and by a total of \$120 million over the 2006–2014 period, with no effect thereafter because the authority to collect merchandise processing fees expires at the end of 2014.

Trade Adjustment Assistance. Implementing CAFTA–DR could have a negligible effect on the Trade Adjustment Assistance program (TAA). TAA provides extended unemployment compensation, job training, and health insurance tax credits for individuals who lose their job due to increases in imports. Based on information from the International Trade Commission regarding projected employment losses in various industries, CBO estimates that the added costs to TAA would be less than \$5 million over the 2006–2015 period, and less than \$500,000 in each year over that period.

Estimated Impact on State, Local, and Tribal Governments: S. 1307 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: CBO estimates that under the act, the tariff rates would be no greater than under current law. Consequently, S. 1307 would not impose any private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 18, 2005, CBO also transmitted a cost estimate for H.R. 3045, an identical bill that was ordered reported by the House Committee on Ways and Means on June 30, 2005. The two cost estimates are identical.

Estimate prepared by: Federal Revenues: Annabelle Bartsch and Emily Schlect. Federal Spending: Mark Grabowicz and David Hull. Christi Hawley-Sadoti. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Selena Caldera.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that S. 1307 will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (“UMRA”) (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 1307 as approved by the Committee on June 29, 2005. In accordance with the requirement of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of State, local, or tribal governments.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * *

(15) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

* * * * *

TARIFF ACT OF 1930

* * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

* * * * *

(g) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

(1) DEFINITIONS.—In this subsection:

an exported good under paragraph (2), records and documents related to the origin of the good, including—

(i) the purchase, cost, and value of, and payment for, the good;

(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) CAFTA–DR CERTIFICATION OF ORIGIN.—*The term “CAFTA–DR certification of origin” means the certification established under article 4.16 of the Dominican Republic–Central America–United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.*

(2) EXPORTS TO CAFTA–DR COUNTRIES.—*Any person who completes and issues a CAFTA–DR certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).*

(3) RETENTION PERIOD.—*Records and supporting documents shall be kept by the person who issued a CAFTA–DR certification of origin for at least 5 years after the date on which the certification was issued.*

[(g)] (h) PENALTIES.—*Any person who fails to retain records and supporting documents required by subsection (f) or (g) or the regulations issued to implement [that subsection] either such subsection shall be liable for the greater of—*

(1) * * *

* * * * *

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * *

(h) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE DOMINICAN REPUBLIC–CENTRAL AMERICA–UNITED STATES FREE TRADE AGREEMENT.—*If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 203 of the Dominican Republic–Central America–United States Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic–Central America–United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 203.*

* * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * *

(d) **GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.**—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act [or section 202 of the United States-Chile Free Trade Agreement Implementation Act], *section 202 of the United States-Chile Free Trade Agreement Implementation Act, or section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act* for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) * * *

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)), or other certificates *or certifications* of origin, as the case may be; and

* * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

* * * * *

(c) **MAXIMUM PENALTIES.**—

(1) * * *

* * * * *

(9) **PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.**—*An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.*

[(9)] (10) **SEIZURE.**—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Sec-

retary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * *

(h) FALSE CERTIFICATIONS OF ORIGIN UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA-DR certification of origin (as defined in section 508(g)(1)(B) of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA-DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CAFTA-DR certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

* * * * *

SECTION 202 OF THE TRADE ACT OF 1974

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

*(1) * * **

* * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free

Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, [and] title III of the United States-Morocco Free Trade Agreement Implementation Act, *and title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.* The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * *

SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

SEC. 308. DEFINITIONS.

As used in this title—

(1) * * *

* * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) * * *

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States; [or]

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States[.]; or

(iv) *a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States.*

* * * * *

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

TITLE II—CARIBBEAN BASIN INITIATIVE

SEC. 201. SHORT TITLE.

This title may be cited as the “Caribbean Basin Economic Recovery Act”.

* * * * *

SEC. 212. BENEFICIARY COUNTRY.

(a)(1) For purposes of this title—

(A) * * *

* * * * *

(F) The term “former beneficiary country” means a country that ceases to be designated as a beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

* * * * *

(b) In designating countries as “beneficiary countries” under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla	【Honduras】
Antigua and Barbuda	Jamaica
Bahamas, The	Montserrat
Barbados	Netherlands Antilles
Belize	【Nicaragua】
Cayman Islands	Panama
【Costa Rica】	Saint Lucia
Dominica	Saint Vincent and the Grenadines
【Dominican Republic】	Suriname
【El Salvador】	Trinidad and Tobago
Grenada	Saint Christopher-Nevis
【Guatemala】	Turks and Caicos Islands
Guyana	Virgin Islands, British
Haiti	

In addition, the President shall not designate any country a beneficiary country under this title—

(1) * * *

* * * * *

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, and except as provided in subsection (b)(2) and (3), the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) * * *

* * * * *

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】 *the Commonwealth of Puerto Rico, the United States Virgin Islands, and any former beneficiary country.* 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 per centum 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).

* * * * *

(b) IMPORT-SENSITIVE ARTICLES.—

(1) * * *

* * * * *

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) * * *

* * * * *

(G) *FORMER CBTPA BENEFICIARY COUNTRY.*—The term “former CBTPA beneficiary country” means a country that ceases to be designated as a CBTPA beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

(H) *ARTICLES THAT UNDERGO PRODUCTION IN A CBTPA BENEFICIARY COUNTRY AND A FORMER CBTPA BENEFICIARY COUNTRY.*—(i) For purposes of determining the eligibility of an article for preferential treatment under paragraph (2) or (3), references in either such paragraph, and in subparagraph (C) of this paragraph to—

(I) a “CBTPA beneficiary country” shall be considered to include any former CBTPA beneficiary country, and

(II) “CBTPA beneficiary countries” shall be considered to include former CBTPA beneficiary countries, if the article, or a good used in the production of the article, undergoes production in a CBTPA beneficiary country.

(ii) An article that is eligible for preferential treatment under clause (i) shall not be ineligible for such treatment because the article is imported directly from a former CBTPA beneficiary country.

(iii) Notwithstanding clauses (i) and (ii), an article that is a good of a former CBTPA beneficiary country for purposes of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or section 334 of the Uruguay Round Agreements Act (19 U.S.C. 3592), as the case may be, shall not be eligible for preferential treatment under paragraph (2) or (3), unless—

(I) it is an article that is a good of the Dominican Republic under either such section 304 or 334; and

(II) the article, or a good used in the production of the article, undergoes production in Haiti.

* * * * *