

**The Dominican Republic-Central America-United States Free Trade Agreement
Implementation Act
SECTION-BY-SECTION SUMMARY
PREPARED BY THE COMMITTEE ON WAYS AND MEANS**

Sections 1-3: Short title, purposes and definitions

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and Entry into Force

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action and that the President is authorized to provide for the Agreement to enter into force with respect to the specific country that has signed the Agreement (the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, or Nicaragua) and taken measures necessary to comply with the provisions that are to take effect on the date on which the Agreement enters into force with respect to that country.

Section 102: Relationship of the Agreement to U.S. and State Law

Section 102 provides that U.S. law is to prevail in a conflict and states that the Agreement does not preempt state rules that do not comply with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

Section 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

Section 103(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the date the Agreement enters into force.

Section 103(b) establishes that regulations necessary or appropriate to carry out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or the effective date of the provision.

Section 104: Consultation and Layover for Proclaimed Actions

Section 104 provides that if the President implements proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the Ways & Means and Finance Committees concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

Section 105: Administration of Dispute Settlement Proceedings

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any panels that may be established under the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 106: Arbitration of Claims

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreement.

Section 107: Effective Dates; Effect of Termination

The effective date of this Act is the date the Agreement enters into force with respect to the United States except sections 1-3 and Title I take effect upon the date of enactment. During any period in which a country ceases to be a CAFTA-DR country, the provisions of this Act cease to have effect with respect to that country. The provisions of the Act terminate on the date on which the Agreement terminates with respect to the United States.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff Modifications

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement. Sections 201(a)(2) and 201(a)(3) terminate each CAFTA-DR country's status as a beneficiary of the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act (CBERA) once the agreement enters into force with respect to that country.

Under section 201(a)(3)(B) three exceptions apply to withdrawal under the CBERA; the United States will continue to treat CAFTA-DR countries as beneficiary countries: (1) to preclude the International Trade Commission from cumulating CBERA imports in antidumping and countervailing duty investigations according to article 8.8.1 of the Agreement; (2) to implement duty free treatment for certain ethyl alcohol 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) for purposes of taxpayer deductions for business trips to CBERA countries.

Section 201(b) gives the President the authority to proclaim further tariff modifications, subject to consultation and layover, 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.

Section 201(c) allows the President, for any goods for which the base rate is a specific or

compound rate of duty, to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

Section 202: Additional Duties on Certain Agricultural Goods

Section 202 of the bill 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. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and 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 (NTR) rate of duty. No additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974.

Section 202(b) provides for the Secretary to impose agricultural safeguard duties in any year when 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. The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Section 203: Rules of Origin

Section 203 codifies the rules of origin set out in chapter 4 of the Agreement. Under the general rules, there are three basic ways for a good of a CAFTA-DR country to qualify as an “originating good” and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is “wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries”; (2) those 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 or meet other requirements, as specified in Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of one or more CAFTA-DR countries exclusively from originating materials.

Under the rules in chapter 4 and Annex 4.1 of the Agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a “yarn forward” requirement. Thus, to qualify as an originating good imported into the United States from another CAFTA-DR country, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in one or more CAFTA-DR country from yarn, or fabric made from yarn that originates in a CAFTA-DR country. However, Annex 3.27 of the Agreement provides a 2-year exception to this general rule for 500,000 square meter equivalents of certain wool apparel goods assembled in Costa Rica. Annex 3.28 of the Agreement provides an exception to this general rule allowing access for 100 million square meter equivalents of apparel assembled in Nicaragua in the first 5 years of the Agreement, phasing down over the next 4 years and eliminated in year 10.

Section 203(o)(2) provides authority for the President to add fabrics or yarns to a list of products that are unavailable in commercial quantities in a timely manner, and such products are treated as if they originate in an Agreement country, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Section 203(o)(4) provides a process by which the President may modify that list at the request of interested entities, defined as Agreement countries and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of section 203 sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second method of qualifying as an originating good. These provisions include rules pertaining to *de minimis* quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and the alternative methods for calculating regional value content. Other provisions in section 203 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

Section 204: Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding the exemption of the merchandise processing fee on originating goods. This provision is similar to those included in the implementing legislation for the North American Free Trade Agreement, the U.S. – Singapore Free Trade Agreement, the U.S. – Chile Free Trade Agreement, and the U.S. – Australia Free Trade Agreement. The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Section 205: Retroactive Application for Certain Liquidations and Reliquidations of Textile or Apparel Goods

Section 205 implements Article 3.20 of the Agreement and provides that, notwithstanding section 514 of the Tariff Act of 1930, the Secretary of the Treasury must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date 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.

Section 206: Disclosure of Incorrect Information

Section 206 implements Articles 4.15.3 and 4.20.5 of the Agreement. The provision prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error. If an importer so acts more than once, falsely or without substantiation, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer.

Section 207: Reliquidation of Entries

Section 207 implements Article 4.15.5 of the Agreement and provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

Section 208: Recordkeeping requirements

Section 208 of the bill implements Article 4.19 of the Agreement and provides that an importer claiming preferential tariff treatment for a good shall maintain, for a period of five years after the date of importation, a certificate of origin or other information demonstrating that the good qualifies as originating.

Section 209: Enforcement relating to trade in textile or apparel goods

Section 209 implements the customs cooperation provisions in Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary to take “appropriate action” while a verification that the Secretary has requested is being conducted. Such appropriate action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 209(c), the President may also direct the Secretary to take “appropriate action” after a verification has been completed. Depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided erroneous information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 209(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

Section 210: Regulations

Section 210 provides that the Secretary of Treasury shall prescribe regulations to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief from Imports Benefiting from the Agreement (Sections 301-316)

Sections 301-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a CAFTA-DR product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 301 defines key safeguard terms for Subtitle A.

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is “representative of an industry.” As under section 202(a)(1) of the Trade Act of 1974, the term “entity” is defined to include a trade association, firm, certified or recognized union, or a group of workers. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) defines “substantial cause” and applies factors in making determinations in the same manner as section 202 of the Trade Act of 1974. Section 311(d) exempts from investigation under this section CAFTA-DR articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President may provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC 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 the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of: a suspension of further reductions in the rate of duty to be applied to the articles in question; or an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or

the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force. Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed four years. However, if the initial period of import relief is less than four years, the President may extend the period of import relief (to a maximum aggregate period of four years). Section 313(e) specifies that on the termination of relief, the rate of duty for the remainder of the calendar year is that rate scheduled to have been in effect one year after the initial provision of import relief. For the remainder of the duty phase-out period, the President may set the rate called for in the Agreement or choose to eliminate the duty in equal annual stages until the end of the phase-out period.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); or (ii) the product of a de minimis supplying country.

Section 314 provides that no relief may be provided under this subtitle after ten years from the date the Agreement enters into force, unless the tariff elimination for the article under the Agreement is greater than ten years, in which case relief may not be provided for that article after the period for tariff elimination for that article ends.

Section 315 authorizes the President to provide compensation to CAFTA-DR countries consistent with article 8.5 of the Agreement. Section 316 provides for the treatment of confidential business information.

Subtitle B: Textile and Apparel Safeguard (Sections 321-328)

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he will publish a notice commencing consideration and seeking comments. The notice is to include a summary of the request.

Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice that the request will be considered and seeking public comments on the request.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination or reduction of a duty provided under the Agreement, a CAFTA-DR textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article,

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. The President must make this determination within 30 days after the completion of consultations held pursuant to article 3.23.4.

Section 322(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force.

Section 323 of the bill provides that the period of relief shall be no longer than three years. If the initial relief period is less than three years, the President may extend the relief, but the aggregate period of relief, including extensions, may not exceed three years.

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard, or the article is subject to import relief under subtitle A of title III of this bill or under chapter 1 of title II of the Trade Act of 1974.

Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action.

Section 326 states that the authority to provide safeguard relief under this subtitle expires five years after the date on which the Agreement enters into force. Section 327 of the Act gives authority to the President to provide compensation to CAFTA-DR countries if he orders relief. Section 328 provides for the treatment of confidential business information.

Subtitle C: Global Safeguard Cases Under Title II of the Trade Act of 1974 (Section 331)

Section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article of each Agreement country considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

TITLE IV: MISCELLANEOUS

Section 401: Government Procurement

Section 401 implements chapter 9 of the Agreement and amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section

308(4)(A) will provide that, for an Agreement country, an “eligible product” means a product or service of that country that is covered under the Agreement for procurement by the United States.

Section 402: Modifications to the Caribbean Basin Economic Recovery Act

Section 402 of the bill makes several amendments to the CBERA in light of the fact that the Agreement countries will no longer be beneficiary countries for purposes of the CBERA or the Caribbean Basin Trade Partnership Act (CBTPA) once the Agreement takes effect for them. The amendments do not provide new benefits for the remaining beneficiary countries or the Agreement countries; rather the amendments preserve benefits which the remaining beneficiary countries already have under the CBERA and CBTPA.

Subsection 402(b) of the bill amends section 212(b) of the CBERA to delete the Agreement countries from the list of countries that the President may designate as beneficiary countries. Section 402(a) of the bill amends section 212(a)(1) of the CBERA to define the term “former beneficiary country” to mean a country that has ceased to be designated as a beneficiary country by reason of its becoming a party to a free trade agreement with the United States.

Section 402(c) of the bill amends section 213(a)(1) of the CBERA, which establishes the permissible source of materials and processing for benefits. Specifically, the bill provides that the term “beneficiary country” also includes “former beneficiary countries” for purposes of determining whether the rules of origin under Section 213(a)(1) of CBERA have been satisfied.

Section 402(d) of the bill adds subparagraphs (G) and (H) to 213(b)(5) of the CBERA. Subparagraph (G) defines the term “former CBTPA beneficiary country” to mean a country that has ceased to be designated as a CBTPA beneficiary country by reason of its becoming a party to a free trade agreement with the United States.

Subparagraph (H) seeks to preserve benefits under currently recognized co-production operations and ensure that the remaining CBTPA beneficiary countries may continue to obtain preferential treatment for their goods even if the goods contain inputs of an Agreement country or the goods undergo processing in an Agreement country. Specifically, the subparagraph provides that a “former CBTPA beneficiary country” will be considered a CBTPA beneficiary country for purposes of determining the eligibility of a good for preferential treatment under section 213(b)(2) of the CBERA (for certain textile and apparel articles) and section 213(b)(3) of the CBERA, provided that the good undergoes some production in one of the remaining beneficiary countries. Subparagraph (H) also provides that a good that meets the requirements of the subparagraph will not be ineligible for preferential treatment under section 213(b)(2) or (3) because the good was imported directly from a former CBTPA beneficiary country. However, because Agreement countries will no longer be CBTPA beneficiary countries, subparagraph (H) provides that a good considered a good of an Agreement country under U.S. non-preferential rules of origin is not eligible for preferential treatment pursuant to subparagraph (H). This

limitation does not apply to certain goods of the Dominican Republic that undergo production in Haiti, again for the purpose of preserving benefits for existing co-production operations.

Section 403: Periodic Reports and Meetings on Labor Obligations and Labor Capacity-Building Provisions

Section 403 creates periodic report and meeting requirements on labor provisions of the DR-CAFTA and White Paper prepared by Agreement countries, in particular activities conducted by the DR-CAFTA countries and the United States on capacity building on labor issues.