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

JULY 25, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3045]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3045) to implement the Dominican Republic-Central America-United States Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
I. Introduction	2
A. Purpose and Summary	2
B. Background	2
C. Legislative History	8
II. Section-by-Section Summary	10
A. Title I: Approval and General Provisions	10
B. Title II: Customs Provisions	12
C. Title III: Relief from Imports	19
D. Title IV: Miscellaneous	23
III. Vote of the Committee	27
IV. Budget Effects of the Bill	27
A. Committee Estimate of Budgetary Effects	27
B. Budget Authority and Tax Expenditures	28
C. Cost Estimate Prepared by the Congressional Budget Office	28
V. Other Matters to be Discussed Under the Rules of the House	31

39–006

A. Committee Oversight Findings and Recommendations 31
B. Statement of General Performance Goals and Objectives 32
C. Constitutional Authority Statement 32
D. Information Relating to Unfunded Mandates 32
VI. Changes in Existing Law Made by the Bill, as Reported 32
VII. Views 39

I. INTRODUCTION

A. Purpose and Summary

H.R. 3045 would implement the August 5, 2004 Agreement establishing a free trade area between the United States, the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (DR–CAFTA or Agreement).

B. Background

I. The United States-Dominican Republic-Central America Free Trade Agreement

The Committee believes that the Agreement meets the objectives and priorities set forth in the Bipartisan Trade Promotion Authority Act of 2002 (TPA). The Agreement covers all agricultural and industrial sectors, opens DR–CAFTA markets to U.S. services, contains robust protections for U.S. investors and intellectual property rights holders, and includes strong labor and environment provisions. In addition to the new commercial opportunities, DR–CAFTA will help cement many of the recent democratic, legal, and economic reforms in the DR–CAFTA countries.

Consumer and industrial goods.—More than 80 percent of U.S. exports of consumer and industrial products to the DR–CAFTA countries will be duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over ten years. Key U.S. exports, such as information technology products, agricultural and construction equipment, chemicals, and medical and scientific equipment will gain immediate duty-free access to Central America and the Dominican Republic.

Agriculture.—More than half of U.S. agricultural exports to DR–CAFTA countries will immediately receive duty-free treatment, and most other tariffs will be phased out within twenty years. The current average Central American and Dominican Republic tariff on agriculture goods ranges from 35–60 percent. Nearly every major U.S. agricultural sector will benefit from expanded market access under CAFTA–DR, with gains in such sectors as feed grains, wheat, rice, soybeans, poultry, pork, beef, dairy, fruits, vegetables, and processed products. The American Farm Bureau estimates that the Agreement will increase U.S. farm exports by $1.5 billion per year.

With respect to sugar, the United States will provide increased market access for DR–CAFTA countries of only about 1.2 percent of current U.S. sugar consumption in the first year, incrementally growing over 15 years to about 1.7 percent of current consumption.

Textiles and apparel.—The Agreement contains a general yarn-forward rule of origin for textiles that is already met by over 90 percent of existing textile trade. Goods satisfying the yarn-forward rule will receive duty-free treatment retroactive to January 1, 2004. Limited exceptions to the yarn-forward rule include a tariff preference level of 100 million square meter equivalents (SMEs) for Nicaragua, and cumulation of inputs from Mexico and Canada for certain woven apparel subject to a 100 million SMEs annual cap. This cumulation cap can grow to 200 million SMEs, as long as CAFTA trade grows. This cumulation provision benefits American companies with investments in Mexico and Canada and helps to integrate production in the region. The Committee requests semi-annual reports for the first three years on the operation of the textile and apparel provisions in the Agreement, including any recommendations on how these provisions can be improved.

Services.—The Agreement will provide broader market access and greater regulatory transparency in most services industries. The Agreement utilizes a negative list for coverage with very few reservations, which means that all services are covered unless specifically excluded. The Agreement offers new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment, professional, environmental, and other sectors. The Agreement also mandates transparency and non-discriminatory application in the regulation of service industries.

Intellectual Property Rights.—Because the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) contains minimum international standards for intellectual property protection, bilateral free trade agreements (FTAs) are an important means of raising international practices to higher U.S. standards. Specifically, U.S. authors, performers, inventors, and other producers of creative material will benefit from the improved standards the FTA requires for protecting intellectual property rights such as copyrights, patents, trademarks, and other intellectual property and the enhanced means for enforcing those rights. The Agreement lengthens terms for copyright protection, covering electronic and digital media, and strengthens enforcement obligations. Each party is obliged to provide appropriate civil and criminal remedies, and parties must provide legal incentives for service providers to cooperate with rights holders, including limitations on liability.

Investment.—The Agreement contains an investor-state dispute settlement provision, which allows investors alleging a breach in investment obligations to seek binding arbitration with the country. These investor protections give U.S. investors in these developing countries access to objective arbitration. These provisions level the playing field for U.S. investors by giving them legal protections in Central America and the Dominican Republic comparable to the protections that foreign investors already receive in the United States.

The Committee believes that there have been significant misrepresentations about investment protection provisions in this and other free trade agreements. Nothing in the Agreement or any other free trade agreement or bilateral investment treaty interferes with a state or local government's right to regulate. An investor cannot enjoin regulatory action through arbitration, nor can arbitral tribunals. Also, the Agreement makes improvements over former FTAs by incorporating standards in the expropriation provisions drawn directly from U.S. Supreme Court decisions and by taking regulatory interests fully into account. Consistent with U.S. law, for example, the DR–CAFTA specifies that nondiscriminatory regulatory actions designed and applied to protect the public welfare do not constitute indirect expropriations "except in rare circumstances." Moreover, the arbitration process under the Agreement is more open and transparent, and hearings and documents would be public, and amicus curiae submissions are expressly authorized.

Building on experience under the North American Free Trade Agreement (NAFTA), the DR–CAFTA investment chapter includes checks to help ensure that investors cannot abuse the arbitration process. The Agreement includes a special provision (based on U.S. court rules) that allows tribunals to dismiss frivolous claims at an early stage of the proceedings, and it expressly authorizes awards of attorneys' fees and costs if a claim is found to be frivolous.

The Committee believes that the allegations and anti-trade rhetoric surrounding NAFTA Chapter 11 investor-state cases are exaggerated. The United States has never lost a single case under NAFTA or any other FTA or bilateral investment treaty (BIT), nor has the United States ever paid to settle such a case.

Labor and environment.—The Agreement contains obligations under which each government commits to effectively enforce its domestic labor and environmental laws, as required by TPA. The Agreement also provides that parties shall strive to continue to improve their domestic labor and environmental laws. The Agreement makes clear that it is inappropriate to weaken or reduce labor or environmental protections to encourage trade or investment. The Environment Chapter provides for a public participation mechanism whereby civil society may submit information relating to concerns or specific problems with enforcement of environmental laws. Civil society will be able to make submissions to an independent secretariat concerning effective enforcement of environmental laws in Central America and the Dominican Republic. DR–CAFTA is the first FTA to include such a mechanism within the Agreement. The Agreement also reinforces efforts to promote transparency and public participation in government decision-making by including a specific obligation for each party to convene a new or consult existing national consultative or advisory committees to provide views on matters related to the implementation of the Environment Chapter.

The DR–CAFTA countries and the United States negotiated an Environmental Cooperation Agreement (ECA) in parallel with the FTA. The ECA's main objectives are to protect, improve, and conserve the environment, including natural resources, in Central America and the Dominican Republic.

The Agreement also contains a cooperative mechanism to promote respect for the principles embodied in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor.

Almost all of the DR–CAFTA countries have ratified the ILO Fundamental Conventions on forced labor, freedom of association and right to organize, right to organize and collective bargaining, equal remuneration, abolition of forced labor, discrimination, minimum work age, and worst forms of child labor. The only exception is El Salvador, which has not ratified the two ILO Conventions related to freedom of association and collective bargaining because of a constitutional ruling by its Supreme Court limiting unions in the public sector. Nonetheless, El Salvador remains subject to the scrutiny of ILO's Committee on Freedom of Association, which issues reports, findings, and recommendations on any complaints with regard to these rights. Moreover, under the Constitutions of all of the DR–CAFTA countries, the core conventions of the ILO, once ratified, become part of the body of national law and provide a basis for workers to challenge labor law provisions that might otherwise conflict with the country's ILO obligations.

The Committee believes that concern that labor provisions are weaker than in other free trade agreements such as the United States-Jordan Free Trade Agreement (Jordan FTA) is unfounded. The Jordan FTA, for example, which passed the House by voice vote in 2001, contains the same labor obligations as DR–CAFTA, uses a weaker dispute settlement mechanism than DR–CAFTA, and does not include the vigorous capacity building provisions of DR–CAFTA. DR–CAFTA clarifies what was implicit in the Jordan FTA: the only provision subject to dispute settlement is the requirement that a party enforce its own laws. Indeed, President Clinton, when he transmitted the Jordan agreement to Congress, stated, "It is important to note that the FTA does not require either country to adopt any new laws in these [labor and environment] areas, but rather includes commitments that each country enforce its own labor and environmental laws." DR–CAFTA explicitly incorporates President Clinton's statement, as do all other FTAs under TPA in the past several years.

Moreover, DR–CAFTA has a more developed and conclusive dispute settlement mechanism than the Jordan FTA. The Jordan FTA's dispute settlement mechanism is underdeveloped, lacks strict time limits, and allows complaints to be blocked in perpetuity. By contrast, DR–CAFTA contains detailed and developed procedures. DR–CAFTA's dispute settlement leads to monetary assessments and the possible suspension of tariff benefits, while side letters to the Jordan FTA state that the parties do not intend or expect to use trade sanctions. DR–CAFTA contains a more robust capacity-building mechanism than the Jordan FTA, including the establishment of a Labor Affairs Council that will oversee a Labor Cooperation and Capacity-Building Mechanism.

Labor under DR–CAFTA as compared with preference programs.—The labor provisions of the Agreement are superior to those applicable to these countries under the Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA) preference programs in three ways. First, DR–CAFTA contains stronger obligations on worker rights. Under DR–CAFTA, Central American countries publicly commit to effectively enforce their laws that recognize and protect internationally recognized labor rights. The labor laws a country is obligated to effectively enforce under DR–CAFTA cover all of the internationally recognized worker rights used as eligibility criteria for GSP and CBERA. While the DR–CAFTA requires countries to effectively enforce their labor laws, the eligibility requirements for GSP and CBERA in contrast require a country only to be "taking steps" to afford internationally recognized worker rights. This is a far weaker obligation than under DR–CAFTA.

Second, DR–CAFTA offers a better enforcement mechanism for the United States to consider labor law reforms in the Agreement countries. Under DR–CAFTA, if a country is found to not adequately enforce its labor laws, the government would pay a significant fine until the situation is remedied, with trade sanctions as a last resort. In contrast, the only option under our trade preference programs is to suspend or withdraw trade benefits offered through the programs. This has never occurred. Withdrawal of GSP/CBERA benefits is a blunt instrument, which could harm the very workers whose rights the United States seeks to protect.

Third, CAFTA offers a more constructive way to solve labor problems by ensuring access to fair, equitable, and transparent tribunals for labor law enforcement, and to promote public awareness. Unlike DR–CAFTA, the GSP/CBERA programs contain no options other than trade sanctions to address the situation: no formal consultation mechanism, no fines, and no capacity-building assistance. DR–CAFTA offers various ways to solve labor problems by working together, including consultation provisions. If fines are imposed, funds would be spent on initiatives aimed at improving enforcement of labor laws in the Central American country.

Government procurement.—The government procurement commitments in the DR–CAFTA are significant because none of the Central American countries is a party to the WTO Agreement on Government Procurement, and the DR–CAFTA provides comparable benefits to U.S. interests. Specifically, the Agreement grants non-discriminatory rights to bid on most contracts offered by Central American ministries, agencies, and departments. It calls for transparent and fair procurement procedures including clear, advance notice of purchases and effective review. As with government procurement commitments at the state level in all prior U.S. trade agreements, DR–CAFTA state commitments cover only those states which agreed to be covered before the Agreement was signed.

Dispute settlement.—The Agreement sets out detailed procedures for the resolution of disputes, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The Agreement's dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the Agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the Agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

Access to medicines.—The Agreement provides protections for developers and manufacturers of innovative pharmaceutical drugs consistent with U.S. law and recent trade agreements. Consistent with the WTO TRIPs Agreement, countries must provide that a drug innovator's data submitted for the purpose of obtaining marketing approval must be protected from unfair commercial use by competitors. The Agreement expressly states that nothing in the intellectual property chapter affects the countries' ability to protect public health by promoting access to medicines for all. Nor will the Agreement prevent effective utilization of the recent WTO consensus allowing developing countries that lack pharmaceutical manufacturing capacity to import drugs under compulsory licenses.

Stronger patent and data protection increases the willingness of companies to release innovative drugs in free trade partners' markets, potentially increasing, rather than decreasing, the availability of medicines. For example, the Jordan FTA, signed in 2000, contained an intellectual property chapter that covered data protection. Since 2000, there have been over 40 new innovative product launches in Jordan, a substantial increase in the rate of approval of innovative drugs, helping facilitate Jordanian consumers' access to medicines. Since enactment of the FTA, the Jordanian drug industry has begun to flourish. The Committee emphasizes that this is an example of how strong intellectual property protection can bring substantial benefits to developing countries.

Democracy, freedom, security, and rule of law.—The Committee notes that as recently as the 1980s, Central America was plagued by civil war and Communist insurgencies and today remains vulnerable from anti-reform forces. Moreover, U.S. security is connected to development in the region because criminal gangs, drug trafficking, and trafficking in persons create dangerous transnational networks that focus on breaches of U.S. borders. Poverty remains a powerful incentive for people in the region to leave their homes to come to the United States illegally. DR–CAFTA offers a way to address the sources of these problems.

The democratically elected Presidents of Central America and Dominican Republic have repeatedly emphasized that economic liberalization through the Agreement will strengthen the foundations of democracy by promoting growth and cutting poverty, creating equality of opportunity, fighting crime, and reducing corruption. It will help in accomplishing these broad social goals by securing concrete benefits through economic freedom, i.e., tangible improvements in people's daily life. Given the relatively few trade liberalizing steps required of the United States through the Agreement (over and beyond what the United States currently gives these countries through trade preference laws), the Agreement represents a remarkable opportunity to stabilize the region for the benefit of the United States as well as other countries and also assist people in all economic levels.

Conclusion.—DR–CAFTA is a marked improvement over existing law for both the economies of Central America, the Dominican Republic, and the United States. The existing preference programs garnered large support in the House on May 4, 2000, when 309 House Members voted to support the DR–CAFTA countries, among others, in the CBTPA, by enhancing the Caribbean Basin Initiative preference program and unilaterally opening the U.S. market to goods from Central America and the Caribbean Basin. DR–CAFTA would enhance benefits for these Central American countries and the Dominican Republic because the current CBTPA program is temporary (ending in 2008), excludes many products, restricts use of regional inputs, and requires burdensome documentation procedures on beneficiaries. In contrast, DR–CAFTA makes trade benefits permanent, covers all products that meet the rule of origin, allows regional inputs, and permits use of simple electronic documentation procedures. DR–CAFTA also changes the current unilateral nature of benefits to these CBTPA beneficiaries into mutually reciprocal trade benefits for Americans under DR–CAFTA. While the current unilateral program makes 80% of exports from these countries to the United States duty-free, DR–CAFTA provides U.S. exporters with equal treatment by granting immediate duty free access to 80% of U.S. exports. The remainder of trade is liberalized over 15–20 years.

II. TPA process

As noted above, this legislation is being considered by Congress under TPA procedures. As such, the Agreement has been negotiated by the President in close consultation with Congress, and it can be approved and implemented through legislation using streamlined procedures. Pursuant to TPA requirements, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process, and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering in the Agreement, the President must submit to Congress a description of those changes to existing laws that the President considers would be required to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader in each chamber. The House then has up to 60 days to consider implementing legislation for the Agreement (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under TPA requirements.

III. Status of implementation by DR–CAFTA countries

Three out of the six DR–CAFTA partner countries have ratified the Agreement: El Salvador, Guatemala, and Honduras. Nicaragua and the Dominican Republic have both introduced legislation to implement the Agreement. The Costa Rican president has said that Costa Rica will introduce legislation to ratify the Agreement.

C. Legislative History

On October 1, 2002, the United States Trade Representative (USTR) formally notified the Congress of its intention to pursue a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (CAFTA). On August 4, 2003, USTR notified the Congress of its intention to initiate free trade agreement negotiations with the Dominican Republic with the purpose of integrating it into the CAFTA. On February 20, 2004, the President formally notified the Congress of his intent to sign a free trade agreement with the five Central American countries. On March 24, 2004, the President formally notified the Congress of his intent to sign a free trade agreement with the DR. On May 28, 2004, Ambassador Zoellick signed the CAFTA, and on August 5, 2004, he signed the DR–CAFTA with the Dominican Republic and the five Central American countries.

In accordance with TPA requirements, President Bush submitted to Congress on October 1, 2004, a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the Agreement.

Legislative hearing

On April 21, 2005, the Committee held a hearing on the implementation of the DR–CAFTA. The hearing focused on Congressional consideration of the DR–CAFTA and the benefits that this agreement will bring to American businesses, farmers, workers, consumers, and to the U.S. economy. At the hearing, Deputy U.S. Trade Representative Peter Allgeier and representatives from the private sector expressed their views on the benefits of the Agreement. There was widespread support expressed for the Agreement.

Committee action

On June 15, 2004, the Committee on Ways and Means considered in an informal markup session draft legislation to implement DR–CAFTA to provide guidance to the Administration on the implementing bill and statement of administrative action. The Committee approved the Chairman's amendment in the nature of a substitute without further amendment by a vote of 25–16. The Chairman's substitute included a requirement that the Administration report on activities conducted by the DR–CAFTA countries and the United States to build capacity on labor issues. The substitute also included a provision noting that DR–CAFTA will have a very positive impact on the U.S. services industry. The substitute requires that the Administration examine after one year the effect the Agreement has had on the services industry, and requires the Administration to make recommendations as to how the Trade Adjustment Assistance program should be amended if the DR–CAFTA has led to negative effects on the services industry.

On June 23, 2005, President Bush formally transmitted to Congress the legal text of the DR–CAFTA, implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following this transmittal, on June 23, 2005, Majority Leader DeLay introduced, by request, H.R. 3045 to implement the Agreement. The bill was referred to the Committee on Ways and Means.

On June 30, 2005, the Committee on Ways and Means formally met to consider H.R. 3045. The Committee ordered H.R. 3045 favorably reported to the House of Representatives by a vote of 25–16, without amendment; under the requirements of TPA, amendments were not permitted.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

SECTION 101: APPROVAL AND ENTRY INTO FORCE

Current law

No provision.

Explanation of provision

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action. It also provides that when the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those obligations that are to take effect at the time the Agreement enters into force, 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.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of TPA. The remainder of section 101 provides for entry into force of the Agreement.

SECTION 102: RELATIONSHIP OF THE AGREEMENT TO U.S. AND STATE LAW

Current law

No provision.

Explanation of provision

Section 102 provides that U.S. law is to prevail in a conflict and 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.

Reason for change

Section 102 is necessary to make clear the relationship between the Agreement and federal and state law, respectively.

SECTION 103: IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

Current law

No provision.

Explanation of provision

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 carrying 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.

Reason for change

Section 103 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner in order to provide maximum clarity to parties claiming benefits under the Agreement. As noted in the Statement of Administrative Action, the regulation-issuing agency will provide a report to Congress not later than thirty days before one year elapses on any regulation that is going to be issued later than one year.

With respect to textiles and apparel, the Committee directs that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection (Customs) of the Department of Homeland Security, and the Department of Commerce, to issue all guidelines, regulations, and procedures necessary for the implementation of the textile and apparel provisions of this agreement in an expeditious manner. The Committee further directs these agencies to ensure that the implementing legislation and such regulations and guidelines be interpreted and enforced broadly so as to maximize opportunities for textile and apparel trade under this agreement.

SECTION 104: CONSULTATION AND LAYOVER FOR PROCLAIMED ACTIONS

Current law

No provision.

Explanation of provision

Section 104 provides that if the President intends to implement an action under this proclamation authority, the President may proclaim the 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.

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough manner.

SECTION 105: ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Current law

No provision.

Explanation of provision

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.

Reason for change

The Committee believes that the Commerce Department is the appropriate agency to provide administrative assistance to panels.

SECTION 106: ARBITRATION OF CLAIMS

Current law

No provision.

Explanation of provision

Section 106 authorizes the United States to resolve certain claims covered by the investor-state dispute settlement procedures set forth in the Agreement.

Reason for change

This provision is necessary to meet U.S. obligations under Section B of Chapter 10 of the Agreement.

SECTION 107: EFFECTIVE DATES; EFFECT OF TERMINATION

Current law

No provision.

Explanation of provision

The effective date of this Act is the date the Agreement enters into force with respect to the United States except that 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.

Reason for change

Section 107 implements provisions of the Agreement.

TITLE II: CUSTOMS PROVISIONS

SECTION 201: TARIFF MODIFICATIONS

Current law

No provision.

Explanation of provision

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).

Reason for change

Section 201(a) is necessary to put the United States in compliance with the market access provisions of the Agreement. The three exceptions under section 201(a)(3)(B) are also consistent with the Agreement and allow DR–CAFTA countries to continue to (1) be exempt from cumulation in antidumping and countervailing duty investigations; (2) receive duty free treatment for certain ethyl alcohol; and (3) be eligible for certain taxpayer deductions for business trips to CBERA countries.

Section 201(b) gives the President flexibility to maintain the trade liberalizing nature of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out this subsection. Section 201(c) allows the President to convert tariffs to ad valorem rates to carry out the tariff modifications in the Agreement.

SECTION 202: ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS

Current law

No provision.

Explanation of provision

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.

Reason for change

Section 202 implements the agricultural safeguard provisions of article 3.15 and Annex 3.15 of the Agreement and provides important security to U.S. farmers.

SECTION 203: RULES OF ORIGIN

Current law

No provision.

Explanation of provision

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 (SMEs) of certain wool apparel goods assembled in Costa Rica. These goods will be subject to a rate of duty that is 50 percent of the NTR rate of duty. Annex 3.28 of the Agreement provides an exception to this general rule allowing access for 100 million SMEs 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. The Agreement also allows for the cumulation of inputs from Mexico and Canada for certain woven apparel subject to a 100 million SMEs annual cap. This cumulation cap can grow to 200 million SMEs, if CAFTA trade grows.

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 (i.e., in "short supply") 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.

Reason for change

Rules of origin are needed in order to confine Agreement benefits, such as tariff cuts, to parties to the Agreement and to prevent third-country goods from being transshipped through DR–CAFTA countries and claiming benefits under the Agreement. Section 203 puts the United States in compliance with the rules of origin provisions of the agreement. The Committee directs the Administration to ensure that such regulations and guidelines necessary for the implementation of these rules be published expeditiously and interpreted and enforced broadly so as to maximize opportunities for textile and apparel trade under this agreement.

The Committee welcomes the inclusion of cumulation provisions in this agreement and urges their inclusion in future agreements to ensure better integration among the United States and its current and future free trade and trade preference partners. The Committee notes that the cumulation provision in the Agreement will not take effect until after further negotiations are completed with Canada and Mexico in areas relating to customs cooperation and reverse cumulation benefits. USTR is directed to undertake these negotiations expeditiously and to provide regular updates to the Committee on the status of these talks and on the implementation of this provision. The Committee also notes that under Article 3.25.1 of the Agreement, parties may seek modifications to the rules of origin, and USTR has already publicly announced its intention to seek such a modification with respect to pockets. USTR is directed to report regularly with the Committee on any consultations it conducts pursuant to Article 3.25.1 of the Agreement, and to ensure input from all affected U.S. textile and apparel interests in such consultations.

With respect to the short supply provisions, the Committee believes that maintaining a current short supply list under the DR–CAFTA is integral to the effective functioning of the rule of origin for textiles and apparel. The Committee further notes that items considered to be in short supply under the North American Free Trade Agreement and U.S. trade preference programs are reflected in the short supply list for this Agreement. The Committee believes such a short supply approach and process should be a model for future FTAs. The Committee clarifies that the process under section 203(o)(4) by which the President may remove an item from the DR–CAFTA short supply list (or impose a restriction on its use) applies only to new items added in an unrestricted quantity to the list under DR–CAFTA and does not include items that were included in the original short supply list that the Parties negotiated. This unique removal process has not been included in previous FTAs or trade preference programs and was added with the express understanding that the threshold to approve items in short supply for DR–CAFTA is less arduous than other FTAs and trade preference programs. The Committee is disappointed that the Administration has considered removing products from short supply status under CBTPA after designating them as being in short supply. The Committee continues to intend that once an item designated in short supply under other FTAs (other than DR–CAFTA) and trade preference programs, it is permanently designated as such because there is no express authority provided by the statute, unlike DR–CAFTA.

With regard to the short supply procedures to be published by CITA, the Committee considers it important that all parties be able to participate in an open and transparent system. CITA should publish procedures that clearly explain the criteria it uses to make its determinations on whether and why a good is or is not available in commercial quantities. At the very least, when CITA determines that a good is available in commercial quantities, a sample of the good should be readily available for physical inspection by all parties as well as evidence of some effort to market the good in the United States. Moreover, all parties should have open access to the full evidence being considered by CITA as well as the opportunity to respond to the full evidence before a determination is made.

SECTION 204: CUSTOMS USER FEES

Current law

Section 58c of the Title 19 lays out various user fees applied by customs officials to imports, including the merchandise processing fee (MPF), which is applied on an ad valorem basis subject to a cap.

Explanation of provision

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.

Reason for change

As with other free trade agreements, the Agreement eliminates the merchandise processing fee on qualifying goods from DR–CAFTA countries. Other customs user fees remain in place. Section 204 is necessary to put the United States in compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that MPF funds will not be available.

SECTION 205: RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS OF TEXTILE OR APPAREL GOODS

Current law

No provision.

Explanation of provision

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.

Reason for change

Section 205 is necessary to put the United States into compliance with Article 3.20 of the Agreement.

SECTION 206: DISCLOSURE OF INCORRECT INFORMATION

Current law

No provision.

Explanation of provision

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.

Reason for change

Section 206 is necessary to put the United States into compliance with Articles 4.15.3 and 4.20.5 of the Agreement.

SECTION 207: RELIQUIDATION OF ENTRIES

Current law

No provision.

Explanation of provision

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.

Reason for change

Article 4.15.5 of the Agreement anticipates that private parties may err in claiming preferential benefits under the Agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 207 is necessary to put the United States into compliance with Article 4.15.5 of the Agreement.

SECTION 208: RECORDKEEPING REQUIREMENTS

Current law

No provision.

Explanation of provision

Section 208 of the bill implements Article 4.19 of the Agreement and provides that an exporter or producer issuing a certification of origin for a good shall maintain, for a period of five years, records and supporting documents related to the origin of the good.

Reason for change

Section 208 is necessary to put the United States in compliance with the recordkeeping requirement provisions of the Agreement at Article 4.19.

SECTION 209: ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS

Current law

No provision.

Explanation of provision

Section 209 implements the customs cooperation provisions in Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary of the Treasury 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.

Reason for change

In order to avoid textile transshipment, special textile enforcement provisions were included in the Agreement. Section 209 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

SECTION 210: REGULATIONS

Current law

No provision.

Explanation of provision

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

Reason for change

Because the implementing bill involves lengthy and complex implementation procedures by customs officials, section 210 is necessary in order to authorize the Secretary of the Treasury to carry out provisions of the implementing bill through regulations.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief From Imports Benefiting From the Agreement (Sections 301–316)

Current law

No provision.

Explanation of provision

Sections 301–316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission (ITC), 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) 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 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.

Reason for change

The Committee believes that it is important to have in place a temporary, extraordinary mechanism if a U.S. industry experiences injury by reason of increased import competition from DR–CAFTA countries in the future, with the understanding that the President is not required to provide relief if the relief will not provide greater economic and social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Section A of Chapter Eight (Trade Remedies) of the Agreement.

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

Current law

No provision.

Explanation of provision

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 seek 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.

Reason for change

The Committee intends that the provisions of subtitle B be administered in a manner that is in compliance with U.S. obligations under Article 3.23 of the Agreement. In particular, the Committee expects that the President will implement a transparent process that will serve as an example to our trading partners. For example, in addition to publishing a summary of the request for safeguard relief, the Committee notes that the President plans to make available the full text of the request, subject to the protection of business confidential data, on the Department of Commerce, International Trade Administration's website. In addition, the Committee encourages the President to issue regulations on procedures for requesting such safeguard measures, for making determinations under section 322(a), and for providing relief under section 322(b).

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

Current law

The President has no authority under Title II of the Trade Act of 1974 ("section 201") to exclude articles from DR–CAFTA countries from the application of a safeguard remedy. A similar authority is granted with respect to Singaporean articles in section 331 of the United States-Singapore Free Trade Agreement Implementation Act, to articles from Jordan in section 221 of the U.S.-Jordan Free Trade Area Implementation Act, and to articles from Australia in section 331 of the U.S.-Australia Free Trade Agreement Implementation Act.

Explanation of provision

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 DR–CAFTA 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.

Reason for change

This provision implements Article 8.6.2 of the Agreement.

TITLE IV: MISCELLANEOUS

SECTION 401: GOVERNMENT PROCUREMENT

Current law

U.S. procurement law (the Buy American Act of 1933 and the Buy American Act of 1988) discriminates against foreign suppliers of goods and services in favor of U.S. providers of goods and services. Most discriminatory purchasing provisions are waived with respect to a country that is a party with the United States to a bilateral or multilateral procurement agreement, such as the WTO Agreement on Government Procurement and the NAFTA.

Explanation of provision

Section 401 amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act of 1979. As amended, section 308(4)(A) provides that, for a DR–CAFTA country, an "eligible product" means a product or service of that country that is covered under the Agreement for procurement by the United States.

Reason for change

This provision implements U.S. obligations under Chapter Nine of the Agreement.

SECTION 402: MODIFICATIONS TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Current law

The Agreement countries are currently beneficiaries under the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA). As such, goods from these countries receive preferential trade treatment when entering the United States subject to various requirements. Inputs from such countries may be used by other CBERA and CBTPA beneficiaries (i.e., may be cumulated) in goods that qualify for benefits under the programs.

Explanation of provision

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 CBTPA once the Agreement takes effect for them.

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 ceases to be designated as a beneficiary country because the country has become 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 ceases to be designated as a CBTPA beneficiary country because the country has become 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.

Reason for change

Under the CBTPA, inputs of, and processing operations performed in, one or more CBTPA beneficiary countries may be combined in establishing that a good is eligible for preferential tariff treatment under the program. Section 402(d) is necessary because when the DR–CAFTA is implemented, the Central American countries and the Dominican Republic will lose their status as CBTPA beneficiary countries. Therefore, without an amendment to the law, the remaining CBTPA beneficiary countries would be unable to use inputs of, or processing performed in, the DR–CAFTA countries in establishing that a good qualifies for preferential tariff treatment under the CBTPA program. Given the existing production relationships with the DR–CAFTA countries (such as apparel processing in which producers in one country cut fabric into components and producers in another country assemble the components into apparel), the Committee intends to allow remaining CBTPA beneficiary countries to continue to use inputs of, or processing performed in, former CBTPA beneficiary countries in establishing the eligibility for CBTPA preferential treatment of goods that are produced through a combination of operations (sometimes referred to as "co-production") in remaining CBTPA beneficiary countries and former CBTPA beneficiary countries.

In fashioning this section, the Committee, together with USTR, carefully analyzed existing commercial operations developed under CBERA and CBTPA to avoid disrupting the existing benefit structure created by Congress and relied upon by firms and beneficiary countries when making investments in the region. The amendment does not provide new benefits for the remaining CBTPA beneficiary countries or the former CBTPA beneficiary countries; rather the amendment preserves benefits the remaining CBTPA beneficiary countries already have under the CBTPA.

General rule under section 402(d).—Clause (i) of subparagraph (H) provides that for purposes of determining the eligibility of an article for CBTPA preferential treatment, the term "CBTPA beneficiary country" includes a former CBTPA beneficiary country. Thus, any type of production activity that may, under the CBTPA, take place in a remaining CBTPA beneficiary country may also take place in a former CBTPA beneficiary country, subject to the country of origin limitation described below. For example, the CBTPA provides (in section 213(b)(2)(A)(ii)) duty-free treatment for apparel that is assembled in one or more CBTPA beneficiary countries from U.S. fabric that is cut into components in one or more CBTPA beneficiary countries. Under the general rule, this apparel article would not be disqualified from CBTPA preferential treatment because the fabric from which it was made was cut into components in a former CBTPA beneficiary country, instead of in a remaining CBTPA beneficiary. Similarly, an article using regionally produced fabric (from U.S. yarn), which is now eligible for duty-free treatment under CBPTA, would continue to satisfy the general rule because the article underwent production in a remaining CBPTA beneficiary country. For example, knit apparel made from Honduran knit fabric (from U.S. yarn) that is cut in Honduras but sewed or assembled in Jamaica would continue to be eligible under CBPTA.

Imported directly.—Under CBERA, goods must be imported directly from a beneficiary country to obtain CBTPA preferential treatment. Clause (ii) of subparagraph (H) provides that a good will not be disqualified from CBTPA preferential treatment because it is imported directly from a former CBTPA beneficiary country.

Country of origin limitation.—Clause (iii) of subparagraph (H) limits the scope of the general rule in clauses (i) and (ii). Specifically, clause (iii) provides that if a good is a good of a former CBTPA beneficiary country under the non-preferential rules of origin that the United States applies in the normal course of trade, then the good is not eligible for CBTPA preferential treatment under the general rule. For example, under U.S. non-preferential rules of origin for textile and apparel goods, the country in which an apparel article is assembled is the country of origin. Therefore, an apparel article that is assembled in a former CBTPA beneficiary country would not qualify for CBTPA preferential treatment under the general rule because the article would be a good of the former CBTPA beneficiary country under U.S. non-preferential rules of origin.

Haiti-DR exception.—Clause (iii) of subparagraph (H) makes an exception to the country of origin limitation in the case of a good that is co-produced in Haiti and the Dominican Republic. Under this exception, origin-conferring activities may take place in the Dominican Republic as long as the good contains inputs of, or undergoes processing in, Haiti. Using the example from above, if U.S. fabric is cut into components in Haiti, and the components are sewed and assembled in the Dominican Republic, the resulting apparel item will be eligible for CBTPA preferential treatment—even though the apparel item would be a good of the Dominican Republic under U.S. non-preferential rules of origin.

SECTION 403: PERIODIC REPORTS AND MEETINGS ON LABOR OBLIGATIONS AND LABOR CAPACITY-BUILDING PROVISIONS

Current law

No provision.

Explanation of provision

Section 403 creates periodic report and meeting requirements on labor provisions of DR–CAFTA and the 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.

Reason for change

This provision was not included in the original preliminary draft of the implementing bill but was added by the Committee in the Chairman's amendment in the nature of a substitute. These new provisions, providing for bi-annual progress reports on the implementation of DR–CAFTA's labor provisions and the DR–CAFTA Trade and Labor Ministers' "White Paper" and periodic meetings of the Secretary of Labor with the Ministers of Labor of the CAFTA–DR countries, show the deep interest of the Committee in ensuring that the labor efforts described in the Agreement are closely monitored and vigorously implemented. Overall, these provisions will ensure that the Congress and Administration closely track the progress made by the nations that are parties to DR–CAFTA in promoting important, shared goals in protecting labor rights.

The Committee notes with approval the recent letter dated June 28, 2005, from Ambassador Portman to Senator Bingaman committing to significant funding for capacity building work that will improve enforcement of labor laws and compliance with the Agreement and the Trade and Labor Ministers' "White Paper" as well as economic development assistance in the region. In particular, the Administration's letter supports the recent increase in environmental and labor law enforcement capacity building funding in the FY 2006 Foreign Operations Appropriations bill from $20 million to $40 million and maintaining this level through FY09, a combined total of $160 million in that period. Moreover, the letter points to $390 million of U.S. Millennium Challenge Account funds for Honduras and Nicaragua, and pledges $150 million of additional Millennium Challenge Account funds in the next several years to the remaining Agreement countries. The Committee strongly believes that these meaningful funding commitments will improve compliance with the Labor obligations of the Agreement and will assist DR–CAFTA countries in meeting the development needs of rural populations as they adjust.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 3045.

MOTION TO REPORT THE BILL

The bill, H.R. 3045, was ordered favorably reported by a rollcall vote of 25 yeas to 16 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X	....	....	Mr. Rangel	....	X	....
Mr. Shaw	X	....	....	Mr. Stark	....	X	....
Mrs. Johnson	X	....	....	Mr. Levin	....	X	....
Mr. Herger	X	....	....	Mr. Cardin	....	X	....
Mr. McCrery	X	....	....	Mr. McDermott	....	X	....
Mr. Camp	X	....	....	Mr. Lewis (GA)	....	X	....
Mr. Ramstad	X	....	....	Mr. Neal	....	X	....
Mr. Nussle	X	....	....	Mr. McNulty	....	X	....
Mr. Johnson	X	....	....	Mr. Jefferson	X	X	....
Mr. English	....	X	....	Mr. Tanner	X	....	....
Mr. Hayworth	X	....	....	Mr. Becerra	....	X	....
Mr. Weller	X	....	....	Mr. Doggett	....	X	....
Mr. Hulshof	X	....	....	Mr. Pomeroy	....	X	....
Mr. Lewis (KY)	X	....	....	Ms. Tubbs Jones	....	X	....
Mr. Foley	X	....	....	Mr. Thompson	....	X	....
Mr. Brady	X	....	....	Mr. Larson	....	X	....
Mr. Reynolds	X	....	....	Mr. Emanuel	....	X	....
Mr. Ryan	X	....	....	....	....	....	....
Mr. Cantor	X	....	....	....	....	....	....
Mr. Linder	X	....	....	....	....	....	....
Mr. Beauprez	X	....	....	....	....	....	....
Ms. Hart	X	....	....	....	....	....	....
Mr. Chocola	X	....	....	....	....	....	....
Mr. Nunes	X	....	....	....	....	....	....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3045 as reported: The Committee generally agrees with the analysis prepared by CBO which is included below.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 3045 would reduce customs duty receipts due to lower tariffs imposed on goods from DR–CAFTA countries

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 18, 2005.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Way and Means,
House of Representatives, Washington DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3045, 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.

H.R. 3045—Dominican Republic-Central America-United States Free Trade Agreement Implementation Act

Summary: H.R. 3045 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 the it also would increase direct spending by $27 million in 2006, $245 million over the 2006–2010 period, and $621 million over the 2006–2015 period.

CBO has determined that H.R. 3045 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 H.R. 3045 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 Programs:											
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	3	4	4	15	15	20	20	20	20	0
Estimated Outlays	0	3	4	4	15	15	20	20	20	20	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 wou1d 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: The bill 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 bill, the tariff rates would be no greater than under current law. Consequently, this bill 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 S. 1307, identical legislation passed by the Senate on June 30, 2005. The two cost estimates are identical.

Estimate prepared by: Federal Revenues: Annabelle Bartsch and Emily Schlect. Federal Spending: Mark Grabowicz, David Hull, and 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; and Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the bill as reported. In addition, the legislation is governed by procedures of the Bipartisan Trade Promotion Authority Act of 2002.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill H.R. 3045 makes de minimis authorization of funding, and the Administration has in place program goals and objectives, which have been reviewed by the Committee.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ('The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.')

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 italic, 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.

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TARIFF ACT OF 1930

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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:

(A) RECORDS AND SUPPORTING DOCUMENTS.—The term “records and supporting documents” means, with respect to 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 Secretary 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”.

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

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 CPTPA 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.

* * * * * * *

VII. VIEWS

ADDITIONAL VIEWS OF REPRESENTATIVE JEFFERSON

As a Democrat with a firm commitment to eliminate poverty and to improve the lives of workers both here and abroad, I believe it is important to discuss the important policy implications contained in the proposed U.S.–FTA with the Dominican Republic and the countries of Central America (DR–CAFTA). In supporting the DR–CAFTA, I have determined the United States can best promote improvements both to working conditions and labor standards in those countries with the commitments and the supporting capacity-building provisions of this Agreement.

For years Democrats have promoted democracy in Central America and have spoken about the need to secure commitments from developing countries on core international labor standards and labor enforcement; we have sought U.S. commitments to substantive and comprehensive labor capacity-building programs; and we have sought to ensure a role for the International Labor Organization (ILO) in these efforts. With this unprecedented Agreement, we have all of these things.

There are many important reasons why Democrats should vote for greater economic integration with our Central American friends and neighbors:

- First, DR–CAFTA promotes economic opportunity for the workers of the region who are facing massive competition from Asia and elsewhere in the most significant formal source of economic livelihood—textile and apparel production. With nearly half the population of these countries living in severe poverty without formal employment, the continued competitiveness of the textile and apparel industry and other industries DR–CAFTA can promote is critical. I've heard my colleagues suggest that the DR–CAFTA textile and apparel rules remain too strict to really make a difference. But the countries and the companies who invest and purchase from the region believe differently. Many of us had hoped for more flexibility, but those whose livelihoods depend on these issues believe that the new flexibilities DR–CAFTA provides are critical to support an industry that provides some of the best-paying jobs in the region (and that also purchases significant U.S. inputs). Without DR–CAFTA, these jobs will ebb away, as many have already started to do, since the elimination of global textile and apparel quotas at the beginning of the year.
- Equally important are the strong investment ties that can be bolstered by this agreement that are critical to support much-needed economic growth. We all know that investment flows around the world far out-value bilateral or even multilat-

eral aid. Helping these countries improve their investment climate through a more permanent relationship with the United States and many of the provisions of the DR–CAFTA—including increased transparency, curbs on corruption, and provisions that promote the rule of law—could in fact be the single most important driver to improve the lives of our neighbors in Central America and the Dominican Republic.

- And finally, there are the Agreement's labor provisions—both the commitments made by each country in the labor chapter to enforce domestic laws (provided for in their constitutions and ratified treaties, such as the core ILO conventions these countries have largely ratified) *and* the capacity-building program built in to the DR–CAFTA, which the six governments recently relied upon in undertaking an unprecedented commitment to improve labor standards and enforcement in each of their countries in very concrete ways. These provisions are also strengthened by the DR–CAFTA countries' commitments to the Inter-American Development Bank (IDB) and the ILO outlined in the "White Paper".

But, despite all of these provisions and commitments, it is argued that the DR–CAFTA's labor provisions are a backwards step and that the DR–CAFTA should not be supported because of the DR–CAFTA countries' history of weak labor laws and suppressing worker rights.

DR–CAFTA'S LABOR COMMITMENTS ARE STRONG AND ENFORCEABLE

The DR–CAFTA commits each of the countries to enforce domestic labor laws, subject to binding, time-limited dispute settlement and monetary fines of up to $15 million per occurrence, per year, that the United States and Labor Affairs Council must decide how the country will spend to improve labor law enforcement. If the offending country does not provide the funds, the United States can impose trade sanctions. Chapter 16.8 of the DR–CAFTA defines "Labor Law" to be a Party's statutes or regulations, or provisions thereof, which are directly related to the following internationally recognized labor rights:

- The right of association;
- The right to organize and bargain collectively;
- A prohibition on the use of any form of forced or compulsory labor;
- A minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

A careful reading of the 1998 ILO *Declaration on Fundamental Rights and Principles at Work,* which promotes the observance of the ILO's core labor principles, demonstrates that this definition adequately incorporates the ILO core principles into the DR–CAFTA.[1]

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[1] The 1988 ILO Declaration defines the core labor principles as:
- Freedom of association and the right to collective bargaining;
- The elimination of forced and compulsory labour;
- The abolition of child labour, and;

The DR–CAFTA's labor provisions are stronger than those of the NAFTA, which has labor protections in a side agreement and does not provide dispute settlement subject to monetary fines or trade sanctions for violations of core labor laws. The Agreement's labor provisions are also stronger than the Jordan FTA, which does not have binding dispute settlement and under which the offending country can block even the formation of an objective panel to review its labor laws. Finally, these labor provisions are indeed stronger than current preference programs, such as CBI, which requires the President to deny all preferential benefits if the country *"has not [taken] or is not taking steps to afford internationally recognized worker rights"*. Such a standard does not even require the enforcement of existing labor laws.

Critics have argued that the DR–CAFTA countries can weaken their laws since the DR–CAFTA commitment not to weaken labor laws is explicitly made not subject to dispute settlement. DR–CAFTA and the Jordan FTA contain almost identical language on this Issue, stating:

> each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws *in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to an Article 16.8* as an encouragement for trade with the *an*other Party, *or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.* (Italicized language is only found in DR–CAFTA, not in the Jordan FTA)

This obligation was not explicitly exempt from dispute settlement in the Jordan FTA, although the hortatory nature of the commitment undercuts the notion that this is a standard justiciable by formal dispute settlement. The Parties agreed to "strive to ensure" not to weaken law, a far different type of commitment than the "enforce your own laws" standard found in both DR–CAFTA and Jordan. In fact, this type of hortatory standard in Jordan, DR–CAFTA and all the other recent FTAs, is one of political will, not a justiciable standard that is subject to dispute settlement. But political will remains an extremely potent force.

Much more importantly, these countries' labor standards are embedded in their democratic systems in a manner that makes them not subject to precipitate change. Consider that for most of the six countries, all of the core ILO protections are explicitly, albeit generally, included in their Constitutions—obviously not subject to change at whim.[2]

As we know from our own democratic system, labor law issues are complex and subject to many factors. They simply are not and cannot be changed overnight.

The structure of the monetary fines for labor (and environmental) violations in the DR–CAFTA is quite innovative and will provide more than adequate incentives for countries to enforce

- The elimination of discrimination in the workplace.

[2] All but one of the DR–CAFTA countries has already ratified all eight of the core ILO conventions (EI Salvador has ratified two), which are in fact incorporated into their domestic laws. All of the countries have extensive labor codes and a tripartite process (including the government, labor and business) that must work together in proposing any changes to those laws.

their laws and improve upon their ability to afford internationally recognized worker rights. Consider:

- The fines (up to $15 million per occurrence) are fairly significant given these governments' annual budgets;
- The fines can be applied annually if the problem is not fixed; and
- Most significantly, the fines collected will be re-invested and focused on addressing the failure of enforcement, which is oftentimes due to insufficient resources or lack of capacity, which the fines can more effectively address than trade sanctions.

Trade sanctions in the form of revoking trade benefits often cause disruptions in investment flows and hurt U.S. importers working with these trading partners. For us, the greater concern is the uncertainty and dislocation that would come from the revocation of trade benefits that will negatively impact the workers in the DR–CAFTA countries.

DR–CAFTA REPRESENTS A MARKED IMPROVEMENT OVER UNILATERAL PREFERENCE PROGRAMS FOUND IN EXISTING LAW (GS, CBI, AND CBPTA)

The unilateral trade preference programs require the President (unless an exemption applies) to withdraw all of the unilateral preference benefits if he finds that a country "has not [taken] or is not taking steps to afford internationally recognized worker rights." Here, the U.S. government is not required to do anything to help countries improve their capacity to afford or enforce worker rights. In part, for this reason, the use of trade sanctions under many of the unilateral preference programs has rarely been used.

I am convinced that the approach in DR–CAFTA's Labor Chapter is likely to be far more effective in promoting worker rights in the DR–CAFTA countries. DR–CAFTA provides for a neutral, time-limited dispute settlement panel process, unlike the wholly Administration-driven process of GSP, CBI and CBTPA, where reviews can be prolonged for many years. DR–CAFTA also provides for focused penalties, rather than the all-or-nothing approach of GSP, CBI and CBPTA, which has rarely produced sanctions. Finally, the DR–CAFTA requires each country to enforce its labor laws, in their constitutions and on their books. GSP, CBI and CBTPA simply do not do have that requirement.

Last, but not least, is the issue of whether the DR–CAFTA countries' laws are good enough.

While the DR–CAFTA countries' laws can certainly be improved in several areas, these countries in fact have the most basic labor protections in their constitutions and in their laws. Even a cursory review of the two International Labor Organization reports on the DR–CAFTA countries' labor laws reveals that each of these countries respects the core ILO standards in their laws, oftentimes with general constitutional protections, as well as detailed provisions on everything from providing for union registration to prohibitions on anti-union or anti-organizing discrimination.

Even more significantly, by operation of their constitutions and their civil law systems, the DR–CAFTA countries' legal systems, in fact, incorporate ratified conventions, such as the core ILO conventions these countries have ratified, into their domestic law. For Costa Rica, such conventions are constitutionally considered superior to the constitution; for the others, such conventions are considered part of their domestic law. Notably, several constitutions explicitly provide that the conventions are superior to their domestic law.

The biggest labor issue for the DR–CAFTA countries is, in fact, the inadequacy of their enforcement of existing labor laws. Indeed, this is where many of the 20-plus labor problems the critics identify/allege actually fall; they are issues of enforcement, not the existing labor law. And that is where DR–CAFTA can do the most good.

I am pleased that the Administration has committed to substantial and sustained labor and environmental capacity-building funding to support and strengthen the DR–CAFTA's capacity-building framework. For the first time ever in connection with a free trade agreement (FTA), dedicated and substantial funding for labor and environmental capacity building has been provided. These funds will help make concrete DR–CAFTA's already robust labor and environmental capacity-building commitments.

This funding, coupled with the six countries' commitments to improve labor standards and labor enforcement in their April 2005 White Paper, represents a bold step forward in ensuring that the DR–CAFTA will improve labor conditions and promote greater adherence to and enforcement of worker's rights in the Central American region. In particular:

- For FY 2005, Congress appropriated $20 million for labor and environmental capacity building for the six DR–CAFTA countries. For FY 2006 Administration has committed to support a doubling of this funding—to $40 million—as reported by the House Appropriations Committee.
- For FY 2007 through FY 2009, the Administration will propose and support $40 million in labor and environmental capacity-building funds for the DR–CAFTA countries.

Numerous commitments in addition to those already contained in the DR–CAFTA and the April 2005 White Paper will provide powerful and public action-forcing events to promote continued and concrete work by the Administration and the six DR–CAFTA countries to improve labor standards and enforcement. I believe the ILO monitoring and reporting committed to by the Administration and the Administration reporting and periodic labor meeting requirements added to the implementing legislation provide unprecedented catalysts for advancements in labor conditions in the region.

- Biannual Administration report for 15 years on the progress made by the DR–CAFTA countries in implementing the labor provisions of the FTA and the April 2005 White Paper, as well as U.S. labor capacity-building efforts. This provision, included in the DR–CAFTA implementing bill, includes specific requirements for the solicitation and inclusion of public comments in the report.
- Meetings of the U.S. Secretary of Labor with labor ministers from each of the DR–CAFTA countries on a periodic basis to discuss the operation of the DR–CAFTA labor chapter

and progress made on implementing the White Paper commitments.

- ILO Monitoring and Six-Month Reporting. The Administration has made a commitment to fund the International Labor Organization's on-the-ground monitoring mechanism, which includes a requirement for reports every six months on the DR–CAFTA countries' progress on implementing the White Paper from FY 2006 through FY 2009.

Finally, it is important to note that the Administration also made specific commitments to give high priority to negotiating Millennium Challenge Compacts (MCCs) with the Dominican Republic, El Salvador and Guatemala. (Honduras and Nicaragua have already been designated to receive substantial MCC funds.) The Administration has also committed an additional $10 million per country per year for transitional rural assistance for up to five years or until the country concludes a MCC. These funds are an important corollary to help ensure a positive adjustment to DR–CAFTA's new rules, particularly in the agricultural sector.

WILL THE DR–CAFTA COUNTRIES FOLLOW-THROUGH ON THEIR LABOR COMMITMENTS, GIVEN THEIR SPOTTY ENFORCEMENT RECORDS?

For the first time, all of the DR–CAFTA countries have expressed strong support and a determined commitment to affording and enforcing worker rights. Has this not been THE goal of tying labor rights to trade agreements? Their commitment to the DR–CAFTA's labor standards and more was enriched by their commitment to address their enforcement capacity as outlined in the IDB/ILO White Paper. In so doing, these countries are not only making commitments on labor enforcement to the United States, but they are making them to international organizations. This commitment will include timelines, benchmarks, and clear objectives. Never before have I seen an FTA partner take such extraordinary steps to demonstrate their seriousness of purpose regarding affording workers core international labor protections. To simply ignore these commitments flies in the face of the democratic ideals our Party has promoted in trade policy over the last 10 years.

Of course the DR–CAFTA countries can improve their labor laws—and through this process these countries have committed in fact to seeking improvements through their own democratic and tripartite processes. But the fact that there are deficiencies in some of these laws is not a reason to vote "no" on DR–CAFTA. We didn't vote "no" on the Jordan FTA despite the even more significant deficiencies in Jordan's labor code (such as the lack of a right of any employee to strike without government approval or the fact that a large number of workers, including foreign workers and many agricultural workers, are excluded from labor code protections). We didn't vote "no" on the Jordan FTA even though former President Clinton made it explicitly clear that "the FTA does not require either country to adopt any new laws." Congress made the right decision then and we should do so here.

Given the significant commitments to core labor protections and capacity building incorporated into the CAFTA, I believe that this is an Agreement that reflects Democrats' own core values and concerns. The terms of the Agreement, including its enhanced enforcement provisions, in combination with the countries' earnest commitment to improving the lives of their workers, as well as the Administration's agreement to provide significant resources for capacity building in the DR–CAFTA countries should engender confidence that this Agreement will not only create economic opportunities for the United States and the DR–CAFTA countries but that it will also promote greater adherence to core labor standards throughout our hemisphere.

That said, I welcome continued dialogue on these issues and look forward to every Member's consideration of the important ways that supporting DR–CAFTA will have on improving workers' lives and working conditions in the six DR–CAFTA countries, and in improving our economy and job prospects here at home.

WILLIAM J. JEFFERSON.

DISSENTING VIEWS

The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, H.R. 3045, considered by the Committee on June 30, 2005, represents a missed opportunity. The Administration had an opportunity to negotiate and submit to Congress for approval an agreement that would have ensured that the benefits of trade flow broadly to working people, small farmers and society at large, as well as to larger businesses. The Administration had an opportunity to submit a world class, cutting edge agreement that would have helped to close the widening gap between the rich and poor, and lead to the development of a middle class in the Central American countries and the Dominican Republic, which can afford to purchase U.S. goods and services. The Administration had an opportunity to craft a lasting, bipartisan approach to U.S. trade policy. Instead, the Administration negotiated a free trade agreement with Central America and the Dominican Republic (CAFTA) and submitted a bill to Congress that does little to ensure that our trade policy raises living standards in the United States and abroad, and that exacerbates, rather than bridges, differences in views among the Members of this Committee.

The vote earlier this month on U.S. participation in the World Trade Organization ("WTO") demonstrates clearly that issues of international trade can be, and traditionally have been, in the main, broadly bipartisan. This conclusion is only buttressed by previous votes on free trade agreements with Jordan (2001), Chile (2003), Singapore (2003), Australia, (2004), and Morocco (2004); the enhanced Caribbean Basin Initiative and Africa Growth and Opportunity Act (2000); and, legislation granting Permanent Normal Trade Relations (PNTR) to China (2000). These votes demonstrate that the opposition to CAFTA of virtually every Democrat is not based on a rejection of the view that trade holds the potential for generating economic growth and increased standards of living.

To the contrary, most Democratic Members of the Committee continue to support that view, and strongly support a CAFTA—the right CAFTA. We believe in the power of trade as a tool for promoting economic growth and enhancing bilateral relationships between the United States and its trading partners. We believe that a trade agreement, drafted correctly, would benefit the United States on the one hand, and the countries of Central America and the Dominican Republic, on the other.

I. CAFTA LACKS BASIC, INTERNATIONALLY-RECOGNIZED LABOR STANDARDS

A. The Right CAFTA Would Include Basic Labor Standards

The right CAFTA would ensure that Central American workers have the ability to bargain for better working conditions and wages, so that they can raise themselves and their families out of poverty and so that they can earn enough to become consumers of U.S. goods. The right CAFTA would ensure that U.S. firms and workers are not asked to compete against companies in Central America that gain a competitive advantage by suppressing their workers. The right CAFTA would not promote a race to the bottom.

The changes that would be necessary to make the CAFTA an agreement that a broad majority of Democratic Committee Members could support are few, but significant. The amendment introduced by Ranking Member Rangel during the informal markup on June 15, 2005, set forth these changes. First, the right CAFTA would require each party to the agreement to commit to (1) bring its labor laws into compliance with the basic standards of the International Labor Organization (ILO) within 3 years; and (2) subject this commitment to meet ILO labor standards and other obligations set forth in the CAFTA Chapter on Labor to the regular dispute settlement mechanisms that apply to all other commercial provisions in the agreement.

In addition, Democrats have consistently called on the Administration to provide meaningful technical assistance to assist the CAFTA countries to meet these goals. In that regard, it is particularly disappointing that the Administration continues to cut foreign aid rather than increase it. For example, even as the Administration this week promised in a letter to Congress to provide additional technical assistance of $40 million for "labor and environmental" goals, the House of Representatives passed in the Labor-HHS Appropriations bill the Administration's proposal to cut the budget of the principal agency that supports foreign labor standards technical assistance by $82 billion.

B. CAFTA Represents a Step Backward From Current U.S. Law

These changes would ensure that U.S. trade policy moves forward—rather than backward—to build upon existing U.S. trade preference programs (e.g., the Generalized System of Preferences, Caribbean Basin Initiative (CBI), and Caribbean Basin Trade Partnership Act (CBPTA)). These preferential trade programs have for more than 20 years conditioned trade benefits to countries in Central America and the Caribbean on the countries' making steady progress toward achieving basic ILO standards. More recently, over the last five years, the CBTPA program has conditioned its more ambitious trade benefits on the countries actually achieving those standards.

Notably, U.S. law further authorizes the President to deny trade benefits to countries that are not in compliance with these basic labor standards. The United States has the programs to deny trade benefits. Since 1984, the United States has made effective use of the labor criteria in GSP/CBI/CBPTA programs to improve labor standards in CAFTA countries. The track record is as follows.

First, the United States U.S. has "suspended trade benefits" 19 times since 1984: 4 times for intellectual property issues, 1 time for drug trafficking issues, and 14 times for labor issues. Second, the United States has suspended benefits to CAFTA countries twice: (1) in 1987, President Reagan suspended benefits to Nicaragua, for failure to meet the labor rights eligibility criteria; and (2) in 1998, President Clinton suspended benefits to Honduras for failure to meet the intellectual property eligibility criteria.

Third, the United States has repeatedly used the potential for suspension of benefits as leverage to promote improvements in CAFTA countries' labor laws. Examples described below involve Costa Rica, El Salvador and Guatemala. Reliance on potential suspension of benefits is (1) good trade policy (achieve goal without disruption of trade), and (2) parallels use of GATT/WTO dispute settlement, in which vast majority of cases are resolved without need for formal adjudication and even higher percentage of such cases are resolved without the use of trade sanctions.

The CAFTA is a major step backwards from 20 years of U.S. law and enforcement efforts. As currently negotiated, the CAFTA does not require that CAFTA countries continue to improve their labor laws to conform with basic international labor standards—in fact, it does not require that the countries' laws meet any standard, or even that the countries have a law relating to the basic standards. The only enforceable provision in the CAFTA Chapter on Labor requires that member countries "enforce their own laws," no matter how weak. This provision is substantially weaker than current U.S. law.

The CAFTA countries currently receive unilateral trade benefits under three preference programs: (1) the Caribbean Basin Initiative (CBI) enacted in 1984; (2) the Generalized System of Preferences (GSP), enacted in 1976, and modified in 1984 to include a labor condition; and (3) the Caribbean Basin Trade Preferences Act (CBTPA) enacted in 2000. Approximately 50% of all imports from the CAFTA countries already enter duty-free under these three programs. (An additional 30% of products enter duty-free under regular U.S. tariff rates.)

The CBI, CBTPA and GSP programs each condition a country's eligibility for trade benefits (i.e., duty-free access to the U.S. market) on, among other things, whether the country is making progress toward implementing basic international labor standards. More specifically, when determining whether a country should be designated a beneficiary country or maintain its eligibility for benefits, the President must make the following determinations under each program. For CBI and GSP, the President must determine that the country is "taking steps to afford internationally recognized worker rights." For CBTPA, the President must take into account "the extent to which the country provides internationally recognized worker rights."

CAFTA would drop even these minimum requirements. Unlike current U.S. law, CAFTA does not contain any condition requiring a country to achieve—or even move towards achieving—a basic level of worker rights.

Although the GSP, CBI and CBTPA programs all condition the eligibility of countries for trade benefits on their progress on worker rights, the formalized process for the public to petition the Administration for withdrawal of benefits is contained in the umbrella program (GSP). Accordingly, the United States has utilized the labor rights condition under the GSP program more than the conditions in the Caribbean-specific programs.

The United States has suspended GSP benefits 19 times since 1984. Fourteen of those suspensions were tied to the failure of the beneficiary country to meet the program's eligibility criteria on worker rights. Four suspensions were due to a country's failure to comply with the program's eligibility requirements regarding intellectual property rights, and one suspension was due to a failure to comply with the eligibility criteria regarding drug trafficking.

Among the CAFTA countries, Nicaragua and Honduras have had their benefits curtailed for failure to meet eligibility criteria. In the case of Nicaragua, President Reagan terminated the country's eligibility for the program in 1987, due to worker rights issues, and the country remains ineligible for the program today. In the case of Honduras, President Clinton suspended benefits under both the GSP and CBI programs in 1998, due to the country's failure to meet the programs' eligibility criteria regarding the protection of intellectual property rights.

Typically, the United States has used the *potential* for suspension of GSP/CBI/CBTPA benefits to promote improvements in our trading partners' labor laws. In fact, most of the labor law reforms of the past twenty years in the CAFTA countries has been due to the leverage of the workers rights conditionality under GSP/CBI/CBPTA. The following examples illustrate this fact.

In June 1993, a GSP petition against Costa Rica led to reform of its Labor Code in October 1993, to provide protections for union organizers and prohibiting solidarity associations from engaging in collective bargaining. Similarly, in June 1992, a petition against Guatemala resulted in recognition of a maquila union for the first time in six years in August 1992. During the period 1993–1997 when Guatemala was under GSP review, the government raised the minimum wage, established new labor courts and streamlined the legal recognition process.

In 2000, Guatemala's status under GSP was reopened due to the firing of banana plantation workers at a Del Monte company. In April 2001, Guatemala passed a labor reform bill that granted new rights to farm workers. Finally, in 1992, *EI Salvador* was put on continuing GSP review for workers rights violations. In 1994, El Salvador changed its laws to make it easier for unions to be recognized without employer interference.

The changes proposed by Ranking Member Rangel would eliminate both the backsliding as compared with current U.S. law and the double standard created under the CAFTA with regard to the enforcement of the agreement's labor provisions versus other commercial provisions. As negotiated, the CAFTA provides that labor provisions are enforceable primarily through a weak system of fines, which the offending country effectively pays to itself. In comparison, the agreement's other commercial provisions are enforceable using trade sanctions. Mr. Rangel's amendment would correct this imbalance to ensure that the rights of workers receive the same protection as the rights of corporations under the agreement.

As stated, we consider that meaningful technical assistance must be an integral part of U.S. trade policy with the CAFTA countries, and others. In Central America, such assistance needs to be used to improve existing laws (so that they meet ILO standards) as well as to strengthen enforcement.

"Unfortunately, the technical assistance prosed by the Administration—whatever its other weaknesses—requires only that countries enforce the laws they have on their books—even if the law on the books is weak or there is *no* existing law. Even the best enforcement of inadequate laws can never yield acceptable results. Indeed, Congress would never approve an agreement that requires merely that our trading partners enforce their existing laws in other areas, such as intellectual property rights. Would *any* Administration ever provide technical assistance for countries to enforce laws that allow or promote piracy of American patents, copyrights or trademarks? Requiring only that countries "enforce their own laws" with regard to labor standards is equally inappropriate.

II. CAFTA COULD DEFEAT COUNTRIES' ABILITY TO RESPOND TO PUBLIC HEALTH EMERGENCIES

We also continue to have reservations about sections of the CAFTA (as well as other recently negotiated U.S. free trade agreements (FTAs)) that affect the availability of affordable drugs in developing countries. In particular, we are concerned about test data requirements in the CAFTA, which could prevent the CAFTA countries from addressing public health problems and delay the introduction of generic pharmaceuticals into the Central American market, thereby making pharmaceuticals less affordable in the region.

In particular, Article 15.10.1 of the CAFTA requires parties to protect certain test data submitted to obtain regulatory marketing approval of a drug. The provisions operate as follows: if a government requires submission of test data in order to obtain marketing approval for a drug (e.g., FDA approval), the government may not allow any other company to use these test data as the basis of obtaining marketing approval for a similar drug for a period of 5 years. The company first submitting the data has the right to prevent anyone else from using those data to enter the market for that period. Test data rights are separate and distinct from patent rights, and can exist for drugs not covered by a patent.

The key issue raised by the test data requirements in the CAFTA is whether they can be waived if a CAFTA country wants to approve a producer other than the test data owner to produce and sell a drug in the CAFTA country during the test data protection period. The following example illustrates the issue:

> Assume Guatemala decides that it needs to increase the supply of an HIV/AIDS drug in its market. Company A owns the patent on the HIV/AIDS drug, and also is the only producer to have obtained marketing approval for the drug in the Guatemalan market. If Guatemala is unable to convince Company A to produce more of the HIV/AIDS drug at a reasonable price, Guatemala could issue a compulsory license to another drug manufacturer, Company B. However, the compulsory license, which is allowed under

> the FTA, is an exception only for the patent rights related to the HIV/AIDS drug. The compulsory license does not affect Company A's right to prevent any other company from receiving marketing approval for the drug based on the data it submitted.
>
> Obviously, if the United States invoked its right to test data protection as to the drug in question, the compulsory license would be useless—and Guatemala's right under specified circumstances pursuant to WTO rules to issue such a license would be defeated.

Notably, the above analysis applies even if the HIV/AIDS drug is not covered by a patent. The only difference is that Guatemala would not need to issue a compulsory license.

The Intellectual Property Chapter of the Agreement (Chapter 15) does not include any specific exception that would allow Guatemala or any other CAFTA countries to waive the test data requirements to address a public health need. As such, our concern is that the test data requirements could effectively undermine the CAFTA countries' ability to use compulsory licenses. As such, we believe that the CAFTA violates at a least the spirit of the November 2001 World Trade Organization Declaration on the TRIPS Agreement and Public Health ("Doha Declaration"), because the key flexibility identified in that Declaration was the ability of developing countries to use compulsory licensing to "protect public health" and "promote access to medicines for all."

We were heartened by the comments of Ambassador Allgeier, the Deputy United States Trade Representative, at the mock markup held by the Committee on June 15. At the mock markup, Ambassador Allgeier stated that the "Understanding Regarding Certain Public Health Concerns," which was adopted by the parties as a side agreement to the CAFTA, allows a country to waive test data requirements in order to market a drug produced under a compulsory license. The portion of the side agreement that Ambassador Allgeier apparently relied on for this interpretation states, in relevant part, that "[t]he obligations of [the Intellectual Property Chapter] do not affect a Party's ability to take necessary measures to protect public health by promoting access to medicines for all. * * *"

In our view, the side agreement is not sufficiently clear as to whether it provides an exception to the test data protection provisions. Accordingly, we urge USTR to ensure that Ambassador Allgeier's interpretation is given express legal effect in all future trade agreements, by making the exception explicit.

III. CAFTA AND THE ENVIRONMENT

We also have reservations about the CAFTA Chapter on Environment, which includes only minimal commitments. The agreement includes no benchmarks for countries to meet in improving their environmental laws and practices, and instead requires only that the countries enforce their existing laws. In addition, although the CAFTA includes commitments by the countries to engage in cooperative activities to improve and conserve the environment, these obligations are largely rhetorical, as the CAFTA also includes no commitments for funding such activities.

IV. INVESTOR-STATE PROVISIONS COULD ALLOW FOREIGN INVESTORS TO HAVE GREATER RIGHTS THAN U.S. INVESTORS IN THE UNITED STATES

Another area of concern is the so-called "investor-state" dispute settlement mechanism provided for in the CAFTA Chapter on Investment. The investor-state mechanism can be a useful tool to ensure that U.S. investors overseas are protected against unfair treatment.

However, if not properly crafted to reflect current U.S. laws, the investor-state mechanism can provide foreign investors greater rights than U.S. investors in the U.S. market. Congress recognized the potential for this problem during debate over the Trade Act of 2002 (P.L. 107–210), and included a mandate to USTR that U.S. trade agreements ensure that "foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than [U.S.] investors in the United States."

Unfortunately, the CAFTA still leaves out key elements of U.S. law, notwithstanding that it arguably is an improvement over the standard contained at Chapter 11 of the NAFTA. The result is to empower CAFTA panels to issue decisions that could go well beyond U.S. law—allowing foreign investors to receive greater rights than U.S. investors in the U.S. market. Given the aggressive reasoning of some arbitration panels that have considered claims brought under the NAFTA, it is particularly important that the investor-state provisions included in free trade agreements closely track U.S. constitutional and Supreme Court jurisprudence in order to ensure that legitimate U.S. laws and regulations are not threatened—and there is no chilling effect on local, state or federal authorities.

V. U.S. TRADE PRIORITIES

Finally, we believe that, in general, bilateral free trade agreements have a legitimate place in U.S. trade policy. If the agreements are properly negotiated and free trade partners are properly selected in coordination with Congress, these agreements can contain significant benefits for the United States in helping to set the global trade agenda and in other ways.

Nonetheless, we urge the Administration to recognize that the most important U.S. trade priorities should be the ongoing negotiations in the World Trade Organization and opening markets that achieve the largest gains for Americans. We are concerned that the Administration has focused too heavily on FTAs. In the case of CAFTA, we are concerned that Congress as well has had to dedicate enormous resources and attention to this agreement at the expense of other important trade priorities, largely because the CAFTA negotiated by the Administration could not attract broad, bipartisan support.

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