



H.R.6142

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (Introduced in House)

TITLE III--HAITI

SEC. 301. SHORT TITLE.

This Act may be cited as the 'Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006'.

SEC. 302. TRADE BENEFITS FOR HAITI.

(a) In General- The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 213 the following new section:

' SEC. 213A. SPECIAL RULES FOR HAITI.

' (a) DEFINITIONS- In this section:

' (1) APPLICABLE 1-YEAR PERIOD-

' (A) IN GENERAL- The term 'applicable 1-year period' means each of the 1-year periods described in subparagraphs (B) through (F).

' (B) INITIAL APPLICABLE 1-YEAR PERIOD- The term 'initial applicable 1-year period' means the 1-year period beginning on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006.

' (C) SECOND APPLICABLE 1-YEAR PERIOD- The term 'second applicable 1-year period' means the 1-year period beginning on the day after the last day of the initial applicable 1-year period.

' (D) THIRD APPLICABLE 1-YEAR PERIOD- The term 'third applicable 1-year period' means the 1-year period beginning on the day after the last day of the second applicable 1-year period.

' (E) FOURTH APPLICABLE 1-YEAR PERIOD- The term 'fourth applicable 1-year period' means the 1-year period beginning

on the day after the last day of the third applicable 1-year period.

` (F) FIFTH APPLICABLE 1-YEAR PERIOD- The term ` fifth applicable 1-year period' means the 1-year period beginning on the day after the last day of the fourth applicable 1-year period.

` (2) ENTER; ENTRY- The terms ` enter' and ` entry' refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

` (b) Apparel Articles-

` (1) IN GENERAL- In addition to any other preferential treatment under this title, apparel articles described in paragraph (2) of a producer or entity controlling production that are imported directly from Haiti shall enter the United States free of duty during an applicable 1-year period, subject to the limitations set forth in paragraphs (2) and (3), if Haiti has met the requirements of subsections (d) and (e).

` (2) Apparel articles described-

` (A) FOR INITIAL APPLICABLE 1-YEAR PERIOD- Apparel articles described in this paragraph are apparel articles that are wholly assembled, or are knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, that are entered during the initial applicable 1-year period.

` (B) FOR OTHER APPLICABLE 1-YEAR PERIODS-

` (i) IN GENERAL- In each of the second, third, fourth, and fifth applicable 1-year periods, apparel articles described in this paragraph are apparel articles that are wholly assembled, or are knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, only if, for each entry in the preceding applicable 1-year period, the sum of--

` (I) the cost or value of the materials produced in Haiti or one or more countries described in subparagraph (C), or any combination thereof, plus

` (II) the direct costs of processing operations (as defined in section 213(a)(3)) performed in Haiti or one or more countries described in subparagraph (C), or any combination thereof,

is not less than the applicable percentage (as defined in subparagraph (E)(i)) of the declared customs value of such apparel articles.

` (ii) DEDUCTIONS- In calculating cost or value under clause (i)(I), there shall be deducted the cost or value of--

- ˘ (I) any foreign materials that are used in the production of the apparel articles in Haiti; and
- ˘ (II) any foreign materials that are used in the production of the materials described in clause (i)(I).

˘ (C) COUNTRIES DESCRIBED- The countries referred to in subparagraph (B) are the following:

- ˘ (i) The United States.
- ˘ (ii) Any country that is a party to a free trade agreement with the United States that is in effect on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, or that enters into force under the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3801 et seq.).
- ˘ (iii) Any country designated as a beneficiary country under section 213(b)(5)(B) of this Act.
- ˘ (iv) Any country designated as a beneficiary country under section 506A(a)(1) of the Trade Act of 1974 (19 U.S.C. 2466a(a)(1)), if a finding has been made by the President or the President's designee, and published in the Federal Register, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722).
- ˘ (v) Any country designated as a beneficiary country under section 204(b)(6)(B) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(6)(B)).

˘ (D) ANNUAL AGGREGATION-

˘ (i) AGGREGATION- The requirements under subparagraph (B) relating to applicable percentage may also be met for articles of a producer or an entity controlling production that enter during an applicable 1-year period by aggregating--

˘ (I) the cost or value of materials under clause (i)(I) of subparagraph (B), and

˘ (II) the direct costs of processing operations under clause (i)(II) of subparagraph (B), of all apparel articles of that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during that applicable 1-year period.

˘ (ii) DEDUCTIONS- In calculating cost or value under clause (i)(I), there shall be deducted the cost or value of--

˘ (I) any foreign materials that are used in the production of the apparel articles in Haiti; and

` (II) any foreign materials that are used in the production of the materials described in clause (i)(I).

` (iii) INCLUSION IN CALCULATION OF OTHER ARTICLES RECEIVING PREFERENTIAL TREATMENT- (I)

The entry of a woven apparel article receiving preferential treatment under paragraph (4) is not included in an annual aggregation under clause (i).

` (II) Entries of articles receiving preferential treatment under paragraph (5) are not included in an annual aggregation under clause (i) unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation.

` (III) Entries of apparel articles that receive preferential treatment under any provision of law other than this subsection or are subject to the `General' column 1 rate of duty under the HTS are not included in an annual aggregation under clause (i) unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation.

` (E) DEFINITIONS- In this paragraph:

` (i) APPLICABLE PERCENTAGE- The term `applicable percentage' means--

` (I) 50 percent or more during the initial applicable 1-year period, the second applicable 1-year period, and the third applicable 1-year period;

` (II) 55 percent or more during the fourth applicable 1-year period; and

` (III) 60 percent or more during the fifth applicable 1-year period.

` (ii) FOREIGN MATERIAL- The term `foreign material' means a material produced in a country other than Haiti or any country described in subparagraph (C).

` (F) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE-

` (i) IN GENERAL- The Bureau of Customs and Border Protection of the Department of Homeland Security shall develop and implement methods and procedures to ensure ongoing compliance with the requirements set forth in subparagraphs (B) and (D).

` (ii) NONCOMPLIANCE- If the Bureau of Customs and Border Protection finds that a producer or an entity controlling production has not satisfied such requirements in any applicable 1-year period, then apparel articles described in subparagraph (B) of that

producer or entity shall be ineligible for preferential treatment under paragraph (1) during any succeeding applicable 1-year period until--

- ` (I) the cost or value of materials under subclause (I) of subparagraph (B)(i), plus
- ` (II) the direct costs of processing operations under subclause (II) of subparagraph (B)(i),

of that producer or entity controlling production, is not less than the applicable percentage under subparagraph (E)(i), plus 10 percent, of the aggregate declared customs value of all apparel articles of that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during the preceding applicable 1-year period.

` (iii) RETROACTIVE APPLICATION OF DUTY-FREE TREATMENT- If--

- ` (I) a producer or an entity controlling production is ineligible for preferential treatment under paragraph (1) in an applicable 1-year period because that producer or entity controlling production did not satisfy the requirements of subparagraph (B) or (D), and

- ` (II) that producer or entity controlling production satisfies the requirements of clause (ii) of this subparagraph in that applicable 1-year period,

then, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after the Bureau of Customs and Border Protection determines that subclause (II) applies, the entry of any articles--

- ` (aa) that was made during that applicable 1-year period, and

- ` (bb) with respect to which there would have been preferential treatment under paragraph (1) if the producer or entity controlling production had satisfied the requirements in subparagraph (B) or (D) (as the case may be),

shall be liquidated or reliquidated as though such preferential treatment under paragraph (1) applied to such entry.

` (G) FABRICS NOT AVAILABLE IN COMMERCIAL QUANTITIES-

- ` (i) IN GENERAL- For purposes of determining the applicable percentage under subparagraph (B) or (D), there may be included in that percentage--

- ` (I) the cost of fabrics or yarns to the extent that apparel articles of such fabrics or yarns would be

eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA; and

` (II) the cost of fabrics or yarns that are designated as not being available in commercial quantities for purposes of--

` (aa) section 213(b)(2)(A)(v) of this Act,

` (bb) section 112(b)(5) of the African Growth and Opportunity Act,

` (cc) section 204(b)(3)(B)(i)(III) or (ii) of the Andean Trade Preference Act, or

` (dd) any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement that enters into force under the Bipartisan Trade Promotion Authority Act of 2002,

without regard to the source of the fabrics or yarns.

` (ii) REMOVAL OF DESIGNATION OF FABRICS OR YARNS NOT AVAILABLE IN COMMERCIAL QUANTITIES- If the President determines that--

` (I) any fabric or yarn described in clause (i)(I) was determined to be eligible for preferential treatment, or

` (II) any fabric or yarn described in clause (i)(II) was designated as not being available in commercial quantities,

on the basis of fraud, the President is authorized to remove the eligibility or designation (as the case may be) of that fabric or yarn with respect to articles entered after such removal.

` (3) Quantitative limitations- The preferential treatment described in paragraph (1) shall be extended, during each of the applicable 1-year periods set forth in the following table, to not more than the corresponding percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the most recent 12-month period for which data are available:

The corresponding

` During the:

percentage is:

Initial applicable 1-year period

1 percent

Second applicable 1-year period

1.25 percent

Third applicable 1-year period

1.5 percent

Fourth applicable 1-year period

1.75 percent

Fifth applicable 1-year period

2 percent.

No preferential treatment shall be provided under paragraph (1) after the last day of the fifth applicable 1-year period.

` (4) SPECIAL RULE FOR WOVEN APPAREL- In the case of apparel articles classifiable under chapter 62 of the HTS (other than articles classifiable under subheading 6212.10 of the HTS), as in effect on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, that do not qualify for preferential treatment under paragraph (1) because they do not meet the percentage requirements under paragraph (2)(B) or (2)(D), the preferential treatment under paragraph (1)--

` (A) shall be extended, in addition to the quantities permitted under paragraph (3) to--

` (i) not more than 50,000,000 square meter equivalents of such apparel articles for the initial applicable 1-year period;

` (ii) not more than 50,000,000 square meter equivalents of such apparel articles for the second applicable 1-year period; and

` (iii) not more than 33,500,000 square meter equivalents for the third applicable 1-year period; and

` (B) may not be extended to such apparel articles after the last day of the third applicable 1-year period.

` (5) SPECIAL RULE FOR BRASSIERES- The preferential treatment under paragraph (1) shall, subject to the limitations under paragraph (3), be extended to any article classifiable under heading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in Haiti or the United States, or both, without regard to the source of the fabric or components from which the article is made, and if Haiti has met the requirements of subsections (d) and (e).

` (c) SPECIAL RULE FOR CERTAIN WIRE HARNESS AUTOMOTIVE COMPONENTS-

(1) IN GENERAL- Any wire harness automotive component that is the product or manufacture of Haiti and is imported directly from

Haiti into the customs territory of the United States shall enter the United States free of duty, during the 5-year period beginning on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, if Haiti has met the requirements of subsection (d) and if the sum of--

 ` (A) the cost or value of the materials produced in Haiti or one or more countries described in subsection (b)(2)(C), or any combination thereof, plus

 ` (B) the direct costs of processing operations (as defined in section 213(a)(3)) performed in Haiti or the United States, or both,

is not less than 50 percent of the declared customs value of such wire harness automotive component.

 ` (2) WIRE HARNESS AUTOMOTIVE COMPONENT- For purposes of this subsection, the term `wire harness automotive component' means any article provided for in subheading 8544.30.00 of the HTS, as in effect on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006.

 ` (d) Eligibility Requirements-

 ` (1) IN GENERAL- Haiti shall be eligible for preferential treatment under this section if the President determines and certifies to Congress that Haiti--

 ` (A) has established, or is making continual progress toward establishing--

 ` (i) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

 ` (ii) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

 ` (iii) the elimination of barriers to United States trade and investment, including by--

 ` (I) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

 ` (II) the protection of intellectual property; and

 ` (III) the resolution of bilateral trade and investment disputes;

 ` (iv) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through microcredit or other programs;

` (v) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

` (vi) protection of internationally recognized worker rights, including 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 acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

` (B) does not engage in activities that undermine United States national security or foreign policy interests; and

` (C) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

` (2) TIME LIMIT FOR DETERMINATION- The President shall determine whether Haiti meets the requirements of paragraph (1) not later than 90 days after the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006.

` (3) CONTINUING COMPLIANCE- If the President determines that Haiti is not making continual progress in meeting the requirements described in paragraph (1)(A), the President shall terminate the preferential treatment under this section.

` (e) Conditions Regarding Enforcement of Circumvention-

` (1) IN GENERAL- The preferential treatment under subsection (b)(1) shall not apply unless the President certifies to Congress that Haiti is meeting the following conditions:

` (A) Haiti has adopted an effective visa system, domestic laws, and enforcement procedures applicable to articles described in subsection (b) to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States.

` (B) Haiti has enacted legislation or promulgated regulations that would permit the Bureau of Customs and Border Protection verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country.

` (C) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, on the total exports from and imports into that country of articles described in subsection (b), consistent with the manner in which the records are kept by Haiti.

` (D) Haiti agrees to cooperate fully with the United States to address and take action necessary to prevent circumvention

as provided in Article 5 of the Agreement on Textiles and Clothing.

` (E) Haiti agrees to require all producers and exporters of articles described in subsection (b) in that country to maintain complete records of the production and the export of such articles, including materials used in the production, for at least 5 years after the production or export (as the case may be).

` (F) Haiti agrees to report, on a timely basis, at the request of the Bureau of Customs and Border Protection, documentation establishing the country of origin of articles described in subsection (b) as used by that country in implementing an effective visa system.

` (2) DEFINITION OF TRANSSHIPMENT- Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this section has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components.