

RESTRICTED

L/6980/Add.1

31 January 1992

Limited Distribution

Original: English

COUNCIL
18 February 1992

UNITED STATES - ANDEAN TRADE PREFERENCE ACT

Communication from the United States

Addendum

For the information of contracting parties, the United States delegation herein transmits the text of the "Andean Trade Preference Act¹", signed into law on 4 December 1991.

¹English only

TITLE II

Trade Preference for the Andean Region

Section 201. Short title

This title may be cited as the "Andean Trade Preference Act".

Section 202. Authority to grant duty-free treatment

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

Section 203. Beneficiary country

(a) Definitions - For purposes of this title

- (1) The term "beneficiary country" means any country listed in sub-section (b)(1) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title.
- (2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.
- (3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(b) Countries eligible for designation - Congressional notification

- (1) In designating countries as beneficiary countries under this title, the President shall consider only the following countries or successor political entities:

Bolivia
Ecuador
Colombia
Peru

- (2) Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(c) Limitations on designation - The President shall not designate any country a beneficiary country under this title:

- (1) If such a country is a Communist country

- (2) If such a country:
- (a) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per cent or more beneficially owned by United States citizens;
 - (b) has taken steps to repudiate or nullify,
 - (i) any existing contract or agreement with, or
 - (ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association, which is 50 per cent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
 - (c) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that:
 - (i) prompt, adequate and effective compensation has been or is being made to such citizen, corporation, partnership or association,
 - (ii) good-faith negotiations to provide prompt, adequate and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership or association, or
 - (iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives:
- (3) if such a country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favour of United States citizens or a corporation, partnership, or

association which is 50 per cent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

- (4) if such a country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President:
 - (A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and
 - (B) reports those assurances to the Congress;
- (5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;
- (6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and
- (7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in Section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5) and (7) shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

- (d) Factors affecting designation - In determining whether to designate any country a beneficiary country under this title, the President shall take into account:
 - (1) an expression by such country of its desire to be so designated;
 - (2) the economic conditions in such country, the living standards of its inhabitants and any other economic factors which he deems appropriate;
 - (3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

- (4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under Section 2(a) of the Trade Agreements Act of 1979;
- (5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;
- (6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;
- (7) the degree to which such country is undertaking self-help measures to protect its own economic development;
- (8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;
- (9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;
- (10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;
- (11) whether such country has met the narcotics co-operation certification criteria set forth in Section 481(h)(2)(A) of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and
- (12) the extent to which such country is prepared to co-operate with the United States in the administration of the provisions of this Act.

(e) Withdrawal or suspension of designation

- (1) The president may;
 - (A) withdraw or suspend the designation of any country as a beneficiary country, or
 - (B) withdraw, suspend or limit the application of duty-free treatment under this title to any article of any country,if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

- (2) (A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.
 - (B) The United States Trade Representative shall, within the thirty day period beginning on the date on which the President publishes under sub-paragraph (a) notice of proposed action:
 - (i) accept written comments from the public regarding such proposed action,
 - (ii) hold a public hearing on such proposed action, and
 - (iii) publish in the Federal Register:
 - (I) notice of the time and place of such hearing prior to the hearing, and
 - (II) the time and place at which such written comments will be accepted.
- (f) Triennial report - On or before the third, sixth and ninth anniversaries of the date of the enactment of this title, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in sub-sections (c) and (d). In reporting on the considerations described in sub-section (d)(11), the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this title.

Section 204. Eligible Articles

(a) In general:

- (1) Unless otherwise excluded from eligibility by this title, 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) that article is imported directly from a beneficiary country into the customs territory of the United States; and
 - (B) the sum of:
 - (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries under this Act, or a beneficiary country under the Caribbean Basin Economic Recovery Act or two or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this Act or the Caribbean Basin Economic Recovery Act),

is not less than 35 per cent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in sub-paragraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. 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 cent 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 sub-paragraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out sub-section (a) including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone:

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this sub-section, the phrase "direct costs of processing operations" includes, but is not limited to:

(A) all actual labour costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, moulds, tooling and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit and (ii) general expense of doing business which are either not allocable to the

specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest and salesmens' salaries, commissions or expenses.

- (4) If the President, pursuant to Section 223 of the Caribbean Basin Economic Recovery Expansion Act of 1990, considers that the implementation of revised rules of origin for products of beneficiary countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) would be appropriate, the President may include similarly revised rules of origin for products of beneficiary countries designated under this title in any suggested legislation transmitted to the Congress that contains such rules of origin for products of beneficiary countries under the Caribbean Basin Economic Recovery Act.
- (b) Exceptions to duty-free treatment - The duty-free treatment provided under this title shall not apply to:
- (1) textile and apparel articles which are subject to textile agreements;
 - (2) footwear not designated at the time of the effective date of this Act as eligible for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;
 - (3) tuna, prepared or preserved in any manner, in airtight containers;
 - (4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;
 - (5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;
 - (6) articles to which reduced rates of duty apply under sub-section (c);
 - (7) sugars, syrups and molasses classified in sub-headings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42 and 2106.90.12 of the HTS; or
 - (8) rum and tafia classified in sub-heading 2208.40.00 of the HTS.

(c) Duty reductions for certain goods:

- (1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves and leather wearing apparel that:
 - (A) are the product of any beneficiary country; and
 - (B) were not designated on 5 August 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.
- (2) The reduction required under paragraph (1) in the rate of duty on any article shall:
 - (A) result in a rate that is equal to 80 per cent of the rate of duty that applies to the article on 31 December 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 per cent ad valorem; and
 - (B) be implemented in 5 equal annual stages with the first one fifth of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after 1 January 1992.
- (3) The reduction required under this sub-section with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed:
 - (A) is less than 1.5 per cent ad valorem, the aggregate of such proclaimed reduction and the reduction under this sub-section may not exceed 3.5 per cent ad valorem, or
 - (B) is 1.5 per cent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this sub-section may not exceed the proclaimed reduction plus 1 per cent ad valorem.

(d) Suspension of duty-free treatment

- (1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under Chapter 1 of Title II of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962.
- (2) In any report by the United States International Trade Commission to the President under Section 202(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been

proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

- (3) For purposes of Section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.
- (4) No proclamation providing solely for a suspension referred to in paragraph (3) of this sub-section with respect to any article shall be taken under Section 203 of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under Section 202(b) of the Trade Act of 1974, determines in the course of its investigation under such Section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.
- (5) (A) Any action taken under Section 203 of the Trade Act of 1974 that is in effect when duty-free treatment is proclaimed under Section 202 of this title shall remain in effect until modified or terminated.
- (B) If any article is subject to any such action at the time duty-free treatment is proclaimed under Section 202 of this title, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of Section 204 of the Trade Act of 1974.

(e) Emergency relief with respect to perishable products

- (1) If a petition is filed with the United States International Trade Commission pursuant to the provisions of Section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this sub-section with respect to such article.
- (2) Within fourteen days after the filing of a petition under paragraph (1) of this sub-section:
 - (A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the

- threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or
- (B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.
- (3) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this sub-section, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.
- (4) The emergency action provided by paragraph (3) of this sub-section shall cease to apply:
- (A) upon the taking of action under Section 203 of the Trade Act of 1974;
- (B) on the day a determination by the President not to take action under Section 203(b)(2) of such Act becomes final;
- (C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President; or
- (D) whenever the President determines that because of changed circumstances such relief is no longer warranted.
- (5) For the purposes of this sub-section, the term "perishable product" means:
- (A) live plants and fresh cut flowers provided for in Chapter 6 of the HTS;
- (B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except sub-heading 0709.52.00) and heading 0714 of the HTS;
- (C) fresh fruit provided for in sub-headings 0804.20 through 0810.90 (except citrons of sub-headings 0805.90.00, tamarinds and kiwi fruit of sub-heading 0810.90.20 and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of sub-heading 0810.90.40) of the HTS; or
- (D) concentrated citrus fruit juice provided for in sub-headings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20 and 2009.30.60 of the HTS.

- (f) Section 22 fees - No proclamation issued pursuant to this title shall affect fees imposed pursuant to Section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

Section 205. Related Amendments

- (a) Increase in duty-free tourist allowance - Note 4 to sub-chapter IV of Chapter 98 of the HTS is amended by inserting before the period the following:

"or a country designated as a beneficiary country under the Andean Trade Preference Act".

- (b) Treatment of insular possessions products - General Note 3(a)(iv) of the HTS (relating to products of the insular possessions) is amended by adding at the end thereof the following:

"(E) Subject to the provisions in Section 204 of the Andean Trade Preference Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favourable than the treatment afforded such goods when they are imported from a beneficiary country under such Act".

Section 206. International Trade Commission reports on impact of the Andean Trade Preference Act

- (a) In general - The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress, a report regarding the economic impact of this title on United States industries and consumers and in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during:
- (1) the twenty-four month period beginning with the date of enactment of this title; and
 - (2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under Section 208(b).

For the purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

- (b) Report requirements

- (1) Each report required under sub-section (a) shall include, but not be limited to, an assessment by the Commission regarding:
 - (A) the actual effect, during the period covered by the report, of this title on the United States economy generally as well as on those specific domestic industries which produce

articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

- (B) the probable future effect that this title will have on the United States economy generally, as well as on such domestic industries, before the provisions of this title terminate; and
- (C) the estimated effect that this title has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable:

- (A) analyse the production, trade and consumption of United States products affected by this title, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence or equipment, and diversification of production; and
- (B) describe the nature and extent of any significant change in employment, profit levels and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this title.

(c) Submission dates - Public comment

- (1) Each report required under sub-section (a) shall be submitted to the Congress before the close of the nine month period beginning on the day after the last day of the period covered by the report.
- (2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

Section 207. Impact study by Secretary of Labour

The Secretary of Labour, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this title has with respect to United States labour; and shall make an annual written report to Congress on the results of such review and analysis.

Section 208. Effective date and termination of duty-free treatment

- (a) Effective date - This title shall take effect on the date of enactment.
- (b) Termination of duty-free treatment - No duty-free treatment extended to beneficiary countries under this title shall remain in effect ten years after the date of the enactment of this title.