

## THE UNITED STATES – PANAMA TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT

### STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action (“Statement”) is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”) and accompanies the implementing bill for the free trade agreement (“Agreement”) that the United States has concluded with Panama. The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on June 28, 2007.

As is the case with Statements of Administrative Action submitted to the Congress in connection with earlier trade agreements, this Statement represents an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Agreement, both for purposes of U.S. international obligations and domestic law. The Administration understands that it is the expectation of the Congress that future administrations will observe and apply the interpretations and commitments set out in this Statement. In addition, since this Statement will be approved by the Congress at the time it approves the implementing bill for this Agreement, the interpretation of the Agreement included in this Statement carries particular authority.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement. The Statement also describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement.

The Agreement does not change the provisions of any agreement the United States has previously negotiated with Panama. Article 1.3.2 of the Agreement suspends on the date the Agreement enters into force Articles VII and VIII of the *Treaty Between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investments*, with Annex and Agreed Minutes, signed at Washington on October 27, 1982 (the “Treaty”) concerning investor-to-state and state-to-state dispute settlement, respectively. However, Article 1.3.3 of the Agreement preserves, for ten years, the option of invoking dispute settlement under the Treaty with respect to investments covered by the Treaty as of the date of entry into force of the Agreement and in the case of disputes that arose prior to the date of entry into force of the

Agreement. Article 1.3.3 also preserves investor-to-state dispute settlement under the Treaty with respect to disputes arising on or after the date of entry into force of the Agreement out of an investment agreement that was in effect before the date of entry into force of the Agreement. If the Agreement terminates, the dispute settlement provisions of the Treaty will automatically resume operation.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One, Two, and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

**Chapters:**  
**One (Initial Provisions)**  
**Two (General Definitions)**  
**Eighteen (Transparency)**  
**Nineteen (Administration of the Agreement and Trade Capacity Building)**  
**Twenty (Dispute Settlement)**  
**Twenty-One (Exceptions)**  
**Twenty-Two (Final Provisions)**

**1. Implementing Bill**

**a. Congressional Approval**

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

**b. Entry into Force**

Article 22.5 of the Agreement requires the United States and Panama to exchange written notifications that their respective legal requirements for the entry into force of the Agreement have been fulfilled. The exchange of notifications is a necessary condition for the Agreement's entry into force. Section 101(b) of the implementing bill authorizes the President to exchange notes with Panama to provide for the Agreement to enter into force for the United States on or after January 1, 2012. The exchange of notes is conditioned on a determination by the President that Panama has taken measures necessary to comply with those of its obligations that are to take effect at the time the Agreement enters into force.

Certain provisions of the Agreement become effective after the Agreement enters into force. For example, the Agreement provides Panama up to three years to comply with certain provisions relating to customs administration. Likewise, certain procedural obligations relating to government procurement become effective with respect to Panama two years after the Agreement enters into force. In addition, certain of the Agreement's obligations regarding intellectual property rights, including those governing the ratification of certain international agreements, patent term restoration, and the enforcement of certain copyright protections, apply to Panama at prescribed times after the Agreement enters into force.

**c. Relationship to Federal Law**

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement and to make other changes that are necessary or appropriate to implement the Agreement. The bill accomplishes those objectives with respect to federal

legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement, amending existing federal laws that are necessary or appropriate to implement the Agreement, and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

#### **d. Relationship to State Law**

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor, environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the

application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a “last resort,” in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute “specifically relates to the business of insurance.” Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although “grandfathering” provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, “non-conforming”) measures.

Given section 2 of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement’s provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

**e. Private Lawsuits**

Section 102(c) of the implementing bill precludes any private right of action or remedy against the federal government, a state or local government, or a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general “public interest” authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration’s conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

**f. Implementing Regulations**

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

**g. Dispute Settlement**

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 19.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, Singapore, Morocco, the Dominican Republic and Central America, Bahrain, Oman, and Peru. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

**h. Effective Dates**

Section 107(b)(1) of the bill provides that the first three sections of the bill as well as Title I and Title V of the bill go into effect on the date of enactment of the bill. Section 107(b)(2) provides that certain amendments made by the bill take effect upon enactment, but will apply with respect to Panama only when the Agreement enters into force.

Section 107(a) of the bill provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement

enters into force. Section 107(c) of the bill provides that the provisions of the bill (other than section 107(c) itself and Title V) and the amendments to other statutes made by the bill (except the amendments made by Title V) will cease to have effect on the date on which the Agreement terminates.

## **2. Administrative Action**

No administrative changes will be necessary to implement Chapters One, Two, Nineteen, Twenty-One, and Twenty-Two of the Agreement.

Article 18.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative (“USTR”) will serve as the U.S. contact point for this purpose. In addition, Article 19.1 of the Agreement establishes a Free Trade Commission to oversee the implementation of the Agreement and the work of committees and other bodies established under the Agreement. The U.S. Trade Representative, or his or her designee, will represent the United States on the Free Trade Commission.

The Agreement calls for the United States and Panama to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while specialized rosters will be established to address disputes regarding the Agreement’s financial services, labor, and environmental provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (“Trade Committees”) as it develops rosters of panelists. USTR will provide the Trade Committees with the names of the experts it is considering, and detailed background information on each, at least 30 days before submitting the names of any nominees to Panama.

## **Chapter Three (National Treatment and Market Access for Goods)**

### **1. Implementing Bill**

#### **a. Proclamation Authority**

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Three of the Agreement through the application or elimination of customs duties and tariff-rate quotas (“TRQs”). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or

- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.26, 3.27, 3.28, and 3.29, and Annex 3.3 of the Agreement.

The proclamation authority with respect to Article 3.3 of the Agreement authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 3.3 of the Agreement, of customs duties on imports from Panama that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 3.5 and 3.6 of the Agreement authorizes the President to provide for the elimination of duties on particular categories of imports from Panama. Article 3.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 3.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in Panama; or (ii) sent from Panama for repair or alteration in the United States.

The proclamation authority with respect to Article 3.26 of the Agreement authorizes the President to reduce the amount of duty imposed on certain textile or apparel goods that are not "originating goods" for purposes of the Agreement, but that contain U.S.-origin components. The President is authorized to proclaim a duty rate equal to the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty applied to the value of the good minus the value of U.S. components (*e.g.*, fabric). To qualify for this duty treatment the good must be made with U.S. fabric or knit-to-shape components and assembled in Panama with U.S. thread. The U.S. fabric may be cut in Panama.

The proclamation authority with respect to Article 3.27 of the Agreement authorizes the President to provide duty-free treatment for textile or apparel articles that the United States and Panama agree are handloomed, handmade, or folklore articles, and which are certified as such by Panama's competent authority.

The proclamation authority with respect to Article 3.28 of the Agreement authorizes the President to provide duty-free treatment for Guayabera-style dresses and shirts that are cut and sewn or otherwise assembled in Panama or the United States or both.

The proclamation authority with respect to Article 3.29 of the Agreement authorizes the President to provide duty-free treatment for certain socks that are sewn or otherwise assembled in Panama with U.S. thread from components knit-to-shape in the United States from U.S. yarn.

Sections 201(a)(2) and (3) of the bill address the status of Panama as a designated beneficiary country under the following U.S. trade preference programs: (i) the Generalized System of Preferences (19 U.S.C. 2461 *et seq.*) ("GSP"); (ii) the Caribbean Basin Economic

Recovery Act (19 U.S.C. 2701 *et seq.*) (“CBERA”); and (iii) the United States – Caribbean Basin Trade Partnership Act, Pub. Law 106-200 (“CBTPA”), which amended the CBERA to provide additional tariff preferences to beneficiary countries for certain goods, including certain textile and apparel goods.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under GSP on the date the Agreement takes effect.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the CBERA from Panama on the date the Agreement takes effect. The requirement to terminate CBERA beneficiary status is subject to three exceptions, however, which are set out in section 201(a)(3)(B).

The first exception implements Article 8.8.1 of the Agreement, which provides that the United States will continue to treat Panama as a CBERA beneficiary country for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)). Those provisions preclude the U.S. International Trade Commission (“ITC”) from aggregating (or “cumulating”) imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports of a particular product from such beneficiary countries.

The second exception will permit the President to implement the duty-free treatment provided under paragraph 4 of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement.

The third exception provides that Panama will continue to be considered a CBERA beneficiary country for purposes of section 274(h)(6)(B) of the Internal Revenue Code (26 U.S.C. 274(h)(6)(B)). Section 274(h) limits taxpayer deductions for expenses incurred in attending conventions, seminars, or similar meetings abroad. The rule does not apply with respect to conventions, seminars, or similar meetings held in a CBERA beneficiary country, if the country meets certain tests: (1) there is an agreement in effect between the country and the United States providing for bilateral exchange of tax information; and (2) the Secretary of the Treasury has not made a finding that the tax laws of such country discriminate against conventions held in the United States. This third exception would maintain the status quo with respect to this tax provision.

Section 213(b)(5)(D) of the CBERA, as amended by the CBTPA, provides that CBTPA benefits terminate with respect to any CBTPA beneficiary country on entry into force of a free trade agreement between that country and the United States. The President’s proclamation implementing the Agreement will reflect the termination of CBTPA benefits for Panama.

Section 402 of the bill amends the CBERA in light of the fact that Panama will no longer be a beneficiary country for purposes of the CBERA or the CBTPA on the date the Agreement

takes effect. Specifically, section 402 of the bill amends section 212(b) of the CBERA to delete Panama from the list of countries that the President may designate as beneficiary countries. The amendment takes effect on the date on which the President terminates Panama's designation as a beneficiary country pursuant to section 201(a)(3) of the bill. On that date, Panama will become a "former beneficiary country" as defined in section 212(a)(1) of the CBERA and a "former CBTPA beneficiary country" as defined in section 213(b)(5) of the CBERA.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination set out in Annex 3.3 of the Agreement, pursuant to an agreement with Panama under Article 3.3.3 of the Agreement;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Panama provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a) of the bill, any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with Panama under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the

Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

Section 201(d) of the bill directs the President to take such action as may be necessary to ensure that imports of goods subject to TRQs do not disrupt the orderly marketing of commodities in the United States. This provision will be implemented consistent with Article 3.14 of the Agreement. Any agency action pursuant to this provision will be taken in accordance with regulations promulgated after providing notice and opportunity for public comment.

#### **b. Agricultural Safeguard**

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.17 and Annex 3.17 of the Agreement. Article 3.17 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Panama specified in the Schedule of the United States to Annex 3.17 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill defines various terms used in the agricultural safeguard provisions. Section 202(a)(1) defines "applicable NTR (MFN) rate of duty." In conformity with the Agreement, the sum of the duties assessed on a good under an agricultural safeguard measure 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 NTR (MFN) rate of duty that applies to that type of good.

Section 202(a)(2) of the bill specifies the products that may be subject to an agricultural safeguard measure. Specifically, a good is a "safeguard good" if (i) it is included in the Schedule of the United States to Annex 3.17; (ii) it qualifies as an originating good under section 203 of the bill; and (iii) a claim for preferential tariff treatment under the Agreement has been made with respect to the good.

Section 202(a)(3) of the bill defines "schedule rate of duty" as the rate of duty for a good set out in the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(4) of the bill defines the "trigger level" for purposes of applying agricultural safeguard measures. For beef products that qualify as safeguard goods, the trigger level is 330 metric tons in the calendar year in which the Agreement enters into force and, in each of the second through 14<sup>th</sup> calendar years after the Agreement enters into force, 110 percent of the trigger level for the prior year. For all other safeguard goods, the trigger level is 115 percent of the applicable "in-quota" quantity for the good specified in Appendix I to the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement. (The in-quota quantities are set out in the General Notes on a calendar-year basis beginning with "year one." Year one refers to that portion of the calendar year that begins on the day the Agreement enters into force.)

Section 202(b) of the bill provides for the Secretary of the Treasury (the “Secretary”) to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any calendar year when the volume of imports of the good from Panama in that year exceeds the trigger level for the good for that year. The additional duties remain in effect only until the end of the calendar year in which they are imposed.

Section 202(b)(3) of the bill implements Article 3.17.6 of the Agreement by directing the Secretary within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify Panama and provide it with supporting data.

Section 202(c) of the bill implements Article 3.17.4 of the Agreement by establishing that 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(d) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

**c. Customs User Fees**

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under section 203 of the bill, which codifies the general origin rules set out in Chapter Four of the Agreement. Customs processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

**d. Textile or Apparel Safeguard**

Article 3.24 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. Article 3.24 also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from Panama. Nevertheless, the Agreement’s textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods from Panama are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.24 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile and apparel safeguard.

Section 321(a) of the bill establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b) of the bill, if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 of the bill sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "Panamanian 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 that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "Panamanian textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3.30 of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.24.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.24.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with Panama held in accordance with Article 3.24.4 of the Agreement.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place

for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile and apparel safeguard if: (i) relief previously has been granted to that article under the textile and apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile and apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.24.6 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Panama “mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard].” If the United States and Panama are unable to agree on trade liberalizing compensation, Panama may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement’s textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

**e. Enforcement of Textile and Apparel Rules of Origin**

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.21 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.21.3 and 3.21.4 of the Agreement, at the request of the government of the importing Party, the government of the exporting Party must conduct a verification of textile and apparel enterprises in its territory. The object of a verification under Article 3.21.3(a) of the Agreement is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.21.3(b) is to determine whether an enterprise is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in a verification of a Panamanian enterprise or, at the request of the government of Panama, conduct the verification itself. A verification may entail visits by officials of Panama and the United States to the premises of a textile or apparel exporter or producer in Panama or the United States.

Pursuant to Article 3.21.7 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 208 of the bill implements Article 3.21 of the Agreement. Under section 208(a) of the bill, the President may direct the Secretary to take “appropriate action” while a verification that the Secretary has requested is being conducted. Section 208(b) of the bill provides that, depending on the nature of the verification, the 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 determines there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary determines that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary determines 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 incorrect information on their origin.

Under section 208(c) of the bill, the President may also direct the Secretary to take “appropriate action” after a verification has been completed. Under section 208(d) of the bill, depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary determines 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 determines that a person has provided incorrect 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 Panama is accurate.

Under section 208(e) of the bill, 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, the textile or apparel goods that are the subject of a verification.

**f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

Under the specific rules of origin for textile and apparel goods set out in Annex 4.1 of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States and Panama are treated as if they originate in the United States or Panama, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3.25 of the Agreement lists certain fabrics, yarns, and fibers that the United States and Panama have agreed are unavailable in the region.

In addition, Article 3.25.4 of the Agreement provides that the United States may add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.25.4(e) of the Agreement provides that the United States will add any fabric, yarn, or fiber to the list that it has determined before the Agreement enters into force to be unavailable in commercial quantities in a timely manner under its regional trade preference programs or another free trade agreement that includes procedures under which the United States may determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an “interested entity” (a potential or actual purchaser or seller, or the government of Panama), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in Panama and the United States, or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3.25 of the Agreement, the United States may remove any restriction it has imposed on the product.

Article 3.25.5 of the Agreement authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in Panama or the United States.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list in Annex 3.25 of the Agreement in certain circumstances.

Section 203(o)(4) of the bill implements those provisions of Article 3.25 of the Agreement that provide for the United States to modify the list of materials in Annex 3.25 after the Agreement enters into force.

Specifically, subparagraph (C)(i) of section 203(o)(4) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in Panama and the United States and to proclaim that the material is included in the list in Annex 3.25.

Subparagraph (C)(ii) of section 203(o)(4) authorizes the President to determine whether the material is commercially available in a timely manner in Panama or the United States. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in Panama and the United States, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv)(II) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) of section 203(o)(4) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in Panama and the United States.

Subparagraph (D) of section 203(o)(4) implements Article 3.25.4(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i) of section 203(o)(4), an interested entity may request the

President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3.25 in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in Panama or the United States. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) of section 203(o)(4) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3.25 list and to submit comments and supporting evidence before the President determines whether to change the list.

## **2. Administrative Action**

### **a. Temporary Admission of Goods and Goods Entered After Repair or Alteration**

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 3.5 (temporary admission of certain goods) and Article 3.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

### **b. Handloomed, Handmade, or Folklore Articles**

The President will authorize the Committee for the Implementation of Textile Agreements (“CITA”) to consult with Panama to determine which, if any, textile or apparel goods from Panama will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

### **c. Agricultural Safeguard**

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202 of the bill. It is the Administration’s intent that agricultural safeguard measures will be applied whenever the volume thresholds specified in the Agreement have been met.

### **d. Textile or Apparel Safeguard**

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a) of the bill, and providing relief under section 322(b). CITA will

issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b) of the bill. CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

**e. Enforcement of Textile and Apparel Rules of Origin**

Section 208 of the bill provides that the Secretary may request Panama to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 208(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 208(d) of the bill after a verification is completed. If CITA decides that it is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to U.S. Customs and Border Protection ("CBP").

Section 208 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.21 of the Agreement.

**f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities**

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Panama and the United States set out in Annex 3.25 of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3.25; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which manufacturers in Panama and the United States are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

## **Chapter Four (Rules of Origin)**

### **1. Implementing Bill**

#### **a. General**

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from Panama for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of Panama to qualify as an “originating” good and, therefore, be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is “wholly obtained or produced entirely in the territory of Panama, the United States, or both.” The term “good wholly obtained or produced entirely in the territory of Panama, the United States, or both” is defined in section 203(n)(5) of the bill and includes, for example, minerals extracted from the territory of Panama, the United States, or both; animals born and raised in the territory of Panama, the United States, or both; and waste and scrap derived from production of goods that takes place in the territory of Panama, the United States, or both.

The term “good wholly obtained or produced entirely in the territory of Panama, the United States, or both” includes “recovered goods.” These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a “remanufactured good.” The term “remanufactured good” is separately defined in section 203(n)(20) of the bill to mean an industrial good falling within Chapter 84, 85, 87, or 90 of the HTS or heading 9402 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a good that is new.

Second, the general rules of origin provide that a good is “originating” if the good is produced in the territory of Panama, the United States, or both, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in the territory of Panama, the United States, or both, or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of Panama, the United States, or both, exclusively from materials that themselves qualify as originating goods.

As is the case for all goods exported to the United States, “originating goods” must comply with applicable U.S. laws and regulations, including import prohibitions, sanctions, and licensing requirements, in order to be admitted into the territory of the United States.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s specific requirements to qualify as an originating good. For example, section 203(c) of the bill implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of “regional value content” to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) of the bill provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

Section 203(l) of the bill allows a good to be shipped through a third country without losing its status as an originating good, provided certain conditions are met. While in a third country, the good may not be further produced, except that it may be unloaded, reloaded, or preserved, if necessary. Whether the good is unloaded, reloaded, or preserved in a third country, or is simply shipped through the third country, the good must, while in that country, remain under customs control.

Section 203(l) recognizes that, in modern commerce, a good may not be directly shipped from Panama to the United States, or vice versa; for example, shipments may be consolidated at an interim port. At the same time, in order to ensure that the preferential tariff treatment under the Agreement inures to producers in Panama and the United States, rather than producers in third countries, an originating good may not be further produced in a country that is not a party to the Agreement. Requiring the good to remain under customs control provides greater traceability of the good to ensure that no further production occurred.

#### **b. Proclamation Authority**

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement’s specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Three, above.)

Various provisions of the Agreement expressly contemplate that Panama and the United States may agree to modify the Agreement's rules of origin. Article 4.14 of the Agreement calls for the two governments to consult regularly after the Agreement's entry into force to discuss proposed modifications to Annex 4.1 of the Agreement. Article 19.1.3(b) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement's origin rules. These modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.25.1 of the Agreement calls for the Parties to consult at either Party's request to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4.1 of the Agreement). However, those rules of origin may be modified by proclamation within one year of entry into force of the Agreement to correct typographical, clerical, or other non-substantive technical errors. As discussed above, Section 203(o)(4) of the bill also provides the President with authority to proclaim modifications to the list in Annex 3.25 of the Agreement of fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in Panama and the United States.

**c. Disclosure of Incorrect Information and Denial of Preferential Tariff Treatment**

Article 4.16.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim or, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.20.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 205(a) of the bill implements Article 4.16.3 of the Agreement for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 205(b) of the bill implements Article 4.20.5 of the Agreement for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

**d. Claims for Preferential Tariff Treatment**

Article 4.16.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was

made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 206 of the bill implements U.S. obligations under Article 4.16.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

#### **e. Exporter and Producer Certifications**

Article 4.15 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to \$1,500.) If an exporter issues a certification, it must either be based on the person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.18 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, the United States may not impose a penalty.

Section 205(a) of the bill implements U.S. obligations under Article 4.18 of the Agreement by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (l) of section 592, as added by section 205(a) of the bill, imposes penalties on exporters and producers that issue false Panama TPA certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

#### **f. Recordkeeping Requirements**

Article 4.19 of the Agreement sets forth recordkeeping requirements that each government must apply to its importers. U.S. obligations under Article 4.19 regarding importers are satisfied by current law, including the recordkeeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.19 also sets forth recordkeeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the

Agreement. Section 207 of the bill implements Article 4.19 of the Agreement for the United States by amending the customs recordkeeping statute (section 508 of the Tariff Act of 1930).

As added by section 207 of the bill, subsection (k) of section 508 of the Tariff Act of 1930 defines the terms “Panama TPA certification of origin” and “records and supporting documents.” It then provides that a U.S. exporter or producer that issues a Panama TPA certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. Section 508 of the Tariff Act of 1930 also sets forth penalties for violations of this recordkeeping requirement, which will appear in renumbered subsection (l).

## **2. Administrative Action**

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in Panama and the United States, not third countries. The rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in the territory of Panama, the United States, or both; or (ii) undergoes substantial processing in the territory of Panama, the United States, or both.

### **a. Claims for Preferential Treatment**

Section 209 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement’s provisions governing claims for preferential treatment. Under Article 4.15 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer’s knowledge, including through reasonable reliance on information in the importer’s possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.15.2 of the Agreement. Under Article 4.16 of the Agreement, an importing Party must grant a claim for preferential tariff treatment made in accordance with Chapter Four of the Agreement, unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

### **b. Verification**

Under Article 4.20 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from the other Party satisfy the Agreement’s rules of origin. Article 3.21 of the Agreement sets out special procedures for verifying claims that textile or apparel goods imported from the other Party meet the Agreement’s origin rules. (See item 1.e of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.20 and 3.21 of

the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

## **Chapter Five (Customs Administration and Trade Facilitation)**

### **1. Implementing Bill**

No statutory changes will be required to implement Chapter Five of the Agreement.

### **2. Administrative Action**

#### **a. Inquiry Point**

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at “www.cbp.gov” on how interested persons can make customs-related inquiries.

#### **b. Advance Rulings**

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

## **Chapter Six (Sanitary and Phytosanitary Measures)**

No statutory or administrative changes will be required to implement Chapter Six.

## **Chapter Seven (Technical Barriers to Trade)**

### **1. Implementing Bill**

No statutory changes will be required to implement Chapter Seven.

## **2. Administrative Action**

Article 7.8 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade (“TBT”). A USTR official responsible for TBT matters or trade relations with Panama will serve as the U.S. coordinator for the committee.

## **Chapter Eight (Trade Remedies)**

### **1. Implementing Bill**

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

#### **a. Safeguard Measures**

Subtitle A of Title III of the bill, sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a “Panamanian article” when, as a result of the reduction or elimination of a duty under the Agreement, the article 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 a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) of the bill defines the term “Panamanian article” to mean a good that qualifies as an originating good under section 203(b) of the bill.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) of the bill 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) of the bill 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) of the bill makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of “substantial cause” in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) of the bill exempts from investigation under this section Panamanian articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) of the bill establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation.

Section 312(b) of the bill makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c) of the bill, if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a) of the bill, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d) of the bill, the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC’s report must include: (i) the ITC’s determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) of the bill requires the ITC to make public its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b) of the bill, to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under

section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) of the bill 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) of the bill, 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) of the bill provides that the period for import relief under a Subtitle A safeguard may not exceed four years in the aggregate. 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) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) of the bill specifies the duty rate to be applied to Panamanian articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 3.3 of the Agreement; or
- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) of the bill 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); (ii) subject to import relief under subtitle B of the bill; or (iii) subject to an assessment of additional duty under subsection (b) of section 202 of the bill.

Section 314 of the bill provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 of the bill allows the President to provide trade compensation to Panama, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 of the bill will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 of the bill amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

## **b. Global Safeguard Measures**

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) of the bill 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 Panama considered individually that qualify as originating goods under section 203(b) of the bill are a substantial cause of serious injury or threat thereof. Under section 331(b) of the bill, 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.

## **2. Administrative Action**

No administrative changes will be required to implement Chapter Eight.

## **Chapter Nine (Government Procurement)**

### **1. Implementing Bill**

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1 of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures, and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Panama is eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for Panama, an "eligible product" means a product or service of Panama that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from Panama.

### **2. Administrative Action**

As noted above, Annex 9.1 of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from Panama when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Panama under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Article 9.7.5 of the Agreement clarifies that a procuring entity is not precluded from preparing, adopting, or applying "technical specifications" to promote the conservation of natural resources or to require a supplier to comply with generally applicable laws regarding fundamental principles and rights at work and acceptable conditions of work with respect to

minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed. Thus, for example, a procuring entity is permitted to require a foreign producer to comply with laws guaranteeing freedom of association and protecting collective bargaining rights that generally apply in the territory in which the good is produced, even if that law does not apply to that foreign producer based on its location in an export processing zone.

Finally, neither this provision nor any other provision of Chapter Nine will affect application of the Davis-Bacon Act and related acts and regulations (40 U.S.C. 3141 - 48 and 29 C.F.R. 5.1).

## **Chapter Ten (Investment)**

### **1. Implementing Bill**

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Panama under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16 of the Agreement. Provisions allowing arbitration of certain contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, Morocco, Central America and the Dominican Republic, Oman, and Peru.

### **2. Administrative Action**

No administrative changes will be required to implement Chapter Ten.

## **Chapter Eleven (Cross-Border Trade in Services)**

No statutory or administrative changes will be required to implement Chapter Eleven.

## **Chapter Twelve (Financial Services)**

No statutory or administrative changes will be required to implement Chapter Twelve.

## **Chapter Thirteen (Telecommunications)**

No statutory or administrative changes will be required to implement Chapter Thirteen.

## **Chapter Fourteen (Electronic Commerce)**

No statutory or administrative changes will be required to implement Chapter Fourteen.

## **Chapter Fifteen (Intellectual Property Rights)**

No statutory or administrative changes will be required to implement Chapter Fifteen.

For pharmaceutical products, Article 15.10.2(e)(i) of the Agreement provides an exception to the data exclusivity obligations for measures to protect public health in accordance with the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the “Doha Declaration”). Thus, where a Party issues a compulsory license in accordance with Article 31 of the TRIPS Agreement and the Doha Declaration, the data exclusivity obligations in Chapter Fifteen of the Agreement will not prevent the adoption or implementation of such a public health measure. In addition, in a case in which there is no patent on the pharmaceutical product, and, therefore, no need to issue a compulsory license, the data exclusivity obligations in Chapter Fifteen will not prevent the adoption or implementation of such a measure.

## **Chapter Sixteen (Labor)**

### **1. Implementing Bill**

No statutory changes will be required to implement Chapter Sixteen of the Agreement.

### **2. Administrative Action**

Article 16.5.3 of the Agreement calls for each government to designate an office to serve as a contact point with the other country and the public and to assist the Council in carrying out the Agreement’s Labor Cooperation and Capacity Building Mechanism. The Department of Labor’s Bureau of International Labor Affairs (ILAB) will serve as the U.S. contact point for this purpose, and will consult with USTR in carrying out this function.

## **Chapter Seventeen (Environment)**

### **1. Implementing Bill**

No statutory changes will be required to implement Chapter Seventeen of the Agreement.

## **2. Administrative Action**

Article 17.6.1 of the Agreement establishes an Environmental Affairs Council, comprising cabinet-level officials with environmental responsibilities from each Party, and provides that each government will designate a contact point for carrying out the Council's work. The Department of State (Oceans, Environment and Science Bureau) and USTR will serve as the U.S. contact point for this purpose.

## **TITLE V – OFFSETS**

### **Customs User Fee Extension**

Section 501 of the bill amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to extend from September 1, 2021, until September 30, 2021, the passenger and conveyance processing fees authorized under that act.

### **Timing of Estimated Corporate Tax Payments**

Section 502 of the bill increases the amount of the required installment of estimated tax otherwise due from a corporation with at least \$1 billion in assets in (1) July, August, or September 2012 by 0.25 percent; and (2) July, August, or September 2016 by 0.25 percent. The bill reduces the next required installment to reflect the prior increase.