THE UNITED STATES – COLOMBIA 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 Colombia. The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the Deputy United States Trade Representative signed in Washington, D.C. on November 22, 2006, as amended through a Protocol signed by the United States Trade Representative in Washington, D.C. 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 Colombia.

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 and Nineteen through Twenty-Three) 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.

The Statement then describes provisions to extend the Andean Trade Preference Act, which 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 Congress.

Chapters:
One (Initial Provisions and General Definitions)
Nineteen (Transparency)
Twenty (Administration of the Agreement and Trade Capacity Building)
Twenty-One (Dispute Settlement)
Twenty-Two (Exceptions)
Twenty-Three (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 23.4 of the Agreement requires the United States and Colombia 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 Colombia 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 Colombia 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 Colombia up to three years to comply with certain provisions relating to customs administration. In addition, certain provisions relating to intellectual property rights apply to Colombia 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-One of the Agreement. This provision enables the United States to implement its obligations under Article 20.3.1 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, Bahrain, Chile, Singapore, Morocco, the Dominican Republic and Central America, 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-One 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 VI 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 only apply with respect to Colombia 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, Title V, and Title VI) and the amendments to other statutes made by the bill (except the amendments made by Title V and Title VI) 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, Twenty, Twenty-Two, and Twenty-Three.

Article 19.1.1 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 20.1 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.

Article 21.7 of the Agreement calls for the United States and Colombia to develop a roster of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. 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 the roster 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 Colombia.

Chapter Two (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 Two 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 2.3, 2.5, 2.6, and 3.3.13, and Annex 2.3 of the Agreement.

The proclamation authority with respect to Article 2.3 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 2.3 of the Agreement, of customs duties on imports from Colombia that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 2.5 and 2.6 of the Agreement authorizes the President to provide for the elimination of duties on particular categories of imports from Colombia. Article 2.5 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 2.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in Colombia; or (ii) sent from Colombia for repair or alteration in the United States.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences ("GSP") from Colombia on the date the Agreement takes effect. Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the Andean Trade Preference Act from Colombia on the date the Agreement takes effect.

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 2.3 of the Agreement, pursuant to an agreement with Colombia under Article 2.3.4 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 Colombia provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation by proclamation of any duty modification. 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 Colombia 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 2.15 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 2.18 and Annex 2.18 of the Agreement. Article 2.18 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Colombia specified in the Schedule of the United States to Annex 2.18 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(1) defines the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 2.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(2) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 2.3 of the Agreement.

Section 202(a)(3) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203 of the bill, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

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 year when the volume of imports of the good from Colombia exceeds 140 percent of the in-quota quantity allocated to Colombia for the good in that calendar year in Appendix I of the General Notes to the Schedule of the United States to Annex 2.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 2.3 of the Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force.) 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 2.18.6 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 Colombia and provide it with supporting data.

Section 202(c) of the bill implements Article 2.18.4 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 2.3 of the Agreement.

c. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 2.10.4 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 Article 3.3, Annex 3-A or 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.

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 2.5 (temporary admission of certain goods) and Article 2.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. 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.

Chapter Three (Textiles and Apparel)

1. Implementing Bill

a. Handloomed, Handmade, or Folklore Articles

The proclamation authority granted to the President under section 201(a)(1) of the bill includes authority to implement Article 3.3.13 of the Agreement by providing duty-free treatment for Colombian textile or apparel articles that the United States and Colombia agree are handloomed, handmade, or folklore articles, and which are certified as such by Colombia's competent authority.

b. Textile or Apparel Safeguard

Article 3.1 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 3.1 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 Colombia. 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 of Colombia 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. 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 "Colombian 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 "Colombian 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-C 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 3.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.1.2 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 in the aggregate. The initial period of import relief may be up to two years. The President may extend the relief for up to one year, however, if he 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) Section A of 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 3.1.7 of the Agreement, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Colombia "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]." Under Article 3.1.8, if the United States and Colombia are unable to agree on trade liberalizing compensation, Colombia 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.

c. 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 3.2 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 3.2.3 and 3.2.4 of the Agreement, at the request of the United States, the government of Colombia must conduct a verification. The object of a verification under Article

3.2.3(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.2.3(a)(ii) is to determine whether an exporter or producer 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 the verification or, at the request of the government of Colombia, conduct the verification itself. A verification may entail visits by officials of Colombia and the United States to the premises of a textile or apparel exporter or producer in Colombia.

Pursuant to Article 3.2.7 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 3.2 of the Agreement. Under section 208(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 208(b) 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), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under section 208(d), 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 Colombia is accurate.

Under section 208(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

d. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

Under the specific rules of origin for textile and apparel goods set out in Annex 3-A of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States and Colombia are treated as if they originate in the United States or Colombia, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3-B of the Agreement lists certain fabrics, yarns, and fibers that the governments of the United States and Colombia have agreed are unavailable in the region.

In addition, Article 3.3.5 of the Agreement provides that the United States may add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.3.5(e) of the Agreement provides that the United States may, after consultations with Colombia, add any fabrics or yarns that it has determined under its regional trade preference programs before the Agreement enters into force to be unavailable in the United States 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 Colombia), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in Colombia 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-B of the Agreement, the United States may remove any restriction it has imposed on the product.

Article 3.3.6 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 Colombia or the United States.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.3.5(e) of the Agreement pursuant to which the United States may, after consultations with Colombia, add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.3 of the Agreement that provide for the United States to modify the list of materials in Annex 3-B of the Agreement 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 Colombia and the United States and to proclaim that the material is included in the list in Annex 3-B of the Agreement.

Subparagraph (C)(ii) of section 203(o)(4) authorizes the President to determine whether the material is commercially available in a timely manner in Colombia 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 Colombia 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-B 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) of section 203(o)(4) 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-B 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 Colombia and the United States.

Subparagraph (D) of section 203(o)(4) of the bill implements Article 3.3.5(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-B 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 Colombia 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-B list and to submit comments and supporting evidence before the President determines whether to change the list.

2. Administrative Action

a. Handloomed, Handmade, or Folklore Articles

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA") to consult with Colombia to determine which, if any, textile or apparel goods from Colombia 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.

b. Textile and 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.

c. Enforcement of Textile and Apparel Rules of Origin

Section 208 of the bill provides that the Secretary may request Colombia 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 3.2 of the Agreement.

d. 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 Agreement countries set out in Annex 3-B 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-B of the Agreement; (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) of the bill 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 Colombia or 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 Colombia for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of Colombia 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 Colombia, the United States, or both." The term "good wholly obtained or produced entirely in the territory of Colombia, 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 Colombia, the United States, or both; animals born and raised in the territory of Colombia, the United States, or both; and waste and scrap derived from production of goods that takes place in the territory of Colombia, the United States, or both.

The term "good wholly obtained or produced entirely in the territory of Colombia, 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 assembled in the territory of Colombia or the United States, or both, and 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 Colombia, 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 3-A or 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 Colombia, 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 Colombia, 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) 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 must be used in the case of certain automotive goods. Section 203(f) 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. In defining an exception to that rule, section 203(f)(3)(B) specifies that certain textile or apparel goods containing elastomeric yarns in the component of the good that determines the tariff classification will be considered an originating good only if such yarns are "wholly formed" in the territory of Colombia, the United States, or both. Article 3.3.9 of the Agreement, read together with footnote 5, makes clear that "wholly formed" means that all production processes and finishing operations must take place in the territory of a Party. The United States – Peru Trade Promotion Agreement and the Dominican Republic – Central America – United States Free Trade Agreement contain the same clarification, set out in footnotes to Article 3.3.9 and Article 3.25.8, respectively, namely that both finishing operations and production processes are included within the term "wholly formed" as used in those agreements. Other provisions in section 203 of the bill 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) 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 Colombia 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 Colombia 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 3-A and 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 Two, above.)

Various provisions of the Agreement expressly contemplate that Colombia 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 20.1.3(b) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement's origin rules. Such modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.3.2 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 3-A of the Agreement). 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. However, Section 203(o)(4) of the bill, discussed above, provides the President with authority to proclaim modifications to the rules of origin limited to fabrics, yarns, or fibers that are not available in commercial quantities in the United States and Colombia.

c. Disclosure of Incorrect Information and Denial of Preferential Treatment

Article 4.19.3 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 4.18.5 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 4.19.3 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 4.18.5 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 4.19.5 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 4.19.5 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 4.20 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 4.20 of the Agreement by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (k) of section 592, as added by section 205(a) of the bill, imposes penalties on exporters and producers that issue false CTPA 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 4.17 of the Agreement sets forth recordkeeping requirements that each government must apply to its importers. U.S. obligations under Article 4.17 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.17 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 4.17 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 (j) of section 508 of the Tariff Act of 1930 defines the terms "CTPA certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CTPA 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. New subsection (k) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this recordkeeping requirement.

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 Colombia and the United States, not third countries. For this reason, 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 Colombia, the United States, or both; or (ii) undergoes substantial processing in the territory of Colombia, 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 4.19 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 4.18 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 3.2 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.c of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.18 and 3.2 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.

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 7.7 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 Colombia 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 "Colombian 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 "Colombian 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) of that act, 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 Colombian 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), 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) of the bill. 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), 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. The initial period of import relief may be of up to two years. The President may extend the period of import relief provided by up to two years, however, if he 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 Colombian 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 2.3 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; 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 Colombia, 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 from Colombia 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, Colombia 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 Colombia, an "eligible product" means a product or service of Colombia 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 Colombia.

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 Colombia 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 Colombia 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 9.6.7 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 and the environment, 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 (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 Colombia 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 (Competition Policy, Designated Monopolies, and State Enterprises)

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

Chapter Fourteen (Telecommunications)

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

Chapter Fifteen (Electronic Commerce)

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

Chapter Sixteen (Intellectual Property Rights)

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

For pharmaceutical products, Article 16.10.2(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 Sixteen 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 Sixteen will not prevent the adoption or implementation of such a measure.

Chapter Seventeen (Labor)

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Seventeen~~.~~

2. **Administrative Action**

Article 17.5.1 of the Agreement establishes a Labor Affairs Council comprising cabinet-level officials from each Party. Article 17.5.5 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 these purposes, and will consult with USTR in carrying out this function.

Chapter Eighteen (Environment)

1. **Implementing Bill**

No statutory changes will be required to implement Chapter Eighteen.

2. **Administrative Action**

Article 18.6.1 of the Agreement establishes an Environmental Affairs Council, comprising senior-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 points for this purpose.

TITLE V – EXTENSION OF THE ANDEAN TRADE PREFERENCE ACT

1. <u>Implementing Bill</u>

Title V of the implementing bill provides for extension of benefits under the Andean Trade Preference Act (ATPA).

These provisions are "necessary or appropriate" to implement the Agreement, as required by Trade Promotion Authority and predecessor legislation. The "necessary or appropriate" standard has applied to virtually every trade agreement considered by Congress since 1974, creating an extensive history of legislative practice. Based on this practice, the extension of ATPA is well within the boundaries of the "necessary or appropriate" standard.

Specifically, the Uruguay Round Agreements Act of 1994 included provisions to extend the Generalized System of Preferences (GSP), which like ATPA extends duty-free treatment to imports from certain developing countries. In addition, the Trade Agreements Act of 1979, which implemented the Tokyo Round of the General Agreement on Tariffs and Trade, included provisions that made several policy changes affecting the operation of GSP. Neither the Uruguay Round nor the Tokyo Round required extension of or changes to GSP. But these provisions were considered "necessary or appropriate" to implement those agreements. The ATPA provisions of this bill are likewise necessary or appropriate to implement this Agreement.

Section 501 of the implementing bill provides for an extension of benefits under ATPA until July 31, 2013. Colombia's benefits under GSP expired on February 12, 2011, the date on which benefits for ATPA beneficiary countries expired. Although Colombia's designation as a beneficiary country under ATPA will terminate on the date the Agreement enters into force, this extension will allow imports from Colombia to continue to benefit under the program until the earlier of such entry into force date or July 31, 2013. Section 501(a)(2) provides for an extension of ATPA benefits with respect to Ecuador until July 31, 2013. Section 501(b) provides for consequential time period adjustments. Section 501(c) provides for the retroactive application of duty free treatment for entries made after February 12, 2011, and before the 15th day after the date of enactment of the Act (the effective date of the extension), if those entries would have qualified for duty free treatment if they had been made on February 12, 2011.

2. <u>Administrative Action</u>

No administrative action is required.

TITLE VI – OFFSETS

Passenger Processing Fee

Section 601 of the bill amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to eliminate the current exemption from customs user fees for air and sea passengers arriving from Canada, Mexico, and the Caribbean. The amendment leaves in place the exemption for travelers arriving from U.S. territories and possessions.

Customs User Fee Extension

Section 602 of the bill amends section 13031 of COBRA to extend from August 3, 2021 until September 30, 2021 the merchandise processing fees and from December 9, 2020 until August 31, 2021 the passenger and conveyance processing fees authorized under that act.

Timing of Estimated Corporate Tax Payments

Section 603 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 July, August, or September 2016 by .50 percent. The bill reduces the next required installment to reflect the prior increase.