

TITLE 19 - CUSTOMS DUTIES
CHAPTER 12 - TRADE ACT OF 1974
SUBCHAPTER V - GENERALIZED SYSTEM OF PREFERENCES

§ 2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

(2) Least-developed beneficiary developing countries

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

(b) Countries ineligible for designation

(1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

- (A)** Australia.
- (B)** Canada.
- (C)** European Union member states.
- (D)** Iceland.
- (E)** Japan.
- (F)** Monaco.
- (G)** New Zealand.
- (H)** Norway.
- (I)** Switzerland.

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

- (A)** Such country is a Communist country, unless—
 - (i)** the products of such country receive nondiscriminatory treatment,
 - (ii)** such country is a WTO Member (as such term is defined in section 3501 (10) of this title) and a member of the International Monetary Fund, and
 - (iii)** such country is not dominated or controlled by international communism.
- (B)** Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—
 - (i)** to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and
 - (ii)** to cause serious disruption of the world economy.
- (C)** Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.
- (D)**
 - (i)** Such country—
 - (I)** has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States

citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 2405 (j)(1)(A) of title 50, Appendix or such country has not taken steps to support the efforts of the United States to combat terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 2467 (6)(D) of this title) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account—

- (1) an expression by such country of its desire to be so designated;
 - (2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;
 - (3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
 - (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;
 - (5) the extent to which such country is providing adequate and effective protection of intellectual property rights;
 - (6) the extent to which such country has taken action to—
 - (A) reduce trade distorting investment practices and policies (including export performance requirements); and
 - (B) reduce or eliminate barriers to trade in services; and
 - (7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.
- (d) Withdrawal, suspension, or limitation of country designation**

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

(2) Changed circumstances

The President shall, after complying with the requirements of subsection (f)(2) of this section, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this subchapter.

(3) Advice to Congress

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c) of this section.

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a “high income” country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) Designation as least-developed beneficiary developing country

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) Notification of termination

If the President has designated any country as a beneficiary developing country under this subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

(Pub. L. 93–618, title V, § 502, as added Pub. L. 104–188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1917; amended Pub. L. 104–295, § 35(a), Oct. 11, 1996, 110 Stat. 3538; Pub. L. 106–200, title IV, § 412(a), May 18, 2000, 114 Stat. 298; Pub. L. 107–210, div. D, title XLI, § 4102(a), Aug. 6, 2002, 116 Stat. 1040.)

Prior Provisions

A prior section 2462, Pub. L. 93–618, title V, § 502(a)–(c), (e), Jan. 3, 1975, 88 Stat. 2066–2069; Pub. L. 94–455, title XVIII, § 1802, Oct. 4, 1976, 90 Stat. 1763; Pub. L. 96–39, title XI, §§ 1106(g)(1), (2), 1111 (a)(1), (2), July 26, 1979, 93 Stat. 312, 313, 315; Pub. L. 98–573, title V, § 503, Oct. 30, 1984, 98 Stat. 3019; Pub. L. 99–47, § 8(b)(2), June 11, 1985, 99 Stat. 85; Pub. L. 99–514, title XVIII, § 1887(a)(5), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 99–570, title IX, § 9002(a), Oct. 27, 1986, 100 Stat. 3207–166; Pub. L. 101–179, title III, § 301, Nov. 28, 1989, 103 Stat. 1311; Pub. L. 101–382, title I, § 131, Aug. 20, 1990, 104 Stat. 643; Pub. L. 103–66, title XIII, § 13802(a), Aug. 10, 1993, 107 Stat. 667; Pub. L. 103–149, § 4(b)(9), Nov. 23, 1993, 107 Stat. 1506, related to beneficiary developing countries, prior to the general amendment of this subchapter by Pub. L. 104–188.

Amendments

2002—Subsec. (b)(2)(F). Pub. L. 107–210 inserted “or such country has not taken steps to support the efforts of the United States to combat terrorism” before period at end.

2000—Subsec. (b)(2). Pub. L. 106–200, § 412(a)(2), in concluding provisions substituted “(G), and (H) (to the extent described in section 2467 (6)(D) of this title)” for “and (G)”.

Subsec. (b)(2)(H). Pub. L. 106–200, § 412(a)(1), added subpar. (H).

1996—Subsec. (b)(2)(F). Pub. L. 104–295, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.”

Effective Date of 1996 Amendment

Section 35(b) of Pub. L. 104–295 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1996.”

Delegation of Functions

Proc. No. 6942, Oct. 17, 1996, 61 F.R. 54719, provided in par. (5) that powers of the President granted in subsec. (f)(2) of this section to notify a country of the President's intention to terminate that country's status as a beneficiary developing country for purposes of the Generalized System of Preferences were delegated to the United States Trade Representative.