

109TH CONGRESS
2^D SESSION

H. R. 6142

To amend the African Growth and Opportunity Act relating to preferential treatment to apparel articles of lesser developed countries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2006

Mr. THOMAS introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the African Growth and Opportunity Act relating to preferential treatment to apparel articles of lesser developed countries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—AFRICAN GROWTH AND OPPORTUNITY ACT

Sec. 101. Short title.

Sec. 102. Preferential treatment of apparel products of lesser developed countries.

Sec. 103. Technical corrections.

Sec. 104. Sub-Saharan Africa economic activity credit.

TITLE II—GENERALIZED SYSTEM OF PREFERENCES (GSP)
PROGRAM

Sec. 201. Limitations on waivers of competitive need limitation.

Sec. 202. Extension of GSP program.

TITLE III—HAITI

Sec. 301. Short title.

Sec. 302. Trade benefits for Haiti.

Sec. 303. ITC study.

Sec. 304. Sense of Congress on interpretation of textile and apparel provisions
for Haiti.

Sec. 305. Technical amendments.

Sec. 306. Effective date.

1 **TITLE I—AFRICAN GROWTH AND**
2 **OPPORTUNITY ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be referred to as the “Africa Invest-
5 ment Incentive Act of 2006”.

6 **SEC. 102. PREFERENTIAL TREATMENT OF APPAREL PROD-**
7 **UCTS OF LESSER DEVELOPED COUNTRIES.**

8 (a) IN GENERAL.—Section 112 of the African
9 Growth and Opportunity Act (19 U.S.C. 3721) is amend-
10 ed—

11 (1) by redesignating subsections (e) through (e)
12 as subsections (d) through (f);

13 (2) in subsection (b)—

14 (A) in the matter preceding paragraph (1),
15 by striking “The” and inserting “Subject to
16 subsection (c), the” ; and

17 (B) by striking subparagraph (B) and re-
18 designating subparagraph (C) as subparagraph
19 (B); and

1 (3) by inserting after subsection (b) the fol-
2 lowing new subsection:

3 “(c) LESSER DEVELOPED COUNTRIES.—

4 “(1) PREFERENTIAL TREATMENT OF PRODUCTS
5 THROUGH SEPTEMBER 30, 2008.—

6 “(A) PRODUCTS COVERED.—In addition to
7 the products described in subsection (b), and
8 subject to paragraph (4), the preferential treat-
9 ment described in subsection (a) shall apply
10 through September 30, 2008, to apparel articles
11 wholly assembled, or knit-to-shape and wholly
12 assembled, or both, in one or more lesser devel-
13 oped beneficiary sub-Saharan African countries,
14 regardless of the country of origin of the fabric
15 or the yarn used to make such articles, in an
16 amount not to exceed the applicable percentage
17 of the aggregate square meter equivalents of all
18 apparel articles imported into the United States
19 in the preceding 12-month period for which
20 data are available.

21 “(B) APPLICABLE PERCENTAGE.—For
22 purposes of subparagraph (A), the term ‘appli-
23 cable percentage’ means—

24 “(i) 2.9285 percent for the 1-year pe-
25 riod beginning October 1, 2005;

1 “(ii) 3.5 percent for the 1-year period
2 beginning October 1, 2006; and

3 “(iii) 3.5 percent for the 1-year period
4 beginning October 1, 2007.

5 “(2) PREFERENTIAL TREATMENT OF PRODUCTS
6 BEGINNING OCTOBER 1, 2008.—

7 “(A) IN GENERAL.—In addition to the
8 products described in subsection (b), the pref-
9 erential treatment described in subsection (a)
10 shall apply to apparel articles described in sub-
11 paragraph (B) of a producer or entity control-
12 ling production that are imported directly from
13 a lesser developed beneficiary sub-Saharan Afri-
14 can country during an applicable 1-year period,
15 subject to the limitations set forth in this sub-
16 section.

17 “(B) ARTICLES DESCRIBED.—The apparel
18 articles referred to in subparagraph (A) are ap-
19 parel articles that are wholly assembled, or are
20 knit-to-shape, in a lesser developed beneficiary
21 sub-Saharan African country from any com-
22 bination of fabrics, fabric components, compo-
23 nents knit-to-shape, and yarns.

24 “(C) RESTRICTIONS IN SECOND THROUGH
25 SEVENTH APPLICABLE 1-YEAR PERIODS.—The

1 preferential treatment under subparagraph (A)
2 applies to apparel articles described in subpara-
3 graph (B) in each of the second through sev-
4 enth applicable 1-year periods only if, for each
5 entry in the preceding applicable 1-year period,
6 the sum of—

7 “(i) the cost or value of the materials
8 produced in one or more beneficiary sub-
9 Saharan African countries or one or more
10 countries described in subparagraph (E),
11 or any combination thereof, plus

12 “(ii) the direct costs of processing op-
13 erations (as defined in section 213(a)(3))
14 of the Caribbean Basin Economic Recovery
15 Act performed in one or more beneficiary
16 developed beneficiary sub-Saharan African
17 countries or one or more countries de-
18 scribed in subparagraph (E), or any com-
19 bination thereof,

20 is not less than the applicable percentage (as
21 defined in subparagraph (I)) of the declared
22 customs value of such apparel articles.

23 “(D) DEDUCTIONS.—In calculating cost or
24 value under subparagraph (C)(i), there shall be
25 deducted the cost or value of—

1 “(i) any foreign materials that are
2 used in the production of the apparel arti-
3 cles in a lesser developed beneficiary sub-
4 Saharan African country; and

5 “(ii) any foreign materials that are
6 used in the production of the materials de-
7 scribed in subparagraph (C)(i).

8 “(E) COUNTRIES DESCRIBED.—The coun-
9 tries referred to in subparagraph (C) are the
10 following:

11 “(i) The United States.

12 “(ii) Any country that is a party to a
13 free trade agreement with the United
14 States that is in effect on the date of the
15 enactment of the Africa Investment Incen-
16 tive Act of 2006, or that enters into force
17 under the Bipartisan Trade Promotion Au-
18 thority Act of 2002 (19 U.S.C. 3801 et
19 seq.).

20 “(iii) Any country designated as a
21 beneficiary country under section
22 213(b)(5)(B) of the Caribbean Basin Eco-
23 nomic Recovery Act.

24 “(iv) Any country designated as a
25 beneficiary country under section

1 204(b)(6)(B) of the Andean Trade Pref-
2 erence Act (19 U.S.C. 3203(b)(6)(B)).

3 “(F) ANNUAL AGGREGATION.—The re-
4 quirements under subparagraph (C) relating to
5 applicable percentage may also be met for arti-
6 cles of a producer or an entity controlling pro-
7 duction that enter during an applicable 1-year
8 period by aggregating—

9 “ (i) the cost or value of materials
10 under subparagraph (C)(i), and

11 “ (ii) the direct costs of processing op-
12 erations under subparagraph (C)(ii),

13 of all apparel articles of that producer or entity
14 controlling production that are wholly assem-
15 bled, or are knit-to-shape, in a lesser developed
16 beneficiary sub-Saharan African country and
17 are entered during that applicable 1-year pe-
18 riod.

19 “(G) DEDUCTIONS.—In calculating the
20 cost or value under subparagraph (F)(i), there
21 shall be deducted the cost or value of—

22 “ (i) any foreign materials that are
23 used in the production of the articles in a
24 lesser developed beneficiary sub-Saharan
25 African country; and

1 “(ii) any foreign materials that are
2 used in the production of the materials de-
3 scribed in subparagraph (F)(i).

4 “(H) QUANTITATIVE LIMITATIONS.—The
5 preferential treatment described in this para-
6 graph shall be extended, during each applicable
7 1-year period, to not more than 3.5 percent of
8 the aggregate square meter equivalents of all
9 apparel articles imported into the United States
10 in the most recent 12-month period for which
11 data are available. No preferential treatment
12 shall be provided under this paragraph after the
13 last day of the seventh applicable 1-year period.

14 “(I) DEFINITIONS.—In this paragraph:

15 “(i) APPLICABLE 1-YEAR PERIOD.—

16 “(I) IN GENERAL.—The term
17 ‘applicable 1-year period’ means each
18 of the 1-year periods described in sub-
19 clauses (I) through (VIII).

20 “(II) INITIAL 1-YEAR PERIOD.—

21 The term ‘initial 1-year period’ means
22 the 1-year period beginning October
23 1, 2008.

24 “(III) SECOND APPLICABLE 1-
25 YEAR PERIOD.—The term ‘second ap-

1 applicable 1-year period’ means the 1-
2 year period beginning October 1,
3 2009.

4 “(IV) THIRD APPLICABLE 1-YEAR
5 PERIOD.—The term ‘third applicable
6 1-year period’ means the 1-year pe-
7 riod beginning October 1, 2010.

8 “(V) FOURTH APPLICABLE 1-
9 YEAR PERIOD.—The term ‘fourth ap-
10 plicable 1-year period’ means the 1-
11 year period beginning October 1,
12 2011.

13 “(VI) FIFTH APPLICABLE 1-YEAR
14 PERIOD.—The term ‘fifth applicable
15 1-year period’ means the 1-year pe-
16 riod beginning October 1, 2012.

17 “(VII) SIXTH APPLICABLE 1-
18 YEAR PERIOD.—The term ‘sixth appli-
19 cable 1-year period’ means the 1-year
20 period beginning October 1, 2013.

21 “(VIII) SEVENTH APPLICABLE 1-
22 YEAR PERIOD.—the term ‘seventh ap-
23 plicable 1-year period’ means the 1-
24 year period beginning October 1,
25 2014.

1 “(ii) APPLICABLE PERCENTAGE.—The
2 term ‘applicable percentage’ means—

3 “(I) 50 percent or more during
4 the initial applicable 1-year period,
5 the second applicable 1-year period,
6 and the third applicable 1-year period;

7 “(II) 55 percent or more during
8 the fourth applicable 1-year period;
9 and

10 “(III) 60 percent or more during
11 the fifth, sixth, and seventh applicable
12 1-year periods.

13 “(3) DEVELOPMENT OF PROCEDURE TO EN-
14 SURE COMPLIANCE.—

15 “(A) IN GENERAL.—The Bureau of Cus-
16 toms and Border Protection of the Department
17 of Homeland Security shall, not later than 1
18 year after the date of enactment of the Africa
19 Investment Incentive Act of 2006, develop and
20 implement methods and procedures to ensure
21 ongoing compliance with the requirements set
22 forth in paragraph (2).

23 “(B) NONCOMPLIANCE.—If the Bureau of
24 Customs and Border Protection finds that a
25 producer or an entity controlling production has

1 not satisfied the requirements of paragraph (2)
2 in any applicable 1-year period, then apparel
3 articles described in paragraph (2)(B) of that
4 producer or entity shall be ineligible for pref-
5 erential treatment under paragraph (2) during
6 any succeeding applicable 1-year period until—

7 “(i) the cost or value of materials
8 under paragraph (2)(C)(i), plus

9 “(ii) the direct costs of processing op-
10 erations under paragraph (2)(C)(ii),

11 of that producer or entity controlling produc-
12 tion, is not less than the applicable percentage
13 that would otherwise apply under paragraph
14 (2)(C), plus 10 percent, of the aggregate de-
15 clared customs value of all apparel articles of
16 that producer or entity controlling production
17 that are wholly assembled, or are knit-to-shape,
18 in a sub-Saharan African country and are en-
19 tered during the preceding applicable 1-year pe-
20 riod.

21 “(C) RETROACTIVE APPLICATION OF
22 DUTY-FREE TREATMENT.—

23 “(i) IN GENERAL.—If—

24 “(I) a producer or an entity con-
25 trolling production is ineligible for

1 preferential treatment under para-
2 graph (2) in an applicable 1-year pe-
3 riod because that producer or entity
4 controlling production did not satisfy
5 the requirements of paragraph (2)(C)
6 or (2)(F), and

7 “(II) that producer or entity con-
8 trolling production satisfies the re-
9 quirements of subparagraph (B) of
10 this paragraph in that applicable 1-
11 year period,

12 then, notwithstanding section 514 of the
13 Tariff Act of 1930 (19 U.S.C. 1514) or
14 any other provision on law, upon proper
15 request filed with the Bureau of Customs
16 and Border Protection before the 90th day
17 after the Bureau of Customs and Border
18 Protection determines that subclause (II)
19 applies, any entry described in clause (ii)
20 shall be liquidated or reliquidated as
21 though such preferential treatment applied
22 to such entry.

23 “(ii) ENTRIES.—An entry is described
24 in this clause if it is an entry of any arti-
25 cles—

1 “(I) that was made during the
2 applicable 1-year period referred to in
3 clause (i)(I); and

4 “(II) with respect to which there
5 would have been preferential treat-
6 ment under paragraph (2) if the pro-
7 ducer or entity controlling production
8 had satisfied the requirements of
9 paragraph (2)(C) or (2)(F) (as the
10 case may be).

11 “(D) FABRICS NOT AVAILABLE IN COM-
12 MERCIAL QUANTITIES.—For purposes of deter-
13 mining the applicable percentage under para-
14 graph (2)(C) or (2)(F), there may be included
15 in that percentage—

16 “(i) the cost of fabrics or yarns to the
17 extent that apparel articles of such fabrics
18 or yarns would be eligible for preferential
19 treatment, without regard to the source of
20 the fabrics or yarns, under Annex 401 of
21 the NAFTA; and

22 “(ii) the cost of fabrics or yarns that
23 are designated as not being available in
24 commercial quantities for purposes of—

1 available in commercial quantities for use by
2 lesser developed beneficiary sub-Saharan Afri-
3 can countries.

4 “(B) EFFECT OF AFFIRMATIVE DETER-
5 MINATION.—

6 “(i) DETERMINATION OF QUANTITY
7 AVAILABLE.—If the Commission deter-
8 mines under subparagraph (A) that a fab-
9 ric or yarn produced in beneficiary sub-Sa-
10 haran African countries is available in
11 commercial quantities for use by lesser de-
12 veloped beneficiary sub-Saharan African
13 countries, the Commission shall determine
14 the quantity of the fabric or yarn that will
15 be so available in lesser developed bene-
16 ficiary sub-Saharan African countries in
17 the applicable 1-year period (as defined in
18 paragraph (2)(H)) beginning after the de-
19 termination is made.

20 “(ii) DETERMINATIONS.—In each case
21 in which the Commission determines that a
22 fabric or yarn is available in commercial
23 quantities under subparagraph (A) for an
24 applicable 1-year period, the Commission

1 shall determine, before the end of that ap-
2 plicable 1-year period—

3 “(I) whether the fabric or yarn
4 produced in beneficiary sub-Saharan
5 African countries will be available in
6 commercial quantities in the suc-
7 ceeding applicable 1-year period; and

8 “(II) if so, the quantity of the
9 fabric or yarn that will be so available
10 in that succeeding 1-year period, sub-
11 ject to clause (iii).

12 “(iii) DETERMINATION REGARDING
13 IMPORTED ARTICLES.—After the end of
14 each applicable 1-year period for which a
15 determination under clause (i) is in effect,
16 the Commission shall determine to what
17 extent the quantity of the fabric or yarn
18 determined under clause (i) to be available
19 in commercial quantities for use by lesser
20 developed beneficiary sub-Saharan African
21 countries was used in the production of ap-
22 parel articles receiving preferential treat-
23 ment under paragraph (1) or (2) that were
24 entered in that applicable 1-year period.
25 To the extent that the quantity so deter-

1 mined was not so used, then the Commis-
2 sion shall add to the quantity of that fabric
3 or yarn determined to be available in the
4 next applicable 1-year period the quantity
5 not so used in the preceding applicable 1-
6 year period.

7 “(C) DENIM.—Denim articles provided for
8 in subheading 5209.42.00 of the Harmonized
9 Tariff Schedule of the United States shall be
10 deemed to have been determined to be in abun-
11 dant supply under subparagraph (A) in an
12 amount of 30,000,000 square meter equivalents
13 for the 1-year period beginning October 1,
14 2006.

15 “(D) PRESIDENTIAL AUTHORITY TO RE-
16 STRICT IMPORTS.—

17 “(i) IN GENERAL.—Subject to clause
18 (ii), the President may by proclamation
19 provide that apparel articles otherwise eli-
20 gible for preferential treatment under
21 paragraph (1) or (2) that contain a fabric
22 or yarn determined to be available in com-
23 mercial quantities under subparagraph (A)
24 may not receive such preferential treat-

1 ment in an applicable 1-year period un-
2 less—

3 “(I) the fabric or yarn in such
4 articles was produced in 1 or more
5 beneficiary sub-Saharan African coun-
6 tries; or

7 “(II) the Commission has deter-
8 mined that the quantity of the fabric
9 or yarn determined under subpara-
10 graph (B) (or (C), as the case may
11 be) to be available in lesser developed
12 beneficiary sub-Saharan African coun-
13 tries for that applicable 1-year period
14 has already been used in the produc-
15 tion of apparel articles receiving pref-
16 erential treatment under paragraph
17 (1) or (2) that were entered in that
18 applicable 1-year period.

19 “(ii) MANDATORY RESTRICTION.—If a
20 fabric or yarn is determined to be available
21 in commercial quantities under subpara-
22 graph (A) in an applicable 1-year period,
23 and for 2 consecutive applicable 1-year pe-
24 riods the quantities determined to be so
25 available are not used in the production of

1 apparel articles receiving preferential treat-
2 ment under paragraph (1) or (2) that were
3 entered during those 2 applicable 1-year
4 periods, then beginning in the succeeding
5 applicable 1-year period, apparel articles
6 containing that fabric or yarn are ineligible
7 for preferential treatment under paragraph
8 (1) or (2) in any succeeding applicable 1-
9 year period unless the Commission has de-
10 termined that the quantity of the fabric or
11 yarn determined under subparagraph (B)
12 (or (C), as the case may be) to be available
13 in lesser developed beneficiary sub-Saharan
14 African countries for that applicable 1-year
15 period has already been used in the pro-
16 duction of apparel articles receiving pref-
17 erential treatment under paragraph (1) or
18 (2) that were entered in that applicable 1-
19 year period.

20 “(E) PROCEDURES.—The Commission
21 shall use the procedures prescribed in sub-
22 section (b)(3)(C)(iv) for the Secretary of Com-
23 merce in making determinations under this
24 paragraph.

1 “(5) REMOVAL OF DESIGNATION OF FABRICS
2 OR YARNS NOT AVAILABLE IN COMMERCIAL QUAN-
3 TITIES.—If the President determines that—

4 “(A) any fabric or yarn described in para-
5 graph (4)(A) was determined to be eligible for
6 preferential treatment, or

7 “(B) any fabric or yarn described in para-
8 graph (4)(B) was designated as not being avail-
9 able in commercial quantities,

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

14 “(6) APPLICABILITY OF OTHER PROVISIONS.—
15 Subsection (b)(3)(C) applies to apparel articles eligi-
16 ble for preferential treatment under this subsection
17 to the same extent as that subsection applies to ap-
18 parel articles eligible for preferential treatment
19 under subsection (b)(3).

20 “(7) DEFINITIONS.—In this subsection:

21 “(A) COMMISSION.—The term ‘Commis-
22 sion’ means the United States International
23 Trade Commission.

24 “(B) ENTER; ENTRY.—The terms ‘enter’
25 and ‘entry’ refer to the entry, or withdrawal

1 from warehouse for consumption, in the cus-
2 toms territory of the United States.

3 “(C) FOREIGN MATERIAL.—The term ‘for-
4 eign material’ means a material produced in a
5 country other than a sub-Saharan African
6 country or a country described in paragraph
7 (2)(E).

8 “(D) LESSER DEVELOPED BENEFICIARY
9 SUB-SAHARAN AFRICAN COUNTRY.—The term
10 ‘lesser developed beneficiary sub-Saharan Afri-
11 can country’ means—

12 “(i) a beneficiary sub-Saharan African
13 country that had a per capita gross na-
14 tional product of less than \$1,500 in 1998,
15 as measured by the International Bank for
16 Reconstruction and Development;

17 “(ii) Botswana; and

18 “(iii) Namibia.”

19 (b) ADDITIONAL PREFERENTIAL TREATMENT.—Sec-
20 tion 112(b) of the African Growth and Opportunity Act
21 (19 U.S.C. 3721(b)) is amended by adding at the end the
22 following new paragraph:

23 “(8) TEXTILE ARTICLES ORIGINATING EN-
24 TIRELY IN ONE OR MORE LESSER DEVELOPED BEN-
25 EFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Tex-

1 tile articles, other than apparel articles, that are
2 wholly assembled, or are knit-to-shape, in one or
3 more lesser developed beneficiary sub-Saharan Afri-
4 can countries, from fabrics, fabric components, com-
5 ponents knit-to-shape, and yarns originating entirely
6 in one or more lesser developed beneficiary sub-Sa-
7 haran African countries.”.

8 (c) TECHNICAL AMENDMENT.—Section 112(e)(3) of
9 the African Growth and Opportunity Act (as redesignated
10 by subsection (a)(1) of this section) is amended by striking
11 “subsection (b)” and inserting “subsections (b) and (c)”.

12 **SEC. 103. TECHNICAL CORRECTIONS.**

13 Section 112 of the African Growth and Opportunity
14 Act (19 U.S.C. 3721) is amended as follows:

15 (1) Subsection (b)(5) is amended by adding at
16 the end the following new subparagraph:

17 “(C) REMOVAL OF DESIGNATION OF FAB-
18 RICS OR YARNS NOT AVAILABLE IN COMMER-
19 CIAL QUANTITIES.—If the President determines
20 that any fabric or yarn was determined to be el-
21 igible for preferential treatment under subpara-
22 graph (A) on the basis of fraud, the President
23 is authorized to remove that designation from
24 that fabric or yarn with respect to articles en-
25 tered after such removal.”.

1 (2) Subsection (e) is amended by adding at the
2 end the following:

3 “(4) ENTER; ENTERED.—The terms ‘enter’ and
4 ‘entered’ refer to the entry, or withdrawal from
5 warehouse for consumption, in the customs territory
6 of the United States.”.

7 (3) Subsection (f) is amended by striking
8 “2008” and inserting “2015”.

9 **SEC. 104. SUB-SAHARAN AFRICA ECONOMIC ACTIVITY**
10 **CREDIT.**

11 (a) IN GENERAL.—Subpart B of part IV of sub-
12 chapter A of chapter 1 of the Internal Revenue Code of
13 1986 (relating to other credits) is amended by adding at
14 the end the following new section:

15 **“SEC. 30D. SUB-SAHARAN AFRICA ECONOMIC ACTIVITY**
16 **CREDIT.**

17 “(a) ALLOWANCE OF CREDIT.—Except as otherwise
18 provided in this section, if a domestic corporation elects
19 the application of this section, there shall be allowed as
20 a credit against the tax imposed by this chapter the
21 amount determined under subsection (b).

22 “(b) AMOUNT OF CREDIT.—The amount determined
23 under this subsection is the excess of—

24 “(1) the product of the highest rate of tax spec-
25 ified in section 11(b) multiplied by the taxable in-

1 come (determined without regard to any deduction
2 for the taxes described in paragraph (2)), from
3 sources without the United States, from the active
4 conduct of a qualified trade or business within sub-
5 Saharan Africa, over

6 “(2) the aggregate taxes described in section
7 901(b)(1) which are paid or accrued with respect to
8 such income.

9 “(c) LIMITATION TO TAX ATTRIBUTABLE TO FOR-
10 EIGN SOURCE INCOME.—

11 “(1) IN GENERAL.—The amount determined
12 under subsection (b) for any taxable year shall not
13 exceed the excess of—

14 “(A) the amount which bears the same
15 ratio to the tax against which such credit is
16 taken which the taxpayer’s taxable income from
17 sources without the United States (but not in
18 excess of the taxpayer’s entire taxable income)
19 bears to the taxpayer’s entire taxable income
20 for the same taxable year, over

21 “(B) the sum of the credits allowed under
22 section 901, 30A, and 936 for the taxable year.

23 “(2) ALLOCABLE SHARE OF SPECIFIED ITEMS
24 TAKEN INTO ACCOUNT.—In the case of a taxpayer

1 whose specified items are increased under subsection
2 (f), paragraph (1) shall be applied—

3 “(A) by treating the taxpayer’s aggregate
4 allocable share of the taxable income referred to
5 in subsection (f)(2)(A) as taxable income of the
6 taxpayer from sources without the United
7 States, and

8 “(B) by increasing the amount described in
9 paragraph (1)(B) by the taxpayer’s aggregate
10 allocable share of taxes referred to in subsection
11 (f)(2)(B).

12 “(d) LIMITATIONS ON CREDIT FOR ACTIVE BUSI-
13 NESS INCOME.—The amount determined under subsection
14 (b) for any taxable year shall not exceed the sum of the
15 following amounts:

16 “(1) 60 percent of the sum of—

17 “(A) the aggregate amount of the domestic
18 corporation’s qualified Africa wages for such
19 taxable year, plus

20 “(B) the allocable qualified employee fringe
21 benefit expenses of the domestic corporation for
22 such taxable year.

23 “(2) The sum of—

1 “(A) 15 percent of the depreciation allow-
2 ances for the taxable year with respect to short-
3 life qualified tangible property,

4 “(B) 40 percent of the depreciation allow-
5 ances for the taxable year with respect to me-
6 dium-life qualified tangible property, and

7 “(C) 65 percent of the depreciation allow-
8 ances for the taxable year with respect to long-
9 life qualified tangible property.

10 “(e) DEFINITIONS.—For purposes of this section—

11 “(1) QUALIFIED TRADE OR BUSINESS.—The
12 term ‘qualified trade or business’ means any trade
13 or business other than—

14 “(A) the trade or business of mining (as
15 defined in section 613(c)(2)), and

16 “(B) the trade or business of exploring for,
17 developing, producing, refining, transporting, or
18 selling crude oil or natural gas, or any product
19 thereof.

20 “(2) QUALIFIED AFRICA WAGES.—

21 “(A) IN GENERAL.—The term ‘qualified
22 Africa wages’ means, with respect to any tax-
23 able year, the excess of—

24 “(i) the sum of the wages which are
25 paid or incurred during such taxable year

1 in connection with the active conduct of a
2 qualified trade or business within sub-Sa-
3 haran Africa to any employee for services
4 performed in sub-Saharan Africa, but only
5 if such services are performed while the
6 principal place of employment of such em-
7 ployee is within sub-Saharan Africa, over

8 “(ii) the sum of wages (if any) paid or
9 incurred during the last taxable year end-
10 ing before the date of the enactment of
11 this section in connection with the active
12 conduct of a qualified trade or business
13 within sub-Saharan Africa (determined as
14 of the first day of the taxable year referred
15 to in clause (i)) to any employee for serv-
16 ices performed in sub-Saharan Africa (as
17 so determined), but only if such services
18 are performed while the principal place of
19 employment of such employee is within
20 sub-Saharan Africa (as so determined).

21 “(B) APPLICABLE RULES FOR DETER-
22 MINING WAGES.—For purposes of subparagraph
23 (A), rules similar to the rules of subparagraphs
24 (B), (C), and (D) of section 936(i)(1) shall
25 apply.

1 “(3) QUALIFIED EMPLOYEE FRINGE BENEFIT
2 EXPENSES.—

3 “(A) IN GENERAL.—The term ‘qualified
4 employee fringe benefit expense’ means, with
5 respect to any taxable year, the excess of—

6 “(i) the sum of the employee fringe
7 benefit expenses which are paid or incurred
8 during such taxable year in connection
9 with the active conduct of a qualified trade
10 or business within sub-Saharan Africa to
11 or for the benefit of any employee for serv-
12 ices performed in sub-Saharan Africa, but
13 only if such services are performed while
14 the principal place of employment of such
15 employee is within sub-Saharan Africa,
16 over

17 “(ii) the sum of the employee fringe
18 benefit expenses paid or incurred during
19 the last taxable year ending before the date
20 of the enactment of this section in connec-
21 tion with the active conduct of a qualified
22 trade or business within sub-Saharan Afri-
23 ca (determined as of the first day of the
24 taxable year referred to in clause (i)) to or
25 for the benefit of any employee for services

1 performed in sub-Saharan Africa (as so de-
2 termined), but only if such services are
3 performed while the principal place of em-
4 ployment of such employee is within sub-
5 Saharan Africa (as so determined).

6 “(B) EMPLOYEE FRINGE BENEFIT EX-
7 PENSES.—The term ‘employee fringe benefit ex-
8 penses’ means with respect to any taxable year
9 the expenses described in section 936(i)(2)(B).

10 “(4) DEFINITIONS RELATED TO DEPRECIA-
11 TION.—

12 “(A) DEPRECIATION ALLOWANCES.—The
13 term ‘depreciation allowances’ means the depre-
14 ciation deductions allowable under section 167
15 to the taxpayer.

16 “(B) QUALIFIED TANGIBLE PROPERTY.—
17 The term ‘qualified tangible property’ means
18 any tangible property—

19 “(i) substantially all of the use of
20 which is in sub-Saharan Africa in the ac-
21 tive conduct of a qualified trade or busi-
22 ness by the taxpayer in sub-Saharan Afri-
23 ca,

1 “(ii) the original use of which in sub-
2 Saharan Africa commences with the tax-
3 payer after September 21, 2006, and

4 “(iii) which is acquired by the tax-
5 payer by purchase (as defined in section
6 179(d)) after September 21, 2006, but
7 only if no written binding contract for the
8 acquisition was in effect on or before such
9 date.

10 Such term shall not include any vessel or air-
11 craft, including any container used in connec-
12 tion with any such vessel or aircraft, within the
13 meaning of section 863(c)(3).

14 “(C) SHORT-, MEDIUM-, AND LONG-LIFE
15 QUALIFIED TANGIBLE PROPERTY.—The terms
16 ‘short-life qualified tangible property’, ‘medium-
17 life qualified tangible property’, and ‘long-life
18 qualified tangible property’ shall have the same
19 meaning given such terms, respectively, by sec-
20 tion 936(i)(4)(B), except that in applying such
21 section the term ‘qualified tangible property’
22 shall have the meaning given such term by sub-
23 paragraph (B).

24 “(5) SUB-SAHARAN AFRICA.—The term ‘sub-
25 Saharan Africa’ means, with respect to any taxable

1 year, the region comprised of countries for which
2 there is in effect on the first day of such taxable
3 year a designation as an eligible sub-Saharan Africa
4 country under section 104 of the African Growth
5 and Opportunity Act (19 U.S.C. 3703).

6 “(f) ALLOCATION OF ITEMS FROM CONTROLLED
7 FOREIGN CORPORATIONS TO UNITED STATES SHARE-
8 HOLDERS.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, in the case of a domestic corporation which
11 elects the application of this section, each of the do-
12 mestic corporation’s specified items shall be in-
13 creased by such corporation’s allocable share of each
14 such specified item of each controlled foreign cor-
15 poration with respect to which such domestic cor-
16 poration is a United States shareholder (as defined
17 in section 951(b)).

18 “(2) SPECIFIED ITEMS.—For purposes of this
19 subsection, the term ‘specified items’ means—

20 “(A) the taxable income taken into account
21 under subsection (b)(1),

22 “(B) the taxes taken into account under
23 subsection (b)(2),

24 “(C) the wages taken into account under
25 clauses (i) and (ii) of subsection (e)(2)(A),

1 “(D) the expenses taken into account
2 under clauses (i) and (ii) of subsection
3 (e)(3)(A), and

4 “(E) the depreciation allowances with re-
5 spect to each class of property under subpara-
6 graphs (A), (B), and (C) of subsection (d)(2).

7 For purposes of determining any specified item of a
8 controlled foreign corporation under this subsection,
9 such corporation shall be treated as a domestic cor-
10 poration electing the application of this section. For
11 purposes of this paragraph, taxes do not include any
12 withholding tax paid to a foreign government with
13 respect to payments by the controlled foreign cor-
14 poration to its shareholders.

15 “(3) **ALLOCABLE SHARE.**—For purposes of this
16 subsection, the term ‘allocable share’ means, with re-
17 spect to any item of a controlled foreign corporation
18 which is owned by any United States shareholder (as
19 defined in section 951(b)), the percentage of total
20 combined voting power of all classes of stock entitled
21 to vote of such foreign corporation which is owned
22 by such United States shareholder (within the mean-
23 ing of section 958(a)), or is considered as owned by
24 such United States shareholder by applying the rules
25 of ownership of section 958(b). For purposes of the

1 preceding sentence, section 958(b) shall be applied
2 in the same manner as in determining whether a
3 United States person is a United States shareholder
4 within the meaning of section 951(b).

5 “(4) DIVIDENDS FROM SUB-SAHARAN AFRICA
6 BUSINESS ACTIVITY.—Dividends from a controlled
7 foreign corporation and amounts included in gross
8 income under section 951(a) (and any taxes associ-
9 ated with such dividends or amounts under section
10 902 or 960) shall not be taken into account in deter-
11 mining the taxable income or taxes which are taken
12 into account under subsections (b) and (c) to the ex-
13 tent such dividends or amounts are attributable to
14 income described in paragraph (2)(A) and taken into
15 account under paragraph (1).

16 “(g) CARRYFORWARD.—If the limitation under sub-
17 section (d) for any taxable year exceeds the credit allowed
18 under subsection (a) for such taxable year, such excess
19 shall be carried to the succeeding taxable year and added
20 to the limitation under subsection (d) for such succeeding
21 taxable year. No limitation may be carried forward under
22 this subsection to any taxable year following the tenth tax-
23 able year after the taxable year in which the limitation
24 arose. For purposes of the preceding sentence, limitations
25 shall be treated as used on a first-in first-out basis.

1 “(h) CREDIT NOT ALLOWED AGAINST CERTAIN
2 TAXES.—The credit provided by subsection (a) shall not
3 be allowed against the tax imposed by—

4 “(1) section 59A (relating to environmental
5 tax),

6 “(2) section 531 (relating to the tax on accu-
7 mulated earnings),

8 “(3) section 541 (relating to personal holding
9 company tax), or

10 “(4) section 1351 (relating to recoveries of for-
11 eign expropriation losses).

12 “(i) ADMINISTRATIVE PROVISIONS.—For purposes of
13 this title—

14 “(1) rules similar to the rules of subsections
15 (b), (g), and (h) of section 936 shall apply in the
16 same manner as if the credit under this section were
17 a credit under section 936(a)(1)(A) for a domestic
18 corporation to which section 936(a)(4)(A) applies,

19 “(2) the credit under this section shall be treat-
20 ed in the same manner as the credit under section
21 936 (other than for purposes of subsection (c)), and

22 “(3) a corporation to which this section applies
23 shall be treated in the same manner as if it were a
24 corporation electing the application of section 936.

1 “(j) AGGREGATION RULE FOR WAGES AND FRINGE
2 BENEFITS.—

3 “(1) IN GENERAL.—All members of an ex-
4 panded affiliated group shall be treated as a single
5 corporation for purposes paragraphs (2) and (3) of
6 subsection (e).

7 “(2) EXPANDED AFFILIATED GROUP.—For pur-
8 poses of paragraph (1), the term ‘expanded affiliated
9 group’ means an affiliated group as defined in sec-
10 tion 1504(a), determined—

11 “(A) by substituting ‘more than 50 per-
12 cent’ for ‘at least 80 percent’ each place it ap-
13 pears, and

14 “(B) without regard to paragraphs (2) and
15 (4) of section 1504(b).

16 “(k) ELECTION.—The election provided in subsection
17 (a) shall be made at such time and in such manner as
18 the Secretary may by regulations prescribe. Any such elec-
19 tion shall apply for the taxable year for which made and
20 for each succeeding taxable year. Such election may be re-
21 voked only with the consent of the Secretary.

22 “(l) REGULATIONS.—The Secretary shall prescribe
23 regulations to carry out this section, including regula-
24 tions—

1 “(1) for determining the credit under this sec-
2 tion for when a country is designated under section
3 104 of the African Growth and Opportunity Act as
4 an eligible sub-Saharan Africa country on a day
5 other than the first day of the taxable year or if
6 such designation is terminated during the taxable
7 year,

8 “(2) for determining the allocable share of spec-
9 ified items (as defined in subsection (f)) of a part-
10 nership in the case of a domestic corporation or a
11 controlled foreign corporation in which such domes-
12 tic corporation is a United States shareholder, or a
13 lower tier entity of either such corporation, which is
14 a partner in such partnership, and

15 “(3) to prevent the abuse of this section.

16 “(m) TERMINATION.—No credit shall be allowed
17 under this section with respect to any taxable year begin-
18 ning after December 31, 2015.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) The first sentence of section 55(c)(1) of
21 such Code is amended by striking “27(b), and” and
22 inserting “27(b),” and by inserting before the period
23 at the end the following: “, and the Sub-Saharan Af-
24 rica economic activity credit under section 30D”.

1 (2) Section 56(g)(4)(C)(ii)(I) of such Code is
2 amended by inserting “30D,” after “30A,”.

3 (3) Section 56(g)(4)(C)(iii)(VI) of such Code is
4 amended by inserting before the period at the end
5 “and, notwithstanding section 30D(i), shall not be
6 treated as including references to section 30D”.

7 (4) Section 59(b) of such Code is amended by
8 inserting “, 30D,” after “30A” each place it appears
9 in the heading and text.

10 (5) The table of sections for subpart B of part
11 IV of subchapter A of chapter 1 of such Code (relat-
12 ing to other credits) is amended by adding at the
13 end the following new item:

“Sec. 30D. Sub-Saharan Africa economic activity credit.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

17 **TITLE II—GENERALIZED SYSTEM**
18 **OF PREFERENCES (GSP) PRO-**
19 **GRAM**

20 **SEC. 201. LIMITATIONS ON WAIVERS OF COMPETITIVE**
21 **NEED LIMITATION.**

22 Section 503(d)(4)(B) of the Trade Act of 1974 (19
23 U.S.C. 2463(d)(4)(B)) is amended—

24 (1) by striking “The President” and inserting
25 “(i) The President”;

1 (2) by striking “(i) had” and inserting “(I
2 had” and by striking “(ii) had” and inserting “(II
3 had”;

4 (3) by adding at the end the following new
5 clauses:

6 “(ii) Beginning on January 1, 2007, the
7 President may not exercise the waiver authority
8 provided under this subsection with respect to
9 a quantity of an eligible article of a beneficiary
10 developing country entered during any calendar
11 year if the President determines that the aggre-
12 gate appraised value of the article of the coun-
13 try that entered duty-free under this title dur-
14 ing the preceding calendar year exceeded
15 \$1,500,000,000.

16 “(iii) Beginning on January 1, 2007, the
17 President may not exercise the waiver authority
18 provided under this subsection with respect to
19 a quantity of any eligible article of a beneficiary
20 developing country entered during any calendar
21 year if the President determines that the per
22 capita gross national income (GNI) of the coun-
23 try during the preceding calendar year exceeded
24 \$3,400.”.

1 **SEC. 202. EXTENSION OF GSP PROGRAM.**

2 Section 505 of the Trade Act of 1974 (19 U.S.C.
3 2465) is amended by striking “December 31, 2006” and
4 inserting “December 31, 2008”.

5 **TITLE III—HAITI**

6 **SEC. 301. SHORT TITLE.**

7 This Act may be cited as the “Haitian Hemispheric
8 Opportunity through Partnership Encouragement Act of
9 2006”.

10 **SEC. 302. TRADE BENEFITS FOR HAITI.**

11 (a) IN GENERAL.—The Caribbean Basin Economic
12 Recovery Act (19 U.S.C. 2701 et seq.) is amended by in-
13 serting after section 213 the following new section:

14 **“SEC. 213A. SPECIAL RULES FOR HAITI.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) APPLICABLE 1-YEAR PERIOD.—

17 “(A) IN GENERAL.—The term “applicable
18 1-year period” means each of the 1-year periods
19 described in subparagraphs (B) through (F).

20 “(B) INITIAL APPLICABLE 1-YEAR PE-
21 RIOD.—The term ‘initial applicable 1-year pe-
22 riod’ means the 1-year period beginning on the
23 date of the enactment of the Haitian Hemi-
24 spheric Opportunity through Partnership En-
25 couragement Act of 2006.

1 “(C) SECOND APPLICABLE 1-YEAR PE-
2 RIOD.—The term ‘second applicable 1-year pe-
3 riod’ means the 1-year period beginning on the
4 day after the last day of the initial applicable
5 1-year period.

6 “(D) THIRD APPLICABLE 1-YEAR PE-
7 RIOD.—The term ‘third applicable 1-year pe-
8 riod’ means the 1-year period beginning on the
9 day after the last day of the second applicable
10 1-year period.

11 “(E) FOURTH APPLICABLE 1-YEAR PE-
12 RIOD.—The term ‘fourth applicable 1-year pe-
13 riod’ means the 1-year period beginning on the
14 day after the last day of the third applicable 1-
15 year period.

16 “(F) FIFTH APPLICABLE 1-YEAR PE-
17 RIOD.—The term ‘fifth applicable 1-year period’
18 means the 1-year period beginning on the day
19 after the last day of the fourth applicable 1-
20 year period.

21 “(2) ENTER; ENTRY.—The terms ‘enter’ and
22 ‘entry’ refer to the entry, or withdrawal from ware-
23 house for consumption, in the customs territory of
24 the United States.

25 “(b) APPAREL ARTICLES.—

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

10 “(2) APPAREL ARTICLES DESCRIBED.—

11 “(A) FOR INITIAL APPLICABLE 1-YEAR PE-
12 RIOD.—Apparel articles described in this para-
13 graph are apparel articles that are wholly as-
14 sembled, or are knit-to-shape, in Haiti from any
15 combination of fabrics, fabric components, com-
16 ponents knit-to-shape, and yarns, that are en-
17 tered during the initial applicable 1-year period.

18 “(B) FOR OTHER APPLICABLE 1-YEAR PE-
19 RIODS.—

20 “(i) IN GENERAL.—In each of the sec-
21 ond, third, fourth, and fifth applicable 1-
22 year periods, apparel articles described in
23 this paragraph are apparel articles that are
24 wholly assembled, or are knit-to-shape, in
25 Haiti from any combination of fabrics, fab-

1 ric components, components knit-to-shape,
2 and yarns, only if, for each entry in the
3 preceding applicable 1-year period, the sum
4 of—

5 “(I) the cost or value of the ma-
6 terials produced in Haiti or one or
7 more countries described in subpara-
8 graph (C), or any combination there-
9 of, plus

10 “(II) the direct costs of proc-
11 essing operations (as defined in sec-
12 tion 213(a)(3)) performed in Haiti or
13 one or more countries described in
14 subparagraph (C), or any combination
15 thereof,

16 is not less than the applicable percentage
17 (as defined in subparagraph (E)(i)) of the
18 declared customs value of such apparel ar-
19 ticles.

20 “(ii) DEDUCTIONS.—In calculating
21 cost or value under clause (i)(I), there
22 shall be deducted the cost or value of—

23 “(I) any foreign materials that
24 are used in the production of the ap-
25 parel articles in Haiti; and

1 “(II) any foreign materials that
2 are used in the production of the ma-
3 terials described in clause (i)(I).

4 “(C) COUNTRIES DESCRIBED.—The coun-
5 tries referred to in subparagraph (B) are the
6 following:

7 “(i) The United States.

8 “(ii) Any country that is a party to a
9 free trade agreement with the United
10 States that is in effect on the date of the
11 enactment of the Haitian Hemispheric Op-
12 portunity through Partnership Encourage-
13 ment Act of 2006, or that enters into force
14 under the Bipartisan Trade Promotion Au-
15 thority Act of 2002 (19 U.S.C. 3801 et
16 seq.).

17 “(iii) Any country designated as a
18 beneficiary country under section
19 213(b)(5)(B) of this Act.

20 “(iv) Any country designated as a
21 beneficiary country under section
22 506A(a)(1) of the Trade Act of 1974 (19
23 U.S.C. 2466a(a)(1)), if a finding has been
24 made by the President or the President’s
25 designee, and published in the Federal

1 Register, that the country has satisfied the
2 requirements of section 113 of the African
3 Growth and Opportunity Act (19 U.S.C.
4 3722).

5 “(v) Any country designated as a ben-
6 eficiary country under section
7 204(b)(6)(B) of the Andean Trade Pref-
8 erence Act (19 U.S.C. 3203(b)(6)(B)).

9 “(D) ANNUAL AGGREGATION.—

10 “(i) AGGREGATION.—The require-
11 ments under subparagraph (B) relating to
12 applicable percentage may also be met for
13 articles of a producer or an entity control-
14 ling production that enter during an appli-
15 cable 1-year period by aggregating—

16 “(I) the cost or value of mate-
17 rials under clause (i)(I) of subpara-
18 graph (B), and

19 “(II) the direct costs of proc-
20 essing operations under clause (i)(II)
21 of subparagraph (B),

22 of all apparel articles of that producer or
23 entity controlling production that are whol-
24 ly assembled, or are knit-to-shape, in Haiti

1 and are entered during that applicable 1-
2 year period.

3 “(ii) DEDUCTIONS.—In calculating
4 cost or value under clause (i)(I), there
5 shall be deducted the cost or value of—

6 “(I) any foreign materials that
7 are used in the production of the ap-
8 parel articles in Haiti; and

9 “(II) any foreign materials that
10 are used in the production of the ma-
11 terials described in clause (i)(I).

12 “(iii) INCLUSION IN CALCULATION OF
13 OTHER ARTICLES RECEIVING PREF-
14 ERENTIAL TREATMENT.—(I) The entry of
15 a woven apparel article receiving pref-
16 erential treatment under paragraph (4) is
17 not included in an annual aggregation
18 under clause (i).

19 “(II) Entries of articles receiving pref-
20 erential treatment under paragraph (5) are
21 not included in an annual aggregation
22 under clause (i) unless the producer or en-
23 tity controlling production elects, at the
24 time the annual aggregation calculation is

1 made, to include such entries in such ag-
2 gregation.

3 “(III) Entries of apparel articles that
4 receive preferential treatment under any
5 provision of law other than this subsection
6 or are subject to the ‘General’ column 1
7 rate of duty under the HTS are not in-
8 cluded in an annual aggregation under
9 clause (i) unless the producer or entity
10 controlling production elects, at the time
11 the annual aggregation calculation is
12 made, to include such entries in such ag-
13 gregation.

14 “(E) DEFINITIONS.—In this paragraph:

15 “(i) APPLICABLE PERCENTAGE.—The
16 term “applicable percentage” means—

17 “(I) 50 percent or more during
18 the initial applicable 1-year period,
19 the second applicable 1-year period,
20 and the third applicable 1-year period;

21 “(II) 55 percent or more during
22 the fourth applicable 1-year period;
23 and

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

1 “(ii) FOREIGN MATERIAL.—The term
2 ‘foreign material’ means a material pro-
3 duced in a country other than Haiti or any
4 country described in subparagraph (C).

5 “(F) DEVELOPMENT OF PROCEDURE TO
6 ENSURE COMPLIANCE.—

7 “(i) IN GENERAL.—The Bureau of
8 Customs and Border Protection of the De-
9 partment of Homeland Security shall de-
10 velop and implement methods and proce-
11 dures to ensure ongoing compliance with
12 the requirements set forth in subpara-
13 graphs (B) and (D).

14 “(ii) NONCOMPLIANCE.—If the Bu-
15 reau of Customs and Border Protection
16 finds that a producer or an entity control-
17 ling production has not satisfied such re-
18 quirements in any applicable 1-year period,
19 then apparel articles described in subpara-
20 graph (B) of that producer or entity shall
21 be ineligible for preferential treatment
22 under paragraph (1) during any suc-
23 ceeding applicable 1-year period until—

1 “(I) the cost or value of mate-
2 rials under subclause (I) of subpara-
3 graph (B)(i), plus

4 “(II) the direct costs of proc-
5 essing operations under subclause (II)
6 of subparagraph (B)(i),

7 of that producer or entity controlling pro-
8 duction, is not less than the applicable per-
9 centage under subparagraph (E)(i), plus
10 10 percent, of the aggregate declared cus-
11 toms value of all apparel articles of that
12 producer or entity controlling production
13 that are wholly assembled, or are knit-to-
14 shape, in Haiti and are entered during the
15 preceding applicable 1-year period.

16 “(iii) RETROACTIVE APPLICATION OF
17 DUTY-FREE TREATMENT.—If—

18 “(I) a producer or an entity con-
19 trolling production is ineligible for
20 preferential treatment under para-
21 graph (1) in an applicable 1-year pe-
22 riod because that producer or entity
23 controlling production did not satisfy
24 the requirements of subparagraph (B)
25 or (D), and

1 “(II) that producer or entity con-
2 trolling production satisfies the re-
3 quirements of clause (ii) of this sub-
4 paragraph in that applicable 1-year
5 period,

6 then, notwithstanding section 514 of the
7 Tariff Act of 1930 (19 U.S.C. 1514) or
8 any other provision of law, upon proper re-
9 quest filed with the Bureau of Customs
10 and Border Protection before the 90th day
11 after the Bureau of Customs and Border
12 Protection determines that subclause (II)
13 applies, the entry of any articles—

14 “(aa) that was made during that
15 applicable 1-year period, and

16 “(bb) with respect to which there
17 would have been preferential treat-
18 ment under paragraph (1) if the pro-
19 ducer or entity controlling production
20 had satisfied the requirements in sub-
21 paragraph (B) or (D) (as the case
22 may be),

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

1 “(G) FABRICS NOT AVAILABLE IN COM-
2 MERCIAL QUANTITIES.—

3 “(i) IN GENERAL.—For purposes of
4 determining the applicable percentage
5 under subparagraph (B) or (D), there may
6 be included in that percentage—

7 “(I) the cost of fabrics or yarns
8 to the extent that apparel articles of
9 such fabrics or yarns would be eligible
10 for preferential treatment, without re-
11 gard to the source of the fabrics or
12 yarns, under Annex 401 of the
13 NAFTA; and

14 “(II) the cost of fabrics or yarns
15 that are designated as not being avail-
16 able in commercial quantities for pur-
17 poses of—

18 “(aa) section
19 213(b)(2)(A)(v) of this Act,

20 “(bb) section 112(b)(5) of
21 the African Growth and Oppor-
22 tunity Act,

23 “(cc) section
24 204(b)(3)(B)(i)(III) or (ii) of the
25 Andean Trade Preference Act, or

1 “(dd) any other provision,
2 relating to determining whether a
3 textile or apparel article is an
4 originating good eligible for pref-
5 erential treatment, of a law that
6 implements a free trade agree-
7 ment that enters into force under
8 the Bipartisan Trade Promotion
9 Authority Act of 2002,
10 without regard to the source of the
11 fabrics or yarns.

12 “(ii) REMOVAL OF DESIGNATION OF
13 FABRICS OR YARNS NOT AVAILABLE IN
14 COMMERCIAL QUANTITIES.—If the Presi-
15 dent determines that—

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

19 “(II) any fabric or yarn described
20 in clause (i)(II) was designated as not
21 being available in commercial quan-
22 tities,

23 on the basis of fraud, the President is au-
24 thorized to remove the eligibility or des-
25 ignation (as the case may be) of that fab-

1 ric or yarn with respect to articles entered
 2 after such removal.

3 “(3) QUANTITATIVE LIMITATIONS.—The pref-
 4 erential treatment described in paragraph (1) shall
 5 be extended, during each of the applicable 1-year pe-
 6 riods set forth in the following table, to not more
 7 than the corresponding percentage of the aggregate
 8 square meter equivalents of all apparel articles im-
 9 ported into the United States in the most recent 12-
 10 month period for which data are available:

| “During the: | The corresponding percentage is: |
|--|---|
| Initial applicable 1-year period | 1 percent |
| Second applicable 1-year period | 1.25 percent |
| Third applicable 1-year period | 1.5 percent |
| Fourth applicable 1-year period | 1.75 percent |
| Fifth applicable 1-year period | 2 percent. |

11 No preferential treatment shall be provided under
 12 paragraph (1) after the last day of the fifth applica-
 13 ble 1-year period.

14 “(4) SPECIAL RULE FOR WOVEN APPAREL.—In
 15 the case of apparel articles classifiable under chapter
 16 62 of the HTS (other than articles classifiable under
 17 subheading 6212.10 of the HTS), as in effect on the
 18 date of the enactment of the Haitian Hemispheric
 19 Opportunity through Partnership Encouragement
 20 Act of 2006, that do not qualify for preferential
 21 treatment under paragraph (1) because they do not
 22 meet the percentage requirements under paragraph

1 (2)(B) or (2)(D), the preferential treatment under
2 paragraph (1)—

3 “(A) shall be extended, in addition to the
4 quantities permitted under paragraph (3) to—

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

8 “(ii) not more than 50,000,000
9 square meter equivalents of such apparel
10 articles for the second applicable 1-year pe-
11 riod; and

12 “(iii) not more than 33,500,000
13 square meter equivalents for the third ap-
14 plicable 1-year period; and

15 “(B) may not be extended to such apparel
16 articles after the last day of the third applicable
17 1-year period.

18 “(5) SPECIAL RULE FOR BRASSIERES.—The
19 preferential treatment under paragraph (1) shall,
20 subject to the limitations under paragraph (3), be
21 extended to any article classifiable under heading
22 6212.10 of the HTS, if the article is both cut and
23 sewn or otherwise assembled in Haiti or the United
24 States, or both, without regard to the source of the
25 fabric or components from which the article is made,

1 and if Haiti has met the requirements of subsections
2 (d) and (e).

3 “(c) SPECIAL RULE FOR CERTAIN WIRE HARNESS
4 AUTOMOTIVE COMPONENTS.—

5 (1) IN GENERAL.—Any wire harness automotive
6 component that is the product or manufacture of
7 Haiti and is imported directly from Haiti into the
8 customs territory of the United States shall enter
9 the United States free of duty, during the 5-year pe-
10 riod beginning on the date of the enactment of the
11 Haitian Hemispheric Opportunity through Partner-
12 ship Encouragement Act of 2006, if Haiti has met
13 the requirements of subsection (d) and if the sum
14 of—

15 “(A) the cost or value of the materials pro-
16 duced in Haiti or one or more countries de-
17 scribed in subsection (b)(2)(C), or any combina-
18 tion thereof, plus

19 “(B) the direct costs of processing oper-
20 ations (as defined in section 213(a)(3)) per-
21 formed in Haiti or the United States, or both,
22 is not less than 50 percent of the declared customs
23 value of such wire harness automotive component.

24 “(2) WIRE HARNESS AUTOMOTIVE COMPO-
25 NENT.—For purposes of this subsection, the term

1 “wire harness automotive component” means any ar-
2 ticle provided for in subheading 8544.30.00 of the
3 HTS, as in effect on the date of the enactment of
4 the Haitian Hemispheric Opportunity through Part-
5 nership Encouragement Act of 2006.

6 “(d) ELIGIBILITY REQUIREMENTS.—

7 “(1) IN GENERAL.—Haiti shall be eligible for
8 preferential treatment under this section if the
9 President determines and certifies to Congress that
10 Haiti—

11 “(A) has established, or is making con-
12 tinual progress toward establishing—

13 “(i) a market-based economy that pro-
14 tects private property rights, incorporates
15 an open rules-based trading system, and
16 minimizes government interference in the
17 economy through measures such as price
18 controls, subsidies, and government owner-
19 ship of economic assets;

20 “(ii) the rule of law, political plu-
21 ralism, and the right to due process, a fair
22 trial, and equal protection under the law;

23 “(iii) the elimination of barriers to
24 United States trade and investment, in-
25 cluding by—

1 “(I) the provision of national
2 treatment and measures to create an
3 environment conducive to domestic
4 and foreign investment;

5 “(II) the protection of intellectual
6 property; and

7 “(III) the resolution of bilateral
8 trade and investment disputes;

9 “(iv) economic policies to reduce pov-
10 erty, increase the availability of health care
11 and educational opportunities, expand
12 physical infrastructure, promote the devel-
13 opment of private enterprise, and encour-
14 age the formation of capital markets
15 through microcredit or other programs;

16 “(v) a system to combat corruption
17 and bribery, such as signing and imple-
18 menting the Convention on Combating
19 Bribery of Foreign Public Officials in
20 International Business Transactions; and

21 “(vi) protection of internationally rec-
22 ognized worker rights, including the right
23 of association, the right to organize and
24 bargain collectively, a prohibition on the
25 use of any form of forced or compulsory

1 labor, a minimum age for the employment
2 of children, and acceptable conditions of
3 work with respect to minimum wages,
4 hours of work, and occupational safety and
5 health;

6 “(B) does not engage in activities that un-
7 dermine United States national security or for-
8 eign policy interests; and

9 “(C) does not engage in gross violations of
10 internationally recognized human rights or pro-
11 vide support for acts of international terrorism
12 and cooperates in international efforts to elimi-
13 nate human rights violations and terrorist ac-
14 tivities.

15 “(2) TIME LIMIT FOR DETERMINATION.—The
16 President shall determine whether Haiti meets the
17 requirements of paragraph (1) not later than 90
18 days after the date of the enactment of the Haitian
19 Hemispheric Opportunity through Partnership En-
20 couragement Act of 2006.

21 “(3) CONTINUING COMPLIANCE.—If the Presi-
22 dent determines that Haiti is not making continual
23 progress in meeting the requirements described in
24 paragraph (1)(A), the President shall terminate the
25 preferential treatment under this section.

1 “(e) CONDITIONS REGARDING ENFORCEMENT OF
2 CIRCUMVENTION.—

3 “(1) IN GENERAL.—The preferential treatment
4 under subsection (b)(1) shall not apply unless the
5 President certifies to Congress that Haiti is meeting
6 the following conditions:

7 “(A) Haiti has adopted an effective visa
8 system, domestic laws, and enforcement proce-
9 dures applicable to articles described in sub-
10 section (b) to prevent unlawful transshipment
11 of the articles and the use of counterfeit docu-
12 ments relating to the importation of the articles
13 into the United States.

14 “(B) Haiti has enacted legislation or pro-
15 mulgated regulations that would permit the Bu-
16 reau of Customs and Border Protection
17 verification teams to have the access necessary
18 to investigate thoroughly allegations of trans-
19 shipment through such country.

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

1 “(D) Haiti agrees to cooperate fully with
2 the United States to address and take action
3 necessary to prevent circumvention as provided
4 in Article 5 of the Agreement on Textiles and
5 Clothing.

6 “(E) Haiti agrees to require all producers
7 and exporters of articles described in subsection
8 (b) in that country to maintain complete
9 records of the production and the export of
10 such articles, including materials used in the
11 production, for at least 5 years after the pro-
12 duction or export (as the case may be).

13 “(F) Haiti agrees to report, on a timely
14 basis, at the request of the Bureau of Customs
15 and Border Protection, documentation estab-
16 lishing the country of origin of articles de-
17 scribed in subsection (b) as used by that coun-
18 try in implementing an effective visa system.

19 “(2) DEFINITION OF TRANSSHIPMENT.—Trans-
20 shipment within the meaning of this subsection has
21 occurred when preferential treatment for a textile or
22 apparel article under this section has been claimed
23 on the basis of material false information concerning
24 the country of origin, manufacture, processing, or
25 assembly of the article or any of its components. For

1 purposes of this paragraph, false information is ma-
2 terial if disclosure of the true information would
3 mean or would have meant that the article is or was
4 ineligible for preferential treatment under this sec-
5 tion.

6 “(f) REGULATIONS.—The President shall issue regu-
7 lations to carry out this section not later than 180 days
8 after the date of the enactment of the Haitian Hemi-
9 spheric Opportunity through Partnership Encouragement
10 Act of 2006. The President shall consult with the Com-
11 mittee on Ways and Means of the House of Representa-
12 tives and the Committee on Finance of the Senate in pre-
13 paring such regulations.”.

14 **SEC. 303. ITC STUDY.**

15 The International Trade Commission shall, not later
16 than 18 months after the date of the enactment of this
17 Act, submit a report to Congress on the effects of the
18 amendments made by this Act on the trade markets and
19 industries, involving textile and apparel articles, of Haiti,
20 the countries described in clauses (ii) and (iii) of section
21 213A(b)(2)(C) of the Caribbean Basin Economic Recovery
22 Act (as added by section 302 of this Act), and the United
23 States.

1 **SEC. 304. SENSE OF CONGRESS ON INTERPRETATION OF**
2 **TEXTILE AND APPAREL PROVISIONS FOR**
3 **HAITI.**

4 It is the sense of the Congress that the executive
5 branch, particularly the Committee for the Implementa-
6 tion of Textile Agreements (CITA), the Bureau of Cus-
7 toms and Border Protection of the Department of Home-
8 land Security, and the Department of Commerce, should
9 interpret, implement, and enforce the provisions of section
10 213A(b) of the Caribbean Basin Economic Recovery Act,
11 as added by section 302 of this Act, relating to pref-
12 erential treatment of textile and apparel articles, broadly
13 in order to expand trade by maximizing opportunities for
14 imports of such articles from Haiti.

15 **SEC. 305. TECHNICAL AMENDMENTS.**

16 (a) CBI.—Section 213(b)(2)(A)(v) of the Caribbean
17 Basin Economic Recovery Act (19 U.S.C.
18 2703(b)(2)(A)(v)) is amended by adding at the end the
19 following new subclause:

20 “(III) If the President determines
21 that any fabric or yarn was determined to
22 be eligible for preferential treatment under
23 subclause (I) on the basis of fraud, the
24 President is authorized to remove that des-
25 ignation from that fabric or yarn with re-

1 spect to articles entered after such re-
2 moval.”.

3 (b) ATPA.—Section 204(b)(3)(B) of the Andean
4 Trade Preference Act (19 U.S.C. 3202(b)(3)(B)) is
5 amended by adding at the end the following new clause:

6 “(viii) REMOVAL OF DESIGNATION OF
7 FABRICS OR YARNS NOT AVAILABLE IN
8 COMMERCIAL QUANTITIES.—If the Presi-
9 dent determines that any fabric or yarn
10 was determined to be eligible for pref-
11 erential treatment under clause (i)(III) or
12 (ii) on the basis of fraud, the President is
13 authorized to remove that designation from
14 that fabric or yarn with respect to articles
15 entered after such removal.”.

16 **SEC. 306. EFFECTIVE DATE.**

17 This title and the amendments made by this title
18 apply to articles entered, or withdrawn from warehouse
19 for consumption, on or after the 15th day after the date
20 of the enactment of this Act.

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