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AMENDING THE AFRICAN GROWTH AND OPPORTUNITY ACT TO EXTEND THE THIRD-COUNTRY FABRIC PROGRAM AND TO ADD SOUTH SUDAN TO THE LIST OF COUNTRIES ELIGIBLE FOR DESIGNATION UNDER THE ACT, TO MAKE TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES RELATING TO THE TEXTILE AND APPAREL RULES OF ORIGIN FOR THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT, TO APPROVE THE RENEWAL OF IMPORT RESTRICTIONS CONTAINED IN THE BURMESE FREEDOM AND DEMOCRACY ACT OF 2003, AND FOR OTHER PURPOSES

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SEPTEMBER 20, 2012.—Ordered to be printed

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Mr. BAUCUS, from the Committee on Finance,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 3326]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 3326) to amend the African Growth and Opportunity Act to extend the third-country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, and to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## I. REPORT AND OTHER MATERIALS OF THE COMMITTEE

### A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (S. 3326) to amend AGOA, to make technical changes to the CAFTA-DR, and to renew the BFDA, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### B. SUMMARY OF CONGRESSIONAL CONSIDERATION OF THE BILL

#### 1. Background

*African Growth and Opportunity Act:* On June 21, 2012, Senator Baucus introduced S. 3326 on behalf of himself and Senators Hatch, Coons, McConnell, Blunt, Isakson, Brown of Massachusetts, and Thune. Since then, Senators Kerry, Wicker, Feinstein, Durbin, and Cochran have also joined as cosponsors. Also on June 21, 2012, Congressmen Camp, Rangel, Brady, and McDermott introduced companion legislation (H.R. 5986) in the House of Representatives.

*Dominican Republic-Central America-United States Free Trade Agreement:* On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement. On July 28, 2005, the House of Representatives approved it (217 to 215), followed by passage in the Senate (55-45), clearing the measure for presidential signature on August 2, 2005 (Pub. L. 109-53). CAFTA-DR entered into force with El Salvador, Guatemala, Honduras, and Nicaragua during 2006; the Dominican Republic in 2007; and Costa Rica in 2009.

*Burmese Freedom and Democracy Act:* On June 4, 2003, the BFDA of 2003 was introduced in the U.S. House of Representatives (H.R. 2330) and the U.S. Senate (S. 1182). A revised version of the legislation was introduced in the Senate (S. 1215) on June 9, 2003. That latter version, S. 1215, passed the Senate with an amendment

on June 11, 2003, by a recorded vote of 97–1. In the House, H.R. 2330 passed with an amendment on July 15, 2003, by a recorded vote of 418–2, 1 present. The Senate then passed the House-passed version of H.R. 2330 without amendment on July 16, 2003, by a recorded vote of 94–1. The legislation was presented to the President on July 22, 2003, and signed into law by the President on July 28, 2003 (Pub. L. 108–61).

## *2. Committee and floor consideration*

The Senate Committee on Finance met in open executive session on July 18, 2012 to consider four legislative proposals, including the Chairman’s Mark to amend provisions of the AGOA and the CAFTA–DR and to reauthorize and renew the import ban in the BFDA. The proposal the Committee considered was based upon S. 3326. During the Committee’s consideration of the proposal, no amendments were offered. The Committee approved the proposal by voice vote.

On August 2, 2012, the House of Representatives passed H.R. 5986, the identical bill text as S. 3326, by voice vote. On the same day, the Senate voted on an amendment to S. 3326 by Senator Coburn that would have substituted a different offset to pay for the AGOA portion of the bill pursuant to a unanimous consent agreement. The amendment was not agreed to by a vote of 40–58. Following the vote, and in accordance with the unanimous consent agreement, S. 3326 was read a third time and passed by the Senate. Later that day, the House of Representatives sent over H.R. 5986, the Senate read H.R. 5986 a third time, and it was passed by the Senate pursuant to the unanimous consent agreement.

## C. TRADE RELATIONS WITH SUB-SAHARAN AFRICA

### *1. United States-Sub-Saharan Africa trade*

In 2000, Congress amended the Trade Act of 1974 to establish U.S. trade and investment preferences for sub-Saharan Africa through the creation of a new trade preference program called AGOA. AGOA offers trade preferences and other economic benefits to sub-Saharan African countries that meet certain criteria, including progress towards a market economy, respect for the rule of law, elimination of barriers to U.S. trade and investment, and protection of worker rights. AGOA builds on existing U.S. trade programs by including additional products eligible for duty-free treatment beyond those previously available under the Generalized System of Preferences (GSP). Duty-free access to the U.S. market under the combined AGOA/GSP program now stands at approximately 7,000 product tariff lines, including the roughly 1,800 product tariff lines that were added to GSP by the AGOA legislation.

AGOA has been amended several times since its initial enactment. In 2002, Congress amended AGOA to further increase market access for products from sub-Saharan Africa. In 2004, Congress passed legislation further amending AGOA, extending its benefits beyond the original deadline and clarifying certain provisions. This legislation also included directives to the President on investment initiatives and technical assistance. Congress passed legislation in 2006 that further amended AGOA and extended certain provisions

concerning textile and apparel imports to 2012. AGOA itself expires on September 30, 2015.

In 2011, the United States imported \$70.6 billion worth of goods from sub-Saharan African countries and exported \$19.2 billion worth of goods to sub-Saharan African countries, producing a U.S. trade deficit of \$51.4 billion. Major U.S. imports from AGOA countries include natural resources such as oil, precious metals, iron, steel, ores, slag, ash, as well as manufactured products such as vehicles, machinery, mechanical appliances, and articles of apparel. Major U.S. exports to AGOA countries include manufactured products such as nuclear reactors, machinery, mechanical appliances, vehicles, and aircraft, as well as cereals and oils.

#### TOP TEN U.S. IMPORTS FROM SUB-SAHARAN AFRICA, 2010 AND 2011

(In \$ billions)

HTS Number	2010	2011	Percent change 2010-2011
27—Mineral fuels and oil .....	51.38	58.97	14.80
71—Pearls, Precious Stones, Precious Metals, etc., Coin .....	3.95	4.33	9.80
87—Vehicles, Except Railway Or Tramway, And Parts .....	1.61	2.16	34.10
18—Cocoa and cocoa preparations .....	1.04	1.27	22.60
29—Organic chemicals .....	1.22	1.16	-4.70
72—Iron and steel .....	0.76	0.89	16.70
26—Ores, slag, and ash .....	0.67	0.79	17.70
62—Articles of apparel and clothing accessories, not knitted or crocheted	0.40	0.46	14.70
84—Nuclear Reactors, Boilers, Machinery and Parts .....	0.36	0.46	26.30
61—Articles of apparel and clothing accessories, knitted or crocheted .....	0.39	0.44	14.30
Subtotal .....	61.77	70.94	14.80
All Other .....	2.58	3.08	19.40
Total .....	64.35	74.02	15.00

Source: U.S. International Trade Commission Trade Dataweb, <http://www.usitc.gov>.  
Note: U.S. Imports for Consumption.

#### TOP TEN U.S. EXPORTS TO SUB-SAHARAN AFRICA

(In \$ billions)

HTS Number	2010	2011	Percent change
84—Nuclear Reactors, Boilers, Machinery and Parts .....	3.43	3.93	14.30
87—Vehicles, Except Railway Or Tramway, And Parts .....	2.40	3.45	43.60
27—Mineral Fuels and Oil .....	1.41	1.84	30.30
10—Cereals .....	1.36	1.79	31.60
88—Aircraft, Spacecraft, and Parts .....	1.11	1.51	35.70
85—Electric Machinery; Sound and TV Equipment and Parts .....	0.81	0.75	-7.70
98—Special Classification Provisions .....	0.60	0.72	18.50
71—Pearls, Precious Stones, Precious Metals, etc., Coin .....	0.42	0.62	44.90
90—Optical, Photography, Medical or Surgical Instruments .....	0.60	0.58	-3.50
39—Plastics and Articles Thereof .....	0.47	0.56	20.40
Subtotal .....	12.63	15.73	24.60
All Other .....	3.81	4.57	19.80
Total .....	16.44	20.30	23.50

Source: U.S. International Trade Commission Trade Dataweb, <http://www.usitc.gov>.

### 2. *Third-country fabric textiles and apparel provisions*

The “third-country fabric” provision in AGOA allows duty-free treatment of apparel assembled in one or more lesser-developed AGOA beneficiary countries regardless of the country of origin of the fabric, subject to a cap of 3.5 percent (by quantity) of all U.S.

apparel imports. The provision expires on September 30, 2012. S. 3326 extends the provision through September 30, 2015.

Lesser-developed countries are defined in AGOA as those with a per capita gross national product of less than \$1,500 per year as measured by the World Bank. In subsequent amendments of AGOA, Botswana, Namibia, and Mauritius were also added to the list of lesser-developed countries. At present, 27 AGOA-eligible countries qualify for the third-country fabric provision. Several sub-Saharan African countries, including Lesotho, Kenya, Mauritius, Swaziland, and Botswana, have exported a significant amount (both by quantity and value) of apparel under the provision, and exports of apparel to the United States present the major portion of their benefits under AGOA.

#### BENEFICIARY COUNTRIES UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

[As of May 2012]

Republic of Angola	Republic of Ghana * *	Democratic Republic of Sao Tome and Principe
Republic of Benin * *	Republic of Guinea	Republic of Senegal * *
Republic of Botswana * *	Republic of Guinea-Bissau	Republic of Seychelles
Burkina Faso * *	Republic of Kenya * *	Republic of Sierra Leone * *
Republic of Burundi	Kingdom of Lesotho * *	Republic of South Africa
Republic of Cameroon * *	Republic of Liberia * *	Kingdom of Swaziland * *
Republic of Cape Verde * *	Republic of Malawi * *	United Republic of Tanzania * *
Republic of Chad * *	Republic of Mali * *	Republic of Togo
Union of the Comoros	Islamic Republic of Mauritania	Republic of Uganda * *
Republic of Congo	Republic of Mauritius * *	Republic of Zambia * *
Republic of Cote d'Ivoire	Republic of Mozambique * *	
Republic of Djibouti	Republic of Namibia* *	
Ethiopia * *	Republic of Niger * *	
Gabonese Republic	Federal Republic of Nigeria * *	
Republic of the Gambia * *	Republic of Rwanda * *	

Source: Harmonized Tariff Schedule of the United States, Revision 2, May 2012.

Notes: Countries in SSA region not currently AGOA-eligible: Democratic Republic of Congo, Eritrea, Equatorial Guinea, Madagascar, Somalia, Sudan, and Zimbabwe.

\* \* Beneficiary country is eligible for the lesser-developed country special rule for apparel (third-country fabric provision).

### 3. *Republic of South Sudan*

The Republic of South Sudan became an independent country on July 9, 2011. In section 107 of AGOA (19 U.S.C. 3706), the term “sub-Saharan Africa” is defined to include a list of countries that may receive AGOA benefits if they meet certain eligibility criteria. This bill adds the Republic of South Sudan to that list. As with all countries on that list, prior to granting AGOA benefits to the Republic of South Sudan, the President must determine that it meets the eligibility criteria set forth in section 104 of AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

## D. CAFTA–DR

### 1. *The free trade agreement*

The CAFTA–DR is a permanent, comprehensive, and reciprocal trade agreement that eliminates tariff and non-tariff barriers to two-way trade and establishes rules and other standards for services, intellectual property rights, government procurement, investment, textiles, and other disciplines. The United States has seen

strong growth in exports of mineral fuels, machinery, cereals, yarns, and fabrics to the CAFTA–DR countries.

CAFTA–DR provides that each country must accord national and most favored nation treatment (non-discrimination) to all parties. The agreement also replaced the unilateral trade preferences that the region received under GSP, the Caribbean Basin Economic Recovery Act, and the Caribbean Basin Trade Partnership Act with permanent bilateral market-opening commitments.

## 2. United States-CAFTA–DR trade

Some of the fastest growing U.S. exports to the CAFTA–DR region include petroleum products, machinery, electrical/electronic products, textile fabrics, cotton yarns, cereals (wheat, corn, and rice), plastics, motor vehicles, paper products, and medical instruments. According to the U.S. Department of Commerce, the CAFTA–DR region was the 15th largest U.S. export market in the world in 2010 and the third largest in Latin America behind Mexico and Brazil.

The United States exported \$24.2 billion in goods to the five Central American countries and the Dominican Republic in 2010, which represents an increase of 21 percent over 2009. From 2006 through 2010, since CAFTA–DR entered into force, U.S. exports have expanded by 43 percent. U.S. exports to each CAFTA–DR country have grown significantly during the first five years of the agreement, led by Guatemala and Nicaragua (both up 57 percent), followed by Costa Rica (44 percent), Honduras (42 percent), the Dominican Republic (39 percent), and El Salvador (32 percent).

### TOP TEN U.S. IMPORTS TO CAFTA–DR COUNTRIES, 2010 AND 2011 (\$)

HTS Number & item	2010	2011	Percent change 2010–2011
324—Petroleum & Coal Products .....	3,644,728,914	6,383,119,529	75
313—Textiles & Fabrics .....	2,363,552,729	3,147,521,353	33
334—Computer And Electronic Products .....	2,671,428,736	2,797,227,961	5
325—Chemicals .....	2,195,597,030	2,481,168,171	13
111—Agricultural Products .....	1,685,067,127	2,301,866,395	37
990—Special Classification Provisions, Nesoi .....	1,737,420,129	2,026,228,715	17
311—Food Manufactures .....	1,660,444,641	1,936,558,626	17
333—Machinery, Except Electrical .....	1,328,205,398	1,437,620,052	8
336—Transportation Equipment .....	1,283,270,903	1,245,075,122	–3
335—Electrical Equipment, Appliances & Components .....	826,060,401	948,021,582	15

Source: U.S. International Trade Commission Trade Dataweb, <http://www.usitc.gov>.  
Note: U.S. Imports for Consumption.

### TOP TEN U.S. IMPORTS FROM CAFTA–DR COUNTRIES, 2010 AND 2011 (\$)

HTS Number & item	2010	2011	Percent change 2010–2011
315—Apparel Manufacturing Products .....	7,106,963,291	7,967,234,072	12
334—Computer And Electronic Products .....	5,799,828,996	6,849,915,571	18
111—Agricultural Products .....	2,809,681,764	3,797,032,742	35
339—Miscellaneous Manufactured Commodities .....	1,762,361,369	1,805,090,915	2
331—Primary Metal Mfg .....	427,971,896	1,340,933,490	213
311—Food Manufactures .....	1,225,595,748	1,279,197,659	4
336—Transportation Equipment .....	732,642,196	908,184,684	24
910—Waste And Scrap .....	558,146,026	703,007,401	26
312—Beverages & Tobacco Products .....	537,924,388	606,883,465	13

## TOP TEN U.S. IMPORTS FROM CAFTA–DR COUNTRIES, 2010 AND 2011 (\$)—Continued

HTS Number & item	2010	2011	Percent change 2010–2011
335—Electrical Equipment, Appliances & Components .....	428,644,049	522,096,391	22

Source: U.S. International Trade Commission Trade Dataweb, <http://www.usitc.gov>.  
Note: U.S. Imports for Consumption.

### 3. *Textiles and Apparel Rules of Origin modifications*

At the February 2011 CAFTA–DR Free Trade Commission meeting, CAFTA–DR trade officials signed an agreement to make a series of changes to Annex 4.1 (Specific Rules of Origin) of the CAFTA–DR pursuant to Articles 3.25.3 and 19.1.3(b)(ii) of the CAFTA–DR agreement, which provides the authority to make such changes. All six of the CAFTA–DR countries have made the necessary reforms to their laws or regulations to effectuate these changes, and only the United States has yet to take action. The CAFTA–DR bill provisions will codify the necessary changes under U.S. law. These modifications will not go into effect until all the CAFTA–DR countries have adopted the necessary laws or regulations to implement the modifications.

## E. BURMA SANCTIONS

### 1. *The Government of Burma*

In September 1988, a military junta known as the State Peace and Development Council (SPDC) took power in Burma. As discussed below, the SPDC maintained its hold on power through brutal means until March 2011, when it dissolved itself and turned over authority to a nominally civilian government. While that government has since allowed some significant political and economic progress in Burma, serious challenges remain.

During its years in power, the SPDC violently suppressed pro-democracy movements. International human rights organizations and the U.S. Department of State reported a pattern of SPDC policies that included the suppression of political and civil liberties, jailing of political prisoners, widespread physical abuses, forced relocation of civilians, conscription of civilians—including children—into military services, and conscription of thousands of civilians for work on economic projects.

In May 2003, a pro-government group of several hundred people assaulted Burmese Nobel Prize winner Aung San Suu Kyi, the leader of the opposition National League for Democracy (NLD), near Mandalay, Burma's second-largest city. The attackers were members of the United Solidarity Development Association (USDA), an organization affiliated with the SDPC. Some NLD supporters were killed, and others were taken into custody. Aung San Suu Kyi was imprisoned, and four months later released under house arrest.

In September 2007, the Burmese government engaged in a violent crackdown against Buddhist monks and other Burmese citizens who were demonstrating peacefully against the poor economic conditions in Burma and the repressive policies of the SPDC. In May 2008, the Burmese government also failed to provide adequate

humanitarian assistance or allow speedy entry of international aid in response to Cyclone Nargis.

In August 2009, the regime convicted Aung San Suu Kyi of spurious charges of violating the terms of her house arrest, and sentenced her to three years in prison with hard labor, commuting that sentence to 29 months of house arrest.

In November 2010, the SPDC allowed the first parliamentary election in Burma in over twenty years. The election was widely seen as government-rigged. Nonetheless, the SPDC announced that the election had paved the way for the transfer of power to civilian rule. In March 2011, former general Thein Sein was sworn in as president of Burma.

Since March 2011, the government of President Thein Sein has taken some important steps towards political and economic reform. Aung San Suu Kyi was freed from house arrest, and the NLD was reinstated as a political party. On April 1, 2012, in a parliamentary by-election, the NLD won 43 of the 44 parliamentary seats at stake. The government has signed ceasefire agreements with most armed ethnic groups, which were associated with some of the worse human rights abuses of the previous two decades. The government also allowed a more open public dialogue, through the relaxation of some media restrictions, the tolerance of peaceful protests, and the creation of a more meaningful parliamentary process. Hundreds of political prisoners have been gradually released.

Nonetheless, as the U.S. State Department has reported to the Senate Finance Committee, significant challenges remain. The Burmese government has limited humanitarian access to areas of Burma where conflict with armed ethnic groups has increased. There are credible reports of human rights violations by the Burmese Army, including rape and forced labor. The Burmese constitution continues to provide the military an effective veto over broad political reform. Hundreds of political prisoners remain incarcerated, and the government has imposed restrictions on recently-released prisoners. There are also indications that Burma continues to engage in military trade with North Korea.

## *2. The Burmese Freedom and Democracy Act of 2003*

On June 4, 2003, the BFDA banned the importation of any article that is a product of Burma. The BFDA allows the President to lift these import restrictions if he certifies to Congress that (1) the SPDC has made substantial progress to end human rights violations, including rapes, and no longer systematically violates workers' rights, including forced and child labor, and conscription of child soldiers; (2) the SPDC has made substantial progress toward implementing a democratic government, including by releasing political prisoners, by allowing freedom of speech, press, association, and religion, and by reaching agreement with the NLD for a democratically elected civilian government; and (3) Burma has not been designated as a country that has failed to abide by its obligations under international counternarcotics agreements and failed to take other enumerated effective counternarcotics measures. In addition to the import ban, the BFDA also freezes the assets of the Burmese regime and its officials held by U.S. financial institutions, directs the Secretary of the Treasury to instruct the U.S. representatives to international financial institutions to oppose loans or other as-



sistance to Burma, and authorizes the President to deny visas to the leaders of the Burmese regime.

In July 2008, Congress amended the BFDA when it passed the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008 (JADE Act). The JADE Act was introduced in the House on October 18, 2007 and passed by voice vote on December 11, 2007. The Senate passed an amended version of the bill on December 19, 2007. After resolving the differences between the two bills, the revised legislation was passed by the House on July 15, 2008 by voice vote and by the Senate on July 22, 2008 by Unanimous Consent. The President signed the legislation into law on July 29, 2008. The JADE Act amended the import restrictions of the BFDA by prohibiting the importation into the United States of jewelry from any country that contains jadeite or rubies mined in Burma. The JADE Act also imposed additional financial and visa sanctions on members of the SPDC or USDA and their immediate family members.

Pursuant to section 9(b) of the BFDA, the import ban expires after one year unless a new joint resolution approving a one-year renewal of the import ban is enacted into law prior to the anniversary of the date of enactment of the BFDA. The current import ban remains in effect through July 26, 2012.

As originally enacted in 2003, section 9(b)(3) also limited the imposition of import restrictions to a maximum of three years from the date of enactment, or until 2006. In 2006, a joint resolution was introduced to extend this period to a maximum of six years from the date of enactment, or until 2009. Specifically, H.J. Res. 86 was introduced in the House on May 19, 2006, and S.J. Res. 38 was introduced in the Senate on May 26, 2006. The House passed H.J. Res. 86 on July 11, 2006 by voice vote. H.J. Res. 86 was placed on the Senate calendar on July 26, 2006 and passed without amendment by voice vote. The President signed the joint resolution on August 1, 2006 (Pub. L. 109–251).

In 2009, S.J. Res. 17 was introduced to extend the limitation on the import restrictions for an additional three years, to a maximum of nine years from the date of enactment, or until 2012. A similar resolution (H.J. Res. 56) was passed by the House on July 21, 2009 by voice vote. H.J. Res. 56 was received by the Senate on July 22, 2009 and passed by Unanimous Consent on July 23, 2009. The resolution was signed by the President on July 28, 2009 (Pub. L. 111–42).

On June 21, 2012, S. 3326 was introduced to, among other things, extend the import restrictions set forth in section 9(b)(3) of the BFDA for an additional three years, to a maximum period of twelve years from the date of enactment, or until 2015. Further, S. 3326, approves the renewal of those restrictions for another year, in accordance with section 9(b) of the BFDA. An identical companion bill, H.R. 5896, was introduced in the House of Representatives on June 21, 2012.

### *3. Report of the U.S. Department of State on the trade sanctions against Burma*

On June 20, 2012, the U.S. Department of State submitted to Congress a report regarding the trade sanctions against Burma, as required by section 8(b)(3) of the BFDA. At the request of the

Chairman, that report was made a part of the record of the Committee's consideration of S. 3326. The State Department report is reprinted below:

U.S. DEPARTMENT OF STATE,  
*Washington, DC, June 20, 2012.*

Hon. MAX BAUCUS,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The enclosed report reviews measures to promote human rights and democracy in Burma and assesses the effectiveness of the trade provisions in the Burmese Freedom and Democracy Act of 2003 (P.L. 108-61) (BFDA) to improve conditions in Burma and to advance U.S. policy objectives. This year's report highlights the important reforms that have taken place in Burma and outlines the U.S. government's response to recognize and encourage progress on our core concerns.

Our approach has been calibrated by announcing an easing rather than lifting of financial services and investment restrictions against Burma and maintaining all sanctions authorities in place. Consistent with this approach, we recommend Congressional renewal of the BFDA import ban as amended by the Junta's Anti-Democratic Efforts Act, while noting that if reforms continue in Burma, the Secretary of State may consider using executive authority to ease the import ban. As always, we will continue to consult closely with Congress regarding any updates to our Burma policy.

We hope this information is useful to you. Please do not hesitate to contact us if we may be of further assistance in this matter.

Sincerely,

DAVID S. ADAMS,  
*Assistant Secretary, Legislative Affairs.*

Enclosure: As stated.

#### Report on U.S. Economic Sanctions Against Burma

##### INTRODUCTION AND SUMMARY

(U) Pursuant to Section 8(b)(3) of the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108-61) (the BFDA), and in view of the impending expiration of the import ban contained in the BFDA, as amended by the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008 (Pub. L. 110-286) (the JADE Act), this report reviews bilateral and multilateral measures to promote human rights and democracy in Burma and assesses the effectiveness and impact of the BFDA's trade provisions and the furtherance of U.S. policy objectives.

(U) The United States has been a leading advocate of human rights and democracy in Burma for more than two decades. During this reporting period, and for the first time since the enactment of the BFDA, there has been a significant political and economic opening in Burma. Burma's former autocratic military leader, Senior General Than Shwe, officially retired. President Thein Sein, a former regime member who assumed office through a flawed electoral process, initiated an important reform process shortly after taking office in March 2011.

(SBU) The Burmese government's reform process included steps to address several core concerns of the United States and the international community. In October 2011 and January 2012, authorities released over 500 political prisoners. After the Burmese government initiated a substantive dialogue with Aung San Suu Kyi (ASSK) and amended electoral laws, the National League for Democracy (NLD)—the leading, previously banned, pro-democracy opposition party—registered and was reinstated as a political party in December 2011. On April 1, ASSK and the NLD won 43 of the 44 parliamentary seats they contested in by-elections. Authorities signed preliminary ceasefire agreements with armed ethnic groups including the Chin National Front, the Karenni National Progressive Party, the New Mon State Party, the Shan State Army-South, Shan State Army-North, and, for the first time in 63 years, the Karen National Union. The Burmese government has also taken other steps toward civic openness, relaxing media restrictions, approving legislation to allow citizens to form labor unions and protest peacefully, criminalizing forced labor, and creating a more open and substantive parliamentary process.

(SBU) Serious challenges and concerns remain. A 17-year ceasefire in Burma's northern Kachin State broke down in June 2011 and conflict ensued, despite sporadic ceasefire talks. Humanitarian access to conflict zones, including to an estimated 60,000 persons displaced as a result of the fighting in Kachin State, has been limited.

Credible reports of serious human rights violations by the Burmese Army, including rape and forced labor, continue. Burma's constitution remains flawed, in particular by granting the armed forces excessive authorities. Though the precise figure is unclear, hundreds of political prisoners reportedly remain in detention, and the Burmese government imposed conditions on many of the prisoners released in October and January. Despite official assurances to the contrary, there are indications that Burma's military trade with North Korea continues.

(SBU) In response to Government of Burma action on core concerns, the United States decided in May to ease certain financial and investment sanctions, while maintaining all sanctions authorities in place. This calibrated approach recognizes and encourages the reform effort, while preserving the flexibility to tighten sanctions if warranted by conditions on the ground. Consistent with this approach, the State Department supports a Congressional resolution to maintain the BFDA import ban, as amended by the JADE Act. If positive reforms in Burma continue, the Secretary of State may elect to waive all or part of the ban on Burmese imports. As the Department proceeds with this approach, the Department intends to work closely with the Congress.

#### BILATERAL MEASURES

(SBU) The United States significantly enhanced engagement with the Burmese government during the reporting period. To assess early signs of progress, President Obama requested Secretary Clinton to visit Burma from November 30 to December 2, 2011, marking the first visit by a Secretary of State since 1955. During her trip, Secretary Clinton announced an "action-for-action" strategy to encourage further reforms. As part of this strategy, the

United States has announced several measures such as resumption of World War II remains recovery operations, support for assessment missions by international financial institutions (via a partial and time-limited waiver of Trafficking Victims Protection Act sanctions), support for a normal UN Development Programme program in the country, an intention to re-establish a USAID mission, and an upgrade of diplomatic ties to exchange ambassadors. After Burma's credible parliamentary by-elections and other progress, the United States announced May 17 it would ease bans on the exportation of U.S. financial services and new investment across sectors of the Burmese economy. These steps reflect an "easing" (as opposed to a "lifting") of sanctions as all sanction authorities remain in place. In this regard, on May 17 President Obama renewed the national emergency with respect to Burma declared pursuant to the International Emergency Economic Powers Act.

(SBU) Since September 2011, U.S. Special Representative and Policy Coordinator for Burma Derek Mitchell and other key U.S. government officials, including Members of Congress, travelled to Burma to promote our human rights, democracy, and nonproliferation goals. On the margins of the UNGA in September 2011, the State Department initiated a dialogue on political prisoners with Burmese officials and invited the Burmese foreign minister to the State Department. In every interaction with Burmese officials, the United States advocated for greater respect for human rights and encouraged political reform. Senior-level U.S. visitors to Burma consulted with ASSK, the NLD, civil society representatives, and ethnic minority leaders. Embassy Rangoon maintained regular contact with a broad spectrum of society, including ASSK, former political prisoners, and ethnic minority and civil society leaders. This outreach enabled more accurate assessments on the ground and calibration of U.S. actions and responses accordingly.

#### MULTILATERAL MEASURES

(SBU) The United States pursued multilateral measures to advance our human rights and democracy goals. The United States has consistently urged the UN—including the UN Security Council, UN Human Rights Council (UNHRC), and the UN Secretary-General's Good Offices Mission—to maintain focus on shared, international core concerns. The United States successfully co-sponsored the annual resolution on the human rights situation in Burma in the UNGA's Third Committee and in the UNHRC. The 2011 UNGA Resolution on Burma passed the Third Committee by a 98 (yes)—25 (no)—63 (abstain) margin. The U.S. government supported the findings of UN Special Rapporteur on the Situation of Human Rights Thomas Ojea Quintana, based on his assessments during the reporting period. The United States urged respect for labor rights in statements at the International Labor Organization in November 2011.

(SBU) Increasing its strategic engagement with ASEAN, the United States conveyed the importance of human rights and democracy progress in Burma at every level and opportunity. Secretary Clinton directly addressed our concerns with Burma during the ASEAN Regional Forum in July 2011 in Indonesia and President Obama highlighted U.S. core concerns and our desire to support hopeful, early signs of reforms in Burma on the margins of the

East Asia Summit in November 2011, also in Indonesia. The State Department engages with ASEAN leaders on a routine basis and has ensured intensive engagement with key regional partners on Burma policy including with Japan, Australia, South Korea, and China.

(SBU) Following Burma's April 1 parliamentary by-elections, the EU suspended its sanctions against Burma, with the exception of the embargo on arms. Australia, Canada, Norway, and Switzerland also eased their respective sanctions. The State Department coordinated closely with these like-minded partners and will be collaborating closely to ensure the Burmese government makes further progress on our shared concerns, particularly political prisoners, violence in ethnic minority areas, greater civic openness for the country's democratization process, and transparency on nonproliferation issues and military ties to North Korea.

#### EFFECTS OF SANCTIONS ON SITUATION IN BURMA

(SBU) U.S. economic sanctions have been an important tool in pressuring the Burmese government to improve respect for human rights and democratic reform. Senior Burmese officials repeatedly requested that sanctions be lifted, while highlighting completed steps to address U.S. concerns. Businessmen in Rangoon complained about the detrimental effects sanctions have had on their business operations and personal lives. Between March 25, 2011, and March 28, 2012, 107 transactions totaling approximately \$4.3 million involving Burmese individuals or entities were reported to the Treasury Department as blocked. Over the same period, the Treasury Department issued 22 licenses authorizing the release of blocked funds or otherwise prohibited transactions. These authorizations allowed, for example, NGOs to conduct assistance-related transactions to promote agricultural development, micro-finance, and education projects. To date, the United States has designated 42 individuals and 58 entities as subject to U.S. sanctions, including two individuals and 19 companies identified as subject to the JADE Act blocking and financial sanctions.

(SBU) Burma's trade with neighboring countries and its regional partners continues to increase. Although trade with the United States is historically insignificant, even prior to the imposition of sanctions, the prospect of increased commerce and investment from the United States and other trading partners may contribute to the Burmese government's calculation to embark on political reform.

#### EFFECTS OF SANCTIONS ON BROADER U.S. INTERESTS

(SBU) Our goal in easing certain financial and investment sanctions is to recognize the reforms that have taken place and to encourage further reforms to address our longstanding human rights, democracy, and nonproliferation interests. U.S. sanctions heretofore have imposed broad restrictions to prohibit dollar-based transactions with Burma and all new investment. The State Department assesses that given the current reforms underway, shifting from broad sanctions to more targeted restrictions and pursuing further engagement are the most effective means to advance our core interests. Some elements of the human rights and Burmese exile communities do not support lifting trade or other sanctions absent further progress on human rights and ethnic minority

issues or legally binding requirements for U.S. businesses seeking to operate in Burma. During the reporting period, many opposition groups and ethnic minority parties inside Burma supported or called for the lifting of, or modification to, extant sanctions.

(SBU) The trade-related and financial sanctions implemented pursuant to the BFDA and Executive Orders 13047, 13310, 13448, and 13464 have had a limited impact on U.S. relations with other nations. Following announcements of our intent to ease financial and investment-related sanctions, the State Department and other U.S. agencies received a dramatic increase in the number of commercial inquiries from U.S. businesses interested in investing in Burma. The United States has conveyed to regional and like-minded partners as well as U.S. companies that even as we ease sanctions we must remain coordinated in urging the release of all political prisoners unconditionally, an end to violence in ethnic minority areas, a dialogue toward genuine national reconciliation, and a cessation of Burma's military relationship with North Korea.

#### CONCLUSION

(SBU) The political and economic opening in Burma has resulted in concrete steps to improve the human rights and political environments. A genuine reform process, however, will require significant time and effort to reach fruition and important, immediate concerns and challenges remain. The principled U.S. engagement and action-for-action approach have resulted in increasingly substantive interactions with Burmese officials. U.S. support for Burma's democracy movement remains strong and steadfast. The Department is committed to supporting reformers both inside and outside the government. The United States continues to work within the UN and with countries in Southeast Asia and beyond to effectively coordinate and promote Burma's peaceful transition to democracy.

At this time, the Department of State supports Congressional renewal of the import ban in the Burmese Freedom and Democracy Act, as amended by the JADE Act, in line with our approach of "easing" and not "lifting" sanctions. If reform continues in Burma, the Secretary of State may decide to exercise her authority to ease the import ban as noted above using waiver authority to facilitate trade in Burmese-origin products in ways that support and encourage further reform and benefit the Burmese population. The State Department will continue to work closely with Congress as events unfold.

#### F. GENERAL DESCRIPTION OF THE BILL

##### *Section 1—Amendments to African Growth and Opportunity Act*

Section 1 amends section 112(c)(1) of AGOA to extend the third-country fabric provision through September 30, 2015. It also adds the "Republic of South Sudan (South Sudan)" to the list of AGOA-eligible beneficiary countries and makes a conforming amendment to strike "48" in section 102(2) of the Act. The effective date of this section is the date of enactment of the Act.

*Section 2—Modifications to Textile and Apparel Rules of Origin for Dominican Republic-Central America-United States Free Trade Agreement*

Section 2 amends the Harmonized Tariff Schedule by implementing the technical corrections and modifications agreed to by the CAFTA–DR trade officials in February 2011. These corrections include a change clarifying that certain monofilament sewing thread is required to be produced in the United States or the CAFTA–DR region in order for goods to qualify for preferential tariff treatment. The other modifications clarify or correct the language used in the text of the CAFTA–DR, which include the treatment of certain nightwear, as well as the treatment of several products under the “short supply” list in the CAFTA–DR. These products include elastomeric yarns, knit waistbands, and knit-to-shape components. The amendments made by this section apply to goods of a CAFTA–DR country that are entered, or withdrawn from warehouse for consumption, on or after the date that the U.S. Trade Representative determines is the first date on which the equivalent amendments to the rules of origin of CAFTA–DR have entered into force in all CAFTA–DR countries.

*Section 3—Extension and renewal of import restrictions under Burmese Freedom and Democracy Act of 2003*

Section 3 reauthorizes the import sanctions in the BFDA for an additional three years, through July 2015. In addition, the amendment provides annual renewal for the import sanctions, such that the sanction authority will remain in place until at least July 2013. The effective date of this section is the date of enactment or July 26, 2012, whichever comes first.

*Section 4—Time for payment of corporate estimated taxes*

Section 4 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, 2017 by 0.25 percent. The bill reduces the next required installment to reflect the prior increase. The effective date of this section is the date of enactment of the Act.

*Section 5—Extension of customs user fees*

Section 5 extends the passenger and conveyance processing fees authorized under section 13031(j)(3)(B)(i) of Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) from September 30, 2021 through October 22, 2021. The section also extends the merchandise processing fees authorized under section 13031(j)(3)(A) of COBRA from September 30, 2021 through October 29, 2021. The effective date of this section is the date of enactment of the Act.

G. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that on July 18, 2011, S. 3326 was ordered favorably reported, without amendment, by voice vote.

## II. BUDGETARY IMPACT OF THE BILL

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 20, 2012.*

HON. MAX BAUCUS,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3326, a bill to amend the African Growth and Opportunity Act to extend the third country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kalyani Parthasarathy.  
Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 3326—*A bill to amend the African Growth and Opportunity Act to extend the third country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes*

Summary: S. 3326 would extend for three years the preferential tariff treatment currently accorded to certain textile products from lesser-developed countries (LDCs) in the African Growth Opportunity Act (AGOA) program, modify the rules of origin for products imported from countries who are members of the Dominican Republic and Central America Free Trade Agreement (DR-CAFTA), and renew import restrictions enacted in the Burmese Freedom and Democracy Act of 2003. The bill also would shift some corporate income tax payments between fiscal years and extend user fees collected by Customs and Border Protection (CBP) that expire under current law.

CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting S. 3326 would reduce revenues by \$59 million in 2013, increase revenues by \$4 million over the 2013–2017 period, and reduce revenues by \$192 million over the 2013–2022 period. Enacting S. 3326 also would reduce direct spending by \$197 million over the 2013–2022 period. Thus, the net impact of those effects is an estimated reduction in deficits of \$5 million over the 2013–2022 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO has determined that the nontax provisions of the bill contain no intergovernmental mandates as defined in the Unfunded



Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. JCT has determined that the tax provision of the bill contains no intergovernmental or private-sector mandates.

CBO has determined that the nontax provisions of S. 3326 would impose private-sector mandates as defined in UMRA by extending the authorization to collect customs user fees, and by renewing the ban on all imports from Burma. CBO estimates that the aggregate cost of those mandates would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation).

**Estimated Cost to the Federal Government:** The estimated budgetary impact of S. 3326 is shown in the following table.

By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013– 2017	2013– 2022
<b>CHANGES IN REVENUES</b>												
Extension of AGOA LDC Preferences <sup>a</sup> .....	–59	–63	–70	0	0	0	0	0	0	0	–192	–192
Rules of Origin Changes for DR–CAFTA .....	*	*	*	*	*	*	*	*	*	*	*	*
Extension of Import Restrictions in the Burmese Freedom and Democracy Act of 2003 .....	*	0	0	0	0	0	0	0	0	0	0	*
Corporate Payments Shift .....	0	0	0	0	196	–196	0	0	0	0	196	0
<b>Total Changes in Revenues .....</b>	<b>–59</b>	<b>–63</b>	<b>–70</b>	<b>*</b>	<b>196</b>	<b>–196</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>4</b>	<b>–192</b>
<b>CHANGES IN DIRECT SPENDING</b>												
Customs User Fees:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0	–197	–197
Estimated Outlays .....	0	0	0	0	0	0	0	0	0	0	–197	–197
<b>Net Change in Deficit .....</b>	<b>59</b>	<b>63</b>	<b>70</b>	<b>*</b>	<b>–196</b>	<b>196</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>–197</b>	<b>–4</b>	<b>–5</b>
<b>NET INCREASE OR DECREASE(–) IN THE DEFICIT</b>												
	59	63	70	*	–196	196	*	*	*	–197	–4	–5

Sources: CBO and the staff of the Joint Committee on Taxation.  
 Notes: Components may not sum to totals because of rounding.  
 \* indicates amounts that are between -\$500,000 and \$500,000.  
<sup>a</sup> This estimate assumes enactment before October 1, 2012. If enactment were delayed, the estimate would be adjusted to account for the intervening expiration of the AGOA LDC preference program.

Basis of Estimate: For the purposes of this estimate, CBO assumes that S. 3326 will be enacted by the start of fiscal year 2013.

#### *Revenues*

S. 3326 would extend the special treatment that certain lesser-developed sub-Saharan countries receive under AGOA. Under AGOA, which is scheduled to expire on September 30, 2015, about 40 African countries receive preferential duty treatment for apparel goods that are assembled within the country, using fabric and yarn originating in the United States or the AGOA region. In addition, through September 30, 2012, countries designated “lesser-developed” within AGOA may export duty-free to the United States apparel goods that are assembled within the country regardless of the origin of the fabric or yarn. Most of the AGOA countries currently have LDC status. The bill would allow the LDCs to receive such special treatment for an additional three years, through September 30, 2015, until the scheduled expiration of the overall AGOA program. CBO estimates that the extension would result in \$192 million in forgone revenues over the 2013–2022 period, net of income and payroll tax offsets.

S. 3326 also would include South Sudan in the list of countries eligible for AGOA preferences. South Sudan became an independent nation, separate from Sudan, in July 2011. Based on the negligible amount of customs duties paid on imports from South Sudan since its independence, and from Sudan prior to independence, CBO estimates that the inclusion of South Sudan in the AGOA preference program would have a negligible effect on revenues over the 2013–2022 period.

The bill also would modify the rules of origin established in the DR–CAFTA for certain apparel and textile goods. Goods imported from the DR–CAFTA region are eligible for duty-free treatment based on the nature and sources of their component fabrics and yarns. The bill would adjust such eligibility for goods to prevent the use of some components from outside the DR–CAFTA region and permit the use of certain others. Based on information from the Department of Commerce, CBO estimates that the net revenue effect of these changes would be insignificant in any year and over the 2013–2022 period.

S. 3326 would extend for one year, through July 26, 2013, the ban on all imports from Burma that was enacted in the Burmese Freedom and Democracy Act of 2003. It also would extend the ban on imports of certain gemstones originating from Burma that was added by the Tom Lantos Block Burmese Junta’s Anti-Democratic Efforts Act of 2008. The original ban was set to expire on July 28, 2004, and since then enacted legislation has renewed it annually, most recently through July 26, 2012. An executive order implementing the import ban, citing authority under the Burmese Freedom and Democracy Act of 2003 as well as other laws, was recently extended into May 2013. CBO estimates that the revenue effect of extending the import ban for roughly two months beyond the executive order would be insignificant in 2013 and over the 2013–2022 period.

The bill also would shift payments of corporate estimated taxes between fiscal years 2017 and 2018. For corporations with at least \$1 billion in assets, the bill would increase the portion of corporate

estimated payments due from July through September in 2017. JCT estimates that those changes would increase revenues by \$196 million in 2017 and decrease them by \$196 million in 2018.

#### *Direct spending*

Under current law, customs user fees will expire after September 30, 2021. The bill would permit CBP to collect these fees through October 22, 2021 (for merchandise processing fees) and through October 29, 2021 (for COBRA fees, which were established in the Consolidated Omnibus Budget Reconciliation Act of 1985). CBO estimates that these changes would increase offsetting receipts (a credit against direct spending) by \$197 million in fiscal year 2022.

**Pay-As-You-Go Considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF S. 3326, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON JULY 18, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact ....	0	59	63	70	0	196	–196	0	0	0	–197	–4	–5

**Estimated Impact on State, Local, and Tribal Governments:** CBO has determined that the nontax provisions of the bill contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. JCT has determined that the tax provision of the bill contains no intergovernmental mandates.

**Estimated Impact on the Private Sector:** CBO has determined that the nontax provisions of S. 3326 would impose private-sector mandates as defined in UMRA on entities required to pay customs user fees and on certain importers. CBO estimates that the aggregate cost of those mandates would exceed the annual threshold established in UMRA for private-sector mandates (\$146 million in 2012, adjusted annually for inflation.) JCT has determined that the tax provision of the bill contains no private-sector mandates.

By extending the authorization for the CBP to collect customs user fees (merchandise processing fees and COBRA fees) the bill would impose mandates on entities required to pay those fees. CBO estimates the cost to private entities would amount to \$197 million paid in fees in 2022.

The bill also would extend for roughly two months the ban on all imports from Burma (and jewelry that contains gems mined in Burma) that is scheduled to expire in May 2013. The cost of the mandate for importers would be the net value of forgone profits from banned Burmese products. Based on information from the U.S. International Trade Commission CBO estimates the cost of the ban for importers would be small.

Estimate prepared by: Federal Costs: Kalyani Parthasarathy and Mark Grabowicz; Impact on State, Local, and Tribal Governments: J'nell L. Blanco; Impact on the Private Sector: Marin Randall.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis; Frank Sammartino, Assistant Director for Tax Analysis.

### **III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS**

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the resolution will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork. The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. No. 104-04). The Committee has reviewed the provisions of S. 3326 as approved by the Committee on July 18, 2012. In accordance with the requirement of Pub. L. No. 104-04, the Committee has determined that the bill contains no intergovernment mandates, as defined in the UMRA, and would not affect the budgets of state, local, or tribal governments.

#### IV. ADDITIONAL VIEWS OF SENATOR TOM A. COBURN

On July 23, 2012, Senator Coburn of Oklahoma objected to CAL. #459, a unanimous consent agreement to allow the Senate to approve S. 3326 without floor debate or opportunity for consideration of amendments. Senator Coburn's objection to Cal. #459 was based solely on the basis of the offset included in S. 3326, and not due to the underlying policies related to amending of the African Growth and Opportunity Act (AGOA), technical changes to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), or the renewal of the Burmese Freedom and Democracy Act (BFDA).

Senator Coburn previously made his objection to the proposal known during executive session held on July 18, 2012. During this executive session, Senator Coburn voiced concern that the proposal's offset does not pay for costs incurred in the first three years of the scoring window until 2022, and for the package's reliance on what he contends is a budget gimmick intended to circumvent PAYGO. The Senate pay-as-you-go, or PAYGO, rule generally requires that any legislation projected to increase direct spending or reduce revenues must also include equivalent amounts of direct spending cuts, revenue increases, or a combination of the two, so that the legislation does not increase the on-budget deficit over a six-year period and an 11-year period.

To comply with PAYGO, the underlying package relies on what Senator Coburn contended to be a budget gimmick, a provision (termed a "corporate payment shift") requiring corporations with assets over \$1 billion to be taxed more than they owe in year 2017, only to have such excess amounts paid refunded in 2018. Senator Coburn contends this administrative burden for affected corporations serves no purpose other than ensuring PAYGO compliance since the legislative proposal does not offset costs of the package until year ten of the scoring window.

During floor debate held on the morning of July 26, 2012, Senator Baucus confirmed<sup>1</sup> that Senator Coburn filed an amendment proposing an alternative offset during the Finance Committee executive session held on July 18, 2012. The Coburn amendment filed during executive session proposed paying for costs of the bill by reducing spending by at least \$200 million annually by eliminating, rescinding, consolidating, or streamlining government trade programs, tax benefits and agencies starting Fiscal Year 2013. Senator Coburn noted during his opening statement of executive session that he would not offer his alternative pay-for amendment because he was informed such amendment would be ruled out of order, and

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<sup>1</sup>July 26, 2012 Senate floor proceeding, 1:28 mark, <http://www.senate.gov/floor/index.htm>, accessed August 8, 2012.

noted his opposition to the package on the basis of the offset.<sup>2</sup> During floor debate held on the morning of July 26, 2012, Senator Baucus confirmed<sup>3</sup> that he planned to rule the amendment filed by Senator Coburn during executive session as non-germane.

On July 26, 2012, Senator Coburn asked for Unanimous Consent agreement that the Senate proceed to the immediate consideration of S. 3326, with an amendment to immediately pass the BFDA and CAFTA-DR. Senator Coburn asked for Unanimous Consent to pass BFDA and CAFTA-DR because neither piece of the underlying package result in costs needing to be offset, so as to avoid the expiration of BFDA on July 26, 2012, and to allow time for further negotiations on an alternative pay-for to the AGOA package prior to its expiration on September 30, 2012, or for an agreement to be reached resulting in floor time allowing for a vote on an amendment to provide for an alternative pay-for. Senator Baucus objected to such Unanimous Consent agreement.

Senator Coburn also spoke in favor of a Unanimous Consent agreement subsequently offered on the floor on July 26, 2012, by Minority Leader McConnell to immediately approve the annual Burma Sanctions bill prior to its expiration. Senator Baucus objected to such Unanimous Consent agreement.

On August 2, 2012, pursuant to a unanimous consent agreement, the Senate voted on a Coburn amendment to S. 3326 that would have substituted a different offset to pay for the AGOA portion of the bill. The Coburn amendment sought to offset the bill's \$192 million costs in fiscal years (FYs 2012 and 2013) by instructing OMB to produce such savings by eliminating, consolidating or streamlining federal programs and agencies with duplicative or overlapping missions related to trade. The Coburn amendment sought to achieve such savings through a combination of reduced spending as a result of streamlining of federal trade agencies and programs, and a rescission of unobligated FY 2012 funds from trade programs of the Department of Commerce, Small Business Administration, Export-Import Bank, Overseas Private Investment Corporation and the Trade Development Agency. The amendment was not agreed to by a vote of 40-58.

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<sup>2</sup>Senate Committee on Finance, July 18, 2012 Executive Session to consider the Enforcing Orders and Reducing Customs Evasion (ENFORCE) Act; Citrus, Cotton, and Wool Trust Funds; African Growth and Opportunity Act (AGOA) Amendments, Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) Technical Corrections, Burma Sanctions; and Russia Permanent Normal Trade Relations (PNTR) and Moldova PNTR, <http://www.finance.senate.gov/hearings/hearing/?id=12437dde095056-a032-5227-cd85d08834ed>, 75:00 minute mark, accessed August 8, 2012.

<sup>3</sup>July 26, 2012 Senate floor proceeding, 1:28 mark, <http://www.senate.gov/floor/index.htm>, accessed August 8, 2012.

**V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**THE AFRICAN GROWTH AND OPPORTUNITY ACT**

\* \* \* \* \*

**SEC. 112. TREATMENT OF CERTAIN TEXTILES AND APPAREL.**

\* \* \* \* \*

(c) LESSER DEVELOPED COUNTRIES.—

(1) Preferential treatment of products through September 30, **[2012]** *2015*

(A) PRODUCTS COVERED.—In addition to the products described in subsection (b) of this section the preferential treatment described in subsection (a) of this section shall apply through September 30, **[2012]** *2015*, to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(B) APPLICABLE PERCENTAGE.—

\* \* \* \* \*

iii. 3.5 percent for the 1-year period beginning on October 1, 2006, and each 1-year period thereafter through September 30, **[2012]** *2015*.

\* \* \* \* \*

**SEC. 107. SUB-SAHARAN AFRICA DEFINED.**

For purposes of this chapter, the terms “sub-Saharan Africa”, “sub-Saharan African country”, “country in sub-Saharan Africa”, and “countries in sub-Saharan Africa” refer to the following or any successor political entities:

\* \* \* \* \*

Republic of South Africa (South Africa).  
*Republic of South Sudan (South Sudan).*

\* \* \* \* \*

**SEC. 102. FINDINGS.**

Congress finds that—

\* \* \* \* \*

(2) the **[48]** countries of sub-Saharan Africa form a region richly endowed with both natural and human resources;

\* \* \* \* \*



**HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

\* \* \* \* \*

GENERAL RULES OF INTERPRETATION.—

\* \* \* \* \*

29. *Dominican Republic-Central America-United States Free Trade Agreement Implementation Act*

\* \* \* \* \*

(m) \* \* \*

\* \* \* \* \*

(viii) \* \* \*

(A) \* \* \*

\* \* \* \* \*

(2) a combination of the fibers and yarns listed in U.S. note 20 to such subchapter XXII and one or more fibers and yarns that originate under the terms of this note.

The originating fibers and yarns referred to in subdivision (A)(2) may contain up to 10 percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in subdivision (n) of this note. **[Any elastomeric yarn contained in a textile good of chapters 50 through 60 of the tariff schedule must be formed in the territory of one or more of the parties to the Agreement.]** *Any elastomeric yarn (except latex) contained in the originating yarns referred to in subdivision (A)(2) must be formed in the territory of one or more of the parties to the Agreement.*

(B) An apparel good of chapter 61 or 62 of the tariff schedule and imported under heading 9822.05.01 of the tariff schedule shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and if the fabric of the outer shell, **[exclusive of collars and cuffs where applicable]** *exclusive of collars, cuffs and ribbed waistbands (only if the ribbed waistband is present in combination with cuffs and identical in fabric construction to the cuffs)*, is wholly of—

(1) one or more fabrics listed in U.S. note 20 to subchapter XXII of chapter 98; or

(2) one or more fabrics *or knit to shape components* formed in the territory of one or more of the parties to the Agreement from one or more of the yarns listed in U.S. note 20 to such subchapter XXII; or

(3) any combination of the fabrics referred to in subdivision (B)(1), the fabrics *or knit to shape components* referred to in subdivision (B)(2), or one or more fabrics *or knit to shape components* originating under this note.

The originating fabrics referred to in subdivision (B)(3) may contain up to 10 percent by weight of fibers or yarns

that do not undergo an applicable change in tariff classification set out in subdivision (n) of this note. **【Any elastomeric yarn contained in a fabric referred to in subdivision (B)(1), (B)(2) or (B)(3) must be formed in the territory of one or more of the parties to the Agreement.】** *Any elastomeric yarn (except latex) contained in an originating fabric or knit to shape component referred to in subdivision (B)(3) must be formed in the territory of one or more of the parties to the Agreement.*

(C) A textile good of chapter 63 or 94 of the tariff schedule and imported under heading 9822.05.01 of the tariff schedule shall be considered originating if it is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and if the component that determines the tariff classification of the good is wholly of—

(1) one or more fabrics listed in U.S. note 20 to subchapter XXII of chapter 98; or

(2) one or more fabrics or *knit to shape components* formed in the territory of one or more of the parties to the Agreement from one or more of the yarns listed in U.S. note 20 to such subchapter XXII; or

(3) any combination of the fabrics referred to in subdivision (C)(1), the fabrics or *knit to shape components* referred to in subdivision (C)(2) or one or more fabrics or *knit to shape components* originating under this note.

The originating fabrics referred to in subdivision (C)(3) may contain up to 10 percent by weight of fibers or yarns that do not undergo an applicable change in tariff classification set out in subdivision (n) of this note. **【Any elastomeric yarn contained in a fabric referred to in subdivision (C)(1), (C)(2) or (C)(3) must be formed in the territory of one or more of the parties to the Agreement.】** *Any elastomeric yarn (except latex) contained in an originating fabric or knit to shape component referred to in subdivision (C)(3) must be formed in the territory of one or more of the parties to the Agreement.*

(n) \* \* \*

\* \* \* \*

Chapter 61.

\* \* \* \*

**Chapter rule 4.** Notwithstanding chapter rule 2 to this chapter, a good of this chapter, other than a good of subheading 6102.20, tariff item 6102.90.90 (for goods subject to cotton restraints), 6104.12.00 (for jackets imported as parts of suits), 6104.13.20, 6104.19.15, 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints or for goods subject to man-made fiber restraints), 6104.22.00 (for garments described in heading 6102 or jackets and blazers described in heading 6104), 6104.29.20 (for garments described in heading 6102 or jackets and blazers described

in heading 6104, the foregoing subject to cotton restraints), subheading 6104.32, tariff item 6104.39.20 (for goods subject to cotton restraints), 6112.11.00 (for women's or girls' garments described in headings 6101 or 6102), 6113.00.90 (for coats and jackets of cotton, for women or girls) or 6117.90.90 (for coats and jackets of cotton), containing sewing thread of heading 5204, **[5401 or 5508]** 5401, or 5508 or yarn of heading 5402 used as sewing thread shall be considered originating only if such sewing thread or yarn is both formed and finished in the territory of one or more of the parties to the Agreement.

\* \* \* \* \*

**Chapter rule 6:** Notwithstanding chapter rules 1, 3, 4 or 5 to this chapter, an apparel good of chapter 61 shall be considered originating regardless of the origin of any visible lining fabric described in chapter rule 1 to this chapter, narrow elastic fabrics as described in chapter rule 3 to this chapter, sewing thread or yarn of heading 5402 used as sewing thread described in chapter rule 4 to this chapter or pocket bag fabric described in chapter rule 5 to this chapter, provided such material is listed in U.S. note 20 to subchapter XXII of chapter 98 and the good meets all other applicable requirements for preferential tariff treatment under this note.

Chapter 62.

\* \* \* \* \*

**Chapter rule 3.** Notwithstanding chapter rule 2 to this chapter, a good of this chapter, other than—

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and **[nightwear]** *sleepwear* only),

\* \* \* \* \*

**Chapter rule 4.** Notwithstanding chapter rule 2, a good of this chapter, other than—

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and **[nightwear]** *sleepwear* only), subheading 6204.23, 6204.29, 6204.32, 6212.10, tariff item 6202.12.20, 6202.19.90 (for goods subject to cotton restraints), 6202.91.20 (for goods for women), 6202.92.15, 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves), 6202.93.45, 6202.99.90 (for goods subject to cotton restraints), 6203.39.90 (for goods subject to wool restraints), 6204.12.00 (for jackets imported as parts of suits), 6204.13.20, 6204.19.20, 6204.19.80 (for jackets imported as parts of suits and subject to cotton restraints, or for goods subject to man-made fiber restraints), 6204.22.30 (for garments described in heading 6202, or for jackets and blazers described in heading 6204), 6204.33.20, 6204.39.80, 6204.42.30 (for garments for girls, other than of corduroy), 6204.43.40 (for garments for girls), 6204.44.40 (for garments for girls), 6205.20.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6205.30.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with

chipboards, pins, jett clips, individual polybags and hang tags each for retail sale), 6209.20.10, 6210.30.90 (for garments other than of linen), 6210.50.90 (for anoraks), 6211.20.15 (for anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), for women or girls, of cotton, imported as parts of ski suits), 6211.20.58 (for goods of cotton), 6211.41.00 (for jackets and jacket type garments excluded from heading 6202), 6211.42.00 (for track suits, other than trousers, or for jackets and jacket-type garments excluded from heading 6202) or 6217.90.90 (for coats and jackets, of cotton); or

(b) men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers, vests and women's and girls' skirts of wool fabric, of subheadings 6203.11, 6203.31, 6203.41, 6204.11, 6204.31, 6204.51, 6204.61, 6211.39 or 6211.41, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns,

containing sewing thread of heading 5204, **[5401 or 5508]** 5401, or 5508 or yarn of heading 5402 used as sewing thread shall be considered originating only if such sewing thread or yarn is both formed and finished in the territory of one or more of the parties to the Agreement.

**Chapter rule 5.** Notwithstanding chapter rule 2, a good of this chapter, other than—

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and **[nightwear]** *sleepwear* only),

\* \* \* \* \*

**Chapter rule 6:** *Notwithstanding chapter rules 1, 3, 4 or 5 to this chapter, an apparel good of chapter 62 shall be considered originating regardless of the origin of any visible lining fabric described in chapter rule 1 to this chapter, narrow elastic fabrics as described in chapter rule 3 to this chapter, sewing thread or yarn of heading 5402 used as sewing thread described in chapter rule 4 to this chapter or pocket bag fabric described in chapter rule 5, provided such material is listed in U.S. note 20 to subchapter XXII of chapter 98 and the good meets all other applicable requirements for preferential tariff treatment under this note.*

\* \* \* \* \*

33. **[A change to pajamas and nightwear of subheadings 6207.21 or 6207.22, tariff items 6207.91.30 or 6207.92.40 or subheadings 6208.21 or 6208.22 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.] A change to pajamas and sleepwear of subheadings 6207.21 or 6207.22, tariff items 6207.91.30 or 6207.92.40, subheadings 6208.21 or 6208.22 or tariff items 6208.91.30, 6208.92.00 or 6208.99.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.**

\* \* \* \* \*

**Chapter 63.**

\* \* \* \* \*

**Chapter rule 2:** Notwithstanding chapter rule 1 to this chapter, a good of this chapter containing sewing thread of headings 5204, [5401 or 5508] 5401, or 5508 or yarn of heading 5402 used as sewing thread shall be considered originating only if such sewing thread or yarn is wholly formed in the territory of one or more of the parties to the Agreement.

**Chapter rule 3:** Notwithstanding chapter rule 2 to this chapter, a good of this chapter shall be considered originating regardless of the origin of sewing thread or yarn of heading 5402 used as sewing thread described in chapter rule 2 to this chapter, provided the thread or yarn is listed in U.S. note 20 to subchapter XXII of chapter 98 and the good meets all other applicable requirements for preferential tariff treatment under this note.

**BURMESE FREEDOM AND DEMOCRACY ACT OF 2003**

\* \* \* \* \*

**SEC. 9. DURATION OF SANCTIONS.**

\* \* \* \* \*

(3) LIMITATION.—The import restrictions contained in section 3(a)(1) may be renewed for a maximum of [nine years] *twelve years* from the date of the enactment of this Act.

\* \* \* \* \*

**CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985**

\* \* \* \* \*

**TITLE 19—CUSTOMS DUTIES**

**CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS**

\* \* \* \* \*

**SEC. 58c. FEES FOR CERTAIN CUSTOMS SERVICES.**

(a) SCHEDULE OF FEES.—

\* \* \* \* \*

(j) EFFECTIVE DATES.—

(1) \* \* \*

(2) \* \* \*

(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) of this section after [August 2, 2021] *October 22, 2021*.

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) of this section after [December 8, 2020] *October 29, 2021*.

\* \* \* \* \*

(C)(i) Notwithstanding subparagraph (A), fees may be charged under paragraphs (9) and (10) of subsection (a) during the period beginning on August 3, 2021, and ending on September 30, 2021.]

【(ii) Notwithstanding subparagraph (B)(i), fees may be charged under paragraphs (1) through (8) of subsection (a) during the period beginning on December 9, 2020, and ending on August 31, 2021.】

【(D) Notwithstanding subparagraph (B)(i), fees may be charged under paragraphs (1) through (8) of subsection (a) during the period beginning on September 1, 2021, and ending on September 30, 2021.】

