Chapter 6: RECIPROCAL TRADE AGREEMENTS

Reciprocal Trade Agreement Objectives and Authorities

Section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, included in the Trade Act of 2002,[1] provides authorities for the President to enter into reciprocal trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. The Act replaced similar authorities in the Omnibus Trade and Competitiveness Act of 1988,[2] which in turn replaced similar authorities under section 102 of the Trade Act of 1974[3] that expired on January 3, 1988. Except for the authority to proclaim modifications in U.S. tariffs under multilateral agreements, trade agreements entered into under section 2103 are subject to congressional approval of implementing legislation under special expedited procedures, previously called "fast track." The basic purpose of the section 2103 authorities is to provide the means to achieve U.S. negotiating objectives set forth under section 2102 of the 2002 Act in bilateral, regional, and multilateral negotiations.

In addition, there are special trade agreement authorities that apply in limited circumstances or to deal with specific situations: (1) trade agreements entered into under section 123 of the Trade Act of 1974,[4] as amended by the 1988 Act, to grant new concessions as compensation for import relief actions or any judicial or administrative tariff reclassification; (2) withdrawal, suspension, or modification of trade agreement obligations under section 125 of the Trade Act of 1974;[5] (3) agreements with major state trading regimes acceding to the World Trade Organization (WTO); (4) trade agreements and remedies under sections 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988[6] to obtain more open foreign market access in telecommunications trade; and (5) bilateral trade agreements with certain Communist countries providing for nondiscriminatory (most-favored-nation) treatment under certain conditions.

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[1] Public Law 107-210, approved August 6, 2002, 19 U.S.C. 3801-3813.

[2] Public Law 100-418, approved August 23, 1988, 19 U.S.C. 2902. These authorities expired on June 1, 1993, except that on July 2, 1993, section 1102 was amended to extend the fast track procedures to April 16, 1994 for the sole purpose of concluding the Uruguay Round negotiations. Public Law 103-49, approved July 2, 1993, 19 U.S.C. 2902(e).

[3] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2112.

[4] Public Law 93-618, 19 U.S.C. 2133.

[5] Public Law 93-618, 19 U.S.C. 2135.

[6] Public Law 100-418, 19 U.S.C. 3101.

TRADE NEGOTIATING OBJECTIVES

Section 2102(a) establishes a number of overall negotiating objectives for concluding trade agreements. Section 2102(b) establishes the principal trade negotiating objectives, which cover trade barriers and distortions, services, foreign investment, intellectual property, transparency, anti-corruption, regulatory practices, electronic commerce, agriculture, labor and the environment, dispute settlement and enforcement, extended WTO negotiations, trade remedy laws, border taxes, textiles, and the worst forms of child labor.

Section 2102(c) sets forth certain priorities for the President to address. These provisions include labor and environmental issues, especially reporting and capacity building; protection of legitimate health or safety, essential security, and consumer interests; reporting on the effectiveness of dispute settlement remedies; and establishing consultative mechanisms to examine the trade consequences certain currency movements.

In determining whether to enter into negotiations with a particular country, section 2102(e) requires the President to take into account whether that country has implemented its obligations under the Uruguay Round Agreements.

Section 1124 of the 1988 Act[7] requires the Secretary of the Treasury to take action to initiate bilateral currency negotiations on an expedited basis with a foreign party to trade agreement negotiations if the Secretary advises the President during the course of those negotiations that the country satisfies the criteria under section 3004(b) of the 1988 Act relating to exchange rate manipulation.

Sections 131, 135 and 315 of the Uruguay Round Agreements Act[8] provide U.S. objectives for seeking a WTO working party on worker rights; extended negotiations in financial services, telecommunications, and civil aircraft; and intellectual property right protection. More specifically, section 131 requires the President to seek the establishment of a WTO working party to examine the relationship of international trade and worker rights. Section 135 sets forth principal U.S. negotiating objectives for the extended negotiations in the WTO on financial services, basic telecommunications, and trade in civil aircraft. Section 315 sets forth objectives for the Administration to pursue in the field of intellectual property, which include accelerating the implementation of the TRIPs agreement, seeking the enactment of effective intellectual property rights laws abroad, and securing fair, equitable and nondiscriminatory market access opportunities for U.S. intellectual property based industries.

The NAFTA Implementation Act includes a provision regarding congressional intent for future free trade agreements. In this regard, section

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[7] Public Law 100-418, 22 U.S.C. 5304 note.

[8] Public Law 103-465, approved December 8, 1994, 19 U.S.C. 3551, 3555, 3581.

108 of the Act[9] sets forth considerations and preliminary procedures for possible future free trade area agreements and accession by foreign countries to NAFTA. Article 2204 of the NAFTA sets forth the basis for the accession of any country or group of countries. In the United States, accession would require congressional approval and implementing legislation. Section 108 stipulates that congressional approval of NAFTA with respect to Canada or Mexico does not constitute approval of its extension to other countries. Section 108 also requires the President to report to Congress on his recommendations for future trade agreement countries and sets forth general U.S. negotiating objectives for accession.

Section 409 of the Trade and Development Act of 2000 (Public Law 106-200) contains specific agricultural negotiating objectives of the United States for the World Trade Organization's negotiations on agriculture mandated by the Uruguay Round Trade Agreements. Section 409 also mandates consultations with Congress at specific points during the negotiations.

GENERAL TARIFF AUTHORITY

Since enactment of the Reciprocal Trade Agreements Act of 1934, Congress periodically has delegated authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations, without requiring further congressional action. The most recent grant of such authority was contained in section 2103(a) of the Bipartisan Trade Promotion Authority Act of 2002.[10]

Section 2103(a) of the Act provides the President the authority to proclaim, without Congressional approval, certain duty modifications. Specifically, for tariff rates that exceed 5 percent ad valorem, the President is not authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent ad valorem may be reduced to zero. Any duty reduction that exceeds 50 percent of an existing duty higher than 5 percent or any tariff increase must be approved by Congress.

In addition, section 2103(a) does not allow the use of tariff proclamation authority for import sensitive agriculture.

Staging authority requires that duty reductions on any article may not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging is not required if the International Trade Commission determines there is no U.S. production of that article. These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

The Uruguay Round Agreements Act provides certain limited, residual proclamation authority to the President with respect to tariffs. Specifically,

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[9] Public Law 103-182, approved December 8, 1993, 19 U.S.C. 3317.

[10] See also the discussion on specific trade agreement authorities, which follows.

section 111(a) provides very limited authority to the President to modify duties, change duty staging, and increase duties "as the President determines to be necessary or appropriate to carry out schedule XX." In addition, section 111(b)(1) provides that, subject to consultation and layover requirements, the President may proclaim tariff modification or staged rate reduction if the United States so agrees in a WTO negotiation and if it applies to the duty on an article in a tariff category that "was the subject of reciprocal duty elimination" (so-called "zero-for-zero elimination") "or harmonization negotiations" during the Uruguay Round.[11] Acceleration of staging on other categories of tariffs would not be permitted under this authority. Finally, section 111(b)(2) provides that the President may make modifications necessary to correct "technical errors" in schedule XX.

The North American Free Trade Agreement Implementation Act of 1993 also provides some limited proclamation authority with respect to tariffs. Specifically, section 201(a) provides the President with the very limited authority to modify duties, change duty staging, and increase duties as he "determines to be necessary or appropriate to carry out or apply" the Agreement. In addition, section 201(b) provides that, subject to consultation and layover requirements, the President may proclaim: tariff modifications or continuations, or staged rate modifications if the United States, Canada, and Mexico agree; continuation of duty-free treatment; and increased duties "as the President determines to be necessary or appropriate to maintain the general level of reciprocity and mutually advantageous concessions with respect to Canada and Mexico provided for by the Agreement."

The Uruguay Round Agreements Act also provides authority for the President to increase duties on articles from countries which are not WTO members. Section 111(c) of the Act[12] authorizes the President, after congressional consultation, to increase duties on imports from countries that are not members of the WTO, or to which the United States does not apply the WTO, if he determines that the country is not according adequate trade benefits to the United States, including substantially equivalent competitive opportunities. The maximum rate of duty that may be proclaimed is the higher of the pre-Uruguay Round most-favored-nation (MFN) rate or the MFN rate of duty that will apply under the Uruguay Round schedule XX.

TRADE AGREEMENT AUTHORITY

Agreements on tariff and non-tariff barriers. In addition to the tariff proclamation authority in section 2103(a), the Bipartisan Trade Promotion Authority Act of 2002 authorizes the President at section 2103(b)(1) to enter

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[11] This authority was used by the President in implementing U.S. obligations under the Information Technology Agreement concluded in December 1996. Pres. Proc. No. 7011, June 30, 1997, 62 Fed. Reg. 35909.

[12] Public Law 103-465, 19 U.S.C. 3521.

into a trade agreement with a foreign country whenever he determines that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

Conditions. Section 2103(b)(2) provides that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2102(a) and (b) and the President satisfies the consultation requirements set forth in section 2104.

Bills qualifying for trade authorities procedures. Section 2103(b)(3)(A) provides that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

(1) Provisions approving the trade agreement and statement of administrative action; and

(2) Provisions necessary or appropriate to implement the trade agreement.

Time period. Sections 2103(a)(1)(A) and 2103(b)(1)(C) extend trade promotion authority to agreements entered into before July 1, 2005. An extension until July 1, 2007, is permitted unless either House of Congress passed a disapproval resolution, as described under section 2103(c).

OTHER TRADE AGREEMENT AUTHORITIES

Sections 123 and 125 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988, as well as section 111 of the Uruguay Round Agreements Act and section 201 of the North American Free Trade Agreement Implementation Act, contain authorities to enter into and/or to proclaim changes in U.S. duties under trade agreements in certain specific limited circumstances.

Compensation agreements

Section 123 of the Trade Act authorizes the President to enter into trade agreements granting new concessions and to proclaim modifications or continuation of existing duties or duty-free treatment as he determines required or appropriate as compensation to foreign countries for restrictions imposed as import relief under section 203 of the Trade Act or for any judicial or administrative tariff reclassification. No duty reduction can exceed 30 percent of its existing level. The purpose of such concessions is to meet international obligations under the WTO to maintain the general level of reciprocal and mutually advantageous concessions with countries whose trade is adversely affected by import relief measures or certain tariff reclassifications, and provide an alternative to the right of such countries under the WTO to take retaliatory action.

Termination and withdrawal authority

Section 125 of the Trade Act contains the traditional requirement that every trade agreement entered into is subject to termination or withdrawal within 3 years after its effective date, or upon 6 months advance notice thereafter. The President may terminate any proclamation at any time.

Section 125(c) provides the President explicit domestic legal authority to proclaim increased duties or other import restrictions as he deems necessary or appropriate to implement U.S. international trade agreement rights or obligations to withdraw, suspend, or modify any trade agreement concessions.

Section 125(d) authorizes the President to withdraw, suspend, or modify substantially equivalent trade agreement obligations and proclaim increased duties or other import restrictions in response to withdrawal suspension, or modification by foreign countries of trade obligations benefiting the United States without granting adequate compensation (i.e., "self-compensation" authority). This authority was used in November 1982 by President Reagan to suspend most-favored-nation status for Poland indefinitely, based upon Poland's nonfulfillment of trade obligations undertaken in its accession to the GATT, and in view of increased repression of the Polish people by the martial law government.

No duty increase imposed under section 125(d) can exceed the higher of 50 percent or 20 percent ad valorem above the rate existing on January 1, 1975. Public hearings are required prior to taking any action, or promptly thereafter if expeditious action is necessary.

Section 125(e) requires duties or other import restrictions to remain in effect at negotiated levels for 1 year after U.S. termination of, or withdrawal from, a trade agreement, unless the President proclaims restoration of the previous level. The President must submit his recommendations to the Congress within 60 days as to the appropriate rates of duty on all affected articles. This provision prevents automatic, sudden "snapbacks" to higher preagreement duties that could create serious economic impact.

Accession of major state trading regimes to the WTO

Section 1106 of the Omnibus Trade and Competitiveness Act of 1988,[13] as amended, requires the President to determine, before any major foreign country accedes to the WTO, whether state trading enterprises (1) account for a significant share of that country's exports or of its goods subject to import competition, and (2) whether those enterprises unduly burden or restrict or

[13] Public Law 100-418, 19 U.S.C. 2905.

adversely affect U.S. trade or the U.S. economy or are likely to have such results. If both determinations are affirmative, the WTO cannot apply between the United States and that country until either (1) the country enters into an agreement with the United States for its state trading enterprises to operate in accordance with commercial considerations, or (2) Congress approves fast track legislation submitted by the President extending application of the WTO to the country.

Trade Promotion Authority Implementing Procedures

In contrast to traditional tariff proclamation authority, nontariff barrier agreements entered into under section 102 of the Trade Act of 1974, or section 2103 of the 2002 Act cannot enter into force for the United States and become binding as a matter of domestic law unless and until the President complies with specific requirements for consultation with Congress and implementing legislation approving the Agreement and any changes in U.S. law is enacted into law.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to agreements which often involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance of formal congressional action. At the same time, the procedure ensures certain and expeditious action on the results of the negotiation and on the implementing bill with no amendments.

TRADE PROMOTION AUTHORITY PROCEDURES

Under section 2105 of the Bipartisan Trade Promotion Authority Act of 2002, the President is required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 2105(a) also establishes a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

Section 2105(b) provides that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress, which is defined as failing or refusing to consult in accordance with section 2104 or 2105, failing to develop or meet guidelines under section 2107(b), failure to meet with the Congressional Oversight Group, or the agreement fails to make progress in achieving the purposes, policies, priorities, and objectives of the Act. Such a resolution may be introduced by any Member of the House or Senate. Only one such privileged resolution is permitted to be considered per trade agreement per Congress.

Section 2105(a) requires the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, with no time limit to do so, but the submission must be made on a date on which both Houses are in session. The procedures of section 151 of the Trade Act of 1974 then apply. Specifically, on the same day as the President formally submits the legislation, the bill is to be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House Committees of jurisdiction have 45 legislative days to report the bill. The House is required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days are provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action is required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction is 90 legislative days.

Once the bill has been formally introduced, no amendments are permitted either in Committee or floor action, and a straight "up or down" vote is required. In considering legislation to implement free trade agreements with Chile, Singapore, Australia, and Morocco under the Act, the implementing bills were developed by the Committees of jurisdiction together with the Administration before formal introduction, and the Committees held informal mark-up sessions.

Section 2105 also specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body.

Finally, section 2105(b)(3) requires the Secretary of Commerce, in consultation with the Secretaries of State and Treasury, the Attorney General, and the United States Trade Representative, to transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 2101(b)(3). This report was issued by the Secretary of Commerce prior to December 31, 2002, as required by the Act.

Section 2108 requires the President to submit to Congress a plan for implementing and enforcing any trade agreement resulting from the Act. The report is to be submitted simultaneously with the text of the agreement and is to include a review of the Executive Branch personnel needed to enforce the agreement as well as an assessment of any U.S. Customs Service infrastructure improvements required. The range of personnel to be addressed in the report is very comprehensive, including U.S. Customs and Department of Agriculture border inspectors, and monitoring and implementing personnel at USTR, the

Departments of Agriculture, Commerce, and the Treasury, and any other agencies as may be required.

Section 2109 states that the grant of trade promotion authority is likely to increase the activities of the primary committees of jurisdiction, and the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader Members of Congress in the formulation of U.S. trade policy and oversight of the U.S. trade agenda. Accordingly, the provision specifies that the primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

Section 2111 requires the International Trade Commission (ITC), within one year following enactment of the Act, to issue a report regarding the economic impact of the following trade agreements: (1) The U.S.-Israel Free Trade Agreement; (2) the U.S.-Canada Free Trade Agreement; (3) the North American Free Trade Agreement (NAFTA); (4) The Uruguay Round Agreements, which established the World Trade Organization; and (5) The Tokyo Round of Multilateral Trade Negotiations. The ITC issued the report in compliance with the Act.

The congressional consultation requirements and fast track/trade promotion authority procedures applied to the implementing legislation for the Tokyo Round of GATT multilateral trade negotiations in 1979, the United States-Israel Free Trade Agreement, the United States-Canada Free-Trade Agreement, the North American Free Trade Agreement, the Uruguay Round of GATT multilateral trade negotiations (including the Agreement Establishing the World Trade Organization), the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, the United States-Australia Free Trade Agreement, and the United States-Morocco Free Trade Agreement.

Special fast track procedures under section 3(c) of the Trade Agreements Act of 1979 also applied to implementation of changes in the Tokyo Round Agreements and to the United States-Canada Free-Trade Agreement for an initial 30-month period. Section 3(c), which currently applies to implementation of changes in the United States-Israel Free Trade Agreement and the GATT Agreement on Civil Aircraft,[14] requires the President to submit a draft bill and statement of any administrative action to the Congress whenever he determines it is necessary or appropriate to amend, repeal, or enact a statute to implement any requirement, amendment, or recommendation concerning an agreement. The President is required to consult at least 30 days in advance with the House Committee on Ways and Means and the Senate Committee on Finance and any other committees of jurisdiction on the subject matter and implementation.

The legislative procedures under sections 151-154 of the 1974 Act continue to apply to (1) resolutions approving bilateral commercial agreements extending normal trade relations (NTR) treatment to countries which are subject to the provisions of title IV of the Trade Act of 1974; (2) joint resolutions

[14] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2504.

disapproving annual presidential determinations to extend authority to waive freedom of emigration requirements under title IV; (3) joint resolutions disapproving presidential reports of country compliance with freedom of emigration requirements under title IV; (4) joint resolutions disapproving presidential import relief actions under section 203 of the Trade Act of 1974 which differ from recommendations of the International Trade Commission; and (5) joint resolutions withdrawing congressional approval of the WTO Agreement after 5 years and every 5 years thereafter. While the procedures applicable to implementing bills and resolutions and to joint disapproval resolutions are similar, the time periods for committee and House and Senate consideration differ (shorter periods for disapproval resolutions), and the overall time periods for congressional consideration is generally subject to the terms of the statute involved.

TRADE PROMOTION AUTHORITY CONSULTATIONS AND ASSESSMENT

Section 2102(d) of the Act requires that USTR consult closely and on a timely basis with the Congressional Oversight Group appointed under section 2107. In addition, USTR is required to consult closely (including immediately before the initialing of an agreement) with the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974, as well as the House Committee on Ways and Means, the Senate Committee on Finance, and the Congressional Oversight Group. With regard to negotiations concerning agriculture trade, USTR is also required to consult with the House and Senate Committees on Agriculture.

Section 2104 of the Act establishes a number of requirements that the President consult with Congress. Specifically, section 2104(a)(1) requires the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Section 2104(a)(c) also provides that President shall meet with the Congressional Oversight Group established under section 2107 upon a request of a majority of its members. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

Section 2104(b)(1) establishes a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President is also required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President is required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

Section 2104(b)(2) provides special consultations on import sensitive agriculture products. Specifically, before initiating negotiations on agriculture and as soon as practicable with respect to the Free Trade Area of the Americas and WTO negotiations, USTR is to identify import sensitive agriculture products and consult with the Committees on Ways & Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition, and Forestry in the Senate concerning whether any further tariff reduction should be appropriate, whether the identified products face unjustified sanitary or phytosanitary barriers, and whether nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers. USTR is also to request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the U.S. industry producing the product and on the U.S. economy as a whole. USTR is to then notify the Committees of those products for which it intends to seek tariff liberalization as well as the reasons. If USTR commences negotiations and then identifies additional import sensitive agriculture products, or a party to the negotiations requests tariff reductions on such a product, USTR is to notify the Committees as soon as practicable of those products and the reasons for seeking tariff reductions.

Section 2106 exempts agreements resulting from ongoing negotiations with Chile or Singapore, an agreement establishing a Free Trade Area of the Americas, and agreements concluded under the auspices of the WTO from prenegotiation consultation requirements of section 2104(a) only. However, upon enactment of H.R. 3009, the Administration is required to consult as to those elements set forth in section 2104(a) as soon as feasible.

Section 2104(c) establishes a special consultation requirement for textiles. Specifically, before initiating negotiations concerning tariff reductions in textiles and apparel, the President is to assess whether U.S. tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President is also required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President is required to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

In addition, section 2104(d) requires the President, before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in the Act, and all matters relating to implementation under section 2105, including the general effect of the agreement on U.S. laws.

Section 2014(d)(3) requires the President, at least 180 calendar days before the day on which he enters into a trade agreement, to report to the Committees on Ways and Means and the Committee on Finance the range of proposals advanced in trade negotiations and may be in the final agreement that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and how these proposals relate to the objectives described in section 2102(b)(14). Section 2104 also provides a mechanism for any Member in the House or Senate to introduce at any time after the President's report is issued a nonbinding resolution which states that the proposed changes to U.S. trade remedy laws are inconsistent with the Act's negotiating objectives on trade remedies in section 2102(b)(14). The resolution is to be referred to the Ways and Means and Rules Committees in the House and the Finance Committee in the Senate, and is privileged on the floor if it is reported by the Committees. Only one resolution (either a nonbinding resolution on trade remedies or a disapproval resolution for failure to consult) per agreement is eligible for the trade promotion authority procedures contained in sections 152 (d) and (e) of the Trade Act of 1974. The one resolution quota is satisfied for the House only after the Ways and Means Committee reports a resolution, and for the Senate only after the Finance Committee reports a resolution.

Uruguay Round Agreements

The Uruguay Round Agreements represented the culmination of negotiations among 125 countries over an 8-year period launched in Punta del Este, Uruguay in September 1986 under the auspices of the GATT and concluded in Geneva, Switzerland on December 15, 1993. On that date President Clinton provided the Congress the required 120-day advance notice of his intention to enter into the Agreements. The Agreements were signed in Marrakesh, Morocco on April 15, 1994 by 111 countries, including the United States, thereby undertaking the commitment to bring the results before their respective legislatures for approval.

Sections 1101-1103 of the Omnibus Trade and Competitiveness Act of 1988, as extended by Public Law 103-49, set forth U.S. negotiating objectives and authority and implementing procedures necessary for U.S. participation. As required by Public Law 103-49, the private sector advisory committees established under section 135 of the Trade Act of 1974 submitted their reports assessing the Agreements to the President, the USTR and the Congress on January 14, 1994.

On September 27, 1994, President Clinton sent a letter of transmittal to the House and Senate covering: (1) transmittal of the final texts of the Uruguay Round agreements, including the Agreement establishing the World Trade Organization; (2) the draft implementing bill and Statement of Administrative Action; and (3) supporting documents, as required by section 1103 of the 1988 Act.[15]

As provided under section 151 of the Trade Act of 1974,[16] as amended, the implementing legislation was introduced in the House on September 27 as H.R. 5110 by Majority Leader Gephardt, for himself and Minority Leader Michel by request, and jointly referred to eight committees of jurisdiction for a period ending October 3, 1994. On November 29, 1994, H.R. 5110 passed the House and was sent to the Senate for consideration, where it passed on December 1. On December 8, 1994, the bill was signed into law by the President.

The Uruguay Round Agreements are the broadest, most comprehensive trade agreements in history. The Agreements cut global tariffs by more than one-third, and reduce or eliminate numerous nontariff measures, such as quotas, restrictive licensing systems, and discriminatory product standards.

The agreements also contain multilateral rules covering such matters as technical barriers to trade, trade-related investment measures (TRIMs), rules of origin, import licensing procedures, safeguards, trade-related aspects of intellectual property rights (TRIPs), antidumping/countervailing duties, agriculture trade, and government procurement. In addition, the General Agreement on Trade in Services (GATS) establishes a framework of rules for trade and investment in services sectors, including most-favored-nation (MFN) and national treatment, market access, transparency, and the free flow of payments and transfers. Many of these agreements are addressed in detail in other chapters of this book.

The Agreement Establishing the World Trade Organization establishes an international organization which encompasses the existing GATT institutional structure and extends it to the new Uruguay Round disciplines on services, intellectual property, and investment.

The Understanding on Rules and Procedures Governing the Settlement of Disputes creates new procedures for settlement of disputes arising under any of the Uruguay Round agreements and provides time limits for each step in the process. The Understanding creates a more automatic process, including the right to a panel, adoption of panel reports unless there is a consensus to reject the report, appellate legal review on request, time limits for country conformity with panel rulings and recommendations, and authorization of retaliation if such limits are not met.

[15] Public Law 100-418, 19 U.S.C. 2903.
[16] Public Law 93-618, 19 U.S.C. 2191.

URUGUAY ROUND AGREEMENTS ACT

The Uruguay Round Agreements Act approves the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) entered into by the President on April 15, 1994. The legislation and the Statement of Administrative Action (SAA) proposed to implement the Agreements were submitted to the Congress on September 27, 1994.

The legislation contained general provisions on: (1) approval and entry into force of the Uruguay Round Agreements, and the relationship of the Agreements to U.S. laws (section 101 of the Act[17]); (2) authorities to implement the results of tariff negotiations (section 111 of the Act[18]); (3) procedures regarding implementation of dispute settlement proceedings affecting the United States and oversight of activities of the World Trade Organization (WTO) (sections 121-130 of the Act[19]); and (4) objectives regarding extended Uruguay Round negotiations and other related provisions (sections 131, 135 and 315 of the Act[20]).

Specifically, sections 121-130 of the Act[21] contain procedural requirements for notice, consultation, and reporting to ensure access to, and advice by, congressional committees, private sector advisory committees, and the public regarding the dispute settlement mechanism under the WTO. In order to ensure that the WTO continues the practice followed by the GATT of decision-making by consensus, USTR must consult with Congress before any vote is taken in the WTO that would substantially affect U.S. rights or obligations under the Agreement or another multilateral trade agreement, or potentially entails a change in Federal or state law. Within 30 days after the end of any year in which the WTO takes such a vote, USTR will submit a report to the appropriate congressional committees describing the decision, U.S. efforts to achieve consensus, country voting, how the decision affects the United States, and the President's response. The dispute settlement procedures set forth in the Act also include a provision requiring USTR to inform, consult, and report to Congress, private sector advisory committees, and the public during each stage of the process. Promptly after the establishment of a panel, USTR will publish a notice in the Federal Register identifying the parties to the dispute, setting forth the major issues raised and the legal basis of the complaint, identifying the specific measures cited in the request for the panel, and seeking written comments from the public on the issues raised. The USTR will take into account any advice received from Congress and the advisory committees and the written comments in preparing U.S. submissions to the panel or Appellate Body.

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[17] Public Law 103-465, 19 U.S.C. 3511.
[18] Public Law 103-465, 19 U.S.C. 3521.
[19] Public Law 103-465, 19 U.S.C. 3531-3538.
[20] Public Law 103-465, 19 U.S.C. 3551, 3555, and 3581.
[21] Public Law 103-465, 19 U.S.C. 3531-3538.

In addition, USTR is required to submit an annual report to the Congress on the structure, budget and activities of the WTO, and details of dispute settlement actions.

The legislation contains a number of other provisions which affect the administration of U.S. trade laws. Included in the legislation are provisions amending the U.S. antidumping and countervailing duty laws in response to the Uruguay Round Antidumping and Subsidies/Countervailing Measures Agreements. The legislation implement in U.S. domestic law various provisions of the Uruguay Round Agreements relating to import safeguard measures; foreign trade barriers and unfair trade practices in import trade (section 337 of the Tariff Act of 1930); textiles and apparel trade; government procurement; and technical barriers to trade (product standards). Also included are provisions implementing the Agreement on Agriculture and the Agreement on Trade-Related Aspects of Intellectual Property Rights. The legislation also contains provisions extending expiring programs and amendments to certain customs laws related to the Uruguay Round Agreements, conforming amendments to various laws to reflect the implementation of the Agreements, as well as a number of revenue and other non-trade provisions to meet budgetary offset requirements. These provisions are discussed in greater detail in other chapters of this book.

Post Uruguay Round Negotiations

The GATS was the first multilateral, legally enforceable agreement covering trade and investment in services. The GATS was designed to reduce or eliminate governmental measures that prevent services from being freely provided across national borders or that discriminate against locally-established service firms with foreign ownership. After the WTO went into effect, negotiations continued and were given a new negotiating mandate in November 2001 as part of the Doha Development Round of WTO negotiations.

Information Technology Agreement

During the December 1996 WTO Ministerial Meeting in Singapore, trade ministers from 28 WTO-member countries endorsed an agreement liberalizing market access in the information technology industry. This Information Technology Agreement (ITA) eliminated tariffs on information technology products by the year 2000 on a wide range of technology products. The ITA was finalized on March 26, 1997, and entered into force on July 1, 1997. As of this writing, the ITA has 63 participants representing over 95 percent of global trade in this sector.

ITA product coverage includes computers and computer equipment, semiconductors and integrated circuits, computer software products, telecommunications equipment, semiconductor manufacturing equipment and computer-based analytical instruments. Some limited staging up to 2005 was granted on a country-by-country basis for individual products. The ITA, thus far, is the only global sectoral agreement in which participating governments have agreed on a uniform list of products on which all duties will be eliminated. The products subject to the ITA were covered by the residual proclamation authority provided by section 111(b) of the Uruguay Round Agreements Act and, thus, no additional implementing authority was necessary.[22]

Work to review possibilities for expanding product coverage continues, as do efforts to address non-tariff measures affecting trade in ITA-covered products.

WTO Basic Telecommunication Services Agreement

As part of the GATS, WTO members have made both basic and value-added telecommunications commitments. Specifically, the Fourth Protocol to the GATS—generally referred to as the WTO Basic Telecommunications Services Agreement—is the legal instrument embodying basic telecommunications services commitments of seventy WTO members under the GATS. The agreement entered into force on February 6, 1998, and since that time, additional WTO members have made telecommunications services commitments, some upon their accession to the WTO. Due in large part to this agreement, mutually advantageous market opportunities for U.S. telecommunications equipment and service suppliers expanded greatly.

The WTO basic telecommunications services agreement built upon the Annex on telecommunications, part of the General Agreement on Trade in Services (GATS), itself a component of the Uruguay Round Final Act. The Annex requires WTO members to ensure that all service suppliers seeking to take advantage of scheduled commitments have reasonable and non-discriminatory access to, and the use of, public basic telecommunications networks and services. The agreement covers basic telecommunications services only. Participants agreed at the start of the talks to disregard differences in how countries might define "basic" telecommunications, and to negotiate on all public and private information (voice or data) from sender to receiver. Whereas the Annex on telecommunications addresses access to existing services and networks by users, the WTO basic telecommunications agreement addresses the ability to enter telecommunications markets and sell services. Examples of the services covered by this agreement include voice telephony, data transmission, telex, telegraph, facsimile, private leased circuit services (i.e., the sale or lease of transmission capacity), fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communications systems. WTO services negotiations now underway may expand existing commitments to cover a broader range of telecommunications sub-sectors.

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[22] Pres. Proc. No. 7011, June 30, 1997, 62 Fed. Reg. 35,909.

1997 Financial Services Agreement

With respect to extended negotiations on financial services, the United States, because of insufficient market-opening commitments from many of its trading partners, committed in July 1995 to protect the existing investments of foreign financial service providers in the United States but reserved the right to provide differing levels of treatment with respect to any new activities by such providers, or with respect to new entrants to the U.S. financial services market. The interim agreement expired at the end of 1997. Negotiations were renewed in April 1997 and ended December 1997 with a new agreement that covered 95 percent of the global financial services market as measured in revenue. Of the seventy WTO Members that made improved commitments in financial services during these negotiations, 53 countries met the original deadline of January 29, 1999, for completing domestic ratification procedures and notifying their acceptance of the 1997 Agreement—the Fifth Protocol to the GATS, and three still have not ratified their commitments.

The 1997 Financial Services Agreement opened world financial services markets to an unprecedented degree. Fifty-two countries guaranteed broad market access terms across all insurance sectors-encompassing life, non-life, reinsurance, brokerage and auxiliary services. Another fourteen countries committed to open critical sub-sectors of their insurance markets of particular interest to U.S. industry. Fifty-nine countries committed to permit 100 percent foreign ownership of subsidiaries or branches in banking. And forty-four countries guaranteed to allow 100 percent foreign ownership of subsidiaries or branches in the securities sector.

The United States has efforts underway as part of the current round of WTO/GATS negotiations to build upon the results of the 1997 negotiations. In December 2000, the United States submitted an initial financial services sectoral proposal to the GATS Council in Special Session as part of a package of U.S. sectoral proposals.

Maritime Services

With respect to maritime services, the United States (and most other countries) did not table an offer. The negotiations were suspended on June 28, 1996, without an agreement. The United States continues to suspend its NTR obligations in this sector but has received requests from trading partners for market access during the Doha Development Round of WTO negotiations.

WTO "Built-in-Agenda" on Agriculture and Services

The so-called built-in-agenda was an integral part of the Uruguay Round Agreements and constituted an important element in the balance of rights and obligations of the commitments of WTO members. The built-in agenda called for the resumption of negotiations by the year 2000 to further liberalize trade in agriculture and services, as well as the examination of government procurement practices and enforcement of intellectual property rights. The WTO Ministerial conference that was hosted by the United States in Seattle, Washington, from November 30 through December 4, 1999, was to have formally launched these negotiations but members countries could not reach agreement.

New GATS negotiations began at the start of 2000 and aimed to reduce or eliminate the adverse effects on trade in services of measures as a means of providing effective market access. The deadline for submission of negotiating and other proposals for new GATS discussions was set for December 2000 and in July 2000, the United States presented a broad proposal.

Global talks on agriculture were launched in 2000 under the mandate of Article 20 of the Uruguay Round's Agriculture Agreement. At the Fourth WTO Ministerial Conference in Doha in November 2001, WTO Members agreed to a new mandate for trade in agriculture, known as the "three pillars," which included "substantial improvements in market access, reductions of, with a view toward phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support programs." In addition, the Doha Development Agenda (DDA) committed Members to both a March 31, 2003 deadline for establishing reform modalities, such as tariff and subsidy reduction formulas, to serve as the basis of the negotiation, as well as the submission of a draft of specific Member commitments by the Fifth Ministerial Conference in Cancun, scheduled for September 2003. This deadline was missed as were other negotiating deadlines, but, at the time of this writing, efforts to reach modalities is scheduled for mid-year 2005.

Upon the enactment of Presidential Trade Promotion Authority, the United States wasted no time taking the lead and has tabled far-reaching and aggressive reform proposals for world agricultural trade, including provisions for a specific deadline for WTO Members to eliminate all trade-distorting subsidies and tariffs. Agricultural trade liberalization is now closely tied to the success of the current Round of negotiations. By mandate, the Doha Round negotiations were to have been completed by January 1, 2005, but delays have caused member countries to consider 2006 as a more practical deadline.

U.S. WTO Dispute Settlement Fund

Section 5201 of the Trade Act of 2002 (P.L. 107-210) established in the U.S. Treasury a fund for the payment of WTO dispute settlements. The Act authorizes the U.S. Trade Representative to provide total or partial settlements pursuant to WTO dispute proceedings. If the total or partial settlement is not more than $10,000,000, the Trade Representative is to certify to the Secretary of the Treasury that the settlement is in the best interests of the United States. If the total or partial settlement is more than $10,000,000, the Trade Representative is to certify to the U.S. Congress. The fund authorizes an initial appropriation of $50,000,000 plus those amounts equivalent to settlements recovered by the United States pursuant to WTO dispute proceedings. Amounts appropriated to the fund are authorized to remain available until expended.

Specific Foreign Trade Barriers

SECTIONS 181 AND 182 OF THE TRADE ACT OF 1974, AS AMENDED

Section 181 of the Trade Act of 1974,[23] added by section 303 of the Trade and Tariff Act of 1984 and amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act, requires an annual report on foreign trade barriers and their impact, known as the National Trade Estimates report. The USTR, through the interagency trade mechanism, must identify, analyze, and estimate the impact on U.S. commerce of foreign acts, policies, and practices which constitute significant barriers to or distortions of U.S. exports of goods or services and U.S. foreign direct investment. The report must also include information on any action taken (or reasons for no action taken) to eliminate any measure identified, as well as information with respect to section 301, negotiations or consultations with foreign governments, and foreign anticompetitive practices that adversely affect U.S. exports. The report is submitted to the appropriate committees of the House and to the Senate Committee on Finance. After submission of the report, the USTR must consult and take into account the views of these congressional committees. Section 182 of the Trade Act of 1974,[24] as added by section 1303(b) of the 1988 Act and amended by the North American Free Trade Agreement Implementation Act and the Uruguay Round Agreements Act, requires the USTR to identify priority foreign countries that deny adequate and effective protection or fair and equitable market access for U.S. intellectual property rights, for purposes of action under section 301 (see further description under chapter 2).

TELECOMMUNICATIONS TRADE ACT OF 1988

The Telecommunications Trade Act of 1988, under sections 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988 and as amended by the Uruguay Round Agreements Act, provides specific trade negotiating authority and remedies to address the lack of foreign market openness in telecommunications trade. The Telecommunications Act requires the U.S. Trade Representative to investigate and designate foreign priority countries, taking into account acts, policies, and practices that deny mutually advantageous market opportunities to U.S. telecommunications exporters and their subsidiaries. Countries may be added or deleted from the list of designated countries at any time.

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[23] Public Law 93-618, 19 U.S.C. 2241.
[24] Public Law 93-618, 19 U.S.C. 2242.

The President is required to negotiate with the priority countries, drawing from a list of general and specific negotiating objectives, for the purpose of entering into bilateral or multilateral agreements that provide mutually advantageous market opportunities. If no agreement is reached, the Act requires the President to take whatever authorized actions are appropriate and most likely to achieve the general negotiating objectives, as defined by the specific objectives established by the President. The actions authorized are broadly similar to authorities available to the USTR under section 301 of the Trade Act of 1974, as amended.

The Telecommunications Trade Act requires the USTR to conduct annual reviews to determine if a country has violated a telecommunications trade agreement or otherwise denies mutually advantageous market opportunities. In the case of an affirmative determination, it shall be treated as a trade agreement violation under section 301 of the Trade Act of 1974, as amended. In general, that section requires that in cases involving foreign violations of trade agreements or other "unjustifiable" practices, the USTR must take retaliatory action in an amount equivalent in value to the foreign burden or restriction on U.S. commerce. Certain waivers are available to the USTR, under which no retaliation is required.

Negotiating authority was provided concomitant with the general trade agreement authority provided in the Omnibus Trade and Competitiveness Act of 1988 (i.e., until its expiration in 1993). Compensation authority also is provided, in the event that action is taken that violates U.S. obligations under the WTO.

Background and reviews in 2001-2002

The Telecommunications Trade Act was intended to address the imbalance in market access for telecommunications goods and services between the United States and other countries that arose from increased deregulation of the U.S. market and court-ordered divestiture by American Telephone and Telegraph (AT&T) of its local operating companies on January 1, 1984. These actions resulted in a U.S. market virtually devoid of barriers to the entry of foreign competitors. At the same time, however, major foreign markets were characterized by strict government regulations, procurement policies, standards, and other practices that resulted in limited competitive opportunities for U.S. and other foreign firms in those markets. Although the period authorized for telecommunications trade negotiations is coterminous with multilateral trade negotiating authority in the 1988 Act, the separate negotiating authority is designed to permit increased flexibility in negotiating agreements in telecommunications trade. It permits the USTR to focus on priority countries whose barriers or practices pose the greatest impediment to market access by U.S. telecommunications firms and to tailor the negotiating priorities to address the specific circumstances in each country.

In the 2005 section 1377 annual review, the main issues identified were existing practices or prospective concerns relating to: 1) excessive interconnection rates for mobile networks in Germany, Japan, Mexico, Peru, and Switzerland; (2) restrictions on access to and use of leased lines in Germany and submarine cable capacity in India; (3) excessive regulatory requirements in China, Colombia, and India; (4) burdensome testing and certification requirements in Mexico and Korea; and (5) limitations on suppliers' choice of technology in China and Korea.

Most-Favored-Nation (Nondiscriminatory) or Normal Trade Relations Treatment

Nondiscriminatory treatment of trading partners has been a basic element of international trade for several centuries, although its scope, application, and terminology in U.S. law have changed as the complexity of trade among the nations has increased. Nondiscriminatory treatment and the principle underlying it are often referred to as the "most-favored-nation" (MFN) treatment or principle. While the MFN principle remains firmly in place as a fundamental concept governing U.S. trade relations, the term "most-favored-nation" was replaced with the term "normal trade relations" in all U.S. trade laws and regulations in 1998.[25] This was done to clear up confusion and more clearly reflect the principles of U.S. trade policy. In the following summary, the term "MFN" is retained to describe the international obligation, while "NTR" is used to describe U.S. law since 1998.

MFN had its origins in international commercial agreements, whereby the signatories extend to each other treatment in trade matters which is no less favorable than that accorded to a nation which is the "most favored" in this respect. The effect of such treatment is that all countries to which it applies are "the most favored" ones; hence, all are treated equally. In the context of U.S. tariff legislation, NTR means that the products of a country given such treatment are subject to lower rates of duty (found in column 1 of the Harmonized Tariff Schedule (HTS) of the United States), which have resulted from various rounds of reciprocal tariff negotiations. Products from countries not eligible for NTR under U.S. law are subject to higher rates of duty (found in column 2 of the HTS), which are essentially the rates of duty enacted by the Tariff Act of 1930.

Prior to 1934, the United States accorded MFN treatment to its trading partners reciprocally only within the scope of commercial agreements containing an MFN clause. Section 350 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1934, in effect required the nondiscriminatory application to all countries of tariff and trade concessions granted in bilateral agreements, whether or not those countries had agreements with the United States containing the MFN clause.

[25] Public Law 105-206, approved July 22, 1998.

By becoming a signatory of the General Agreement on Tariffs and Trade, the United States, as of January 1, 1948, also accepted the basic obligation of GATT Article I to accord unconditional MFN status to all other signatories. Thus, MFN or NTR status is extended by the United States to foreign countries as a matter not only of U.S. domestic law but also as an international obligation.

The unconditional and unlimited MFN policy was changed after the enactment of section 5 of the Trade Agreements Extension Act of 1951,[26] which directed the President to withdraw or suspend MFN status from the Soviet Union and all countries under the control of international communism. This action was prompted by the outbreak of the Korean War and the support that these countries were giving to North Korea and China. As implemented, this directive was applied to all then-existing Communist countries except Yugoslavia.

In December 1960, President Eisenhower revoked the suspension of MFN status with respect to Poland. President Kennedy suspended MFN status with respect to Cuba in May 1962, pursuant to a new legislative requirement contained in section 401 of the Tariff Classification Act of 1962.[27] The Tariff Classification Act also enacted the new Tariff Schedules of the United States, which for the first time, included in a general headnote a current list of countries without MFN status. Section 231 of the Trade Expansion Act of 1962,[28] as amended by section 402 of the Foreign Assistance Act of 1963, expanded the scope of the suspension of MFN status by applying it to "any country or area dominated by Communism," unless the President determined that the continued application of MFN status to Communist countries to which it was being applied at the time of the enactment of the Trade Expansion Act (i.e., to Poland and Yugoslavia) was in the national interest. The President made such a determination for both countries in March 1964.

The statutory provisions affecting the U.S. MFN policy and its practical implementation remained unchanged thereafter until enactment of the Trade Act of 1974. Subsequent amendments to U.S. MFN policy were made in the Customs and Trade Act of 1990.[29] As discussed above, "MFN" terminology was changed to "NTR" in all trade laws and regulations in the Internal Revenue Service Restructuring and Reform Act of 1997.[30]

The Normal Trade Relations or MFN principle under present law

The basic statute currently in force with respect to the NTR treatment of U.S. trading partners is section 126 of the Trade Act of 1974.[31] Section 126 contains

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[26] Public Law 49-50, ch. 141, approved June 16, 1951.
[27] Public Law 87-566, approved May 24, 1962.
[28] Public Law 87-794, approved October 11, 1962, 19 U.S.C. 1351.
[29] Public Law 101-382, approved August 20, 1990.
[30] Public Law 105-206, approved July 22, 1998.
[31] Public Law 93-618, 19 U.S.C. 2136.

the general requirement that any duty or other import restriction proclaimed to carry out any trade agreement applies on an MFN basis to products of all foreign countries, except as otherwise provided by law. The key provision embodying such exceptions with respect to tariff treatment is General Note 3(b) of the HTS, which contains the list of countries denied NTR tariff status with respect to their exports to the United States.

Other measures, most notably the Generalized System of Preferences, the Caribbean Basin Initiative, the African Growth and Opportunity Act, the Andean Trade Preferences Act, the various free trade agreements, and tariff treatment of least developed developing countries, provide specifically for application of preferential duty treatment for eligible countries and products under certain circumstances. This preferential tariff status grants terms that are more favorable than those granted to other countries which otherwise receive NTR treatment from the United States.

With respect to nontariff measures, section 1103(a) of the Omnibus Trade and Competitiveness Act of 1988 requires the President to recommend to the Congress that benefits and obligations of a particular agreement apply solely to the parties to that agreement or not apply uniformly to all parties, if such application is consistent with the Agreement. The Agreement on Subsidies and Countervailing Duties and the Agreement on Government Procurement, negotiated during the Tokyo Round of GATT multilateral trade negotiations, were implemented by the United States on a non-MFN basis. The renegotiated plurilaterial GATT Government Procurement Agreement will continue to be implemented on a non-MFN basis.

Nonmarket economy countries

The Trade Act of 1974 repealed section 231 of the Trade Expansion Act of 1962. Title IV of the Trade Act of 1974,[32] as amended, presently regulates the extension of NTR tariff treatment to nonmarket economy countries. Section 401 directs the President to continue to deny NTR treatment to any country to which it was denied on the date of the enactment of the Trade Act (i.e., all Communist countries as of January 3, 1975, except Poland and Yugoslavia). Section 402 also denies NTR treatment (as well as access to U.S. government credits, or credit or investment guarantees) to any nonmarket economy country ineligible for NTR treatment on the date of enactment of the Trade Act and which the President determines denies or seriously restricts or burdens its citizens' right to emigrate.

A country subject to the ban imposed by section 401 may gain NTR status only by fulfilling two basic conditions: (1) compliance with the requirements of the freedom of emigration provisions under section 402 of the Trade Act; and (2) conclusion of a bilateral commercial agreement with the United States under

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[32] Public Law 93-618, as amended by Public Law 96-39, Public Law 100-418, and Public Law 101-382, 19 U.S.C. 2431.

section 405 of the Trade Act providing reciprocal nondiscriminatory treatment.

The provisions of section 402, commonly referred to as the Jackson-Vanik amendment, allow a non-NTR, nonmarket economy country to receive NTR status (and access to U.S. financial facilities) only if the President determines that it permits free and unrestricted emigration of its citizens. If the President determines that a country is in full compliance with the Jackson-Vanik freedom of emigration requirements, he must submit a report to the Congress by June 30 and December 31 of each year that such country receives NTR treatment, describing the nature of the country's emigration laws and policies. The country's NTR status may be revoked if a joint resolution disapproving the December 31 compliance report is enacted into law within 90 legislative days of the delivery of the report to Congress. If such a resolution is enacted, the country's NTR status is rescinded, effective 60 calendar days after enactment.

Section 402 also authorizes the President to waive the requirements for full compliance of the particular country with the Jackson-Vanik requirements, if he determines that such waiver will substantially promote the objectives of the freedom of emigration provisions and if he has received assurances that the emigration practices of the country will lead substantially to the achievement of those objectives. The President may, at any time, terminate by executive order any waiver granted under authority of section 402.

The President's waiver authority is subject to annual renewal. The renewal procedure under section 402(d)(1) requires the President, if he determines that waiver authority extension will substantially promote freedom of emigration objectives, to submit to the Congress a recommendation for a 12-month extension of the waiver authority within 30 days prior to its expiration (i.e., by June 3 each year), together with his reasons for the recommendation and a determination with respect to each country for which a waiver is in effect that the continuation of the waiver will substantially promote the freedom of emigration objectives.

Under the terms of the 1974 Act, as amended, the extension of the waiver authority for an additional 12-month period is automatic unless a joint resolution disapproving such extension either generally or with respect to a specific country is enacted into law within 60 days after the expiration of the previous waiver authority. The enactment of such resolution would rescind the waiver authority (and with it the grant of the NTR status) with respect to countries covered by the resolution, effective 60 days after its enactment.

Presidential authority to extend NTR status to a country excluded under section 401 may be utilized only as long as a bilateral commercial agreement between the United States and the country involved remains in force. Sections 404 and 405 of the Trade Act of 1974 as amended authorize the President to conclude such agreements, which must contain various provisions, including safeguards against disruptive imports, intellectual property rights, trade promotion, and consultations. Agreements and implementing proclamations can take effect only if a joint resolution of approval is enacted into law under the fast track procedures of section 151 of the Trade Act. Agreements may remain in force for no more than 3 years, renewable for additional 3-year periods (without any congressional approval) if past operation has been found satisfactory.

Current provisions providing for the use of joint resolutions to approve trade agreements with nonmarket economy countries and to disapprove presidential waivers and compliance reports were adopted as part of the Customs and Trade Act of 1990. The amendments were made in response to a 1983 Supreme Court ruling in *Immigration and Naturalization Service v. Chadha et al.*, which raised serious questions about the constitutionality of the use of concurrent or one-house resolutions for congressional approval and disapproval actions, as previously provided for in the Jackson-Vanik amendment. The court ruled that any action of a legislative nature must be taken by both houses of Congress and presented to the President for signature or veto.

Application of NTR treatment

Afghanistan

Afghanistan is not subject to title IV of the Trade Act of 1974. However, NTR status for Afghanistan was suspended by presidential proclamation effective February 14, 1986, under the authority provided by section 1118 of the Continuing Appropriations Act for fiscal year 1986.[33] The law gave the President the authority to restore NTR status to the products of Afghanistan only if he provides written notice of such restoration to the Congress at least 30 days prior to the date on which such restoration takes effect. On May 3, 2002, the President notified the Congress that he issued a proclamation restoring NTR status to the products of Afghanistan. The proclamation took effect on June 6, 2002.

Albania

On May 14, 1992, a bilateral trade agreement was signed with Albania, and a Presidential waiver was issued on May 20. A joint resolution approving the granting of NTR treatment to the products of Albania was enacted on August 26, 1992.[34] On December 5, 1997, Albania was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which were favorably determined continuously. Public Law 106-200, signed into law on May 19, 2000, authorized the President to determine that title IV should no longer apply to Albania and to extend non-discriminatory treatment (normal trade relations treatment) to Albania. Pursuant to Public Law 106-200, the President issued Proclamation 7326 on June 29, 2000, determining that title IV of the Trade Act of 1974 should no

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[33] Public Law 99-190, approved December 19, 1985.

[34] Public Law 102-363.

longer apply to Albania and declaring the extension of nondiscriminatory NTR treatment to the products of that country.

Armenia

Armenia first received conditional normal trade relations from the United States on April 6, 1992 under a Presidential waiver from the freedom of emigration requirements in Title IV of the Trade Act of 1974. On June 3, 1997, Armenia was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which were favorably determined continuously. Public Law 108-429, signed into law on Dec. 3, 2004, authorized the President to determine that title IV should no longer apply to Armenia and to extend non-discriminatory treatment (normal trade relations treatment) to Armenia. Pursuant to Public Law 108-429, the President issued Proclamation 7860 on January 7, 2005, determining that title IV should no longer apply to Armenia and declaring the extension of nondiscriminatory NTR treatment to the products of that country.

Azerbaijan

NTR tariff status was extended to Azerbaijan on April 21, 1995 under the Jackson-Vanik waiver provision. On June 3, 1997, the President determined that Azerbaijan was in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

Belarus

In February 1993, the NTR status of Belarus was restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. The President renewed Belarus' waiver every year until 2001. In 2001, Belarus' Jackson-Vanik waiver was not extended by the June 3, 2001 deadline (apparently through an oversight) and was issued anew on July 2, 2001.[35] The waiver has been continuously issued since then.

Bulgaria

The President issued a waiver from the freedom of emigration requirements for Bulgaria on January 22, 1991. A bilateral trade agreement providing NTR treatment for products of Bulgaria was submitted to the Congress on June 25, 1991. A joint resolution approving the extension of NTR treatment to Bulgaria

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[35] Executive Order 13220; 66 F.R. 35527.

was passed by the Congress in October 1991 and signed by the President on November 13, 1991.[36]

Bulgaria continued to receive NTR treatment under a presidential waiver from the Jackson-Vanik freedom of emigration criteria until the President found the country to be in full compliance with the statutory requirements on June 3, 1993. On January 5, 1996, H.R. 2853 was introduced to provide the President with the authority to determine that title IV should no longer apply with respect to Bulgaria and to extend unconditional NTR status to the products of that country. H.R. 2853 passed the House on March 5, 1996 and the Senate on June 28. The bill was signed into law by the President on July 18, 1996.[37] On September 27, the President issued a proclamation effective October 1, 1996 removing the application of title IV from Bulgaria and extending unconditional NTR treatment to the products of that country.

Cambodia

Because of the wording of the initial NTR status-suspending provision and its mandatory continuation by section 401, Cambodia's NTR status was not subject to the terms and conditions of the Jackson-Vanik amendment. Specifically, the original administrative suspension in 1951 and its enactment as part of the Trade Expansion Act of 1962 applied to "any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control." This qualified application of the suspension, based on the actual situation in each country involved, was in effect at the time of enactment of section 401, which predated the compete Communist takeover of Cambodia in May 1975. The language of the provision was not changed until enactment of the Harmonized Tariff Schedule (HTS) in the Omnibus Trade and Competitiveness Act of 1988, which listed "Kampuchea" in General Note 3(b) among those countries whose products were denied NTR treatment. Upon the formation of the freely elected Royal Cambodian government in 1993, the United States and Cambodia negotiated an agreement on bilateral trade relations and intellectual property rights protection, calling for a reciprocal extension of NTR status. On May 16, 1995, H.R. 1642 was introduced to amend the HTS by striking "Kampuchea" to allow for an extension of unconditional NTR treatment to Cambodia upon the effective date of a Federal Register notice that a trade agreement obligating reciprocal NTR treatment had entered into force. The bill also required the President to report to Congress, no later than 18 months after the date of enactment, on trade relations between the United States and Cambodia under the bilateral agreement. H.R. 1642 passed the House on July 11, 1996 and the Senate on July 25. The bill was signed into law by the President on September 25.[38] As of October 25, 1996, the products of Cambodia were extended unconditional NTR treatment pursuant to a

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[36] Public Law 102-157.
[37] Public Law 104-182, approved July 18, 1996.
[38] Public Law 104-203, approved September 25, 1996.

Federal Register notice published by the U.S. Trade Representative that a bilateral trade agreement between the United States and Cambodia was signed on October 4.

Cuba

Cuba remains subject to title IV. In addition, a comprehensive trade embargo applies (see Chapter 5).

Czech Republic and Slovakia

On February 20, 1990, the President issued a waiver for Czechoslovakia, making that country eligible to receive U.S. government credits and credit and investment guarantees. Following congressional approval of a trade agreement, NTR treatment was extended to Czechoslovakia on November 17, 1990. The President continued the waiver on June 3, 1991, and then issued a determination on October 16 that Czechoslovakia's emigration policies were in full compliance with the Jackson-Vanik freedom of emigration requirements.

Sections 1 and 2 of Public Law 102-182, signed on December 4, 1991, provided for full normalization of NTR trading relations with Czechoslovakia, based on findings of its respect for fundamental human rights, policy of free emigration, and the political and economic reforms undertaken by Czechoslovakia. Section 2 of that law authorized the President to terminate the application of title IV of the Trade Act of 1974 and extend NTR status to Czechoslovakia. Unconditional NTR treatment was granted to Czechoslovakia on April 14, 1992. Following the dissolution of Czechoslovakia in 1993, the independent countries of the Czech Republic and Slovakia retained their NTR status, having assumed the rights and obligations of the earlier agreement between the United States and Czechoslovakia.

People's Republic of China

China first received conditional NTR treatment in 1980 under a Presidential waiver from the freedom of emigration requirements in title IV of the Trade Act of 1974, and that treatment has never been interrupted.

Congress approved in the 106th Congress legislation to grant permanent normal trade relations to China (P.L. 106-286). However, that legislation did not take effect until the President certified the terms of China's accession to the World Trade Organization. On June 1, 2001, the President announced his intention to waive for another year the freedom of emigration requirements in title IV of the Trade Act of 1974 with respect to the People's Republic of China, thereby granting NTR treatment to China between July 1, 2001 and June 30, 2002 (H. Doc. 107-79).

On November 13, 2001, the House received a message from the President certifying that the terms and conditions for accession of China to the WTO are at least equivalent to those agreed to in the November 15, 1999 bilateral agreement between the United States and China. On December 27, 2001, the President granted permanent nondiscriminatory treatment (permanent NTR treatment) pursuant to P.L. 106-286.

P.L. 106-286 included a provision codifying the import surge mechanism negotiated as part of the 1999 U.S.-China Bilateral Agreement. Procedures for this new "import surge mechanism" are modeled after Section 406 of the Trade Act of 1974, as amended, with certain changes to conform to the requirements of the bilateral trade agreement. The legislation also: (1) establishes clear standards for the application of Presidential discretion in providing relief to injured industries and workers; (2) authorizes the President to provide a provisional safeguard in cases where "delay would cause damage which it would be difficult to repair," as permitted under the U.S.-China Bilateral Agreement; (3) implements a provision in the Agreement concerning trade diversion; and (4) establishes a Congressional-Executive Commission on China to focus on monitoring human rights, including internationally recognized core labor standards and religious freedom. The legislation also included provisions that: (1) require USTR to submit an annual report on China's compliance with WTO obligations; (2) provide that the United States will seek an annual review of China's compliance with its WTO obligations in the WTO as part of China's Protocol of Accession; (3) establish a task force on the prohibition on the importation of products of forced or prison labor; and (4) authorize additional resources for monitoring and enforcing China's compliance with trade agreements. The legislation also contained a sense of Congress that the accession of Taiwan and the People's Republic of China to the WTO should be considered at the same WTO General Council meeting. Finally, the legislation contained a number of other provisions not in the jurisdiction of the Committee, such as the authorization of funds to assist the development of rule of law and democracy in China. P.L. 106-286 was signed into law by the President on October 10, 2000.

Georgia

Georgia first received conditional normal trade relations from the United States in August 1993 under a Presidential waiver from the freedom of emigration requirements in title IV of the Trade Act of 1974. On June 3, 1997, Georgia was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which were favorably determined continuously.

On June 12, 2000, Georgia became a member of the World Trade Organization. Public Law 106-476, signed into law on November 9, 2000, authorized the President to extend unconditional normal trade relations to

Georgia. The President extended unconditional normal trade relations to Georgia on December 29, 2000.

German Democratic Republic (East Germany)

Section 142 of the Customs and Trade Act of 1990 authorized the President to extend NTR treatment to the German Democratic Republic (East Germany), thus superseding the requirements of title IV, in light of the rapid progress then being made toward German reunification. However, the Congress expressed the strong view that such action should not be taken before NTR status was granted to Czechoslovakia under authority of title IV, since Czechoslovakia had followed all the procedures required by that title. The authority of section 142 was never used, however. The President issued a waiver for East Germany on August 15, 1990; that formerly independent country received NTR status on October 3, 1990 as part of a reunified Germany.

Hungary

On October 25, 1989, Hungary became the first country ever found in full compliance with the title IV freedom of emigration requirements, thereby becoming eligible for open-ended NTR status, as long as the trade agreement remained in force and Hungary remained in full compliance.

Sections 1 and 2 of Public Law 102-182, signed on December 4, 1991, provided for full normalization of NTR trading relations with Hungary, based on findings of its respect for fundamental human rights, policies of free emigration, and the political and economic reforms undertaken by Hungary. Section 2 of that law authorized the President to terminate the application of title IV of the Trade Act of 1974 and extend NTR status to Hungary. Unconditional NTR treatment was granted to Hungary on April 14, 1992.

Kazakhstan

In February 1993, Kazakhstan had its NTR status restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On December 5, 1997, the President determined that Kazakhstan is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews which have been favorably determined continuously.

Kyrgyzstan

Kyrgyzstan first received conditional normal trade relations from the United States in August 1992 under a Presidential waiver from the freedom of emigration requirements in the Jackson-Vanik amendment to the Trade Act of

1974. On December 5, 1997, Kyrgyzstan was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which were favorably determined continuously. Public Law 106-200, signed into law on May 18, 2000, authorized the President to extend unconditional normal trade relations to Kyrgyzstan. On June 29, 2000, the President determined that title IV of the Trade Act of 1974 should no longer apply to Kyrgyzstan.

Laos

Laos was not subject to title IV of the Trade Act of 1974. However, Laos did not receive NTR status because it was included in the Harmonized Tariff Schedule (HTS) of the United States in General Note 3(b) on the list of countries whose products are subject to column 2 (non-NTR) tariff rates. On Dec. 3, 2004, the President signed into law legislation passed by Congress (Public Law 108-429) to amend the HTS by striking "Laos" to allow for an extension of unconditional NTR treatment to Laos upon the effective date of a Federal Register notice that a trade agreement obligating reciprocal NTR treatment had entered into force. As of February 4, 2005, the products of Laos were extended unconditional NTR treatment pursuant to a Federal Register notice published on February 11, 2005 that a bilateral agreement between the United States and Laos entered into force on February 4, 2005.

Moldova

Moldova first received conditional normal trade relations from the United States in July 1992 under a Presidential waiver from the freedom of emigration requirements in title IV of the Trade Act of 1974. On June 3, 1997, Moldova was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which have been favorably determined continuously. Moldova became a member of the World Trade Organization on July 26, 2001, and the United States has invoked the WTO non-application clause because it does not extend unconditional NTR to Moldova.

Mongolia

The President issued a waiver from the freedom of emigration requirements for Mongolia on January 23, 1991. A bilateral trade agreement providing NTR treatment for products of Mongolia was submitted to the Congress on June 25, 1991. A joint resolution approving the extension of NTR treatment to Bulgaria was passed by the Congress in October 1991 and signed by the President on November 13, 1991.[39]

On September 4, 1996, Mongolia was found to be in full compliance with the Jackson-Vanik requirements, but its trade status remained subject to semi-annual compliance reviews, which were favorably determined continuously. Public Law 106-36, signed into law on June 25, 1999, authorized the President to determine that title IV of the Trade Act of 1974 should no longer apply to Mongolia.

Pursuant to Public Law 106-36, the President issued Proclamation 7207 on July 1, 1999, determining that title IV of the Trade Act of 1974 should no longer apply to Mongolia and declaring the extension of nondiscriminatory treatment to the products of that country.

Poland

Poland is exempt from denial of NTR under title IV of the Trade Act of 1974, but its unconditional NTR status was suspended by presidential proclamation effective November 1, 1982, under the authority of section 125(d) of the Trade Act. On February 23, 1987, President Reagan restored NTR status to Poland by presidential proclamation as part of the last stage of removing sanctions imposed on Poland in 1982 in response to its action against Solidarity.

Romania

In 1988, the President did not exercise the annual waiver authority with respect to Romania, issuing a proclamation on June 28, announcing his decision to allow the waiver to expire and to withdraw NTR treatment in response to the decision by the government of Romania to renounce the renewal of NTR subject to the terms of Jackson-Vanik. Romania's NTR status and its eligibility for U.S. government-supported export credits expired on July 3, 1988. On March 11, 1992, the Department of State issued a statement announcing that it had informed the Romanian government that the United States was prepared to sign a new bilateral trade agreement in light of Romania's progress toward democratic pluralism and a market economy and its desire for closer bilateral relations. The President issued a waiver from the freedom of emigration requirements for Romania on August 17, 1991, and signed a new bilateral trade agreement on April 3, 1992. However, in view of the concerns raised about the Romanian government's continued commitment to democratic reform, House consideration of H.J. Res. 512, approving the extension of NTR treatment to Romania, was defeated on September 30. H.J. Res. 228, approving the extension of NTR, was reintroduced on July 13, 1993. In recommending approval, the House Ways and Means Committee report noted that there had been substantial

[39] Public Law 102-158.

progress on democratization and human rights, and additional significant improvements had been made since 1992. The resolution was subsequently passed by the House on October 12, and the Senate on October 21. H.J. Res. 228 was approved by the President and signed into law on November 2, 1993.

Romania continued receiving NTR treatment under a presidential waiver from the Jackson-Vanik freedom of emigration criteria until the President found Romania to be in full compliance with those requirements on May 19, 1995. On March 26, 1996, H.R. 3161 was introduced to provide the President with the authority to determine that title IV should no longer apply with respect to Romania and to extend unconditional NTR status to that country. Upon recommending approval of the bill, the Committee noted that Romania is a member of the World Trade Organization (WTO) and that an extension of unconditional NTR is necessary in order for the United States to avail itself of all rights under the WTO with respect to Romania. H.R. 3161 passed the House on July 17, 1996 and the Senate on July 19. The bill was signed into law by the President on August 3.[40] On November 7, 1996, the President issued a proclamation removing the application of title IV from Romania and extending unconditional NTR treatment to the products of that country.

Russia

In June 1992, Russia had its NTR status restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On September 24, 1994, the President determined that Russia is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

Serbia and Montenegro (Former Yugoslavia)

The former Yugoslavia is not subject to title IV of the Trade Act of 1974. In response to the armed conflict and atrocities in the former Yugoslavia, legislation was initiated and passed late in the 102nd Congress withdrawing NTR treatment from Serbia and Montenegro; the other four newly-independent republics of Bosnia-Hercegovina, Croatia, Macedonia, and Slovenia were unaffected by the legislation and retain NTR status. The legislation authorizes the President to restore NTR status to these two republics if he certifies to the Congress that certain conditions are fulfilled. The President made this certification and NTR status was restored to Serbia and Montenegro as of December 4, 2003.[41]

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[40] Public Law 104-171, approved August 3, 1996.

[41] 68 F.R. 64410

Former Soviet Union including Estonia, Latvia, and Lithuania

The Bush Administration entered into negotiations for a new bilateral trade agreement with the Soviet Union in response to the advent of "perestroika" and "glasnost" under the leadership of Soviet President Gorbachev, the subsequent collapse of communist regimes in Eastern and Central Europe, substantial increases in emigration rates, and to encourage further reforms. That agreement with its side letters was signed by Presidents Bush and Gorbachev on June 1, 1990. The President issued a waiver from the freedom of emigration requirements for the Soviet Union on December 29, 1990 and again on June 3, 1991. However, Soviet violence and economic sanctions against the independence movements in the Baltic states and Soviet republics resulted in delay of the submission of the Agreement to the Congress until August 2, 1991. Following independence of the Baltic states in September, the President resubmitted the trade agreement and presidential proclamation on October 9 and a new joint resolution was introduced omitting references to Estonia, Latvia, and Lithuania. The joint resolution approving the extension of NTR treatment to the products of the Soviet Union was passed by the Congress in November and signed into law on December 9, 1991. Subsequently, bilateral trade agreements granting reciprocal NTR treatment have been signed with governments of the newly-independent republics of the former Soviet Union.[42] No further congressional action was required because these agreements ratified by the republics reflected only technical changes in the previously approved original agreement signed by the former Soviet Union.

Title IV of the Trade Act of 1974 applied to the Baltic states of Estonia, Latvia, and Lithuania by virtue of their forcible incorporation into the former Soviet Union. Following restoration of their independence from the Soviet Union on September 6, 1991, legislation[43] extended NTR treatment to the products of the three Baltic states, notwithstanding title IV or any other provision of law, and terminated the application of title IV to these countries.

Tajikistan

In November 1993, Tajikistan had its NTR status restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On December 5, 1997, the President determined that Tajikistan is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

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[42] As of this writing, bilateral trade agreements have been signed and ratified and conditional NTR treatment granted to the 12 republics of Russia, Ukraine, Kyrgyzstan, Moldova, Armenia, Belarus, Georgia, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan, and Azerbaijan.

[43] Public Law 102-182, title I, approved December 4, 1991.

Turkmenistan

In October 1993, Turkmenistan had its NTR status restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On December 5, 1997, the President declared that Turkmenistan is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

Ukraine

In June 1992, Ukraine had its NTR status restored under the waiver provision of title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On June 3, 1997, the President determined that Ukraine is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

Uzbekistan

In January 1994, Uzbekistan had its NTR status restored under the waiver provision of Title IV by acceding to the U.S.-Soviet Union trade agreement of June 1, 1990. On December 5, 1997, the President determined that Uzbekistan is in full compliance with the Jackson-Vanik requirements, but its trade status remains subject to semi-annual compliance reviews, which have been favorably determined continuously.

Vietnam

Vietnam first received a Presidential waiver in 1998 from the freedom of emigration requirements in title IV of the Trade Act of 1974. The President has renewed Vietnam's waiver every year since that time. During the 107th Congress, the House defeated two resolutions which would have disapproved Presidential waiver determinations for Vietnam.

Prior to Congressional approval of the bilateral trade agreement between the United States and Vietnam, Vietnam was ineligible under title IV of the Trade Act of 1974 to receive NTR treatment from the United States. Thus, the practical effect of the Jackson-Vanik waivers at that time was to make Vietnam eligible for certain U.S. government credits, or investment or credit guarantee programs, provided that Vietnam met the relevant program criteria. These programs, which lie outside the jurisdiction of the Committee on Ways and Means, included the Overseas Private Investment Corporation, the Export-Import Bank, and agricultural credit programs administered by the U.S. Department of Agriculture.

In July 2000, the United States and Vietnam signed the U.S. – Vietnam bilateral trade agreement (BTA). On June 8, 2001, the President transmitted the BTA to Congress for its approval. Congressional approval of the BTA makes Vietnam eligible for NTR treatment (in addition to the access to certain U.S. government credit programs), subject to annual renewal under title IV of the Trade Act of 1974. Approval procedures are covered by permanent fast track provisions in the Trade Act of 1974, which are triggered by the transmittal of the agreement to Congress by the President.

On June 12, 2001, identical bills were introduced in the House and Senate (by request) to grant NTR status to Vietnam by approving the BTA. On September 6, 2001, the House approved the legislation, and the Senate followed suit on October 3, 2001. On October 16, 2001, the President signed the resolution into law (P.L. 107-052). NTR treatment for the products of Vietnam became effective on December 10, 2001.

North American Trade Relations

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988[44] authorized the President to enter into multilateral or bilateral trade agreements, before June 1, 1993 (extended until April 15, 1994, only for the GATT Uruguay Round of Multilateral Trade Negotiations) to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures, subject to congressional consultation requirements under sections 1102 and 1103 and approval of implementing legislation under special fast track procedural rules of the House and Senate under section 151 of the Trade Act of 1974. The authorities provided the means to achieve the negotiating objectives set forth under section 1101 of the 1988 Act.

On August 12, 1992, President Bush announced the completion of negotiations of a comprehensive North American Free Trade Agreement (NAFTA). On September 18, the President officially notified Congress of his intention to enter into the Agreement, accompanied by reports of 38 private sector advisory committees on the draft Agreement as required by section 135 of the Trade Act of 1974, as amended. This notice was followed on October 7 by the initialing of the draft legal text by the trade ministers of the three participating countries in San Antonio, Texas. The Agreement was signed on December 17, the expiration of the 90-day minimum notice period.

Also on December 17, President-elect Clinton stated that he could not support the NAFTA as negotiated without additional side agreements covering the environment, workers, and import surges. On August 13, 1993, U.S. Trade Representative Michael Kantor announced completion of these supplemental agreements. He also announced a basic agreement on a new institutional structure for funding environmental infrastructure projects in the U.S.-Mexico

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[44] Public Law 100-418, approved August 23, 1988, 19 U.S.C. 2901 note.

border region, the North American Development Bank. The NAFTA side agreements were signed in a White House ceremony on September 14, 1993. On November 4, 1993, President Clinton sent two letters of transmittal to the Congress covering: (1) the NAFTA text, together with the draft implementing bill, Statement of Administrative Action and supporting documents as required under section 1103(a) of the 1988 Act for congressional approval; and (2) the NAFTA supplemental agreements.

As provided under section 151 of the Trade Act of 1974, the implementing legislation was introduced as H.R. 3450 in the House and S. 1627 in the Senate on November 4. On November 17, the House passed H.R. 3450. On November 20, the Senate passed the bill. The bill was then signed by the President and became public law on December 8, 1993. On December 15, 1993, President Clinton issued Presidential Proclamation 6641 to implement as of January 1, 1994 the tariff modification provisions under the North American Free Trade Agreement as provided for under section 1102(a) of the 1988 Act.[45]

NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement creates the world's largest market for goods and services. The cornerstone of the Agreement is the phased-out elimination of all tariffs on trade between the United States, Canada, and Mexico. With respect to United States-Canada bilateral trade, all tariffs were eliminated by 1999, as was agreed in the United States-Canada Free-Trade Agreement. As for United States-Mexico bilateral trade, most tariffs were eliminated by 2004, although a few U.S. tariffs on potentially import-sensitive items will not be completely eliminated until 2009. The NAFTA also reduces or eliminates a number of nontariff barriers to trade, liberalizes restrictions on investment and services, sets forth strong and comprehensive rules on intellectual property, and extends to the three countries the international dispute settlement system established under the United States-Canada Free-Trade Agreement for review of national determinations of dumping and subsidy practices.

NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT OF 1993

The North American Free Trade Agreement Implementation Act of 1993[46] approved the Agreement (but not the supplemental agreements) and Statement of Administrative Action submitted to the Congress on November 4, 1993 and includes provisions which are necessary or appropriate to implement the Agreement in U.S. domestic law. U.S. law prevails over the Agreement if there is a conflict. The Agreement establishes a Federal-state consultation process concerning NAFTA obligations affecting state laws. The Act establishes a Federal-state consultation process to achieve conformity of state laws with the

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[45] Proclamation No. 6641, 58 Fed. Reg. 68,191 (1993).

[46] Public Law 103-182, approved December 8, 1993, 19 U.S.C. 3301 note.

Agreement. No person other than the United States has a cause of action or defense under the Agreement.

The President is authorized to proclaim the modifications in U.S. duties to implement the scheduled phaseout and elimination of all tariffs required under various provisions of the NAFTA and to maintain the general level of concessions. The rules of origin in the Act, which are to ensure application of NAFTA preferential tariff treatment only to goods originating in Mexico or Canada, are enacted in the statute. The legislation implements U.S. obligations under the NAFTA to eliminate customs merchandising processing fees, restrict duty drawback, and revise country-of-origin marking requirements; amends penalties and recordkeeping requirements to enforce NAFTA rules of origin and other customs requirements; and required monitoring of television and color picture tube imports for five years.

The legislation also includes procedures and criteria for applying bilateral and global import relief measures on Canadian and Mexican articles; implements NAFTA obligations that apply to certain agricultural commodities, intellectual property rights protection, temporary entry of business persons, standards and sanitary and phytosanitary measures, and corporate average fuel economy; and authorizes the waiver of discriminatory government purchasing restrictions on NAFTA-covered procurement.

The legislation implements into U.S. domestic law the institutional provisions of the NAFTA establishing binational panel and extraordinary challenge committee review of final antidumping and countervailing duty determinations, in lieu of domestic judicial review, including procedures and criteria for the selection of panelists appointed by the United States, and special procedures for the selection of Federal judges for panels and committees. Objectives for future negotiations with NAFTA countries on subsidies and special procedures for industries facing subsidized competition pending development of subsidy rules are also included.

Institutional provisions include authorization of a U.S. section of the NAFTA Secretariat, requirements relating to selection of dispute settlement panelists, and a preliminary process for considering possible future country accession to NAFTA, subject to congressional approval.

Other provisions include the establishment of a NAFTA transitional adjustment assistance program of comprehensive benefits, including training and income support, for workers who may be laid off due to increased U.S. imports from Mexico or Canada or a shift in production to Mexico or Canada, and authorizes state self-employment assistance programs. Also included are a comprehensive report by the President on the operation and economic impact of the NAFTA after 3 years, a response to actions affecting U.S. cultural industries, a report on the impact of the NAFTA on motor vehicle exports to Mexico, a response to discriminatory tax measures, and authorization of a Center for the Study of Western Hemisphere Trade.

With respect to the supplemental agreements, the legislation authorized U.S. participation in, and appropriations for, the Commissions on Labor Cooperation, Environmental Cooperation, and Border Environment Cooperation. It also includes provisions relating to U.S. membership in the North American Development Bank.

United States-Israel Trade Relations

Title IV of the Trade and Tariff Act of 1984[47] amended section 102(b) of the Trade Act of 1974 to authorize the President to enter into a bilateral reciprocal trade agreement with Israel specifically providing for elimination or reduction of U.S. duties on products of that country as well as nontariff barriers, subject to congressional consultations and approval of implementing legislation under the expedited procedures of sections 102 and 151-154 of the Trade Act. As amended by section 401, the requirements for advance consultations and 90-day advance notice to Congress of intent to enter into a trade agreement did not apply to a bilateral agreement with Israel. Title IV also contains basic provisions of U.S. laws required to be applied to the administration of the Agreement.

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations on a United States-Israel free trade area, which the Israeli government originally proposed in 1981. Negotiations by the U.S. Trade Representative began in mid-January 1984 on the elements of an agreement to eliminate tariffs and other trade-distorting practices between the two countries. The Agreement on the Establishment of a Free Trade Area Between the government of the United States of America and the government of Israel was signed on April 22, 1985. The President transmitted to the Congress on April 29 the text of the Agreement, a draft implementing bill, a statement of administrative action, and an explanation of the effects on existing law. The United States-Israel Free Trade Area Implementation Act of 1985[48] approved the free trade area agreement with changes in U.S. laws necessary and appropriate for its domestic implementation. The implementing bill was passed by both Houses of Congress in May and signed into law on June 11, 1985.

TITLE IV OF THE TRADE AND TARIFF ACT OF 1984

In addition to providing the basic authority for a bilateral free trade area agreement with Israel, title IV of the Trade and Tariff Act of 1984, as amended, sets forth the rule-of-origin requirements that would apply to such an agreement as well as the application of import relief laws.

Section 402 requires that any trade agreement entered into under section 102(b) with Israel provide for the reduction or elimination of duties only on

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[47] Public Law 98-573, title IV, approved October 30, 1984.
[48] Public Law 99-47, approved June 11, 1985, 19 U.S.C. 2112.

articles that meet rule-of-origin requirements similar to those under the Caribbean Basin Initiative (CBI):

(1) The article must be the growth, product or manufacture of Israel or foreign materials or components must be substantially transformed into a new or different article grown, produced, or manufactured in Israel. Related provisions are designed to prevent qualification of minor pass-through operations and transshipments;

(2) The article must be imported directly from Israel into the U.S. customs territory; and

(3) At least 35 percent of the total value of the article must consist of materials produced in Israel plus direct cost of processing operations performed in Israel, of which 15 percent may be U.S. content.

Sections 403 and 406 of the 1984 Act make clear that existing trade laws available to domestic industries for relief from injurious import competition or unfair trade practices continue to apply to imports under the trade agreement with Israel. As under the CBI legislation, the President may suspend the reduction or elimination of any duty under the trade agreement with Israel and proclaim a duty as import relief under section 203 of the Trade Act of 1974 or as a national security measure under section 232 of the Trade Expansion Act of 1962. Alternatively the President may establish a margin of preference or maintain the duty reduction or elimination on Israeli articles while imposing relief on imports from other sources. The U.S. International Trade Commission must state in its report to the President on import relief investigations involving Israeli articles covered in a trade agreement whether and to what extent its injury findings and recommended relief apply to imports from Israel.

Section 404 of the Trade and Tariff Act of 1984 applies a special procedure similar to that established under the CBI whereby petitions may be filed with the Secretary of Agriculture for emergency relief on perishable products from Israel pending action on a petition filed for normal import relief action. The Secretary must determine and report to the President within 14 days a recommendation for emergency action if he has reason to believe an agricultural perishable product from Israel is being imported in such increased quantities as to be a substantial cause or threat of serious injury to the U.S. industry. The President must determine within 7 days whether to take emergency action, which consists of withdrawing the reduction or elimination of duty and restoring the original rate pending final action on the import relief petition.

UNITED STATES-ISRAEL FREE TRADE AREA AGREEMENT

The free trade area with Israel was the first such arrangement negotiated by the United States with any foreign country aside from the bilateral free trade arrangement with Canada in the automotive sector only. The Agreement is an adjunct to existing multilateral obligations of both parties under the GATT/WTO; existing rights and obligations between the countries under the GATT or other agreements continue to apply unless specifically modified by the terms of the Agreement.

The main element of the Agreement is the reciprocal elimination of tariffs on all products traded between the two countries by January 1, 1995, and the elimination of other restrictive regulations of commerce on bilateral trade as provided under Article XXIV of the GATT 1994 for free trade areas. Duties were eliminated by both countries over 10 years in four staging categories depending on the relative import sensitivity of articles for domestic producers. Duties on certain products were eliminated immediately as of September 1, 1985.

The Agreement also prohibits the introduction of new duties or quantitative restrictions in bilateral trade unless they are permitted by the Agreement or by the GATT. The government of Israel undertook specific commitments concerning the reduction and elimination of its export subsidy programs and limited its GATT right as a developing country to apply duties to protect infant industries. Both parties must review their veterinary and plant health rules to insure nondiscrimination and not undue trade obstruction, undertook limitations on the duration of temporary restrictions that might be imposed in serious balance-of-payments situations, and reaffirmed existing bilateral obligations on intellectual property rights. The Agreement prohibits the imposition of import licensing requirements except in certain circumstances and of export or domestic purchase performance requirements on investment. The Agreement requires both countries to waive their Buy National restrictions on government procurement contracts valued $50,000 or more for articles or services covered by the 1979 GATT Agreement on Government Procurement.

The Agreement contains various safeguard provisions consistent with title IV of the Trade and Tariff Act of 1984 to permit import relief measures under certain circumstances, and rule-of-origin requirements to ensure that free trade area benefits accrue only to the two parties. Import restrictions other than customs duties may also be maintained based on agricultural policy considerations. A Joint Committee reviews and administers the Agreement and provides for dispute settlement.

In 1996, the United States and Israel entered into the Agreement on Trade in Agricultural Products (ATAP), an adjunct to the 1985 FTA Agreement. The ATAP expired on December 31, 2002 and was renewed in 2004. Because of concern that Israel has failed to implement obligations of the Trade Agreement in the area of agriculture, section 3105 of P.L. 107-210 required USTR to submit a report to Congress on this topic in January 2003.

UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985

The United States-Israel Free Trade Area Implementation Act of 1985 approved the United States-Israel Free Trade Area Agreement and statement of administrative action submitted to the Congress on April 29, 1985 and made necessary and appropriate changes in U.S. laws for its domestic implementation.[49] U.S. statutes prevail if a provision of the Agreement is in conflict. No private rights of action or remedies are created. Expedited legislative approval procedures apply to subsequent changes in U.S. statutes to implement requirements, amendments, or recommendations under the Agreement.

The President is authorized to proclaim the modifications or continuance of existing duties or duty-free treatment to implement the schedule for U.S. duty elimination under the Agreement. Tariff elimination was completed as of January 1, 1995. The President may withdraw, suspend, or modify any duty or duty-free treatment or proclaim additional duties necessary to maintain the general level of concessions under the Agreement.

The implementing legislation also amended title III of the Trade Agreements Act of 1979 to lower the threshold contract value to $50,000 or more on which the President may waive Buy American restrictions on eligible products or services from Israel covered by the GATT Agreement on Government Procurement. As amended by the Uruguay Round Agreements Act, the $50,000 threshold may be applied to the broader central government entity coverage of goods and services under the 1994 GATT Agreement if there is a reciprocal agreement from Israel.

WEST BANK AND GAZA STRIP FREE TRADE BENEFITS

In an exchange of letters on October 17, 1995, among the United States, the government of Israel, and the Palestinian Authority, the U.S. Trade Representative agreed to seek statutory authority to proclaim elimination of existing duties on articles of the West Bank and Gaza Strip. The Palestinian Authority agreed to accord U.S. products duty-free access to the West Bank and Gaza Strip, to prevent illegal transshipment of goods not qualifying for duty-free access, and to support all efforts to end the Arab economic boycott of Israel. Because the authority given to the President to proclaim reductions in tariffs without congressional action contained in section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 had expired, new proclamation authority was required to implement the terms of the exchange of letters.

Accordingly, Congress passed legislation amending the United States-Israel Free Trade Area Implementation Act of 1985, adding a new section to provide the President proclamation authority to modify tariffs on products from the West

[49] Public Law 99-47, approved June 11, 1985, 19 U.S.C. 2112 note.

Bank, Gaza Strip and qualifying industrial zones.[50] The provision applies to areas designated as industrial parks between the Gaza Strip and Israel and between the West Bank and Israel. The effect of the provision is to offer to goods from the West Bank, Gaza Strip, and qualifying industrial zones (located between Israel and Jordan or Israel and Egypt) the same tariff treatment as is offered to Israel under the United States-Israel Free Trade Agreement. The provision applies the same rule-of-origin requirements as to products from the West Bank, Gaza Strip, and qualifying industrial zones as are already applicable to products from Israel.

United States-Canada Trade Relations

Section 102(b) of the Trade Act of 1974, as amended by section 401 of the Trade and Tariff Act of 1984, authorized the President to enter into bilateral reciprocal trade agreements with foreign countries to eliminate or reduce tariffs on bilateral trade as well as nontariff barriers if certain procedural requirements were met.

On July 25, 1988, the President transmitted to the Congress a copy of the United States-Canada Free Trade Agreement, a statement of administrative action, proposed implementing legislation, and a statement of how the Agreement serves the interests of U.S. commerce. The implementing legislation passed the House on August 9 and the Senate on September 19, and was signed into law by the President on September 28, 1988. The Agreement entered into force on January 1, 1989.

On January 1, 1994, the North American Free Trade Agreement entered into force, covering trade among the United States, Canada, and Mexico. The Agreement contains provisions suspending the overlapping provisions of the two agreements until such time as Canada may terminate its participation in the NAFTA.

UNITED STATES-CANADA FREE-TRADE AGREEMENT

At the time, the United States-Canada Free-Trade Agreement was one of the most comprehensive bilateral trade agreements ever negotiated, creating one of the world's largest internal markets for goods and services. The two Federal governments agreed to ensure that state, provincial, and local governments take necessary actions in areas under their jurisdiction to implement the Agreement. Each party agreed to accord national interest treatment to the goods, services, and investment of the other party to the extent provided in the Agreement.

The central provision of the Agreement is the phased out elimination of tariffs on all goods traded between the two countries within 10 years, by January 1, 1998, in three staging categories. The Agreement contains rules of origin based primarily on changes in tariff classifications to determine that only products

[50] Public Law 104-234, approved October 2, 1996.

with sufficient content originating in either or both countries receive the benefits of preferential tariff treatment. Customs user fees and duty drawback programs were phased out by 1994 for bilateral trade; duty waivers linked to performance requirements, except certain waivers affecting automotive trade, and duty remission programs for autos were terminated by 1988.

The Agreement eliminates and prohibits import and export quotas or other restrictions, unless specifically permitted by the Agreement or by the General Agreement on Tariffs and Trade (GATT), and liberalizes or harmonizes laws and regulations relating to technical standards. Other Agreement provisions liberalize barriers affecting agriculture, automotive products, wine and distilled spirits, energy, government procurement, services, investment, temporary entry for business persons, and financial services. Certain "cultural industries" are exempt from the Agreement. Temporary import relief actions may be taken on a bilateral or global basis under certain circumstances to safeguard domestic industries from import-related injury.

Institutional provisions are included for the avoidance or settlement of disputes between the two parties concerning the interpretation or application of the Agreement. A major element of the Agreement is establishment of a mechanism for review by binational panels and extraordinary challenge committees of final antidumping and countervailing duty determinations on products of the two countries in lieu of judicial review by courts of either party using the request of either party.

UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

The United States-Canada Free-Trade Agreement Implementation Act of 1988[51] approved the Agreement and statement of administrative action submitted to the Congress on July 25, 1988 and sets forth the relationship between obligations under the Agreement and U.S. laws. The legislation also makes changes in U.S. laws necessary or appropriate to implement obligations under the Agreement, sets forth negotiating objectives and authorities for further U.S.-Canada trade liberalization, and specifies procedures for domestic implementation of future changes in the Agreement. Technical amendments to various provisions were included in the Customs and Trade Act of 1990.[52]

U.S. laws prevail over the Agreement if there is a conflict. No person other than the United States has a cause of action or defense under the Agreement. Changes in U.S. law necessary or appropriate to implement an amendment to the Agreement could be approved under the fast track congressional procedures during the 30-month period after the Agreement entered into force. Certain actions may be implemented by presidential proclamation subject to prior consultation and 60 calendar day congressional layover requirements.

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[51] Public Law 100-449, approved September 28, 1988, 19 U.S.C. 2112 note.

[52] Public Law 101-382, approved August 20, 1990.

The President was authorized to proclaim the modifications in U.S. rates of duty necessary to implement the scheduled phaseout and elimination of all tariffs on trade with Canada within 10 years. The rules of origin set forth in the Agreement to ensure application of preferential tariff treatment only to goods originating in Canada are enacted in the statute. The legislation implements U.S. obligations under the Agreement to phase out customs user fees on Canadian goods, to eliminate drawback with certain exceptions, and to exempt Canada from the lottery ticket embargo; provides penalties and recordkeeping requirements to enforce the rules of origin; and includes a reporting and monitoring requirement on the consistency of Canadian production-based duty remission programs with the GATT and the Agreement.

The legislation also implements in U.S. domestic law various provisions of the Agreement concerning particular economic sectors, including agricultural products (authority to impose temporary duties on imports of fresh fruits and vegetables, exemption of Canadian meat from any import limitations under the Meat Import Act (now repealed), authority to exempt grain and grain products and sugar-containing products from Canada from section 22 import quotas); exports to Canada of Alaskan oil; exemption of Canadian uranium from U.S. enrichment restrictions; a lower contract threshold ($25,000) for exemption from Buy American restrictions on government procurement of articles from Canada covered by the GATT Agreement on Government Procurement; temporary entry of business persons; and extension of financial services. The legislation also includes procedures and criteria for the application of bilateral or global safeguard measures on Canadian articles as temporary relief from import-related injury.

The implementing legislation sets forth various U.S. negotiating objectives to expand the Agreement with respect to services, investment, intellectual property rights, automotive products, procurement, Canadian agricultural transportation subsidies, potato trade, and enforcement of U.S. rights against Canadian controls on fish. Objectives and authority to negotiate an agreement on subsidies and special procedures for industries facing subsidized competition pending development of subsidy rules are also included.

The legislation also contains revisions to U.S. law to implement the institutional provisions of the Agreement establishing binational panel and extraordinary challenge committee review, upon request, of final antidumping and countervailing duty determinations, in lieu of judicial review. The statute includes procedures and criteria for the selection of the panelists appointed by the United States, establishes the U.S. Secretariat, and authorizes appropriations for administrative expenses.

The NAFTA incorporates or otherwise carries forward most provisions of the United States-Canada FTA or supersedes the bilateral agreement in certain areas, such as rules of origin. The United States and Canada suspended the operation of the bilateral agreement upon entry into force of the NAFTA for the two countries for such time as the two governments remain parties to the

NAFTA. As provided in section 107 of the NAFTA Implementation Act, certain provisions of the United States-Canada FTA Implementation Act are suspended; other provisions of that Act which carry out U.S. obligations under the United States-Canada FTA that are in effect under the NAFTA remain in place or are amended by the NAFTA Implementation Act.

United States-Jordan trade relations

In 1996, the Congress took a major step to widen trade with Jordan when it passed H.R. 3074, West Bank and Gaza Strip Free Trade Benefits (P.L. 104-234). This legislation, *inter alia*, expanded the scope of the U.S.-Israel Free Trade Agreement as it extended duty-free treatment to products from qualifying industrial zones (QIZs) between Israel and Jordan and between Israel and Egypt. QIZs are designed to further Arab-Israeli economic and social cooperation by providing duty-free access to the U.S. market for goods produced with certain levels of Israeli, Jordanian, Egyptian, or Palestinian content. Since 1996, the U.S. Trade Representative has designated ten QIZs in Jordan. The first Jordanian QIZ, established in 1998, has grown from 1,800 employees and eight firms to more than 7,000 employees and 50 firms.

Progress continued in 1997, when the United States and Jordan signed a bilateral investment treaty. This event was a reflection of Jordan's efforts to transform its economy, including streamlining its investment and customs procedures, creating tax and investment incentives, and reducing tariffs. A follow-up Trade and Investment Framework Agreement was signed between the two countries in 1999.

UNITED STATES-JORDAN FREE TRADE AGREEMENT

Negotiations for a United States-Jordan Free Trade Agreement (FTA) began in June 2000 and were concluded on October 24, 2000, when U.S. Trade Representative Charlene Barshefsky and Jordanian Deputy Prime Minister Mohammed Halaiqah signed the agreement. President Clinton transmitted the agreement to the Congress on January 6, 2001 (H.Doc. 107-15). The Jordanian parliament ratified the agreement in May 2001.

On July 23, 2001, United States Trade Representative Robert Zoellick and Jordanian Ambassador Marwan Muasher exchanged formal and official letters which discussed the implementation of the agreement's dispute settlement procedures. In the letters, both countries stated their intention not to apply the agreement's dispute settlement enforcement procedures in a manner that results in blocking trade. The letters also stated that bilateral consultations and other procedures (i.e., alternative mechanisms) would be appropriate measures to help secure compliance without recourse to traditional trade sanctions.

The United States-Jordan Free Trade Agreement is comprehensive and has seven major sections:

Tariff Elimination: The FTA will eliminate tariffs on virtually all trade between the two countries within 10 years. The tariff reductions are in four stages: Tariffs of less than 5 percent are phased out in two years; those between and 5 and 10 percent are eliminated in four years, those between 10 and 20 percent will be gone in five years, and those that were more than 20 percent will be eliminated in 10 years.

Services: Jordan already enjoyed near complete access to the U.S. services market. The FTA opened the Jordanian services market to U.S. companies. Specific liberalization was achieved in many key sectors, including business, communications, construction and engineering, distribution, education, energy distribution, environment, finance, health, printing and publishing, recreation, tourism, and transportation.

Intellectual property rights: These provisions incorporated the most up-to-date international standards for copyright protection. Among other things, Jordan agreed to ratify and implement the World Intellectual Property Organization's (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty within two years. These two treaties, sometimes referred to as the "Internet Treaties," establish several critical elements for the protection of copyrighted works in a digital network environment, including creators' exclusive right to make their creative works available online.

Electronic commerce: Jordan and the United States each committed to promoting a liberalized trade environment for electronic commerce that should encourage investment in new technologies and stimulate the innovative uses of networks to deliver products and services. Both countries agreed to seek to avoid imposing customs duties on electronic transmissions, imposing unnecessary barriers to market access for digitized products, and impeding the ability to deliver services through electronic means.

Labor and trade: The FTA includes provisions reaffirming the parties' support for the core labor standards adopted in the 1998 International Labor Organization's Declaration on Fundamental Principles and Rights at Work. The countries also reaffirmed their belief that is inappropriate to lower standards to encourage trade and agreed in principle to strive to improve their labor standards. Each side agreed to enforce its own existing labor laws and to settle disagreements on enforcement of these laws through a dispute settlement process.

Environment and trade: The FTA includes substantive provisions on trade and the environment. Specifically, each country agreed to avoid relaxing environmental laws to encourage trade. The United States and Jordan affirmed their belief in the principle of sustainable development and agreed to strive to maintain high levels of environmental protection and to improve their environmental laws. Each side also agreed to a provision on effective enforcement of its environmental laws and to settle disagreements on enforcement of these laws through a dispute settlement process. Both countries also agreed on an environmental cooperation initiative, which establishes a

U.S.-Jordanian Joint Forum on Environmental Technical Cooperation for ongoing discussion of environmental priorities and identifies environmental quality and enforcement as areas of initial focus. Finally, the FTA includes an initiative to eliminate tariffs on a number of environmental goods and technologies and liberalize Jordanian restrictions on certain environmental services.

Consultation and dispute settlement: The United States envisions most questions on the interpretation of the agreement or compliance with the agreement being settled by either informal or formal government-to-government contacts. The FTA provides for dispute settlement panels to issue legal interpretations of the FTA, but only if the countries have first consulted and failed to resolve the dispute. The process includes strong provisions on transparency. As in the Israel FTA, the report of such dispute settlement panels is non-binding, and the affected country is authorized to take appropriate measures if the parties are still unable to resolve a dispute once a panel has issued its recommendations.

Because the United States already has a Bilateral Investment Treaty with Jordan, the FTA does not include an investment chapter.

UNITED STATES-JORDAN FREE TRADE AREA IMPLEMENTATION ACT

The United States-Jordan Free Trade Area Implementation Act, signed into law on September 28, 2001, approves the Agreement submitted to the Congress on January 6, 2001, and makes changes in U.S. laws necessary or appropriate to implement obligations under the Agreement.

The legislation authorizes the President to proclaim the modifications or continuance of existing duties or duty-free treatment to implement the schedule for U.S. duty elimination under the Agreement. The rule of origin set forth in the Agreement ensures application of preferential tariff treatment only to goods originating in Jordan. There are also certain rules of origin with respect to the reduction or elimination of any duty imposed by the United States on Jordanian textile, fabric, or apparel articles.

The legislation directs the U.S. International Trade Commission (ITC), upon the filing of a petition by an entity (including a trade association, firm, certified or recognized union, or group of workers representative of an industry) requesting trade relief from U.S. obligations under the Agreement (or alleging that critical circumstances exist), to initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Jordanian article is being imported into the United States in such increased quantities and under such conditions that such imports alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article. The legislation requires the President, upon an affirmative determination by the ITC, to provide necessary import relief (including suspension of any further duty reduction, or an increase in the rate duty, on imported Jordanian articles under the Agreement) and facilitate domestic industry efforts to make a positive adjustment to import competition, unless the provision of such relief is not in the U.S. national economic interest, or in extraordinary circumstances, the provision of relief would cause serious harm to U.S. national security.

The legislation also requires the ITC, if an affirmative determination about import competition has been made under the Trade Act of 1974, to determine whether imports of Jordanian articles are a substantial cause of serious injury or threat. The legislation requires the President to review such a determination and authorizes the exclusion of such Jordanian imports from remedial action if the final determination is negative.

The legislation authorizes a Jordanian national (including any spouse or child, if accompanying or following to join such national) to enter the United States pursuant to the Agreement as a nonimmigrant if such entrance is solely to carry on substantial trade, or solely to develop the operations of an enterprise in which he has invested a substantial amount of capital.

United States-Chile trade relations

UNITED STATES-CHILE FREE TRADE AGREEMENT

In December 1994, the leaders of the United States, Canada, and Mexico announced their intention to negotiate Chile's accession to the North American Free Trade Agreement (NAFTA). Talks on possible accession for Chile to the NAFTA formally began in June 1995. Negotiations for a U.S.-Chile FTA began in December 2000. However, "fast track" authority had lapsed, and the talks stalled. After Trade Promotion Authority was passed in 2002, the negotiations resumed. After two years and fourteen rounds of negotiations, the two countries announced on December 11, 2002, that an agreement had been reached between the United States and Chile. Pursuant to requirements established under TPA, President Bush formally notified the Congress on January 30, 2003, of his intention to sign the agreement. On June 6, 2003, United States Trade Representative Robert Zoellick and Chilean Foreign Minister Soledad Alvear signed the FTA at a ceremony in Miami.

The agreement is comprehensive and includes the following sections:

Tariff Elimination: Under the agreement, all tariffs and quotas on all goods eliminated immediately or after transition period. More than 85% of bilateral trade in consumer and industrial products becomes duty-free immediately upon entry into force of the agreement, with most remaining tariffs eliminated within four years.

Agriculture: More than three-quarters of U.S. farm goods will enter Chile duty-free within 4 years and all duties on U.S. products will be phased out over 12 years. Chilean price bands, under which import duties on the same product may vary according to price level, will be phased out. The agreement contains an agricultural safeguard provision. Finally, both sides renewed their commitment to continue the work on resolving important sanitary and phytosanitary issues that are inhibiting access to consumers in both markets.

Textiles and Apparel: Textiles and apparel will be duty-free immediately if they meet the agreement's rule of origin. A limited yearly amount of textiles and apparel containing non-US or non-Chilean yarns, fibers or fabrics may also qualify for duty-free treatment.

Trade in Services: The commitments in services cover both cross-border supply of services and the right to invest and establish a local services presence. Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. Chile agreed to accord substantial market access across its entire services regime, subject to very few exceptions, a so-called "negative list" approach.

Investment: All forms of investment are protected under the agreement, such as enterprises, debt, concessions, contracts and intellectual property. U.S. investors enjoy in almost all circumstances the right to establish, acquire and operate investments in Chile on an equal footing with Chilean investors, and with investors of other countries, unless specifically stated otherwise. Pursuant to U.S. Trade Promotion Authority, the agreement draws from U.S. legal principles and practices to provide U.S. investors a basic set of substantive protections that Chilean investors currently enjoy under the U.S. legal system.

Intellectual Property Rights (IPR): Protection of copyrights, patents, trademarks and trade secrets is state-of-the-art, going farther than previous agreements. Enforcement of intellectual property rights is also enhanced under the agreement, and the provisions provide meaningful penalties for piracy and counterfeiting.

Competition Policy: The agreement commits Chile to maintain a competition law that prohibits anti-competitive business conduct and a competition agency to enforce that law. The agreement also requires that Chile control and regulate state enterprises and officially designated monopolies.

Government Procurement: The agreement requires that covered Chilean ministries and regional and municipal governments not discriminate against U.S. firms, or in favor of Chilean firms, when making government purchases in excess of agreed monetary thresholds. The agreement also imposes strong and transparent disciplines on procurement procedures. Finally, the agreement ensures that bribery in government procurement is specified as a criminal offense under Chilean and U.S. laws.

Above certain monetary thresholds, the Agreement applies to procurement by 20 Chilean central government and 13 Chilean regional government entities, and by 79 entities of the United States Government-including the General Services Administration, departments of the Federal Government, and independent agencies, boards, and commissions. The thresholds are:

(1) For national government procurement in the two countries, purchases of goods and services over $58,550 and purchases of construction services over $6,481,000; and

(2) For government-owned enterprises, purchases of goods and services over $280,951 or $518,000 and purchases of construction services over $6,481,000.

The Agreement also covers procurement by 341 Chilean municipalities and 37 U.S. States, above certain monetary thresholds and subject to specified conditions. The equivalent thresholds for purchases for these "sub-central" government entities, i.e., Chilean municipalities and U.S. state government agencies, are set at $460,000 for purchases of goods and services and $6,481,000 for purchases of construction services.

Customs Procedures and Rules of Origin: The agreement requires transparency and efficiency in customs administration, and both parties agree to share information to combat illegal trans-shipment of goods. The agreement also establishes rules of origin, designed to be easier to administer than NAFTA rules of origin.

Temporary Entry of Personnel: The agreement contains provisions that provide for the entry into either party of business visitors, traders and investors, intra-company transferees, and professionals. In the United States, this will take the form of a special FTA professional visa, available to a limited number of individuals holding four-year degrees, capped annually.

Labor and Environmental: Labor and environmental obligations are part of the core text of the trade agreement. The agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The agreement also provides that parties shall strive to continue to improve such laws. The agreement makes clear that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment, that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties, is subject to dispute settlement under the agreement. Chile and the United States will pursue a number of cooperative projects to promote environmental protection, and the agreement contains a cooperative mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor.

Dispute Settlement: The agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The agreement dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

The United States-Chile Free Trade Agreement Implementation Act, signed into law on August 3, 2003 (P.L. 108-77), approves the agreement and makes change in U.S. laws necessary or appropriate to implement obligations under the agreement. The agreement was one of the first to be considered by Congress under the procedures outlined in the Bipartisan Trade Promotion Authority Act (TPA), which was approved by the 107th Congress and signed into law in August 2002 as part of the Trade Act of 2002 (P.L. 107-210).

Section 201 of the implementing legislation authorizes the President to proclaim tariff modifications to carry out the agreement. It terminates Chile's status as a beneficiary of the Generalized System of Preferences.

Section 201(c) of the legislation allows, in addition to any duty collected under the agreement, the assessment of a duty on an agricultural safeguard good if the unit import price of the good when it enters the United States is less than the trigger price for that good in the agreement.

Section 202 codifies the rules of origin set out in Chapter 4 of the agreement. Under the general rules, there are three basic ways for a good of Chile to qualify as an "originating good," and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Chile, the United States or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 4.1 of the agreement; or (3) it is produced entirely in the territory of Chile, the United States, or both exclusively from originating materials.

An apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Chile, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Chile from yarn, or fabric made from yarn, that originates in Chile or the United States.

Section 203 implements Article 3.8 of the agreement, which begins a three-year, phased elimination of duty drawback and duty deferral programs between the United States and Chile within eight years of the entry into force of the agreement. The legislation provides for no authorization of the refund, waiver, or reduction of countervailing or antidumping duties imposed on a good imported into the United States, as consistent with the agreement and current U.S. law. Section 204 provides for the exemption of the merchandise processing fee on originating goods and prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994. Section 208 of the legislation implements the verification provisions of the agreement at Article 3.21 and authorizes the President to take appropriate action while the verification is being conducted.

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the agreement, a Chilean product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 311(d) exempts from investigation under this section Chilean articles that have been the basis previously for relief since entry into force under this safeguard or if, at the time the petition is filed, the article is subject to import relief under the global safeguard provisions in section 201 of the Trade Act of 1974. Under section 312(b), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic or social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate imposed when the agreement entered into force. Section 313(d) states that the import relief that the President is authorized to provide may not exceed three years. Section 314 provides that no relief may be provided after ten years from the agreement's entry into force, unless the tariff elimination for the article under the agreement is twelve years, in which case relief may not be provided for that article after twelve years from entry into force. Section 315 authorizes the President to provide compensation to Chile consistent with article 7.4 of the agreement.

The bill also contains a textile and apparel safeguard. Section 322(a) provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 322(b) identifies the relief that the President may provide, which generally represents the MFN/NTR duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief shall be no longer than three years. Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard. Under section 325, after the safeguard expires, the article that had been subject to such action shall be subject to duty-free treatment. Section 326 of the bill states that the authority to provide this safeguard relief expires eight years after the textile and apparel provisions of the agreement take effect. Section 327 of the Act gives authority to the President to provide compensation to Chile if he orders relief.

The legislation also contains provisions concerning the temporary entry of business persons.

United States-Singapore trade relations

UNITED STATES-SINGAPORE FREE TRADE AGREEMENT

Negotiations for a U.S.-Singapore FTA were launched in December 2000. The final round of negotiations was held in November 2002, and the formal agreement was concluded on January 15, 2003. Pursuant to requirements established under TPA, President Bush formally notified the Congress on January 30, 2003, of his intention to sign the agreement. On May 6, 2003, President Bush and Singaporean Prime Minister Goh Chok Tong signed the FTA.

The agreement is comprehensive and contains the following sections:

Trade in Goods: Under the agreement, Singapore guaranteed zero tariffs immediately on all U.S. products. Most U.S. tariffs on Singaporean goods are eliminated upon entry into force of the agreement, with remaining tariffs phased out over 3-10 years.

Textiles and Apparel: Textiles and apparel are duty-free immediately if they meet the agreement's rule of origin. A limited yearly amount of textiles and apparel containing non-US or non-Singaporean yarns, fibers or fabrics may also qualify for duty-free treatment. The agreement contains extensive monitoring and anti-circumvention commitments—such as reporting, licensing, and unannounced factory checks—so that only Singaporean textiles and apparel receive tariff preferences.

Trade in Services: Singapore agreed to accord substantial market access across its entire services regime, subject to very few exceptions, and will treat

U.S. services suppliers as well as its own suppliers or other foreign suppliers. The agreement relies on a so-called “negative list” approach.

Investment: All forms of investment are protected under the agreement unless specifically exempted, a "negative list" approach, and U.S. investors are provided treatment as favorable as local Singaporean investors or any other foreign investor. Pursuant to U.S. Trade Promotion Authority, the agreement draws from U.S. legal principles and practices to provide U.S. investors a basic set of substantive protections that Chilean investors currently enjoy under the U.S. legal system.

Intellectual Property Rights: Protection of copyrights, patents, trademarks and trade secrets is greatly enhanced, as is enforcement of intellectual property rights.

Competition Policy: The agreement commits Singapore to enact a law regulating anti-competitive business conduct and to create a competition commission by January 2005. In addition, specific conduct guarantees are imposed to ensure that commercial enterprises in which the Singapore government has effective influence will operate on the basis of commercial considerations, and that such enterprises will not discriminate in their treatment of U.S. firms.

Government Procurement: Singapore made commitments on non-discrimination in government services procurements, based on a "negative list" approach in which U.S. firms gain nondiscriminatory access unless specifically excluded. The agreement also reinforces WTO commitments to strong and transparent disciplines on procurement procedures. Finally, monetary thresholds for when government procurement disciplines apply is lowered, thus expanding the contracts that are subject to FTA disciplines.

Customs Procedures and Rules of Origin: The agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. Both parties agree to share information to combat illegal trans-shipment of goods. The agreement also establishes rules of origin, designed to be easier to administer than NAFTA rules of origin.

Temporary Entry of Personnel: The agreement creates separate categories of entry for businesspersons to engage in a wide range of activities on a temporary basis, allowing business visitors to enter Singapore without the need for a labor market test.

Labor and Environmental: Labor and environmental obligations are part of the core text of the trade agreement. The agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The agreement also provides that parties shall strive to continue to improve such laws. The agreement makes clear that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment, that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties, is subject to dispute settlement under the agreement.

Dispute Settlement: The agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The agreement dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

UNITED STATES-SINGAPORE FREE TRADE AREA IMPLEMENTATION ACT

The United States-Singapore Free Trade Agreement Implementation Act, signed into law on August 3, 2003 (P.L. 108-78), approves the agreement and makes change in U.S. laws necessary or appropriate to implement obligations under the agreement. The agreement was one of the first to be considered by Congress under the procedures outlined in the Bipartisan Trade Promotion Authority Act (TPA), which was approved by the 107th Congress and signed into law in August 2002 as part of the Trade Act of 2002 (P.L. 107-210).

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the agreement. Section 202 codifies the rules of origin set out in Chapter 3 of the agreement. Under the general rules, there are three basic ways for a good of Singapore to qualify as an "originating good," and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Singapore, the United States or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 3A of the agreement; or (3) it is a good listed in Annex 3B of the agreement and thus considered to be an "originating good" if the good itself, as finished, is imported into the territory of the United States from the territory of Singapore.

Under Annex 3A rules, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Singapore, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Singapore from yarn, or fabric made from yarn, that originates in Singapore or the United States.

The goods listed in Annex 3B (also called Integrated Sourcing Initiative or ISI products) are predominantly information technology goods for which the current United States Normal Trade Relations or Most Favored Nations duty rate is zero. Imports of these goods into the United States would receive duty-free treatment regardless of origin. The bill makes clear that the Annex 3B good "itself, as imported," is deemed to be an originating good. This means that Annex 3B goods are originating only when transshipped through Singapore, not when the good is incorporated as a component into another product, unless the good is first shipped from the United States to Singapore. Thus, for purposes of determining origin by way of a transformation using the regional value content formula in Section 202(d), an Annex 3B good would not be "originating" for purposes of the regional value content calculation unless it was shipped from the United States to Singapore, where it was then incorporated into the final product.

Section 203 of the bill implements U.S. commitments under Article 2.8 of the agreement, regarding the exemption from the merchandise processing fee for originating goods and prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Section 205 of the bill implements the textile and apparel good enforcement against circumvention provisions of the agreement. In accordance with Articles 5.4.5, 5.5.5, and 5.8.2 of the agreement, the provision allows the President to exclude from entry textile and apparel goods from any enterprise that does not permit site visits requested by Customs officials or that engages in intentional circumvention. The President may also take further action against circumventing enterprises or related enterprises, such as barring future entries of goods, if consultations with Singapore authorities fail to address problems of circumvention.

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the agreement, a Singaporean product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 311(a) permits the award of provisional relief and critical circumstances relief under certain circumstances. Section 311(d) exempts from investigation under this section Singaporean articles that have been the basis previously for relief since entry into force under: the bilateral safeguard provision; the textile and apparel safeguard set out in Subtitle B of Title III of the legislation; the global safeguard provisions in section 201 of the Trade Act of 1974; article 6 of the WTO Agreement on Textiles and Clothing; or article 5 of the WTO Agreement on Agriculture.

Under section 312(c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic or social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate imposed when the agreement entered into force.

Section 313(d) provides that the import relief that the President is authorized to provide may not exceed two years. However, the President may extend the relief under certain circumstances, but the aggregate period of relief, including extensions, may not exceed four years. According to section 313(e), the rate of duty at the end of the relief period is to be the rate that would have been in effect on that date but for such action. Section 314 provides that no relief may be provided after ten years from the agreement's entry into force unless Singapore consents. Section 315 authorizes the President to provide compensation to Singapore consistent with article 7.4 of the agreement.

The bill also contains a textile and apparel safeguard. Section 322(a) provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the reduction or elimination of a duty provided under the agreement, a Singaporean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article constitute a substantial cause of serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide as either a suspension of further duty reductions or the normal trade relations/most-favored-nation duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief shall be no longer than two years, although an extension is permitted under certain circumstances as long as total relief, including any extension, does not exceed four years. Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard. Under section 325, the duty rate applicable to the article after the safeguard expires is the rate that would have been in force on that date, but for application of the safeguard.

Section 326 of the bill provides that the authority to provide this safeguard relief expires ten years after the textile and apparel provisions of the agreement take effect. Section 327 of the Act gives authority to the President to provide compensation to Singapore if he orders relief. Section 328 provides for the treatment of business confidential information.

If, in any investigation initiated under Title II of the Trade Act of 1974 ("section 201" action), the ITC makes an affirmative determination, the ITC shall also find and report to the President whether imports of the article from Singapore are a substantial cause of serious injury or threat thereof. In determining relief to be taken under Section 201, the President shall determine whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is negative, may exclude from such actions products from Singapore.

The legislation also contains provisions concerning the temporary entry of business persons.

United States-Australia trade relations

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

On November 13, 2002, the President first notified Congress of his intent to negotiate an FTA with Australia. FTA negotiations between the United States and Australia began in March 2003 and concluded in February 2004. On February 13, 2004, the President notified Congress of his intent to enter into the U.S.-Australia FTA. The FTA was signed on May 18 by U.S. Trade Representative Robert B. Zoellick and Australian Minister for Trade Mark Vaile.

The agreement includes the following sections:

Tariff Elimination: Under the agreement, duties on more than 99 percent of tariff lines covering industrial and consumer goods will be eliminated upon entry into force, amounting to over 93 percent of U.S. goods exports to Australia, and duties on other manufactured goods will be phased out over periods of up to ten years. The agreement also requires the elimination of a variety of non-tariff barriers that restrict or distort trade flows.

Agriculture: Duties on all U.S. agricultural exports to Australia will be eliminated immediately upon entry into force of the agreement. Duties on most imports from Australia will be phased out over periods of between four and 18 years. Duties will be maintained on sugar and certain dairy products. In addition, for certain products, including beef, dairy, cotton, peanuts and certain horticultural products, the agreement includes other mechanisms, such as preferential tariff rate quotas and safeguards. The agreement also establishes a new forum for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters based on science and with a view to facilitating trade.

Pharmaceuticals: The United States and Australia affirmed their commitment to several basic principles related to their shared objectives of facilitating high quality health care and improvements in public health. These principles are: (1) the important role played by innovative pharmaceuticals in delivering high quality health care; (2) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies; and (3) the need to promote timely and affordable access to innovative pharmaceuticals through adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical. The agreement requires that federal health care programs apply transparent procedures in listing new pharmaceuticals for reimbursement, establishes a Medicines Working Group to promote discussion and understanding of pharmaceutical issues, and requires Australia to establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including establishment of an independent review process for listing decisions.

Services: The agreement requires national treatment and most-favored-nation treatment in all sectors not explicitly excluded and prohibits local presence requirements.

Investment: The agreement establishes a secure, predictable legal framework for U.S. investors operating in Australia covering all forms of investment. All U.S. investment in new businesses is exempted from screening under Australia's Foreign Investment Review Board, and thresholds for acquisitions by U.S. investors in nearly all sectors are raised significantly

In recognition of the unique circumstances of this agreement – such as the longstanding economic ties between the United States and Australia, their shared legal traditions, and the confidence of their investors in operating in each others' markets – the two countries agreed not to adopt procedures in the agreement that would allow investors to arbitrate disputes with governments, but this issue will be revisited if circumstances change. In any event, government-to-government dispute settlement procedures remain available to resolve investment-related disputes.

Intellectual Property Rights: The agreement complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law. The FTA establishes strong penalties for piracy and counterfeiting.

Government Procurement: Under the agreement, U.S. suppliers are granted non-discriminatory rights to bid on contracts to supply Australian government entities, including all major procuring entities and administrative and public bodies. The agreement requires the use of tendering procedures that will ensure that procurements are conducted in a transparent, predictable and fair manner.

The agreement provides integrity in procurement practices, including by requiring laws that make bribery of procurement officials a criminal or administrative offense.

Australia has covered all major procuring entities such as Department of Defense, Department of Transport and Regional Services, Department of Communications, Information Technology and the Arts, and Department of Prime Minister and Cabinet. Australia has also covered 31 administrative and public bodies including important agencies such as the Reserve Bank of Australia, Australian Broadcasting Authority, and Australian Nuclear Science and Technology Organization.

Competition Policy: The agreement proscribes anticompetitive business conduct and requires appropriate action with respect to such conduct. It sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering state enterprises so that they do not abuse their official status to harm the interests of U.S. companies or discriminate in the sale of goods and services. The agreement also facilitates cooperation between the United States and Australia on cross-border consumer protection and the recognition and enforcement of supporting the mutual recognition and enforcement of certain monetary judgments to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

Labor and environment: Labor and environmental obligations are part of the core text of the trade agreement. The agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The agreement also provides that parties shall strive to continue to improve such laws. The agreement makes clear that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment, that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties, is subject to dispute settlement under the agreement.

Dispute Settlement: The agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The agreement dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT

The United States-Australia Free Trade Agreement Implementation Act, signed into law on August 3, 2004 (P.L. 108-286), approves the agreement and makes change in U.S. laws necessary or appropriate to implement obligations under the agreement. The agreement was be considered by Congress under the procedures outlined in the Bipartisan Trade Promotion Authority Act (TPA), which was approved by the 107th Congress and signed into law in August 2002 as part of the Trade Act of 2002 (P.L. 107-210).

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the agreement. Section 202 of the bill implements the agricultural safeguard provisions of article 3.4 and Annex 3-A of the agreement. Article 3.4 permits the United States to impose an agricultural safeguard measure, in the form of additional duties, on imports from Australia of an agricultural good listed in the U.S. schedule to Annex 3-A of the agreement. The bill provides for three different types of agricultural safeguards. The first applies to certain horticulture goods specified in Annex 3-A of the agreement. The second applies to certain beef goods imported into the United States above specified quantities during the period from January 1, 2013 through December 31, 2022. The third applies to the same categories of beef goods imported into the United States above specified quantities and the monthly average index price in the United States falls below the specified "trigger" price beginning January 1, 2023.

No additional duty may be applied under section 202 if, at the time of entry, the good is subject to import relief under subtitle A of title III of this bill (the general safeguard) or chapter 1 of title II of the Trade Act of 1974 ("section 201" relief). The assessment of an additional duty under either the horticulture safeguard or the quantity-based beef safeguard shall cease to apply to a good on the date on which duty-free treatment must be provided to that good. There is no termination date for the price-based beef safeguard. The sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the lesser of the existing normal trade relation (NTR)/most favored nation (MFN) rate or the NTR/MFN rate imposed when the agreement entered into force.

Sections 202(c)(4) and (d)(5) provide that the United States Trade Representative may waive the application of the quantity-based beef safeguard and the price-based beef safeguard if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after notice and consultation with the Ways & Means and Finance Committees and the appropriate private sector advisory committees.

Section 203 codifies the rules of origin set out in chapter 5 of the agreement. Under the general rules, there are four basic ways for a good of Australia to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Australia, the United States, or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 4-A or Annex 5-A of the agreement; (3) it is produced entirely in the territory of Australia, the United States, or both exclusively from originating materials; or (4) it otherwise qualifies as an originating good under chapter 4 or chapter 5 of the agreement.

Under the rules in chapter 5.1 and Annex 4-A of the agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Australia, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Australia from yarn, or fabric made from yarn, that originates in Australia or the United States, or both.

Section 204 implements U.S. commitments under article 3.12(4) of the agreement regarding the exemption of the merchandise processing fee on originating goods. The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods, in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the agreement, an Australian product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 311(d) exempts from investigation under this section Australian articles for which import relief has been provided under this safeguard since the agreement entered into force. Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President may provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the agreement entered into force. Section 313(c)(1)(C) specifies that if a duty is applied on a seasonal basis, then the NTR/MFN rate corresponds to the immediately preceding season. Section 313(c)(2) states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed two years. If the President determines that import relief continues to be necessary and there is evidence that the industry is making positive adjustment to import competition, then he may extend the relief, but the aggregate period of relief, including extensions, may not exceed four years. Section 314 provides that no relief may be provided after ten years from the date the agreement enters into force, unless the tariff elimination for the article under the agreement is greater than ten years, in which case relief may not be provided for that article after the period for tariff elimination for that article ends. Section 315 authorizes the President to provide compensation to Australia consistent with article 9.4 of the agreement.

The bill also contains a textile and apparel safeguard. Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/ MFN rate or the NTR/MFN rate imposed when the agreement entered into force. Section 322(c) provides that when an allegation of critical circumstances is made, the President shall make a determination whether there is clear evidence that critical circumstances exist. If the determination is affirmative, he may provide provisional relief for up to 200 days. Section 323 of the bill provides that the period of relief shall be no longer than two years (including any provisional relief). The President may extend the relief, but the aggregate period of relief, including extensions, may not exceed four years.

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard, or the article is subject to import relief under subtitle A of title III of this bill or under chapter 1 of title II of the Trade Act of 1974. Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action. Section 326 states that the authority to provide safeguard relief expires ten years after the date on which duties on the article are eliminated pursuant to the agreement. Section 327 of the Act gives authority to the President to provide compensation to Australia if he orders relief.

If, in any investigation initiated under title II of the Trade Act of 1974 ("section 201" action), the ITC makes an affirmative determination, the ITC shall also find and report to the President whether imports of the article from Australia are a substantial cause of serious injury or threat thereof. In determining relief to be taken under section 201, the President shall determine whether imports from Australia are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is negative, may exclude from such actions products from Australia.

Section 401 implements chapter 15 of the agreement and amends the definition of "eligible product" in section 308 of the Trade Agreements Act of 1979. As amended, section 308(4)(A) will provide that, for a party to a free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States." This amended definition coupled with the President's exercise of his authority under section 301(a) of the Trade Agreement Act will allow procurement of products and services of Australia and other Parties to FTAs that entered into force during the specified time period.

United States-Morocco trade relations

In 1995, the United States and Morocco signed a Trade and Investment Framework Agreement.

UNITED STATES-MOROCCO FREE TRADE AGREEMENT

Negotiations for a United States-Morocco Free Trade Agreement (FTA) began in January 2003 and were concluded on June 15 2004, when U.S. Trade Representative Robert B. Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri signed the agreement. President Bush transmitted the agreement to the Congress on July 15, 2004. As of this writing, the agreement has not entered into force because Morocco has not yet implemented it.

The United States-Morocco Free Trade Agreement is comprehensive and includes the following sections:

Tariff Elimination: The FTA will eliminate tariffs on virtually all trade between the two countries within 10 years.

Agriculture: This agreement covers all agricultural products. The FTA provides immediate bilateral tariff elimination on many agricultural products, with most other tariffs phased out within 15 years. The Agreement also includes a price-based safeguard for certain horticultural products.

Services: The FTA opened the Moroccan services market to U.S. companies. The FTA utilizes the "negative list" approach for coverage of services and includes very few exclusions. It also achieves services liberalization far beyond that to which Morocco is committed in the WTO General Agreement on Trade in Services (GATS). Morocco will accord substantial market access across its entire services regime. The Moroccan government was allowed to maintain certain restrictions in the area of financial services.

Intellectual property rights: These provisions incorporated the most up-to-date international standards for copyright protection. Among other things, the FTA incorporates the World Intellectual Property Organization's (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty. These two treaties, sometimes referred to as the "Internet Treaties," establish several critical elements for the protection of copyrighted works in a digital network environment, including creators' exclusive right to make their creative works available online.

Investment: The FTA provides important investor protections through the inclusion of an investor-state dispute settlement provision. The FTA's investment provisions establish a secure, predictable legal framework for U.S. investors operating in Morocco with all forms of investment protected under the FTA. The FTA does not provide protection for existing investment agreements (defined as agreements relating to natural resources or other assets controlled by the foreign government).

Textiles and Apparel: The FTA contains a yarn forward rule of origin. Qualifying apparel must contain either U.S. or Moroccan yarn and fabric. The FTA provides a limited exception to the yarn forward rule, allowing access for 30 million square meter equivalents of apparel that does not meet the yarn forward rule of origin in the first year of the FTA, phasing down over a ten-year period. Tariffs on textiles and apparel trade meeting the rule of origin will also be phased out over the course of ten years.

Government Procurement: For covered procurements above certain contract values, the FTA ensures that Moroccan government purchasers cannot discriminate against U.S. firms or in favor of Moroccan firms. Strong and transparent disciplines on procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures provide U.S. suppliers with not only greater market access opportunity but also increased certainty in the bidding and contracting process. The FTA provides access to procurements by thirty Moroccan central government entities and also covers procurement by Morocco's provinces and prefectures.

The agreement prohibits Moroccan government procurers from discriminating against U.S. firms, or favoring Moroccan firms, when purchasing more than $175,000 in goods or services or $6,725,000 million in construction services. Morocco has covered 30 central government entities in its government procurement offer. The list of 30 entities includes Morocco's largest government procurers, such as the Ministries of Defense, Foreign Affairs, Interior, and the Prime Minister's Office. The agreement covers all of Morocco's provinces and prefectures – the U.S. equivalent of states. The provisions are important because the Moroccan government is heavily involved in the Moroccan economy. The agreement opens up 136 Moroccan administrative and public bodies to U.S. contractors, including the National Office of Electricity, the National Office of Airports, the National Office of Potable Water, the National Railroad Office, and the Office of Ports Utilization.

Consultation and dispute settlement: The United States envisions most questions on the interpretation of the agreement or compliance with the agreement being settled by either informal or formal government-to-government contacts. The FTA provides for dispute settlement panels to issue legal interpretations of the FTA, but only if the countries have first consulted and failed to resolve the dispute. The process includes strong provisions on transparency.

Labor and Environmental: Labor and environmental obligations are part of the core text of the trade agreement. The agreement states that both parties shall ensure that their domestic labor laws provide for labor standards consistent with internationally recognized labor principles, and that environmental laws provide for high levels of environmental protection. The agreement also provides that parties shall strive to continue to improve such laws. The agreement makes clear that it is inappropriate to weaken or reduce domestic labor or environmental protections to encourage trade or investment. The core commitment, that a party shall not fail to effectively enforce its labor or environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties, is subject to dispute settlement under the agreement.

Dispute Settlement: The agreement sets out detailed procedures for the resolution of disputes over compliance, with high standards of openness and transparency. Dispute settlement procedures promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The agreement dispute settlement procedures also provide for "equivalent" remedies for commercial and labor or environmental disputes. In addition to the use of trade sanctions in commercial disputes, the agreement provides the parties the option of using monetary assessments to enforce commercial, labor, and environmental obligations of the agreement, with the possibility that assessments from labor or environmental cases may be used to fund labor or environmental initiatives. If a party does not pay its annual assessment in a labor or environmental dispute, the complaining party may suspend tariff benefits, while bearing in mind the objective of eliminating barriers to trade and while seeking not to unduly affect parties or interests not party to the dispute.

UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT

The United States-Morocco Free Trade Agreement Implementation Act, signed into law on August 17, 2004 (P.L. 108-302), approves the Agreement and makes changes in U.S. laws necessary or appropriate to implement obligations under the Agreement. As noted above, the agreement has not entered into force as of this writing because Morocco has not yet implemented it.

Section 201 provides the President with the authority to proclaim tariff modifications to carry out the agreement and requires the President to terminate Morocco's designation as a beneficiary developing country for the purposes of the Generalized System of Preferences program.

Section 202 of the bill implements the agricultural safeguard provisions of article 3.5 and Annex 3-A of the agreement. Article 3.5 permits the United States to impose an agricultural safeguard measure, in the form of additional duties, on imports from Morocco of certain horticultural goods listed in the U.S. schedule to Annex 3-A of the agreement.

Section 203 codifies the rules of origin set out in chapter 5 of the agreement. Under the general rules, there are four basic ways for a good of Morocco to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if it is imported directly from the territory of Morocco into the territory of the United States and: (1) it is "wholly the growth, product, or manufacture of the Morocco, the United States, or both"; (2) it is a new or different good that has been "grown, produced, or manufactured in Morocco, the United States, or both" and the value of the materials produced and the direct cost of processing operations performed in Morocco, the United States, or both is not less than 35% of the appraised value of the good; (3) it satisfies certain rules of origin for textile or apparel goods specified in Annex 4-A of the agreement; or (4) it satisfies certain product-specific rules of origin specified in Annex 5-A of the agreement.

An apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Morocco, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Morocco from yarn, or fabric made from yarn, that originates in Morocco or the United States, or both. However, Article 4.3.11 provides an exception to this general rule allowing access for 30 million square meter equivalents of apparel that does not meet the yarn forward rule of origin in the first year of the agreement, phasing down over a ten-year period.

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission (ITC), to impose specified import relief when, as a result of the reduction or elimination of a duty under the agreement, a Moroccan product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 311(d) exempts from investigation under this section Moroccan articles for which import relief has been provided under this safeguard since the agreement entered into force. Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President shall provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the agreement entered into force. Section 313(c)(1)(C) specifies that if a duty is applied on a seasonal basis, then the NTR/MFN rate corresponds to the immediately preceding season. Section 313(c)(2) states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed three years. If the President determines that import relief continues to be necessary and there is evidence that the industry is making positive adjustment to import competition, then he may extend the relief, but the aggregate period of relief, including extensions, may not exceed five years. Section 314 provides that no relief may be provided after five years from the date on which the United States must eliminate duties on the good at issue under the agreement. Section 315 authorizes the President to provide compensation to Morocco consistent with article 8.5 of the agreement.

The bill also contains a textile and apparel safeguard. Section 322(a) provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 322(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/ MFN rate or the NTR/MFN rate imposed when the agreement entered into force. Section 323 of the bill provides that the period of relief shall be no longer than three years. The President may extend the relief, but the aggregate period of relief, including extensions, may not exceed five years. Section 324 provides that relief may not be granted to an article if relief has previously been granted under this safeguard, or the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974. Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action.

Section 326 states that the authority to provide safeguard relief expires ten years after the date on which duties on the article are eliminated pursuant to the agreement. Section 327 gives authority to the President to provide compensation to Morocco if he orders relief.

Because Morocco was expected to complete its actions to bring the agreement into force before 2005, it was further expected that the provisions of the

Section 401 of the U.S.-Australia Free Trade Agreement Implementation Act. which covered all parties to free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an "eligible product" means "a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States." This amended definition coupled with the President's exercise of his authority under section 301(a) of the Trade Agreement Act will allow procurement of products and services of Australia and other Parties to FTAs that entered into force during the specified time period.