

## **Chapter 10: OTHER LAWS REGULATING IMPORTS**

### **A. AUTHORITIES TO RESTRICT IMPORTS OF AGRICULTURAL AND TEXTILE PRODUCTS**

#### **Section 204 of the Agricultural Act of 1956, as amended**

[7 U.S.C. 1854; Public Law 84-540, as amended by Public Law 87-488, Public Law 103-465, and Public Law 104-295]

SEC. 204. The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured there from or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement, including but not limited to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), has been or is concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement, or countries to which the United States does not apply the agreement. Nothing herein shall affect the authority provided under section 22 of the Agricultural Adjustment Act (of 1933) as amended.

#### **Section 22 of the Agricultural Adjustment Act of 1933, as amended**

[7 U.S.C. 624; Act of May 12, 1933, as added by Public Law 74-320, and amended by Act of Feb. 29, 1936, Act of June 3, 1937, Act of Jan. 25, 1940, Act of July 3, 1948, Act of June 28, 1950, Act of June 16, 1951, Act of Aug. 7, 1953, Public Law 100-449, and Public Law 103-465]

SEC. 22. (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such

program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: Provided, That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President. *And provided further*, That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the International Trade Commission, such action to continue in effect pending the report and recommendations of the Trade Commission and action thereon by the President.

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by

the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.

(e) Any decision of the President as to facts under this section shall be final.

(f) No quantitative limitation or fee shall be imposed under this section with respect to any article that is the product of a WTO member (as defined in section 2(10) of the Uruguay Round Agreements Act).

[Paragraph (2) of section 401 (a) of the Uruguay Round Agreements Act provides that subsection (f) as amended shall take effect on the date of entry into force of the WTO Agreement with respect to the United States, except that with respect to wheat, that amendment shall take effect on the later of such date or September 12, 1995.]

### **Tariff-Rate Quotas and Safeguards**

#### **(Sections 404 and 405 of the Uruguay Round Agreements Act)**

[19 U.S.C. 3601, 3602; Public Law 103-465, as amended by Public Law 104-295]

#### **SEC. 404. ADMINISTRATION OF TARIFF-RATE QUOTAS.**

(a) **ORDERLY MARKETING.**—In implementing the tariff-rate quotas set out in Schedule XX for the entry, or withdrawal from warehouse, for consumption of goods in the United States, the President shall take such action as may be necessary to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

(b) **INADEQUATE SUPPLY.**—Where imports of an agricultural product are subject to a tariff-rate quota, and where the President determines and proclaims that the supply of the same or directly competitive or substitutable agricultural product will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices, the President may temporarily increase the quantity of imports of the agricultural product that is subject to the in-quota rate of duty established under the tariff-rate quota.

(c) **MONITORING.**—The Secretary of Agriculture shall monitor the domestic supply of agricultural products subject to a tariff-rate quota as the Secretary considers appropriate and shall advise the President when the domestic supply of the products and substitutable products combined with the estimated imports of the products under the tariff-rate quota may be inadequate to meet domestic demand at reasonable prices.

(d) **COVERAGE OF TARIFF-RATE QUOTAS.**—

(1) **EXCLUSIONS.**—The President may, subject to terms and conditions determined appropriate by the President, provide that the entry, or withdrawal from warehouse, for consumption in the United States of an agricultural product shall not be subject to the over-quota rate of duty established under a

tariff-rate quota if the agricultural product—

(A) is imported by, or for the account of, any agency of the United States or of any foreign embassy;

(B) is imported as a sample for taking orders, for the personal use of the importer, or for the testing of equipment;

(C) is a commercial sample or is entered for exhibition, display, or sampling at a trade fair or for research; or

(D) is a blended syrup provided for in subheadings 1702.20.28, 1702.30.28, 1702.40.28, 1702.60.28, 1702.90.58, 1806.20.92, 1806.20.93, 1806.90.38, 1806.90.40, 2101.10.38, 2101.20.38, 2106.90.38, or 2106.90.67 of Schedule XX, if entered from a foreign trade zone by a foreign trade zone user whose facilities were in operation on June 1, 1990, to the extent that the annual quantity entered into the customs territory from such zone does not contain a quantity of sugar of nondomestic origin greater than the quantity authorized by the Foreign Trade Zones Board for processing in that zone during calendar year 1985.

(2) RECLASSIFICATION.—Subject to the consultation and layover requirements of section 115, the President may proclaim a modification to the coverage of a tariff-rate quota for any agricultural product if the President determines the modification is necessary or appropriate to conform the tariff-rate quota to Schedule XX as a result of a reclassification of any item by the Secretary of the Treasury.

(3) ALLOCATION.—The President may allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and may modify any allocation as determined appropriate by the President.

(4) BILATERAL AGREEMENT.—The President may proclaim an increase in the tariff-rate quota for beef if the President determines that an increase is necessary to implement—

(A) the March 24, 1994, agreement between the United States and Argentina; or

(B) the March 9, 1994, agreement between the United States and Uruguay.

(5) CONTINUATION OF SUGAR HEADNOTE.—The President is authorized to proclaim additional United States note 3 to chapter 17 of the HTS, and to proclaim the modifications to the note, as determined appropriate by the President to reflect Schedule XX.

[(e) Conforming Amendments. \_Amendments to section 213(d) of the Caribbean Basin Economic Recovery Act, section 204 of the Andean Trade Preference Act, section 503 of the Trade Act of 1974, General Note 3(a)(iv) of the HTS, section 313 of the Tariff Act of 1930, and Section 358e(f)(6) of the Agricultural Adjustment Act of 1938 (reprinted elsewhere).]

**SEC. 405. SPECIAL AGRICULTURAL SAFEGUARD AUTHORITY.**

(a) DETERMINATION OF TRIGGER LEVELS.—Consistent with Article 5 as determined by the President, the President shall cause to be published in the Federal Register—

(1) the list of special safeguard agricultural goods not later than the date of entry into force of the WTO Agreement with respect to the United States; and

(2) for each special safeguard agricultural good—

(A) the trigger level specified in subparagraph 1(a) of Article 5, on an annual basis;

(B) the trigger price specified in subparagraph 1(b) of Article 5; and

(C) the relevant period.

(b) DETERMINATION OF SAFEGUARD.—If the President determines with respect to a special safeguard agricultural good that it is appropriate to impose—

(1) the price-based safeguard in accordance with subparagraph 1(b) of Article 5; or

(2) the volume-based safeguard in accordance with subparagraph 1(a) of Article 5,

the President shall, consistent with Article 5 as determined by the President, determine the amount of the duty to be imposed, the period such duty shall be in effect, and any other terms and conditions applicable to the duty.

(c) IMPOSITION OF SAFEGUARD.—The President shall direct the Secretary of the Treasury to impose a duty on a special safeguard agricultural good entered, or withdrawn from warehouse, for consumption in the United States in accordance with a determination made under subsection (b).

(d) NO SIMULTANEOUS SAFEGUARD.—A duty may not be in effect for a special safeguard agricultural good pursuant to this section during any period in which such good is the subject of any action proclaimed pursuant to section 202 or 203 of the Trade Act of 1974 (19 U.S.C. 2252 or 2253).

(e) EXCLUSION OF NAFTA COUNTRIES.—The President may exempt from any duty imposed under this section any good originating in a NAFTA country (as determined in accordance with section 202 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332)).

(f) ADVICE OF SECRETARY OF AGRICULTURE.—The Secretary of Agriculture shall advise the President on the implementation of this section.

(g) TERMINATION DATE.—This section shall cease to be effective on the date, as determined by the President, that the special safeguard provisions of Article 5 are no longer in force with respect to the United States.

(h) DEFINITIONS.—For purposes of this section—

(1) the term “Article 5” means Article 5 of the Agreement on Agriculture described in section 101(d)(2);

(2) the term “relevant period” means the period determined by the President to be applicable to a special safeguard agricultural good for purposes of applying this section; and

(3) the term “special safeguard agricultural good” means an agricultural good

on which an additional duty may be imposed pursuant to the special safeguard provisions of Article 5.

### **Reciprocal Meat Inspection Requirement**

#### **(Section 20(h) of the Federal Meat Inspection Act)**

[21 U.S.C. 620; Public Law 90-201 as added by Public Law 100-418, section 4604]

#### **SEC. 20.**

**\* \* \* \* \***

(h)(1) As used in this subsection:

(A) The term "meat articles" means carcasses, meat and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, that are capable of use as human food.

(B) The term "standards" means inspection, building construction, sanitary, quality, species verification, residue, and other standards that are applicable to meat articles.

(2) On request of the Committee on Agriculture or the Committee on Ways and Means of the House of Representatives or the Committee on Agriculture, Nutrition, and Forestry or the Committee on Finance of the Senate, or at the initiative of the Secretary, the Secretary shall, as soon as practicable, determine whether a particular foreign country applies standards for the importation of meat articles from the United States that are not related to public health concerns about end-product quality that can be substantiated by reliable analytical methods.

(3) If the Secretary determines that a foreign country applies standards described in paragraph (2)–

(A) the Secretary shall consult with the United States Trade Representative; and

(B) within 30 days after the determination of the Secretary under paragraph (2), the Secretary and the United States Trade Representative shall recommend to the President whether action should be taken under paragraph (4).

(4) Within 30 days after receiving a recommendation for action under paragraph (3), the President shall, if and for such time as the President considers appropriate, prohibit imports into the United States of any meat articles produced in such foreign country unless it is determined that the meat articles produced in that country meet the standards applicable to meat articles in commerce within the United States.

(5) The action authorized under paragraph (4) may be used instead of, or in addition to, any other action taken under any other law.

## Sugar Tariff-Rate Quotas Under Headnote Authority

[Additional U.S. Notes of Chapter 17 of the Harmonized Tariff Schedule of the United States]

### CHAPTER 17.—SUGARS AND SUGAR CONFECTIONERY

#### *Additional U.S. Notes*

1. The term “*degree*” as used in the “Rates of Duty” columns of this chapter means International Sugar Degree as determined by polarimetric test.

2. For the purposes of this schedule, the term “*articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17*” means articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

3. For the purposes of this schedule, the term “*articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17*” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

4. For the purposes of this schedule, the term “*blended syrups described in additional U.S. note 4 to chapter 17*” means blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

5. (a)(i) The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not

less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

(ii) Whenever the Secretary believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable prices, the Secretary may modify any quantitative limitations which have previously been established under this note but may not reduce the total amounts below the amounts provided for in subdivision (i) hereof.

(iii) The Secretary shall inform the Secretary of the Treasury of any determination made under this note. Notice of such determinations shall be published in the Federal Register.

(iv) Sugar entering the United States during a quota period established under this note may be charged to the previous or subsequent quota period with the written approval of the Secretary.

(b)(i) The quota amounts established under subdivision (a) may be allocated among supplying countries and areas by the United States Trade Representative.

(ii) The United States Trade Representative, after consultation with the Secretaries of State and Agriculture, may modify, suspend (for all or part of the quota amount), or reinstate the allocations provided for in this subdivision (including the addition or deletion of any country or area) if he finds that such action is appropriate to carry out the rights or obligations of the United States under any international agreement to which the United States is a party or is appropriate to promote the economic interests of the United States.

(iii) The United States Trade Representative shall inform the Secretary of the Treasury of any such action and shall publish notice thereof in the Federal Register. Such action shall not become effective until the day following the date of publication of such notice in the Federal Register or such later date as may be specified by the United States Trade Representative.

(iv) The United States Trade Representative may promulgate regulations appropriate to provide for the allocations authorized pursuant to this note. Such regulations may, among other things, provide for the issuance of certificates of eligibility to accompany any sugars, syrups or molasses (including any specialty sugars) imported from any country or area for which an allocation has been provided and for such minimum quota amounts as may be appropriate to provide reasonable access to the U.S. market for articles the product of those countries or areas having small allocations.

(c) For purposes of this note, the term *raw value* means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations or instructions issued by the Secretary of the Treasury. Such regulations or instructions may, among other things, provide: (i) for the entry of such articles pending a final determination of polarity; and (ii) that positive or negative adjustments for differences in preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner—

(A) For articles described in subheadings 1701.11.05, 1701.11.10, 1701.11.20, 1701.11.50, 1701.12.05, 1701.12.10, 1701.12.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.99.05, 1701.99.10, 1701.99.50, 2106.90.42, 2106.90.44 and 2106.90.46 by multiplying the number of kilograms thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

(B) For articles described in subheadings 1702.90.05, 1702.90.10 and 1702.90.20, by multiplying the number of kilograms of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(C) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar, syrup, or molasses for which he/she determines that the raw value cannot be measured adequately under the above provisions.

6. Raw cane sugar classifiable in subheading 1701.11.20 shall be entered only to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and reexported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The Secretary of Agriculture may issue licenses for such entries and may promulgate such regulations (including any terms, conditions, certifications, bonds, civil penalties, or other limitations) as are appropriate to ensure that sugar entered under subheading 1701.11.20 is used only for such purposes.

7. The aggregate quantity of articles containing over 65 percent by dry weight of sugars described in additional U.S. note 2 to chapter 17, entered under subheadings 1701.91.44, 1702.90.64, 1704.90.64, 1806.10.24, 1806.10.45, 1806.20.71, 1806.90.45, 1901.20.20, 1901.20.55, 1901.90.52, 2101.12.44, 2101.20.44, 2106.90.74 and 2106.90.92 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall be none and no such articles shall be classifiable therein.

8. The aggregate quantity of articles containing over 10 percent by dry weight of sugars described in additional U.S. note 3 to chapter 17, entered under subheadings 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78 and 2106.90.95 during the 12-month period from October 1, in any year to the following September 30, inclusive, shall be

exceed 64,709 metric tons (articles the product of Mexico shall not be permitted or included under this quantitative limitation and no such articles shall be classifiable therein).

9. The aggregate quantity of blended syrups described in additional U.S. note 4 to chapter 17, the foregoing goods entered under subheadings 1704.20.24, 1702.30.24, 1702.40.24, 1702.60.24, 1702.90.54, 1806.20.91, 1806.90.35, 2101.12.34, 2101.20.34, 2106.90.68 and 2106.90.89 during the 12-month period from October 1, in any year to the following September 30, inclusive, shall be none and no such articles shall be none and no such articles shall be classifiable therein.

10. Heading 1703 does not include products derived from sugar cane or sugar beet and containing soluble non-sugar solids (excluding any foreign substance that may have been added or developed in the product) equal to 6 percent or less by weight of the total soluble solids.

11. For the purposes of subheading 1704.90.25, "*cough drops*" must contain a minimum of 5 mg per dose of menthol, of eucalyptol, or of a combination of menthol and eucalyptol.

### **Sugar Quota Reallocation**

[7 U.S.C. 1359kk; Public Law 107-171]

#### **SEC. 359k. REALLOCATING SUGAR QUOTA IMPORT SHORTFALLS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, on or after June 1 of each of the 2002 through 2007 calendar years, the United States Trade Representative, in consultation with the Secretary, shall determine the amount of the quota of cane sugar used by each qualified supplying country for that crop year, and may reallocate the unused quota for that crop year among qualified supplying countries.

(b) **QUALIFIED SUPPLYING COUNTRY DEFINED.**—In this section, the term 'qualified supplying country' means one of the following foreign countries that is allowed to export cane sugar to the United States under an agreement or any other country with which the United States has an agreement relating to the importation of cane sugar:

- Argentina
- Australia
- Barbados
- Belize
- Bolivia
- Brazil
- Colombia
- Republic of the Congo
- Costa Rica
- Dominican Republic
- Ecuador

El Salvador  
Fiji  
Gabon  
Guatemala  
Guyana  
Haiti  
Honduras  
India  
Cote D'Ivoire, formerly known as the Ivory Coast  
Jamaica  
Madagascar  
Malawi  
Mauritius  
Mexico  
Mozambique  
Nicaragua  
Panama  
Papua New Guinea  
Paraguay  
Peru  
Philippines  
St. Kitts and Nevis  
South Africa  
Swaziland  
Taiwan  
Thailand  
Trinidad-Tobago  
Uruguay  
Zimbabwe

**Import Prohibitions on Certain Agricultural Commodities Under  
Marketing Orders**

**(Section 8e of the Agricultural Adjustment Act, as amended)**

[7 U.S.C. 608e-1; Act of Mar. 12, 1933, as amended by Act of Aug. 31, 1954, Public Law 87-128, Public Law 91-670, Public Law 95-133, Public Law 97-312, Public Law 100-418, Public Law 101-624, and Public Law 107-171]

**SEC. 8e. IMPORT PROHIBITIONS ON TOMATOES, AVOCADOS, LIMES, ETC; RULES  
AND REGULATIONS.**

(a) Subject to the provisions of subsections (c) and (d) and notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 8c of this Act contains any terms or conditions

regulating the grade, size, quality or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, apples, or caneberries (including raspberries, blackberries, and loganberries) produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this prohibition shall not apply to such commodities when shipped into the continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this chapter has force and effect; *Provided further*, That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision of this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 8a(5) of this Act or, upon conviction, a penalty in the amount prescribed in section 8c(14) of this Act, or to both such forfeiture and penalty.

(b)(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary—

(A) to effectuate the purpose of this Act; and

(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider—

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

(3) An additional period established by the Secretary in accordance with this subsection shall be—

(A) announced not later than 30 days before the date such additional period is to be in effect; and

(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.

(c) Prior to any import prohibition or regulation under this section being made effective with respect to any commodity—

(1) the Secretary of Agriculture shall notify the United States Trade Representative of such import prohibition or regulation; and

(2) the United States Trade Representative shall advise the Secretary of Agriculture, within 60 days of the notification under paragraph (1), to ensure that the application of the grade, size, quality, and maturity provisions of the relevant marketing order, or comparable restrictions, to imports is not inconsistent with United States international obligations under any trade agreement, including the General Agreement on Tariffs and Trade.

(d) The Secretary may proceed with the proposed prohibition or regulation if the Secretary receives the advice and concurrence of the United States Trade Representative within 60 days of the notification under subsection (c)(1).

## **Import Prohibitions for Animal Health Protection**

### **Animal Health Protection Act**

#### **[Excerpts]**

[7 U.S.C. 8301, 8302, 8303; Public Law 107-171]

#### **SEC. 10401. SHORT TITLE.**

This subtitle may be cited as the “Animal Health Protection Act”.

#### **SEC. 10402. FINDINGS.**

Congress finds that—

(1) the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect—

- (A) animal health;
- (B) the health and welfare of the people of the United States;
- (C) the economic interests of the livestock and related industries of the United States;
- (D) the environment of the United States; and
- (E) interstate commerce and foreign commerce of the United States in animals and other articles;

(2) animal diseases and pests are primarily transmitted by animals and articles regulated under this subtitle;

(3) the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce;

(4) the Secretary must continue to conduct research on animal diseases and pests that constitute a threat to the livestock of the United States; and

(5)(A) all animals and articles regulated under this subtitle are in or affect interstate commerce or foreign commerce; and

(B) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary—

- (i) to prevent and eliminate burdens on interstate commerce and foreign commerce;
- (ii) to regulate effectively interstate commerce and foreign commerce; and
- (iii) to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

#### **SEC. 10403. DEFINITIONS.**

In this subtitle:

(1) **ANIMAL.**—The term “animal” means any member of the animal kingdom (except a human).

(2) **ARTICLE.**—The term “article” means any pest or disease or any material or tangible object that could harbor a pest or disease.

(3) **DISEASE.**—The term “disease” has the meaning given the term by the

Secretary.

(4) ENTER.—The term “enter” means to move into the commerce of the United States.

(5) EXPORT.—The term “export” means to move from a place within the territorial limits of the United States to a place outside the territorial limits of the United States.

(6) FACILITY.—The term “facility” means any structure.

(7) IMPORT.—The term “import” means to move from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.

(8) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(9) INTERSTATE COMMERCE.—The term “interstate commerce” means trade, traffic, or other commerce—

(A) between a place in a State and a place in another State, or between places within the same State but through any place outside that State; or

(B) within the District of Columbia or any territory or possession of the United States.

(10) LIVESTOCK.—The term “livestock” means all farm-raised animals.

(11) MEANS OF CONVEYANCE.—The term “means of conveyance” means any personal property used for or intended for use for the movement of any other personal property.

(12) MOVE.—The term “move” means—

(A) to carry, enter, import, mail, ship, or transport;

(B) to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting;

(C) to offer to carry, enter, import, mail, ship, or transport;

(D) to receive in order to carry, enter, import, mail, ship, or transport;

(E) to release into the environment; or

(F) to allow any of the activities described in this paragraph.

(13) PEST.—The term “pest” means any of the following that can directly or indirectly injure, cause damage to, or cause disease in livestock:

(A) A protozoan.

(B) A plant.

(C) A bacteria.

(D) A fungus.

(E) A virus or viroid.

(F) An infectious agent or other pathogen.

(G) An arthropod.

(H) A parasite.

(I) A prion.

(J) A vector.

(K) Any organism similar to or allied with any of the organisms described in this paragraph.

(14) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(15) STATE.—The term “State” means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

(16) THIS SUBTITLE.—Except when used in this section, the term “this subtitle” includes any regulation or order issued by the Secretary under the authority of this subtitle.

(17) UNITED STATES.—The term “United States” means all of the States.

**SEC. 10404. RESTRICTION ON IMPORTATION OR ENTRY.**

(a) IN GENERAL.—With notice to the Secretary of the Treasury and public notice as soon as practicable, the Secretary may prohibit or restrict—

(1) the importation or entry of any animal, article, or means of conveyance, or use of any means of conveyance or facility, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock;

(2) the further movement of any animal that has strayed into the United States if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock; and

(3) the use of any means of conveyance in connection with the importation or entry of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement of livestock.

(b) REGULATIONS.—

(1) RESTRICTIONS ON IMPORT AND ENTRY.—The Secretary may issue such orders and promulgate such regulations as are necessary to carry out subsection (a).

(2) POST IMPORTATION QUARANTINE.—The Secretary may promulgate regulations requiring that any animal imported or entered by raised or handled under post-importation quarantine conditions by or under the supervision of the Secretary for the purpose of determining whether the animal is or may be affected by any pest or disease of livestock.

(c) DESTRUCTION OR REMOVAL.—

(1) IN GENERAL.—The Secretary may order the destruction or removal from the United States of—

(A) any animal, article, or means of conveyance that has been imported but has not entered the United States if the Secretary determines that destruction or removal from the United States is necessary to prevent the introduction into or dissemination within the United States of any pest or

disease of livestock;

(B) any animal or progeny of any animal, article, or means of conveyance that has been imported or entered in violation of this subtitle; or

(C) any animal that has strayed into the United States if the Secretary determines that destruction or removal from the United States is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

(2) REQUIREMENTS OF OWNERS.—

(A) ORDERS TO DISINFECT.—The Secretary may require the disinfection of—

(i) a means of conveyance used in connection with the importation of an animal;

(ii) an individual involved in the importation of an animal and personal articles of the individual; and

(iii) any article used in the importation of an animal.

(B) FAILURE TO COMPLY WITH ORDERS.—If an owner fails to comply with an order of the Secretary under this section, the Secretary may—

(i) take remedial action, destroy, or remove from the United States the animal or progeny of any animal, article, or means of conveyance as authorized under paragraph (1); and

(ii) recover from the owner the costs of any care, handling, disposal, or other action incurred by the Secretary in connection with the remedial action, destruction, or removal.

**B. AUTHORITIES TO RESTRICT IMPORTS UNDER CERTAIN ENVIRONMENTAL LAWS**

**Marine Mammal Protection Act of 1972, as amended**

**[Excerpts]**

[16 U.S.C. 1371, 1411-1412, and 1415-1417; Public Law 92-522, as amended by Public Law 93-205, Public Law 94-265, Public Law 95-136, Public Law 96-470, Public Law 97-58, Public Law 97-389, Public Law 98-364, Public Law 102-523, Public Law 102-582, Public Law 102-587, Public Law 103-238, Public Law 105-18, Public Law 105-42, and Public Law 108-136]

**TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS**

**MORATORIUM AND EXCEPTIONS**

**SEC. 101.** (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine

mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 104(c)(5), may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 104(c)(5), which is consistent with the purposes and policies of section 2 of this Act. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued thereof pursuant to section 104 of this title, subject to regulations prescribed by the Secretary in accordance with section 103 hereof, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seines nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation

provide documentary evidence that—

(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the

harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect; and

(F)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed 5 kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such

determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.

(5)(A)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 109(f) of this title or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949 [16 U.S.C.A. § 916 et seq.], pursuant to section 112(c) of this title; and

(II) prescribes regulations setting forth—

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107-314), a determination of "least practicable adverse impact on such species or stock" under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either

on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f) or pursuant to a cooperative agreement under section 119.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative

agreement under section 119, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107-314), a determination of "least practicable adverse impact on such species or stock" under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine

mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314) shall not be subject to the following requirements:

(i) In subparagraph (A), "within a specified geographical region" and "within that region of small numbers".

(ii) In subparagraph (B), "within a specified geographical region" and "within one or more regions".

(iii) In subparagraph (D), "within a specific geographic region", "of small numbers", and "within that region".

(6)(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) "Native inhabitant of Russia, Canada, or Greenland" means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian Aleut or Eskimo residing in Alaska; and

(ii) "cultural exchange" means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Except as provided in section 109 of this title the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing:

*Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2), or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) It shall not be a violation of this Act to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) GOOD SAMARITAN EXEMPTION.—It shall not be a violation of this Act to take a marine mammal if—

- (1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;
- (2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;
- (3) reasonable care is exercised to prevent any further injury to the marine

mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) **ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.**—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

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### TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

#### SEC. 301. FINDINGS AND POLICY.

(a) **FINDINGS.**—The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) **POLICY.**—It is the policy of the United States to—

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the

International Dolphin Conservation Program;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

**SEC. 302. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.**

The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-sock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under—

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to—

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in calendar year 2000—

(A) to review the stocks covered under paragraph (3); and

(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit

consistent with the established per-year mortality limits, as determined under paragraph (1) through (3); and

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

**SEC. 303. REGULATORY AUTHORITY OF THE SECRETARY.**

**(a) REGULATIONS.—**

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions—

- (i) requiring observers on each vessel;
- (ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;
- (iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;
- (iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;
- (v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;
- (vi) banning the use of explosive devices in all purse seine operations;
- (vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;
- (viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;
- (ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;
- (x) allowing for the authorization and conduct of experimental

fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

(c) EMERGENCY REGULATIONS.—

(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection—

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for the duration of the applicable fishing year; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

\* \* \* \* \*

**SEC. 306. PERMITS.**

(a) IN GENERAL.—

(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of

the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.—

(1) In any case which—

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, and history of prior offenses, an other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel,

by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.

**SEC. 307. PROHIBITIONS.**

(a) IN GENERAL.—It is unlawful—

(1) for any person to sell, purchase, offer for sale transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

(4) for any person to violate any regulation promulgated under this title;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this title; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) PENALTIES.—

(1) CIVIL PENALTY.—A person that knowingly and willfully violates subsection (a) (1), (2), (3), (4), or (5) shall be subject to a civil penalty under section 105(a).

(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(5) or (a)(6) shall be subject to a criminal penalty under section 105(b).

(c) **CIVIL FORFEITURES.**—Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 310 of the Magnuson Fishery Conservation and Management Act.

### **Section 9 of the Endangered Species Act of 1973, as amended**

[16 U.S.C. 1538; Public Law 93-205, as amended by Public Law 94-359, Public Law 95-212, Public Law 95-632, Public Law 96-159, Public Law 96-246, Public Law 97-304, Public Law 99-659, Public Law 100-478, Public Law 100-653, Public Law 100-707, and Public Law 102-582]

#### **PROHIBITED ACTS**

**SEC. 9. (a) GENERAL.**—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of

any State or in the course of any violation of a State criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) of this section shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to

section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provisions of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—(1) It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as willfully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or

plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

#### **Section 527 of the Tariff Act of 1930, as amended**

[19 U.S.C. 1527; Public Law 71-361]

#### **SEC. 527. IMPORTATION OF WILD MAMMALS AND BIRDS IN VIOLATION OF FOREIGN LAW.**

(a) IMPORTATION PROHIBITED.—If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States or any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after the enactment of this Act, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located

the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part of product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) FORFEITURE.—Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (exempt in the case of heads or horns of wild mammals) sold in the manner provided by law.

(c) SECTION NOT TO APPLY IN CERTAIN CASES.—The provisions of this section shall not apply in the cases of—

(1) PROHIBITED IMPORTATION.—Articles the importation of which is prohibited under the provisions of this Act, or of section 241 of the Criminal Code, or of any other law;

(2) SCIENTIFIC OR EDUCATIONAL PURPOSES.—Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

(3) CERTAIN MIGRATORY GAME BIRDS.—Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a part to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States.

## **Section 2201-2204 of the Endangered Species Act Amendment of 1988**

### **African Elephant Conservation Act**

**[Excerpts]**

[16 U.S.C. 4221-4224; Public Law 100-478]

#### **PART 2 —MORATORIA AND PROHIBITED ACTS**

##### **SEC. 2201. REVIEW OF AFRICAN ELEPHANT CONSERVATION PROGRAMS.**

(a) IN GENERAL.—Within one month after the date of the enactment of this title [October 7, 1988], the Secretary shall issue a call for information on the African elephant conservation program of each ivory producing country by—

- (1) publishing a notice in the Federal Register requesting submission of such information to the Secretary by all interested parties; and
- (2) submitting a written request for such information through the Secretary of State to each ivory producing country.

(b) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall review the African elephant conservation program of each ivory producing country and, not later than one year after the date of the enactment of this title, shall issue and publish in the Federal Register a determination of whether or not the country meets the following criteria:

(A) The country is a party to CITES and adheres to the CITES Ivory Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(2) DELAY IN ISSUING DETERMINATION.—If the Secretary finds within one year after the date of the enactment of this title that there is insufficient information upon which to make the determination under paragraph (1), the Secretary may delay issuing the determination until no later than December 31, 1989. The Secretary shall issue and publish in the Federal Register at the time of the finding a statement explaining the reasons for any such delay.

**SEC. 2202. MORATORIA.**

(a) IVORY PRODUCING COUNTRIES.—

(1) IN GENERAL.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth in section 2201(b)(1).

(2) LATER ESTABLISHMENT.—With regard to any ivory producing country for which the Secretary has insufficient information to make a determination pursuant to section 2201(b), the Secretary shall establish a moratorium the importation of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Secretary concludes before that

date that the country meets all of the criteria set forth in section 2201(b)(1).

(b) INTERMEDIARY COUNTRIES.—The Secretary shall establish a moratorium on the importation of raw and worked ivory from an intermediary country immediately upon making a determination that the country—

- (1) is not a party to CITES;
- (2) does not adhere to the CITES Ivory Control System;
- (3) imports raw ivory from a country that is not an ivory producing country;
- (4) imports raw or worked ivory from a country that is not a party to CITES;
- (5) imports raw or worked ivory that originates in an ivory producing country in violation of the laws of that ivory producing country;
- (6) substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this title during the first three months of that moratorium; or
- (7) imports raw or worked ivory from a country that is subject to a moratorium under this title after the first three months of that moratorium, unless the ivory is imported by vessel during the first six months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

(c) SUSPENSION OF MORATORIUM.—The Secretary shall suspend a moratorium established under this section if, after notice and public comment, the Secretary determines that the reasons for establishing the moratorium no longer exist.

(d) PETITION.—

(1) IN GENERAL.—Any person may at any time submit a petition in writing requesting that the Secretary establish or suspend a moratorium under this section. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) CONSIDERATION AND RULING.—The Secretary shall publish a notice of receipt of a petition under this subsection in the Federal Register and shall provide an opportunity for the public to comment on the petition. The Secretary shall rule on such petition not later than 90 days after the close of the public comment period.

(e) SPORT-HUNTED TROPHIES.—Individuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota. The Secretary shall not establish any moratorium under this section, pursuant to a petition or otherwise, which prohibits the importation into the United States of sport-hunted trophies from elephants that are legally taken by the importer or the importer's principal in an ivory producing country that has submitted an ivory quota.

(f) CONFISCATED IVORY.—Trade in raw or worked ivory that is confiscated by an ivory producing country or an intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium under this part if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or conservation

purposes of CITES. With respect to any country that was not a party to CITES at the time of such confiscation, this subsection shall not apply until such country develops appropriate measures to assure that persons with a history of illegal dealings in ivory shall not benefit from the disposal of confiscated ivory.

**SEC. 2203. PROHIBITED ACTS.**

Except as provided in section 2202(e), it is unlawful for any person—

- (1) to import raw ivory from any country other than an ivory producing country;
- (2) to export raw ivory from the United States;
- (3) to import raw or worked ivory that was exported from an ivory producing country in violation of that country's laws or of the CITES Ivory Control System;
- (4) to import worked ivory, other than personal effects, from any country unless that country has certified that such ivory was derived from legal sources; or
- (5) to import raw or worked ivory from a country for which a moratorium is in effect under section 2202.

**SEC. 2204. PENALTIES AND ENFORCEMENT.**

(a) **CRIMINAL VIOLATIONS.**—Whoever knowingly violates section 2203 shall, upon conviction, be fined under title 18, United States Code, or imprisoned for not more than one year, or both.

(b) **CIVIL VIOLATIONS.**—Whoever violates section 2203 may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation.

(c) **PROCEDURES FOR ASSESSMENT OF CIVIL PENALTY.**—Proceedings for the assessment of a civil penalty under this section shall be conducted in accordance with the procedures provided for in section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540(a)).

(d) **USE OF PENALTIES.**—Subject to appropriations, penalties collected under this section may be used by the Secretary of the Treasury to pay rewards under section 2205 and, to the extent not used to pay such rewards, shall be deposited by the Secretary of the Treasury into the Fund.

(e) **ENFORCEMENT.**—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this part in the same manner such Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)). Section 11(c) of the Endangered Species Act of 1973 (16 U.S.C. 1540(c)) shall apply to actions arising under this part.

**Section 7 of the Rhinoceros and Tiger Conservation Act of 1994, as amended**

[16 U.S.C. 5305a; Public Law 103-391, as amended by Public Law 105-312]

**SEC. 7—PROHIBITION ON SALE, IMPORTATION OR EXPORTATION OF PRODUCTS**

**LABELLED OR ADVERTISED AS RHINOCEROS OR TIGER PRODUCTS.**

(a) **PROHIBITION.**—A person shall not sell, import, or export, or attempt to sell, import, or export, any product, item or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger.

(b) **PENALTIES.**—

(1) **CRIMINAL PENALTY.**—A person engaged in business as an importer, exporter, or distributor that knowingly violates subsection (a) shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both.

(2) **CIVIL PENALTIES.**—

(A) **IN GENERAL.**—A person that knowingly violates subsection (a), and a person engaged in business as an importer, exporter, or distributor that violates subsection (a), may be assessed a civil penalty by the Secretary of not more than \$12,000 for each violation.

(B) **MANNER OF ASSESSMENT AND COLLECTION.**—A civil penalty under this paragraph shall be assessed, and may be collected, in the manner in which a civil penalty under the Endangered Species Act of 1973 may be assessed and collected under section 11(a) of that Act (16 U.S.C. 1540(a)).

(c) **PRODUCTS, ITEMS, AND SUBSTANCES.**—Any product, item, or substance sold, imported, or exported, or attempted to be sold, imported, or exported, in violation of this section or any regulation issued under this section shall be subject to seizure and forfeiture to the United States.

(d) **REGULATIONS.**—After consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the United States Trade Representative, the Secretary shall issue such regulations as are appropriate to carry out this section.

(e) **ENFORCEMENT.**—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating shall enforce this section in the manner in which the Secretaries carry out enforcement activities under section 11(e) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)).

(f) **USE OF PENALTY AMOUNTS.**—Amounts received as penalties, fines, or forfeiture of property under this section shall be used in accordance with section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)).

**Section 8 of the Fishermen's Protective Act of 1967, as amended**

[22 U.S.C. 1978; Public Law 90-578, as added by Public Law 92-219 and amended by Public Law 95-376, Public Law 96-61, Public Law 96-88, Public Law 100-711, Public Law 102-582, and Public Law 106-36]

**SEC. 8. (a)(1)** When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery

conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3) In administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).

(4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in section 2(8) of the Uruguay Round Agreements Act) or the multilateral trade agreements (as defined in section 2(4) of that Act).

(b) Within sixty days following certification by the Secretary of Commerce or the Secretary of the Interior, the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products of the offending country, or if such prohibition does not cover all fish products or wildlife products of the offending country, the President shall inform the Congress of the reasons therefor.

(c) It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any products prohibited by the Secretary of the Treasury pursuant to this section.

(d) After making a certification to the President under subsection (a) of this section, the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e)(1) Any person violating the provisions of this section shall be fined not more than \$10,000 for the first violation, and not more than \$25,000 for each subsequent

violation.

(2) All products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(f)(1) Enforcement of the provisions of this section prohibiting the bringing or importation of products into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel or other conveyance subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or other conveyance or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all products brought or imported into the United States in violation of this section or the regulations issued thereunder. Products so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health and Human Services.

(g) The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior are each authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h) As used in this section—

(1) The term “person” means any individual, partnership, corporation, or association.

(2) The term “United States” means the several States, the District of

Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and every other territory and possession of the United States.

(3) The term “international fishery conservation program” means any ban, restriction, regulation, or other measure in effect pursuant to a bilateral or multilateral agreement which is in force with respect to the United States, the purpose of which is to conserve or protect the living resources of the sea, including marine mammals.

(4) The term “international program for endangered or threatened species” means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(5) The term “taking”, as used with respect to animals to which an international program for endangered or threatened species applies, means to—

(A) harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or

(B) attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

### **High Seas Driftnet Fisheries Enforcement Act**

#### **[Excerpts]**

[16 U.S.C. 1826a-1826c, 1826a note, and 1861 note; Public Law 102-582]

#### **SEC. 1. SHORT TITLE.**

This Act may be cited as the “High Seas Driftnet Fisheries Enforcement Act”.

#### **SEC. 2. FINDINGS AND POLICY.**

(a) FINDINGS.—Congress makes the following findings:

(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world's oceans, including anadromous fish and other living marine resources of the United States.

(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

(4) The United Nations, via General Assembly Resolutions numbered 44-225, 45-197, and most recently 46-215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world's oceans, including enclosed seas and

semi-enclosed seas.

(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46-215 specifically “encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world’s oceans and seas”.

(7) The United States, in section 307(1)(M) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

(8) The Senate, through Senate Resolution 396 of the 100th Congress, approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea, and the United States has taken concrete steps to implement such moratorium through international negotiations.

(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multiyear cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46-215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act and encourage other nations to take similar action.

(b) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 46-215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

(3) secure a permanent ban on the use of destructive fishing practices, and in

particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

**SEC. 101. DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.**

**(a) DENIAL OF PORT PRIVILEGES.—**

(1) **PUBLICATION OF LIST.**—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) **DENIAL OF PORT PRIVILEGES.**—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) **NOTIFICATION OF NATION.**—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

**(b) SANCTIONS.—**

**(1) IDENTIFICATIONS.—**

(A) **INITIAL IDENTIFICATIONS.**—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) **ADDITIONAL IDENTIFICATIONS.**—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) Prohibition on imports of fish and fish products and sport fishing equipment.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within 90 days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is 45 days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than 6 months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) That nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

**SEC. 102. DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.**

Any denial of port privileges or sanction under section 101 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

\* \* \* \* \*

**SEC. 104. DEFINITIONS.**

In this title, the following definitions apply:

(1) **FISH AND FISH PRODUCTS.**—The term “fish and fish products” means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

(2) **LARGE-SCALE DRIFTNET FISHING.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(B) **EXCEPTION.**—Until January 1, 1994, the term “large-scale driftnet fishing” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed 5 kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3) **LARGE-SCALE DRIFTNET FISHING VESSEL.**—The term “large-scale driftnet fishing vessel” means any vessel which is—

(A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or

(B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

\* \* \* \* \*

**SEC. 202. ENFORCEMENT.**

(a) **IN GENERAL.**—Not later than 6 months after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement

under section 311(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(a)) in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

- (b) TERMS.—The agreement entered into under subsection (a) shall include—
- (1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;
  - (2) requirements for the use of the surveillance capabilities of the Department of Defense; and
  - (3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.

**SEC. 203. TRADE NEGOTIATIONS AND THE ENVIRONMENT.**

It is the sense of the Congress that the President, in carrying out multilateral, bilateral, and regional trade negotiations, should seek to—

- (1) address environmental issues related to the negotiations;
- (2) modify articles of the General Agreement on Tariffs and Trade (referred to in this section as “GATT”) to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties;
- (3) secure a working party on trade and the environment within GATT as soon as possible;
- (4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns;
- (5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and
- (6) periodically consult with interested parties concerning the progress of the negotiations.

**Sections 105 and 108 of the Wild Bird Conservation Act of 1992**

[16 U.S.C. 4904, 4907; Public Law 102-440]

**SEC. 105. MORATORIA ON IMPORTS OF EXOTIC BIRDS COVERED BY CONVENTION.**

(a) IMMEDIATE MORATORIUM.—

(1) ESTABLISHMENT OF MORATORIUM.—The importation of any exotic bird of a species identified as a category B species in the report entitled “Report of the Animals Committee”, adopted by the 8th meeting of the Conference of the Parties to the Convention, is prohibited.

(2) TERMINATION OF MORATORIUM.—A species of exotic birds shall be subject to the prohibition on importation established by paragraph (1) until the Secretary, after notice and an opportunity for public comment—

- (A) determines that appropriate remedial measures have been taken in

the countries of origin for that species, so as to eliminate the threat of trade to the conservation of the species; and

(B) makes the findings described in section 106(c) for the species and includes the species in the list published under section 106(a).

(b) EMERGENCY AUTHORITY TO SUSPEND IMPORTS OF LISTED SPECIES.—

(1) AUTHORITY TO SUSPEND IMPORTS.—The Secretary is authorized to suspend the importation of exotic birds of any species that is listed in any Appendix to the Convention, and if applicable remove the species from the list under section 106(a), if the Secretary determines that—

(A)(i) trade in that species is detrimental to the species,

(ii) there is not sufficient information available on which to base a judgment that the species is not detrimentally affected by trade in that species, or

(iii) remedial measures have been recommended by the Standing Committee of the Convention that have not been implemented; and

(B) the suspension might be necessary for the conservation of the species.

(2) TERMINATION OF SUSPENSION.—A species of exotic birds shall be subject to a suspension of importation under paragraph (1) until the Secretary, after notice and an opportunity for public comment, makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(c) MORATORIUM AFTER ONE YEAR FOR OTHER SPECIES LISTED IN APPENDICES.—Effective on the date that is one year after the date of the enactment of this Act, the importation of any exotic bird of a species that is listed in any Appendix to the Convention is prohibited unless the Secretary makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

(d) LIMITATION ON NUMBER IMPORTED DURING FIRST YEAR.—Notwithstanding any other provision of this Act, the Secretary shall prohibit the importation, during the 1-year period beginning on the date of the enactment of this Act, of exotic birds of each species that is listed under any Appendix to the Convention in excess of the number of that species that were imported during the most recent year for which the Secretary has complete import data.

**SEC. 108. MORATORIA FOR SPECIES NOT COVERED BY CONVENTION.**

(a) IN GENERAL.—The Secretary shall—

(1) review periodically the trade in species of exotic birds that are not listed in any Appendix to the Convention; and

(2) after notice and an opportunity for public comment, establish a moratorium or quota on—

(A) importation of any species of exotic birds from one or more countries of origin for the species, if the Secretary determines that—

(i) the findings described in section 106(c) (2), (3), and (4) cannot

- be made with respect to the species;
- (ii) the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title; or
- (B) the importation of all species of exotic birds from a particular country, if—
  - (i) the country has not developed and implemented a management program for exotic birds in trade generally, that ensures both the conservation and the humane treatment of exotic birds during capture, transport, and maintenance; and
  - (ii) the Secretary finds that the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title.

(b) **TERMINATION OF QUOTA OR MORATORIUM.**—The Secretary shall terminate a quota or moratorium established under subsection (a) if the Secretary finds that the reasons for establishing the quota or moratorium no longer exist.

#### **Atlantic Tunas Convention Act of 1975, as amended**

#### **[Excerpts]**

[16 U.S.C. 971 and 971d; Public Law 94-70, as amended by Public Law 94-265, Public Law 95-33, Public Law 104-43, and Public Law 105-384]

#### **SEC. 2. DEFINITIONS.**

For the purpose of this chapter—

- (1) The term “Convention” means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.
- (2) The term “Commission” means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.
- (3) The term “conservation recommendation” means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section 5(a) of this Act.
- (4) The term “Council” means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.
- (5) The term “exclusive economic zone” means an exclusive economic zone as defined in section 3 of the Magnuson Fishery Conservation and Management Act.
- (6) The term “fishing” means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.
- (7) The term “fishing vessel” means any vessel engaged in catching fish or

processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

(8) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.

(9) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the United States.

(10) The term "Secretary" means the Secretary of Commerce.

(11) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

\* \* \* \* \*

**SEC. 6(C). REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS AND OTHER MEASURES.**

\* \* \* \* \*

(4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit—

(A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under

investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(6) IDENTIFICATION AND NOTIFICATION.—

(A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall—

(i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;

(ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and

(iii) publish a list of those Nations identified under clause (i).

(B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.

(7) CONSULTATION.—Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will—

(A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and

(C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.

\* \* \* \* \*

**Section 609 of Public Law 101-162; Conservation of Sea Turtles**

[16 U.S.C. 1537 note; Public Law 101-162]

**SEC. 609.**—(a) The Secretary of State, in consultation with the Secretary of Commerce, shall, with respect to those species of sea turtles the conservation of

which is the subject of regulations promulgated by the Secretary of Commerce on June 29, 1987—

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of such species of sea turtles;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which, as determined by the Secretary of Commerce, may affect adversely such species of sea turtles, for the purposes of entering into bilateral and multilateral treaties with such countries to protect such species of sea turtles;

(3) encourage such other agreements to promote the purposes of this section with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of such species of sea turtles;

(4) initiate the amendment of any existing international treaty for the protection and conservation of such species of sea turtles to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section; and

(5) provide to the Congress by not later than one year after the date of enactment of this section—

(A) a list of each nation which conducts commercial shrimp fishing operations within the geographic range of distribution of such sea turtles;

(B) a list of each nation which conducts commercial shrimp fishing operations which may affect adversely such species of sea turtles; and

(C) a full report on—

(i) the results of his efforts under this section; and

(ii) the status of measures taken by each nation listed pursuant to paragraph (A) or (B) to protect and conserve such sea turtles.

(b)(1) IN GENERAL.—The importation of shrimp or products from shrimp which have been harvested with commercial fishing technology which may affect adversely such species of sea turtles shall be prohibited not later than May 1, 1991, except as provided in paragraph (2).

(2) CERTIFICATION PROCEDURE.—The ban on importation of shrimp or products from shrimp pursuant to paragraph (1) shall not apply if the President shall determine and certify to the Congress not later than May 1, 1991, a annually thereafter that—

(A) the government of the harvesting nation has provided documentary evidence of the adoption of a regulatory program governing the incidental taking of such sea turtles in the course of such harvesting that is comparable to that of the United States; and

(B) The average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of

sea turtles by United States vessels in the course of such harvesting; or  
(C) the particular fishing environment of the harvesting nation does not pose a threat of the incidental taking of such sea turtles in the course of such harvesting.

### C. NATIONAL SECURITY IMPORT RESTRICTIONS

#### Sections 232 and 233 of the Trade Expansion Act of 1962, as amended

[19 U.S.C. 1862, 1864; Public Law 87-794, as amended by Public Law 93-618, Reorganization Plan No. 3 of 1979, Public Law 96-223, and Public Law 100-418; Public Law 87-794, as added by Public Law 99-64 and amended by Public Law 100-418]

#### SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b)(1)(A) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in the section referred to as the "Secretary") shall immediately initiate an appropriate investigation to determine the effects of the national security of imports of the article which is the subject of such request, application, or motion.

(B) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this section.

(2)(A) In the course of any investigation conducted under this subsection, the Secretary shall—

(i) consult with the Secretary of Defense regarding the methodological and policy questions raised in any investigation initiated under paragraph (1),

(ii) seek information and advice from, and consult with, appropriate officers of the United States, and

(iii) if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.

(B) Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary an assessment of the defense requirements of any article that is the subject of an investigation conducted under this section.

(3)(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on

such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

(B) Any portion of the report submitted by the Secretary under subparagraph (A) which does not contain classified information or proprietary information shall be published in the Federal Register.

(4) The Secretary shall prescribe such procedural regulations as may be necessary to carry out the provisions of this subsection.

(c)(1)(A) Within 90 days after receiving a report submitted under subsection (b)(3)(A) in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall—

(i) determine whether the President concurs with the finding of the Secretary, and

(ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

(B) If the President determines under subparagraph (A) to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action under subparagraph (A).

(2) By no later than the date that is 30 days after the date on which the President makes any determinations under paragraph (1), the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1). Such statement shall be included in the report published under subsection (e).

(3)(A) If—

(i) the action taken by the President under paragraph (1) is the negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security, and

(ii) either—

(I) no such agreement is entered into before the date that is 180 days after the date on which the President makes the determination under paragraph (1)(A) to take such action, or

(II) such an agreement that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of such article,

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not

threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If—

(i) clauses (i) and (ii) of subparagraph (A) apply, and

(ii) the President determines not to take any additional actions under this subsection,

the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

(d) For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(e)(1) Upon the disposition of each request, application, or motion under subsection (b), the Secretary shall submit to the Congress, and publish in the Federal Register, a report on such disposition.

(2) [Omitted]

(f)(1) An action taken by the President under subsection (c) to adjust imports of petroleum, or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules

only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term “disapproval resolution” means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: “That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under \_\_\_\_\_ dated \_\_\_\_\_.”, the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

#### **SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.**

Any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404), or any regulation, order, or license issued under that section, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.

### **D. BALANCE OF PAYMENTS AUTHORITY**

#### **Section 122 of the Trade Act of 1974**

[19 U.S.C. 2132; Public Law 93-618]

#### **SEC. 122. BALANCE-OF-PAYMENTS AUTHORITY.**

(a) Whenever fundamental international payments problems require special import measures to restrict imports—

- (1) to deal with large and serious United States balance-of-payments deficits,
- (2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium, the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas and a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) and (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 161(a) and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets,

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to

firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d)(1) Import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of nondiscriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustment procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the un-availability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period

which the President determines is representative of imports of such article, and (2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) No provision of law authorizing the termination of tariff concessions shall be used to impose a surcharge on imports into the United States.

## **E. IMPLEMENTATION OF THE GATT AGREEMENT ON TECHNICAL BARRIERS TO TRADE (PRODUCT STANDARDS)**

### **Excerpts from Title IV of the Trade Agreements Act of 1979**

[19 U.S.C. 2531; Public Law 96-39, as amended by Reorganization Plan No. 3 of 1979, Public Law 103-182, Public Law 103-465, Public Law 104-295, and Public Law 106-36]

#### **Subtitle A—Obligations of the United States**

##### **SEC. 401. CERTAIN STANDARDS-RELATED ACTIVITIES.**

(a) **NO BAR TO ENGAGING IN STANDARDS ACTIVITY.**—Nothing in this title may be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

(b) **UNNECESSARY OBSTACLES.**—Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

##### **SEC. 402. FEDERAL STANDARDS-RELATED ACTIVITIES.**

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but

not limited to, standards-related activities that violate any of the following requirements:

(1) NONDISCRIMINATORY TREATMENT.—Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

- (A) the acceptance of the product for testing in comparable situations;
  - (B) the administration of the tests in comparable situations;
  - (C) the fees charged for tests;
  - (D) the release of test results to the exporter, importer, or agents;
  - (E) the siting of testing facilities and the selection of samples for testing;
- and
- (F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) APPLICATION OF REQUIREMENT.—For purposes of this paragraph, the following apply:

(i) INTERNATIONAL STANDARDS NOT APPROPRIATE.—The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

- (I) National security requirements.
- (II) The prevention of deceptive practices.
- (III) The protection of human health or safety, animal or plant life or health, or the environment.
- (IV) Fundamental climatic or other geographical factors.
- (V) Fundamental technological problems.

(ii) REGIONAL STANDARDS.—In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 451(6)(A)(ii).

(3) PERFORMANCE CRITERIA.—Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) ACCESS FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for

obtaining an assessment of conformity and the mark of the system, if any, to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

**SEC. 403. STATE AND PRIVATE STANDARDS-RELATED ACTIVITIES.**

(a) **IN GENERAL.**—It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) **PRESIDENTIAL ACTION.**—The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 402, and of procedures that provide for notification, participation, and publication with respect to such activities.

**Subtitle B—Functions of Federal Agencies**

**SEC. 411. FUNCTIONS OF TRADE REPRESENTATIVE.**

(a) **IN GENERAL.**—The Trade Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) **NEGOTIATING FUNCTIONS.**—The Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Trade Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) **CROSS REFERENCE.**—For provisions of law regarding general authority of the Trade Representative with respect to trade agreements, see section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

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**Subtitle C—Administrative and Judicial Proceedings Regarding Standards-Related Activities**

**CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS**

**SEC. 421. RIGHT OF ACTION UNDER THIS CHAPTER.**

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

**SEC. 422. REPRESENTATIONS.**

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

**SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.**

(a) REVIEW.—Upon receipt of any representation made under section 422, the Trade Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) RESOLUTION.—The Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

**SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.**

(a) IN GENERAL.—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) CROSS REFERENCE.—For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED  
ACTIVITIES

**SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE**

**PROCEEDINGS.**

(a) **IN GENERAL.**—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Trade Representative finds, and informs the agency concerned in writing, that—

- (1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and
- (2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) **EXEMPTIONS.**—This section does not apply with respect to causes of action arising under—

- (1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or
- (2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or appeal of a rule.

**SEC. 442. NOT CAUSE FOR STAY IN CERTAIN CIRCUMSTANCES.**

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

Subtitle D—Definitions and Miscellaneous Provisions

**SEC. 451. DEFINITIONS.**

As used in this title—

- (1) **AGREEMENT.**—The term “Agreement” means the Agreement on Technical Barriers to Trade referred to in section 101(d)(5) of the Uruguay Round Agreements Act.
- (2) **CONFORMITY ASSESSMENT PROCEDURE.**—The term “conformity assessment procedure” means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.
- (3) **FEDERAL AGENCY.**—The term “Federal agency” means any of the following within the meaning of chapter 2 of part I of title 5, United States Code:
  - (A) Any executive department.
  - (B) Any military department.
  - (C) Any Government corporation.
  - (D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) INTERNATIONAL CONFORMITY ASSESSMENT PROCEDURE.—The term “international conformity assessment procedure” means a conformity assessment procedure that is adopted by an international standards organization.

(5) INTERNATIONAL STANDARD.—The term “international standard” means any standard that is promulgated by an international standards organization.

(6) INTERNATIONAL STANDARDS ORGANIZATION.—The term “international standards organization” means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and at least all Members; and

(B) that is engaged in international standards-related activities.

(7) INTERNATIONAL STANDARDS-RELATED ACTIVITY.—The term “international standards-related activity” means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international conformity assessment procedure, or both.

(8) MEMBER.—The term “Member” means a WTO member as defined in section 2(10) of the Uruguay Round Agreements Act.

(9) PRIVATE PERSON.—The term “private person” means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) PRODUCT.—The term “product” means any natural or manufactured item.

(11) SECRETARY CONCERNED.—The term “Secretary concerned” means the Secretary of Commerce with respect to functions under this title relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this title relating to agricultural products.

(12) TRADE REPRESENTATIVE.—The term “Trade Representative” means the United States Trade Representative.

(13) STANDARD.—The term “standard” means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

(14) STANDARDS-RELATED ACTIVITY.—The term “standards-related activity” means the development, adoption, or application of any standard, technical regulation, or conformity assessment procedure.

(15) STATE.—The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the

United States.

(16) STATE AGENCY.—The term “State agency” means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) TECHNICAL REGULATION.—The term “technical regulation” means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

(18) UNITED STATES.—The term “United States”, when used in a geographical context, means all States.

**SEC. 452. EXEMPTIONS UNDER TITLE.**

This title does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

**SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.**

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period through 2001, the Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

**Subtitle E—Standards and Measures Under the North American Free Trade Agreement**

**CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES**

**SEC. 461. GENERAL.**

Nothing in this chapter may be construed—

(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

**SEC. 462. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents,

at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

- (1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;
- (2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;
- (3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and
- (4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

**SEC. 463. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter—

- (1) **ANIMAL.**—The term “animal” includes fish, bees, and wild fauna.
- (2) **APPROVAL PROCEDURE.**—The term “approval procedure” means any registration, notification, or other mandatory administrative procedure for—
  - (A) approving the use of an additive for a stated purpose or under stated conditions, or
  - (B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant, in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.
- (3) **CONTAMINANT.**—The term “contaminant” includes pesticide and veterinary drug residues and extraneous matter.
- (4) **CONTROL OR INSPECTION PROCEDURE.**—The term “control or inspection procedure” means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.
- (5) **PLANT.**—The term “plant” includes wild flora.
- (6) **RISK ASSESSMENT.**—The term “risk assessment” means an evaluation of
  - (A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or
  - (B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) SANITARY OR PHYTOSANITARY MEASURE.—

(A) IN GENERAL.—The term “sanitary or phytosanitary measure” means a measure to—

(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;

(ii) protect human or animal life or health in the United States from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;

(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.

(B) FORM.—The form of a sanitary or phytosanitary measure includes—

(i) end product criteria;

(ii) a product-related processing or production method;

(iii) a testing, inspection, certification, or approval procedure;

(iv) a relevant statistical method;

(v) a sampling procedure;

(vi) a method of risk assessment;

(vii) a packaging and labeling requirement directly related to food safety; and

(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

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CHAPTER 2—STANDARDS-RELATED MEASURES

**Subtitle F—International Standard-Setting Activities**

**SEC. 491. NOTICE OF UNITED STATES PARTICIPATION IN INTERNATIONAL STANDARD-SETTING ACTIVITIES.**

(a) IN GENERAL.—The President shall designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization.

(b) NOTIFICATION.—Not later than June 1 of each year, the agency designated under subsection (a) with respect to each international standard-setting organization shall publish notice in the Federal Register of the information specified in subsection (c) with respect to that organization. The notice shall cover the period ending on June 1 of the year in which the notice is published, and beginning on the

date of the preceding notice under this subsection, except that the first such notice shall cover the 1-year period ending on the date of the notice.

(c) REQUIRED INFORMATION.—The information to be provided in the notice under subsection (b) is—

(1) the sanitary or phytosanitary standards under consideration or planned for consideration by that organization;

(2) for each sanitary or phytosanitary standard specified in paragraph (1)—

(A) a description of the consideration or planned consideration of the standard;

(B) whether the United States is participating or plans to participate in the consideration of the standard;

(C) the agenda for the United States participation, if any; and

(D) the agency responsible for representing the United States with respect to the standard.

(d) PUBLIC COMMENT.—The agency specified in subsection (c)(2)(D) shall provide an opportunity for public comment with respect to the standards for which the agency is responsible and shall take the comments into account in participating in the consideration of the standards and in proposing matters to be considered by the organization.

**SEC. 492. EQUIVALENCE DETERMINATIONS.**

(a) IN GENERAL.—An agency may not determine that a sanitary or phytosanitary measure of a foreign country is equivalent to a sanitary or phytosanitary measure established under the authority of Federal law unless the agency determines that the sanitary or phytosanitary measure of the foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable sanitary or phytosanitary measure established under the authority of Federal law.

(b) FDA DETERMINATION.—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a measure that is required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or other statute administered by the Food and Drug Administration, the Commissioner shall issue a proposed regulation to incorporate such determination and shall include in the notice of proposed rulemaking the basis for the determination that the sanitary or phytosanitary measure of a foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the proposed regulation. The Commissioner shall not issue a final regulation based on the proposal without taking into account the comments received.

(c) NOTICE.—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a sanitary or phytosanitary measure of the Food and Drug Administration that is not required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act or

other statute administered by the Food and Drug Administration, the Commissioner shall publish a notice in the Federal Register that identifies the basis for the determination that the measure provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the notice. The Commissioner shall not issue a final determination on the issue of equivalency without taking into account the comments received.

**SEC. 493. DEFINITIONS.**

(a) **IN GENERAL.**—As used in this subtitle:

(1) **AGENCY.**—The term “agency” means a Federal department or agency (or combination of Federal departments or agencies).

(2) **COMMISSIONER.**—The term “Commissioner” means the Commissioner of Food and Drugs.

(3) **INTERNATIONAL STANDARD-SETTING ORGANIZATION.**—The term “international standard-setting organization” means an organization consisting of representatives of 2 or more countries, the purpose of which is to negotiate, develop, promulgate, or amend an international standard.

(4) **SANITARY OR PHYTOSANITARY STANDARD.**—The term “sanitary or phytosanitary standard” means a standard intended to form a basis for a sanitary or phytosanitary measure.

(5) **INTERNATIONAL STANDARD.**—The term “international standard” means a standard, guideline, or recommendation—

(A) regarding food safety, adopted by the Codex Alimentarius Commission, including a standard, guideline, or recommendation regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(B) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(C) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization; or

(D) established by or developed under any other international organization agreed to by the NAFTA countries (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or by the WTO members (as defined in section 2(10) of the Uruguay Round Agreements Act).

(b) **OTHER DEFINITIONS.**—The definitions set forth in section 463 apply for purposes of this subtitle except that in applying paragraph (7) of section 463 with respect to a sanitary or phytosanitary measure of a foreign country, any reference in such paragraph to the United States shall be deemed to be a reference to that foreign country.

## F. GOVERNMENT PROCUREMENT

### 1. Buy American Requirements

#### Buy American Act

(Title III of the Act of March 3, 1933, as amended)

[41 U.S.C. 10a, 10b, 10b-1, and 10c; Public Law 72-428, as amended by Public Law 100-418]

**SEC. 1. [41 U.S.C. 10c. DEFINITION OF TERMS USED IN SECTIONS 10A TO 10C.]**

That when used in this title—

(a) The term “United States”, when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms “public use”, “public building”, and “public work” shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands;

**SEC. 2. [41 U.S.C. 10a. AMERICAN MATERIALS REQUIRED FOR PUBLIC USE.]**

Notwithstanding any other provision of law, and unless the head of the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, or supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies [of the class or kind to be used or the articles, materials, or supplies] from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**SEC. 3. [41 U.S.C. 10b. CONTRACTS FOR PUBLIC WORKS; SPECIFICATION FOR USE OF AMERICAN MATERIALS; BLACKLISTING CONTRACTORS VIOLATING REQUIREMENTS.]**

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: *Provided, however*, That if the head of the department or independent establishment making the contract shall

find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

**SEC. 4. [41 U.S.C. 10b-1. PROHIBITION ON PROCUREMENT CONTRACTS; EXCEPTIONS.]**

[Section 7004 of the Omnibus Trade and Competitiveness Act of 1988 established a sunset on section 4 and the conforming amendments made to the Buy American Act and Act of October 29, 1949 by title VII of the 1988 Act]

**SEC. 5.**

This title shall take effect on the date of its enactment, but shall not apply to any contract entered into prior to such effective date.

**SEC. 6.**

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.

**Section 833 of the Defense Production Act of 1950, as amended**

[41 U.S.C. 10b-2; Public Law 102-190, Public Law 103-335, Public Law 104-61, and Public Law 108-287]

**SEC. 833. BUY AMERICAN ACT WAIVER RESCISSIONS.**

(a) DETERMINATIONS BY THE SECRETARY OF DEFENSE.—(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively

waived the Buy American Act for certain products in that country.

(b) **REPORT TO CONGRESS.**—The Secretary of Defense shall submit to Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2005. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) **BUY AMERICAN ACT DEFINED.**—For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

### **Act of October 29, 1949**

[41 U.S.C 10d; Public Law 81-434, as amended by Public Law 100-418]

#### **SEC. 633. [41 U.S.C. 10d. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING SECTIONS 10a AND 10b(a).]**

In order to clarify the original intent of Congress, hereafter, section 2 and that part of section 3 (a) preceding the words “Provided, however,” of title III of the Act of March 3, 1933 (47 Stat. 1520), shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

#### **2. Implementation of the GATT Agreement on Government Procurement**

##### **Title III of the Trade Agreements Act of 1979, as amended**

[19 U.S.C. 2511-2518; Public Law 96-39, as amended by Reorganization Plan No. 3 of 1979, Public Law 99-47, Public Law 100-418, Public Law 100-449, Public Law 103-182, Public Law 103-465, Public Law 104-295, and Public Law 108-286]

#### **SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS.**

(a) **PRESIDENTIAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.**—Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) MODIFICATION OR WITHDRAWAL OF WAIVERS AND DESIGNATIONS.—The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

(d) [Expired April 30, 1996]

(e) PROCUREMENT PROCEDURES BY CERTAIN FEDERAL AGENCIES.—Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a-2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) SMALL BUSINESS AND MINORITY PREFERENCES.—The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

**SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.**

(a) AUTHORITY TO BAR PROCUREMENT FROM NONDESIGNATED COUNTRIES.—

(1) IN GENERAL.—Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems

necessary.

(2) EXCEPTION.—Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) DEFERRALS AND WAIVERS.—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and with the appropriate committees of the Congress.

(c) REPORT ON IMPACT OF RESTRICTIONS.—

(1) IMPACT OF THE ECONOMY.—On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and

equipment in appropriate product sectors.

(2) RECOMMENDATIONS FOR ATTAINING RECIPROCITY.—The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 304 (a) and (b), other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) CONSULTATION.—In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 135 of the Trade Act of 1974.

(d) PROPOSED ACTION.—

(1) PRESIDENTIAL REPORT.—On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) PROCEDURE.—

(A) PRESIDENTIAL DETERMINATION.—If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) CONGRESSIONAL CONSIDERATION.—The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

**SEC. 303. WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS WITH RESPECT TO PURCHASES OF CIVIL AIRCRAFT.**

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft referred to in section 2(c) and approved under section 2(a). The President may modify or withdraw any waiver granted pursuant to this section.

**SEC. 304. EXPANSION OF THE COVERAGE OF THE AGREEMENT.**

(a) **OVERALL NEGOTIATING OBJECTIVE.**—The President shall seek in the renegotiations provided for in article XXIV(7) of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) **SECTOR NEGOTIATING OBJECTIVES.**—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) **INDEPENDENT VERIFICATION OBJECTIVE.**—The President shall seek to establish in the renegotiation provided for in article XXIV(7) of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to article XIX(5) of the Agreement.

(d) **REPORTS ON NEGOTIATIONS.**—

(1) **REPORT IN THE EVENT OF INADEQUATE PROGRESS.**—If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 302(c)(1). Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 302(c), the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) **LEGISLATIVE RECOMMENDATIONS.**—Taking into account the factors required to be analyzed under section 302(c), the President may recommend to

the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) ANNUAL REPORTS.—Each annual report of the President under section 163(a) of the Trade Act of 1974 made after the date of enactment of this Act shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.—Before exercising the waiver authority in section 301 for procurement not covered by the Agreement on the date it enters into force with respect to the United States [January 1, 1995], the President shall follow the consultation provisions of section 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

**SEC. 305. MONITORING AND ENFORCEMENT.**

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this title, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 301(b).

(b) RULES OF ORIGIN.—

(1) ADVISORY RULINGS AND FINAL DETERMINATIONS.—For the purposes of this title, and Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), and article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).

(2) PENALTIES FOR FRAUDULENT CONDUCT.—In addition to any other provisions of law which may be applicable, section 1001 of title 18, United States Code, shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 301 or avoiding a prohibition under section 302.

(c) REPORT TO CONGRESS ON RULES OF ORIGIN.—

(1) DOMESTIC ADMINISTRATIVE PRACTICES.—As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 301(a) first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular

possessions of the United States with respect to such practices.

(2) FOREIGN ADMINISTRATIVE PRACTICES.—The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(d)-(k) [Expired April 30, 1996]

[SEC. 306. LABOR SURPLUS AREA STUDIES. REPEALED.]

SEC. 307. AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.

SEC. 308. DEFINITIONS.

As used in this title—

(1) AGREEMENT.—The term “Agreement” means the agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) CIVIL AIRCRAFT.—The term “civil aircraft and related articles” means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts of the components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) DEVELOPED COUNTRIES.—The term “developed countries” means countries so designated by the President.

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

(ii) a party to the North American Free Trade Agreement, a product

or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term “eligible product” includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under\_

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.—Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term “eligible product” includes a product or service of Canada having a contract value of \$25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) INSTRUMENTALITY.—The term “instrumentality” shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community

(6) LEAST DEVELOPED COUNTRY.—The term “least developed country” means any country on the United Nations General Assembly list of least developed countries.

(7) MAJOR INDUSTRIAL COUNTRY.—The term “major industrial country” means any country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.

**SEC. 309. EFFECTIVE DATES.**

The provisions of this title shall be effective on the date of enactment of this Act, except that—

- (1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and
- (2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.