

Chapter 13: RECIPROCAL TRADE AGREEMENTS

A. U.S. NEGOTIATING OBJECTIVES

Sections 2101 and 2102 of the Trade Act of 2002

[19 U.S.C. 3801 and 3802; Public Law 107-210 as amended by Public Law 108-429]

SEC. 2101. SHORT TITLE AND FINDINGS.

(a) **SHORT TITLE.**—This title may be cited as the "Bipartisan Trade Promotion Authority Act of 2002".

(b) **FINDINGS.**—The Congress makes the following findings:

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

(2) The national security of the United States depends on its economic security, which in turn is founded upon a vibrant and growing industrial base. Trade expansion has been the engine of economic growth. Trade agreements maximize opportunities for the critical sectors and building blocks of the economy of the United States, such as information technology, telecommunications and other leading technologies, basic industries, capital equipment, medical equipment, services, agriculture, environmental technology, and intellectual property. Trade will create new opportunities for the United States and preserve the unparalleled strength of the United States in economic, political, and military affairs. The United States, secured by expanding trade and economic opportunities, will meet the challenges of the twenty-first century.

(3) Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore—

(A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard

of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SEC. 2102. TRADE NEGOTIATING OBJECTIVES.

(a) **OVERALL TRADE NEGOTIATING OBJECTIVES.**—The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 2103 are—

- (1) to obtain more open, equitable, and reciprocal market access;
- (2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;
- (3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;
- (4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;
- (5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;
- (6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 2113(6)) and an understanding of the relationship between trade and worker rights;
- (7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;
- (8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and
- (9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) **PRINCIPAL TRADE NEGOTIATING OBJECTIVES.**—

- (1) **TRADE BARRIERS AND DISTORTIONS.**—The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—
 - (A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of

trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

(B) to obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to those tariff categories covered in section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(2) TRADE IN SERVICES.—The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and market access or unreasonably restrict the establishment or operations of service suppliers.

(3) FOREIGN INVESTMENT.—Recognizing that United States law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, the principal negotiating objectives of the United States regarding foreign investment are to reduce or eliminate artificial or trade-distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice, by—

(A) reducing or eliminating exceptions to the principle of national treatment;

(B) freeing the transfer of funds relating to investments;

(C) reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;

(D) seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;

(E) seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process;

(F) providing meaningful procedures for resolving investment disputes;

(G) seeking to improve mechanisms used to resolve disputes between an investor and a government through—

(i) mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims;

(ii) procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

(iii) procedures to enhance opportunities for public input into the

formulation of government positions; and

(iv) providing for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements; and

(H) ensuring the fullest measure of transparency in the dispute settlement mechanism, to the extent consistent with the need to protect information that is classified or business confidential, by—

(i) ensuring that all requests for dispute settlement are promptly made public;

(ii) ensuring that—

(I) all proceedings, submissions, findings, and decisions are promptly made public; and

(II) all hearings are open to the public; and

(iii) establishing a mechanism for acceptance of amicus curiae submissions from businesses, unions, and nongovernmental organizations.

(4) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding trade-related intellectual property are—

(A) to further promote adequate and effective protection of intellectual property rights, including through—

(i)(I) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(II) ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;

(iv) ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works; and

(v) providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms;

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and

(C) to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.

(5) TRANSPARENCY.—The principal negotiating objective of the United States with respect to transparency is to obtain wider and broader application of the principle of transparency through—

(A) increased and more timely public access to information regarding trade issues and the activities of international trade institutions;

(B) increased openness at the WTO and other international trade fora by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and

(C) increased and more timely public access to all notifications and supporting documentation submitted by parties to the WTO.

(6) ANTI-CORRUPTION.—The principal negotiating objectives of the United States with respect to the use of money or other things of value to influence acts, decisions, or omissions of foreign governments or officials or to secure any improper advantage in a manner affecting trade are—

(A) to obtain high standards and appropriate domestic enforcement mechanisms applicable to persons from all countries participating in the applicable trade agreement that prohibit such attempts to influence acts, decisions, or omissions of foreign governments; and

(B) to ensure that such standards do not place United States persons at a competitive disadvantage in international trade.

(7) IMPROVEMENT OF THE WTO AND MULTILATERAL TRADE AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of the World Trade Organization, the Uruguay Round Agreements, and other multilateral and bilateral trade agreements are—

(A) to achieve full implementation and extend the coverage of the World Trade Organization and such agreements to products, sectors, and conditions of trade not adequately covered; and

(B) to expand country participation in and enhancement of the Information Technology Agreement and other trade agreements.

(8) REGULATORY PRACTICES.—The principal negotiating objectives of the United States regarding the use of government regulation or other practices by foreign governments to provide a competitive advantage to their domestic producers, service providers, or investors and thereby reduce market access for United States goods, services, and investments are—

(A) to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations;

(B) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;

(C) to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and

(D) to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

(9) ELECTRONIC COMMERCE.—The principal negotiating objectives of the United States with respect to electronic commerce are—

(A) to ensure that current obligations, rules, disciplines, and commitments under the World Trade Organization apply to electronic commerce;

(B) to ensure that—

(i) electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and

(ii) the classification of such goods and services ensures the most liberal trade treatment possible;

(C) to ensure that governments refrain from implementing trade-related measures that impede electronic commerce;

(D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and

(E) to extend the moratorium of the World Trade Organization on duties on electronic transmissions.

(10) RECIPROCAL TRADE IN AGRICULTURE.—

(A) The principal negotiating objective of the United States with respect to agriculture is to obtain competitive opportunities for United States exports of agricultural commodities in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in bulk, specialty crop, and value-added commodities by—

(i) reducing or eliminating, by a date certain, tariffs or other charges that decrease market opportunities for United States exports—

(I) giving priority to those products that are subject to significantly higher tariffs or subsidy regimes of major producing countries; and

(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the

Congress on such products before initiating tariff reduction negotiations;

(ii) reducing tariffs to levels that are the same as or lower than those in the United States;

(iii) reducing or eliminating subsidies that decrease market opportunities for United States exports or unfairly distort agriculture markets to the detriment of the United States;

(iv) allowing the preservation of programs that support family farms and rural communities but do not distort trade;

(v) developing disciplines for domestic support programs, so that production that is in excess of domestic food security needs is sold at world prices;

(vi) eliminating government policies that create price-depressing surpluses;

(vii) eliminating state trading enterprises whenever possible;

(viii) developing, strengthening, and clarifying rules and effective dispute settlement mechanisms to eliminate practices that unfairly decrease United States market access opportunities or distort agricultural markets to the detriment of the United States, particularly with respect to import-sensitive products, including—

(I) unfair or trade-distorting activities of state trading enterprises and other administrative mechanisms, with emphasis on requiring price transparency in the operation of state trading enterprises and such other mechanisms in order to end cross subsidization, price discrimination, and price undercutting;

(II) unjustified trade restrictions or commercial requirements, such as labeling, that affect new technologies, including biotechnology;

(III) unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements;

(IV) other unjustified technical barriers to trade; and

(V) restrictive rules in the administration of tariff rate quotas;

(ix) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;

(x) ensuring that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries;

(xi) taking into account whether a party to the negotiations has

failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

(xii) taking into account whether a product is subject to market distortions by reason of a failure of a major producing country to adhere to the provisions of already existing trade agreements with the United States or by the circumvention by that country of its obligations under those agreements;

(xiii) otherwise ensuring that countries that accede to the World Trade Organization have made meaningful market liberalization commitments in agriculture;

(xiv) taking into account the impact that agreements covering agriculture to which the United States is a party, including the North American Free Trade Agreement, have on the United States agricultural industry;

(xv) maintaining bona fide food assistance programs and preserving United States market development and export credit programs; and

(xvi) striving to complete a general multilateral round in the World Trade Organization by January 1, 2005, and seeking the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on United States import-sensitive commodities (including those subject to tariff-rate quotas).

(B)(i) Before commencing negotiations with respect to agriculture, the United States Trade Representative, in consultation with the Congress, shall seek to develop a position on the treatment of seasonal and perishable agricultural products to be employed in the negotiations in order to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.

(ii) During any negotiations on agricultural subsidies, the United States Trade Representative shall seek to establish the common base year for calculating the Aggregated Measurement of Support (as defined in the Agreement on Agriculture) as the end of each country's Uruguay Round implementation period, as reported in each country's Uruguay Round market access schedule.

(iii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 2103(a) or (b), including any trade agreement entered into under section 2103(a) or (b) that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade

Agreement.

(11) LABOR AND THE ENVIRONMENT.—The principal negotiating objectives of the United States with respect to labor and the environment are—

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

(B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6));

(D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;

(E) to reduce or eliminate government practices or policies that unduly threaten sustainable development;

(F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and

(G) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.

(12) DISPUTE SETTLEMENT AND ENFORCEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—

(A) to seek provisions in trade agreements providing for resolution of disputes between governments under those trade agreements in an effective, timely, transparent, equitable, and reasoned manner, requiring determinations based on facts and the principles of the agreements, with the goal of increasing compliance with the agreements;

(B) to seek to strengthen the capacity of the Trade Policy Review Mechanism of the World Trade Organization to review compliance with commitments;

(C) to seek adherence by panels convened under the Dispute Settlement Understanding and by the Appellate Body to the standard of review applicable under the Uruguay Round Agreement involved in the dispute, including greater deference, where appropriate, to the fact-finding and technical expertise of national investigating authorities;

(D) to seek provisions encouraging the early identification and settlement of disputes through consultation;

(E) to seek provisions to encourage the provision of trade-expanding compensation if a party to a dispute under the agreement does not come into compliance with its obligations under the agreement;

(F) to seek provisions to impose a penalty upon a party to a dispute under the agreement that—

(i) encourages compliance with the obligations of the agreement;

(ii) is appropriate to the parties, nature, subject matter, and scope of the violation; and

(iii) has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and

(G) to seek provisions that treat United States principal negotiating objectives equally with respect to—

(i) the ability to resort to dispute settlement under the applicable agreement;

(ii) the availability of equivalent dispute settlement procedures; and

(iii) the availability of equivalent remedies.

(13) WTO EXTENDED NEGOTIATIONS.—The principal negotiating objectives of the United States regarding trade in civil aircraft are those set forth in section 135(c) of the Uruguay Round Agreements Act (19 U.S.C. 3355(c)) and regarding rules of origin are the conclusion of an agreement described in section 132 of that Act (19 U.S.C. 3552).

(14) TRADE REMEDY LAWS.—The principal negotiating objectives of the United States with respect to trade remedy laws are—

(A) to preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws, and avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, especially dumping and subsidies, or that lessen the effectiveness of domestic and international safeguard provisions, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade concessions; and

(B) to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

(15) BORDER TAXES.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes.

(16) TEXTILE NEGOTIATIONS.—The principal negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

(17) WORST FORMS OF CHILD LABOR.—The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.

(c) PROMOTION OF CERTAIN PRIORITIES.—In order to address and maintain United States competitiveness in the global economy, the President shall—

(1) seek greater cooperation between the WTO and the ILO;

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6)) and to promote compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(3) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to develop and implement standards for the protection of the environment and human health based on sound science, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

(4) conduct environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 of November 16, 1999, and its relevant guidelines, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such reviews;

(5) review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria,

report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public;

(6) take into account other legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests and the law and regulations related thereto;

(7) direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;

(8) in connection with any trade negotiations entered into under this title, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 2107(b)(2)(E);

(9) with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;

(10) continue to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing environmental exceptions under Article XX of the GATT 1994;

(11) report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, not later than 12 months after the imposition of a penalty or remedy by the United States permitted by a trade agreement to which this title applies, on the effectiveness of the penalty or remedy applied under United States law in enforcing United States rights under the trade agreement; and

(12) seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

The report under paragraph (11) shall address whether the penalty or remedy was effective in changing the behavior of the targeted party and whether the penalty or remedy had any adverse impact on parties or interests not party to the dispute.

**Sections 1124 and 3004 of the Omnibus Trade and Competitiveness Act of
1988**

[22 U.S.C. 5304 and 5304 note; Public Law 100-418]

SEC. 1124. NEGOTIATIONS ON CURRENCY EXCHANGE RATES.

(a) FINDINGS.—The Congress finds that—

- (1) the benefit of trade concessions can be adversely affected by misalignments in currency, and
- (2) misalignments in currency caused by government policies intended to maintain an unfair trade advantage tend to nullify and impair trade concessions.

(b) NEGOTIATIONS.—Whenever, in the course of negotiating a trade agreement under this subtitle, the President is advised by the Secretary of the Treasury that a foreign country that is a party to the negotiations satisfies the criteria for initiating bilateral currency negotiations listed in section 3004(b) of this Act, the Secretary of the Treasury shall take action to initiate bilateral currency negotiations on an expedited basis with such foreign country.

SEC. 3004. INTERNATIONAL NEGOTIATIONS ON EXCHANGE RATE AND ECONOMIC POLICIES.

(a) MULTILATERAL NEGOTIATIONS.—The President shall seek to confer and negotiate with other countries—

(1) to achieve—

(A) better coordination of macroeconomic policies of the major industrialized nations; and

(B) more appropriate and sustainable levels of trade and current account balances, and exchange rates of the dollar and other currencies consistent with such balances; and

(2) to develop a program for improving existing mechanisms for coordination and improving the functioning of the exchange rate system to provide for long-term exchange rate stability consistent with more appropriate and sustainable current account balances.

(b) BILATERAL NEGOTIATIONS.—The Secretary of the Treasury shall analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade. If the Secretary considers that such manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of

payments adjustments and to eliminate the unfair advantage. The Secretary shall not be required to initiate negotiations in cases where such negotiations would have a serious detrimental impact on vital national economic and security interests; in such cases, the Secretary shall inform the chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives of his determination.

Sections 131, 132, 135, and 315 of the Uruguay Round Agreements Act, as amended

[19 U.S.C. 3551, 3552, 3555, and 3581; Public Law 103-465, as amended by Public Law 104-188, Public Law 104-295, and Public Law 105-206]

SEC. 131. WORKING PARTY ON WORKER RIGHTS.

(a) **IN GENERAL.**—The President shall seek the establishment in the GATT 1947, and, upon entry into force of the WTO Agreement with respect to the United States, in the WTO, of a working party to examine the relationship of internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively.

(b) **OBJECTIVES OF WORKING PARTY.**—The objectives of the United States for the working party described in subsection (a) are to—

- (1) explore the linkage between international trade and internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974, taking into account differences in the level of development among countries;
- (2) examine the effects on international trade of the systematic denial of such rights;
- (3) consider ways to address such effects; and
- (4) develop methods to coordinate the work program of the working party with the International Labor Organization.

(c) **REPORT TO CONGRESS.**—The President shall report to the Congress, not later than 1 year after the date of the enactment of this Act, on the progress made in establishing the working party under this section, and on United States objectives with respect to the working party's work program.

SEC. 132. IMPLEMENTATION OF RULES OF ORIGIN WORK PROGRAM.

If the President enters into an agreement developed under the work program described in Article 9 of the Agreement on Rules of Origin referred to in section 101(d)(10), the President may implement United States obligations under such an agreement under United States law only pursuant to authority granted to the President for that purpose by law enacted after the effective date of this section.

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SEC. 135. OBJECTIVES FOR EXTENDED NEGOTIATIONS.

(a) **TRADE IN FINANCIAL SERVICES.**—The principal negotiating objective of the United States in the extended negotiations on financial services to be conducted under the auspices of the WTO is to seek to secure commitments, from a wide range of commercially important developed and developing countries, to reduce or eliminate barriers to the supply of financial services, including barriers that deny national treatment or market access by restricting the establishment or operation of financial services providers, as the condition for the United States—

- (1) offering commitments to provide national treatment and market access in each of the financial service subsectors, and
- (2) making such commitments on a normal trade relations basis.

(b) **TRADE IN BASIC TELECOMMUNICATIONS SERVICES.**—The principal negotiating objective of the United States in the extended negotiations on basic telecommunications services to be conducted under the auspices of the WTO is to obtain the opening on nondiscriminatory terms and conditions of foreign markets for basic telecommunications services through facilities-based competition or through the resale of services on existing networks.

(c) **TRADE IN CIVIL AIRCRAFT.**—

(1) **NEGOTIATIONS.**—The principal negotiating objectives of the United States in the extended negotiations on trade in civil aircraft to be conducted under the auspices of the WTO are—

(A) to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to those afforded to foreign products in the United States,

(B) to obtain the reduction or elimination of specific tariff and nontariff barriers, including through expanded membership in the Agreement on Trade in Civil Aircraft and in the US-EC bilateral agreement for large civil aircraft,

(C) to maintain vigorous and effective disciplines on subsidies practices with respect to civil aircraft products under the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12),

(D) to maintain the scope and coverage on indirect support as specified in the US-EC bilateral agreement on large civil aircraft, and

(E) to obtain increased transparency with respect to foreign subsidy programs in the civil aircraft sector, both through greater government disclosure with respect to the use of taxpayer moneys and higher financial disclosure standards for companies receiving government supports (including disclosure comparable to that required under United States securities laws).

(2) **DEFINITIONS.**—For purposes of paragraph (1)—

(A) the term “civil aircraft” means those products to which the

Agreement on Trade in Civil Aircraft applies,

(B) the term "large civil aircraft" has the meaning given that term in Annex II to the US-EC bilateral agreement,

(C) the term "indirect support" means indirect government support as defined in Annex II to the US-EC bilateral agreement,

(D) the term "Agreement on Trade in Civil Aircraft" means the Agreement on Trade in Civil Aircraft approved by the Congress under section 2 of the Trade Agreements Act of 1979, and

(E) the term "US-EC bilateral agreement" means the Agreement Concerning the Application of the GATT Agreement on Trade in Civil Aircraft Between the European Economic Community and the Government of the United States of America on trade in large civil aircraft, entered into on July 17, 1992.

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SEC. 315. OBJECTIVES IN INTELLECTUAL PROPERTY.

It is the objective of the United States—

(1) to accelerate the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15),

(2) to seek enactment and effective implementation by foreign countries of laws to protect and enforce intellectual property rights that supplement and strengthen the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) and the North American Free Trade Agreement and, in particular—

(A) to conclude bilateral and multilateral agreements that create obligations to protect and enforce intellectual property rights that cover new and emerging technologies and new methods of transmission and distribution, and

(B) to prevent or eliminate discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights,

(3) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection,

(4) to take an active role in the development of the intellectual property regime under the World Trade Organization to ensure that it is consistent with other United States objectives, and

(5) to take an active role in the World Intellectual Property Organization (WIPO) to develop a cooperative and mutually supportive relationship between the World Trade Organization and WIPO.

Section 409 of the Trade and Development Act of 2000

[7 U.S.C. 1736r note; Public Law 106-200]

SEC. 409. AGRICULTURAL TRADE NEGOTIATING OBJECTIVES AND CONSULTATIONS WITH CONGRESS.

(a) FINDINGS.—Congress finds that—

(1) United States agriculture contributes positively to the United States balance of trade and United States agricultural exports support in excess of 1,000,000 United States jobs;

(2) United States agriculture competes successfully worldwide despite the fact that United States producers are at a competitive disadvantage because of the trade distorting support and subsidy practices of other countries and despite the fact that significant tariff and nontariff barriers exist to United States exports; and

(3) a successful conclusion of the current World Trade Organization agricultural negotiations is critically important to the United States agricultural sector.

(b) OBJECTIVES.—The agricultural negotiating objectives of the United States with respect to the current World Trade Organization agricultural negotiations include as matters of the highest priority—

(1) The expeditious elimination of all export subsidies worldwide while maintaining bona fide food aid and preserving United States market development and export credit programs that allow the United States to compete with other foreign export promotion efforts;

(2) leveling the playing field for United States producers of agricultural products by eliminating blue box subsidies and disciplining domestic supports in a way that forces producers to face world prices on all production in excess of domestic food security needs allowing the preservation of nontrade distorting programs to support family farms and rural communities;

(3) the elimination of state trading enterprises or the adoption of rigorous disciplines that ensure operational transparency, competition, and the end of discriminatory pricing practices, including policies supporting cross-subsidization and price undercutting in export markets;

(4) affirming that the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures applies to new technologies, including biotechnology, and that labeling requirements to allow consumers to make choices regarding biotechnology products or other regulatory requirements may not be used as disguised barriers to trade;

(5) increasing opportunities for United States exports of agricultural products by reducing tariffs to the same levels that exist in the United States or to lower levels and by eliminating all nontariff barriers, including—

(A) restrictive or trade distorting practices, including those that adversely impact perishable or cyclical products;

- (B) restrictive rules in the administration of tariff rate quotas; and
 - (C) other barriers to agriculture trade, including unjustified restrictions or commercial requirements affecting new technologies, including biotechnology;
 - (6) eliminating government policies that create price-depressing surpluses; and
 - (7) strengthening dispute settlement procedures to ensure prompt compliance by foreign governments with their World Trade Organization obligations including commitments not to maintain unjustified restrictions on United States exports.
- (c) CONSULTATION WITH CONGRESSIONAL COMMITTEES.—
- (1) CONSULTATION BEFORE OFFER MADE.—In developing and before submitting an initial or revised negotiating proposal that would reduce United States tariffs on agricultural products or require a change in United States agricultural law, the United States Trade Representative shall consult with the Committee on Agriculture, Nutrition, and Forestry and the Committee on Finance of the Senate and the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives.
 - (2) CONSULTATION WITH CONGRESSIONAL TRADE ADVISERS.—Prior to and during the course of current negotiations on agricultural trade, the United States Trade Representative shall consult closely with the congressional trade advisers.
 - (3) CONSULTATION BEFORE AGREEMENT INITIALED.—Not less than 48 hours before initialing an agreement reached as part of current World Trade Organization agricultural negotiations, the United States Trade Representative shall consult closely with the committees referred to in paragraph (1) regarding—
 - (A) the details of the agreement;
 - (B) the potential impact of the agreement on United States agricultural producers; and
 - (C) any changes in United States law necessary to implement the agreement.
 - (4) DISCLOSURE OF COMMITMENTS.—Any agreement or other understanding addressing agricultural trade with a foreign government or governments (whether oral or in writing) that relates to a trade agreement with respect to which Congress must enact implementing legislation and that is not disclosed to Congress before legislation implementing that agreement is introduced in either House of Congress shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.
- (d) SENSE OF THE CONGRESS.—It is the sense of the Congress that—
- (1) granting the President trade negotiating authority is essential to the successful conclusion of the new round of World Trade Organization agricultural negotiations;

(2) reaching a successful agreement on agriculture should be the top priority of United States negotiators; and

(3) if by the conclusion of the negotiations, the primary agricultural competitors of the United States do not agree to reduce their trade distorting domestic supports and eliminate export subsidies in accordance with the negotiating objectives expressed in this section, the United States should take steps to increase the leverage of United States negotiators and level the playing field for United States producers.

Section 108 of the North American Free Trade Agreement Implementation Act

[19 U.S.C. 3317; Public Law 103-182]

SEC. 108. CONGRESSIONAL INTENT REGARDING FUTURE ACCESSIONS.

(a) **IN GENERAL.**—Section 101(a) may not be construed as conferring Congressional approval of the entry into force of the Agreement for the United States with respect to countries other than Canada and Mexico.

(b) **FUTURE FREE TRADE AREA NEGOTIATIONS.**—

(1) **FINDINGS.**—The Congress makes the following findings:

(A) Efforts by the United States to obtain greater market opening through multilateral negotiations have not produced agreements that fully satisfy the trade negotiating objectives of the United States.

(B) United States trade policy should provide for additional mechanisms with which to pursue greater market access for United States exports of goods and services and opportunities for export-related investment by United States persons.

(C) Among the additional mechanisms should be a system of bilateral and multilateral trade agreements that provide greater market access for United States exports and opportunities for export-related investment by United States persons.

(D) The system of trade agreements can and should be structured to be consistent with, and complementary to, existing international obligations of the United States and ongoing multilateral efforts to open markets.

(2) **REPORT ON SIGNIFICANT MARKET OPENING.**—No later than May 1, 1994, and May 1, 1997, the Trade Representative shall submit to the President, and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the “appropriate Congressional Committees”), a report which lists those foreign countries—

(A) that—

(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is

- required by existing multilateral trade agreements or obligations;
or
- (ii) have made significant progress in opening their markets to United States exports of goods and services and export-related investment by United States persons; and
 - (B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.
- (3) PRESIDENTIAL DETERMINATION.—The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.
- (4) RECOMMENDATIONS ON FUTURE FREE TRADE AREA NEGOTIATIONS.—No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains—
- (A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);
 - (B) with respect to each country selected, the specific negotiating objectives that are necessary to meet the objectives of the United States under this section; and
 - (C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.
- (5) GENERAL NEGOTIATING OBJECTIVES.—The general negotiating objectives of the United States under this section are to obtain—
- (A) preferential treatment for United States goods;
 - (B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;
 - (C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;
 - (D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;
 - (E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;
 - (F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is

inconsistent with commercial considerations, purchasing by such firms of United States goods and services;

(G) adequate and effective protection of intellectual property rights of United States persons, and fair and equitable market access for United States persons that rely upon intellectual property protection;

(H) the elimination of foreign export and domestic subsidies that distort international trade in United States goods and services or cause material injury to United States industries;

(I) the elimination of all export taxes;

(J) the elimination of acts, policies, and practices which constitute export targeting; and

(K) monitoring and effective dispute settlement mechanisms to facilitate compliance with the matters described in subparagraphs (A) through (J).

B. GENERAL TRADE AGREEMENT AND IMPLEMENTATION AUTHORITIES

1. Trade Promotion Authority

Sections 2102(e), 2103, 2104, 2105, 2106, 2108, 2109, 2911, 2912, and 2913 of the Trade Act of 2002

[19 U.S.C. 3803, 3804, 3805, 3806, 3808, 3811, 3812, and 3813; Public Law 107-210 as amended
by Public Law 108-429]

Section 2102(d) of the Trade Act of 2002

[19 U.S.C. 3801; Public Law 107-210]

SEC. 2102. TRADE NEGOTIATING OBJECTIVES.

* * * * *

(d) CONSULTATIONS.—

(1) **CONSULTATIONS WITH CONGRESSIONAL ADVISERS.**—In the course of negotiations conducted under this title, the United States Trade Representative shall consult closely and on a timely basis with, and keep fully apprised of the negotiations, the Congressional Oversight Group convened under section 2107 and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations.

(2) **CONSULTATION BEFORE AGREEMENT INITIALED.**—In the course of negotiations conducted under this title, the United States Trade Representative shall—

(A) consult closely and on a timely basis (including immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the congressional advisers for trade policy and negotiations appointed under section 161 of the Trade Act of 1974 (19 U.S.C. 2211), the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Congressional Oversight Group convened under section 2107; and

(B) with regard to any negotiations and agreement relating to agricultural trade, also consult closely and on a timely basis (including immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e) ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS.— In determining whether to enter into negotiations with a particular country, the President shall take into account the extent to which that country has implemented, or has accelerated the implementation of, its obligations under the Uruguay Round Agreements.

SEC. 2103. TRADE AGREEMENTS AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) IN GENERAL.—Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President—

(A) may enter into trade agreements with foreign countries before—

(i) June 1, 2005; or

(ii) June 1, 2007, if trade authorities procedures are extended under subsection (c); and

(B) may, subject to paragraphs (2) and (3), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties,

as the President determines to be required or appropriate to carry out any such trade agreement.

The President shall notify the Congress of the President's intention to enter into an agreement under this subsection.

(2) LIMITATIONS.—No proclamation may be made under paragraph (1) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of the enactment of this Act) to a rate of duty which is less than 50 percent of the rate of such duty that applies on such date of enactment;

(B) reduces the rate of duty below that applicable under the Uruguay

Round Agreements, on any import sensitive agricultural product; or

(C) increases any rate of duty above the rate that applied on the date of the enactment of this Act.

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

(A) AGGREGATE REDUCTION.—Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if—

(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article; and

(ii) a reduction equal to the amount applicable under clause (i) had taken effect at 1-year intervals after the effective date of such first reduction.

(B) EXEMPTION FROM STAGING.—No staging is required under subparagraph (A) with respect to a duty reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) ROUNDING.—If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) OTHER LIMITATIONS.—A rate of duty reduction that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction is included within an implementing bill provided for under section 2105 and that bill is enacted into law.

(6) OTHER TARIFF MODIFICATIONS.—Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED.—Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act

(19 U.S.C. 3521(b)).

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—

(A) Whenever the President determines that—

(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy, or

(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect,

and that the purposes, policies, priorities, and objectives of this title will be promoted thereby, the President may enter into a trade agreement described in subparagraph (B) during the period described in subparagraph (C).

(B) The President may enter into a trade agreement under subparagraph (A) with foreign countries providing for—

(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A); or

(ii) the prohibition of, or limitation on the imposition of, such barrier or other distortion.

(C) The President may enter into a trade agreement under this paragraph before—

(i) July 1, 2005; or

(ii) July 1, 2007, if trade authorities procedures are extended under subsection (c).

(2) CONDITIONS.—A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2102(a) and (b) and the President satisfies the conditions set forth in section 2104.

(3) BILLS QUALIFYING FOR TRADE AUTHORITIES PROCEDURES.—

(A) The provisions of section 151 of the Trade Act of 1974 (in this title referred to as "trade authorities procedures") apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this title be referred to as an "implementing bill".

(B) The provisions referred to in subparagraph (A) are—

(i) a provision approving a trade agreement entered into under this subsection and approving the statement of administrative action, if any, proposed to implement such trade agreement; and

(ii) if changes in existing laws or new statutory authority are required to implement such trade agreement or agreements,

provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(c) EXTENSION DISAPPROVAL PROCESS FOR CONGRESSIONAL TRADE AUTHORITIES PROCEDURES.—

(1) IN GENERAL.—Except as provided in section 2105(b)—

(A) the trade authorities procedures apply to implementing bills submitted with respect to trade agreements entered into under subsection (b) before July 1, 2005; and

(B) the trade authorities procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under subsection (b) after June 30, 2005, and before July 1, 2007, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before July 1, 2005.

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than April 1, 2005, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under subsection (b) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) OTHER REPORTS TO CONGRESS.—

(A) REPORT BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than June 1, 2005, a written report that contains—

(i) its views regarding the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives of this title; and

(ii) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be

approved or disapproved.

(B) REPORT BY ITC.—The President shall promptly inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress as soon as practicable, but not later than June 1, 2005, a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2).

(4) STATUS OF REPORTS.—The reports submitted to the Congress under paragraphs (2) and (3), or any portion of such reports, may be classified to the extent the President determines appropriate.

(5) EXTENSION DISAPPROVAL RESOLUTIONS.—

(A) For purposes of paragraph (1), the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the ____ disapproves the request of the President for the extension, under section 2103(c)(1)(B)(i) of the Bipartisan Trade Promotion Authority Act of 2002, of the trade authorities procedures under that Act to any implementing bill submitted with respect to any trade agreement entered into under section 2103(b) of that Act after June 30, 2005.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be referred, in the House of Representatives, to the Committee on Ways and Means and, in addition, to the Committee on Rules.

(C) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution after June 30, 2005.

(d) COMMENCEMENT OF NEGOTIATIONS.—In order to contribute to the continued economic expansion of the United States, the President shall

commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 2102(b).

SEC. 2104. CONSULTATIONS AND ASSESSMENT.

(a) NOTICE AND CONSULTATION BEFORE NEGOTIATION.—The President, with respect to any agreement that is subject to the provisions of section 2103(b), shall—

(1) provide, at least 90 calendar days before initiating negotiations, written notice to the Congress of the President's intention to enter into the negotiations and set forth therein the date the President intends to initiate such negotiations, the specific United States objectives for the negotiations, and whether the President intends to seek an agreement, or changes to an existing agreement;

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 2107; and

(3) upon the request of a majority of the members of the Congressional Oversight Group under section 2107(c), meet with the Congressional Oversight Group before initiating the negotiations or at any other time concerning the negotiations.

(b) NEGOTIATIONS REGARDING AGRICULTURE.—

(1) IN GENERAL.—Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 2102(b)(10)(A)(i) with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based

on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(2) SPECIAL CONSULTATIONS ON IMPORT SENSITIVE PRODUCTS.—

(A) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after the enactment of this Act, the United States Trade Representative shall—

(i) identify those agricultural products subject to tariff-rate quotas on the date of enactment of this Act, and agricultural products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

(ii) consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning—

(I) whether any further tariff reductions on the products identified under clause (i) should be appropriate, taking into account the impact of any such tariff reduction on the United States industry producing the product concerned;

(II) whether the products so identified face unjustified sanitary or phytosanitary restrictions, including those not based on scientific principles in contravention of the Uruguay Round Agreements; and

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or practices that distort world trade in such products and the impact of such programs, policies, and practices on United States producers of the products;

(iii) request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the United States industry producing the product concerned and on the United States economy as a whole; and

(iv) upon complying with clauses (i), (ii), and (iii), notify the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate of those products identified under clause (i) for which the Trade Representative intends to seek tariff liberalization in the negotiations and the reasons for seeking such tariff liberalization.

(B) If, after negotiations described in subparagraph (A) are

commenced—

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph (A)(i) for tariff reductions which were not the subject of a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product described in subparagraph (A)(i) is the subject of a request for tariff reductions by a party to the negotiations,

the Trade Representative shall, as soon as practicable, notify the committees referred to in subparagraph (A)(iv) of those products and the reasons for seeking such tariff reductions.

(3) NEGOTIATIONS REGARDING THE FISHING INDUSTRY.—Before initiating, or continuing, negotiations which directly relate to fish or shellfish trade with any country, the President shall consult with the Committee on Ways and Means and the Committee on Resources of the House of Representatives, and the Committee on Finance and the Committee on Commerce, Science, and Transportation of the Senate, and shall keep the Committees apprised of negotiations on an ongoing and timely basis.

(c) NEGOTIATIONS REGARDING TEXTILES.—Before initiating or continuing negotiations the subject matter of which is directly related to textiles and apparel products with any country, the President shall assess whether United States tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) CONSULTATION.—Before entering into any trade agreement under section 2103(b), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement; and

(C) the Congressional Oversight Group convened under section 2107.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of this title; and

(C) the implementation of the agreement under section 2105, including the general effect of the agreement on existing laws.

(3) REPORT REGARDING UNITED STATES TRADE REMEDY LAWS.—

(A) CHANGES IN CERTAIN TRADE LAWS.—The President, at least 180 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(i) the range of proposals advanced in the negotiations with respect to that agreement, that may be in the final agreement, and that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and

(ii) how these proposals relate to the objectives described in section 2102(b)(14).

(B) CERTAIN AGREEMENTS.—With respect to a trade agreement entered into with Chile or Singapore, the report referred to in subparagraph (A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into that agreement.

(C) RESOLUTIONS.—

(i) At any time after the transmission of the report under subparagraph (A), if a resolution is introduced with respect to that report in either House of Congress, the procedures set forth in clauses (iii) through (vi) shall apply to that resolution if—

(I) no other resolution with respect to that report has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to those procedures; and

(II) no procedural disapproval resolution under section 2105(b) introduced with respect to a trade agreement entered into pursuant to the negotiations to which the report under subparagraph (A) relates has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be.

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the _____ finds that the proposed changes to United States trade remedy laws contained in the report of the President transmitted to the Congress on _____ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to _____, are inconsistent with the negotiating objectives described in section

2102(b)(14) of that Act.", with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

(iii) Resolutions in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee.

(iv) Resolutions in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(iv) It is not in order for the House of Representatives to consider any resolution that is not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(v) It is not in order for the Senate to consider any resolution that is not reported by the Committee on Finance.

(vi) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to floor consideration of certain resolutions in the House and Senate) shall apply to resolutions.

(e) **ADVISORY COMMITTEE REPORTS.**—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement entered into under section 2103(a) or (b) of this Act shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2103(a)(1) or 2105(a)(1)(A) of the President's intention to enter into the agreement.

(f) **ITC ASSESSMENT.**—

(1) **IN GENERAL.**—The President, at least 90 calendar days before the day on which the President enters into a trade agreement under section 2103(b), shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.

(2) **ITC ASSESSMENT.**—Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors,

including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

(3) REVIEW OF EMPIRICAL LITERATURE.—In preparing the assessment, the Commission shall review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and shall provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

SEC. 2105. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

(1) NOTIFICATION AND SUBMISSION.—Any agreement entered into under section 2103(b) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which the President enters into the trade agreement, notifies the House of Representatives and the Senate of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) within 60 days after entering into the agreement, the President submits to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the agreement;

(C) after entering into the agreement, the President submits to the Congress, on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill described in section 2103(b)(3);

(ii) a statement of any administrative action proposed to implement the trade agreement; and

(iii) the supporting information described in paragraph (2); and

(D) the implementing bill is enacted into law.

(2) SUPPORTING INFORMATION.—The supporting information required under paragraph (1)(C)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of this title; and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i);

(II) whether and how the agreement changes provisions of an agreement previously negotiated;

(III) how the agreement serves the interests of United States commerce;

(IV) how the implementing bill meets the standards set forth in section 2103(b)(3); and

(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 2102(c) regarding the promotion of certain priorities.

(3) RECIPROCAL BENEFITS.—In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 2103(b) does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement. The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) DISCLOSURE OF COMMITMENTS.—Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

(A) relates to a trade agreement with respect to which the Congress enacts an implementing bill under trade authorities procedures, and

(B) is not disclosed to the Congress before an implementing bill with respect to that agreement is introduced in either House of Congress, shall not be considered to be part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.—

(1) FOR LACK OF NOTICE OR CONSULTATIONS.—

(A) IN GENERAL.—The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section 2103(b) if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.

(B) PROCEDURAL DISAPPROVAL RESOLUTION.—

(i) For purposes of this paragraph, the term "procedural disapproval resolution" means a resolution of either House of Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002 on negotiations with respect to _____ and, therefore, the trade authorities procedures under that Act shall not apply to any implementing bill submitted with respect to such trade agreement or agreements.", with the blank space being filled with a description of the trade agreement or agreements with respect to which the President is considered to have failed or refused to notify or consult.

(ii) For purposes of clause (i), the President has "failed or refused to notify or consult in accordance with the Bipartisan Trade Promotion Authority Act of 2002" on negotiations with respect to a trade agreement or trade agreements if—

(I) the President has failed or refused to consult (as the case may be) in accordance with section 2104 or 2105 with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 2107(b) have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 2107(c) with respect to the negotiations, agreement, or agreements; or

(IV) the agreement or agreements fail to make progress in achieving the purposes, policies, priorities, and objectives of this title.

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS.—

(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) may be introduced by any Member of the House;

(II) shall be referred to the Committee on Ways and Means and, in addition, to the Committee on Rules; and

(III) may not be amended by either Committee; and

(ii) in the Senate—

(I) may be introduced by any Member of the Senate;

(II) shall be referred to the Committee on Finance; and

(III) may not be amended.

(B) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if

no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 2104(d)(3)(C)(ii) with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii) through (vi) of such section 2104(d)(3)(C).

(C) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and, in addition, by the Committee on Rules.

(D) It is not in order for the Senate to consider any procedural disapproval resolution not reported by the Committee on Finance.

(3) FOR FAILURE TO MEET OTHER REQUIREMENTS.—Not later than December 31, 2002, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to the Congress a report setting forth the strategy of the executive branch to address concerns of the Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations, or diminished rights, of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report in a timely manner.

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) of this section, section 2103(c), and section 2104(d)(3)(C) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such are deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

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

SEC. 2106. TREATMENT OF CERTAIN TRADE AGREEMENTS FOR WHICH NEGOTIATIONS HAVE ALREADY BEGUN.

(a) CERTAIN AGREEMENTS.—Notwithstanding the prenegotiation notification and consultation requirement described in section 2104(a), if an agreement to which section 2103(b) applies—

(1) is entered into under the auspices of the World Trade Organization,

(2) is entered into with Chile,

(3) is entered into with Singapore, or

(4) establishes a Free Trade Area for the Americas, and results from negotiations that were commenced before the date of the enactment of this Act, subsection (b) shall apply.

(b) TREATMENT OF AGREEMENTS.—In the case of any agreement to which subsection (a) applies—

(1) the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 2104(a) (relating only to 90 days notice prior to initiating negotiations), and any procedural disapproval resolution under section 2105(b)(1)(B) shall not be in order on the basis of a failure or refusal to comply with the provisions of section 2104(a); and

(2) the President shall, as soon as feasible after the enactment of this Act—

(A) notify the Congress of the negotiations described in subsection (a), the specific United States objectives in the negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

(B) before and after submission of the notice, consult regarding the negotiations with the committees referred to in section 2104(a)(2) and the Congressional Oversight Group convened under section 2107.

[SEC. 2107. CONGRESSIONAL OVERSIGHT GROUP.—TEXT REPRINTED IN CHAP. 14]

SEC. 2108. ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS.

(a) IN GENERAL.—At the time the President submits to the Congress the final text of an agreement pursuant to section 2105(a)(1)(C), the President shall also submit a plan for implementing and enforcing the agreement. The implementation and enforcement plan shall include the following:

(1) BORDER PERSONNEL REQUIREMENTS.—A description of additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

(2) AGENCY STAFFING REQUIREMENTS.—A description of additional personnel required by Federal agencies responsible for monitoring and implementing the trade agreement, including personnel required by the Office of the United States Trade Representative, the Department of Commerce, the Department of Agriculture (including additional personnel required to implement sanitary and phytosanitary measures in order to obtain market access for United States exports), the Department of the Treasury, and such other agencies as may be necessary.

(3) CUSTOMS INFRASTRUCTURE REQUIREMENTS.—A description of the additional equipment and facilities needed by the United States Customs Service.

(4) IMPACT ON STATE AND LOCAL GOVERNMENTS.—A description of the

impact the trade agreement will have on State and local governments as a result of increases in trade.

(5) **COST ANALYSIS.**—An analysis of the costs associated with each of the items listed in paragraphs (1) through (4).

(b) **BUDGET SUBMISSION.**—The President shall include a request for the resources necessary to support the plan described in subsection (a) in the first budget that the President submits to the Congress after the submission of the plan.

SEC. 2109. COMMITTEE STAFF.

The grant of trade promotion authority under this title is likely to increase the activities of the primary committees of jurisdiction in the area of international trade. In addition, the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader number of Members of Congress in the formulation of United States trade policy and oversight of the international trade agenda for the United States. The primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

[SEC. 2110. CONFORMING AMENDMENTS.]

SEC. 2111. REPORT ON IMPACT OF TRADE PROMOTION AUTHORITY.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the International Trade Commission shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the economic impact on the United States of the trade agreements described in subsection (b).

(b) **AGREEMENTS.**—The trade agreements described in this subsection are the following:

- (1) The United States-Israel Free Trade Agreement.
- (2) The United States-Canada Free Trade Agreement.
- (3) The North American Free Trade Agreement.
- (4) The Uruguay Round Agreements.
- (5) The Tokyo Round of Multilateral Trade Negotiations.

SEC. 2112. INTERESTS OF SMALL BUSINESS.

The Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small business are considered in all trade negotiations in accordance with the objective described in section 2102(a)(8). It is the sense of the Congress that the small business functions should be reflected in the title of the Assistant United States Trade Representative assigned the responsibility for small business.

SEC. 2113. DEFINITIONS.

In this title:

- (1) **AGREEMENT ON AGRICULTURE.**—The term "Agreement on Agriculture" means the agreement referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).
- (2) **AGREEMENT ON SAFEGUARDS.**—The term "Agreement on Safeguards

means the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).

(3) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES.—The term "Agreement on Subsidies and Countervailing Measures" means the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).

(4) ANTIDUMPING AGREEMENT.—The term "Antidumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(7) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(7)).

(5) APPELLATE BODY.—The term "Appellate Body" means the Appellate Body established under Article 17.1 of the Dispute Settlement Understanding.

(6) CORE LABOR STANDARDS.—The term "core labor standards" means—
(A) the right of association;
(B) the right to organize and bargain collectively;
(C) a prohibition on the use of any form of forced or compulsory labor;
(D) a minimum age for the employment of children; and
(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(7) DISPUTE SETTLEMENT UNDERSTANDING.—The term "Dispute Settlement Understanding" means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act.

(8) GATT 1994.—The term "GATT 1994" has the meaning given that term in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(9) ILO.—The term "ILO" means the International Labor Organization.

(10) IMPORT SENSITIVE AGRICULTURAL PRODUCT.—The term "import sensitive agricultural product" means an agricultural product—

(A) with respect to which, as a result of the Uruguay Round Agreements the rate of duty was the subject of tariff reductions by the United States and, pursuant to such Agreements, was reduced on January 1, 1995, to a rate that was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994; or

(B) which was subject to a tariff-rate quota on the date of the enactment of this Act.

(11) UNITED STATES PERSON.—The term "United States person" means—

(A) a United States citizen;

(B) a partnership, corporation, or other legal entity organized under the laws of the United States; and

(C) a partnership, corporation, or other legal entity that is organized under the laws of a foreign country and is controlled by entities described in subparagraph (B) or United States citizens, or both.

(12) URUGUAY ROUND AGREEMENTS.—The term "Uruguay Round Agreements" has the meaning given that term in section 2(7) of the Uruguay Round Agreements Act (19 U.S.C. 3501(7)).

(13) WORLD TRADE ORGANIZATION; WTO.—The terms "World Trade Organization" and "WTO" mean the organization established pursuant to the WTO Agreement.

(14) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(15) WTO MEMBER.—The term "WTO member" has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

2. Congressional Trade Promotion Authority and Other Procedures With Respect to Presidential Actions

Sections 151-154 of the Trade Act of 1974, as amended

[19 U.S.C. 2191-2194; Public Law 93-618, as amended by Public Law 96-39, Public Law 98-573, Public Law 100-418, Public Law 101-382, Public Law 103-465, Public Law 104-295, and Public Law 107-210]

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenues bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with 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 in the case of any other rule of that House.

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

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the

House of Representatives and the Senate under section 102 of this Act, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002 and which contains—

(A) a provision approving such trade agreement or agreements or such extension,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary or appropriate to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.

(2) The term “implementing revenue bill” or resolution means an implementing bill or approval resolution which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term “approval resolution” means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of _____ transmitted by the President to the Congress on ____.”, the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002, the implementing bill submitted by the President with respect to such trade agreement or extension shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement or extension is submitted, the implementing bill shall be introduced in that House as provided in the preceding sentence, on the first day thereafter on which the House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) AMENDMENTS PROHIBITED.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection 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 subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or

resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House was not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or

disagreed to.

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTION.—

(1) For purposes of this section, the term “resolution” means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve the action taken by, or the determination of the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ____.”, the blank space being filled with the appropriate date; and

(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve ____ transmitted to the Congress on ____.”, with the first blank space being filled in accordance with paragraph (2), and the second blank space being filled with the appropriate date.

(2) The first blank space referred to in paragraph (1)(B) shall be filled, in the case of a resolution referred to in section 407(c)(2), with the phrase “the report of the President submitted under section ____ of the Trade Act of 1974 with respect to ____” (with the first blank space being filled with “402(b)” or “409(b)”, as appropriate, and the second blank space being filled with the name of the country involved).

(b) REFERENCE TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEES.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

(B) is not in order after the Committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) PROCEDURES IN THE SENATE.—

(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution to which this section applies:

(A)(i) Except as provided in clause (ii), a resolution that has passed the House of Representatives shall, when received in the Senate, be referred to the Committee on Finance for consideration in accordance with this section.

(ii) If a resolution to which this section applies was introduced in the Senate before receipt of a resolution that has passed the House of Representatives, the resolution from the House of Representatives shall, when received in the Senate, be placed on the calendar. If this clause applies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

(B) If the Senate passes a resolution before receiving from the House of Representatives a joint resolution that contains the identical matter, the joint resolution shall be held at the desk pending receipt of the joint resolution from the House of Representatives. Upon receipt of the joint resolution from the House of Representatives, such joint resolution shall be deemed to be read twice, considered, read the third time, and

passed.

(2) If the texts of joint resolutions described in section 152 or 153(a), whichever is applicable concerning any matter are not identical—

(A) the Senate shall vote passage on the resolution introduced in the Senate, and

(B) the text of the joint resolution passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the joint resolution passed by the House), be substituted for the text of the joint resolution passed by the House of Representatives, and such resolution, as amended, shall be returned with a request for a conference between the two Houses.

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) or section 153(a), including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.

(a) CONTENTS OF RESOLUTIONS.—For purposes of this section, the term “resolution” means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ____ with respect to ____”, with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the clause beginning with “with-respect-to” being omitted if the extension of the authority is not approved with respect to any country.

(b) APPLICATION OF RULES OF SECTION 152; EXCEPTIONS.—

(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted.

(3) That part of section 152(d)(2) which provides that no amendment in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. The time limit on a debate on a

resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under the control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a) received from the other House), if that House has adopted a resolution with respect to the same recommendation.

(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE.—

(1) Consideration in the Senate of the conference report on any joint resolution described in subsection (a), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(2) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) DELIVERY OF DOCUMENTS TO BOTH HOUSES.—Whenever, pursuant to section 102(e), 203(b), 402(d), or 407 (a) or (b), a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) COMPUTATION OF 90-DAY PERIOD.—For purposes of sections 203(c), and 407(c)(2), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the

Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

3. Trade Agreement Implementation Authority and Amendment Procedures

Sections 111(b) and 115 of the Uruguay Round Agreements Act
[19 U.S.C. 3521, 3524; Public Law 103-465]

SEC. 111. TARIFF MODIFICATIONS.

* * * * *

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover requirements of section 115, the President may proclaim—

(1) the modification of any duty or staged rate reduction of any duty set forth in Schedule XX if—

(A) the United States agrees to such modification or staged rate reduction in a multilateral negotiation under the auspices of the WTO, and

(B) such modification or staged rate reduction applies to the rate of duty on an article contained in a tariff category that was the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round of multilateral trade negotiations, and

(2) such modifications as are necessary to correct technical errors in Schedule XX or to make other rectifications to the Schedule.

* * * * *

SEC. 115. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), and

(B) the International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons for such actions, and

- (B) the advice obtained under paragraph (1);
- (3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and
- (4) the President has consulted with such committees regarding the proposed action during the period referred to in paragraph (3).

**Sections 103 and 104 of the North American Free Trade Agreement
Implementation Act**

[19 U.S.C. 3313 and 3314; Public Law 103-182]

SEC. 103. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) **CONSULTATION AND LAYOVER REQUIREMENTS.**—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and

(B) the International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor, and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) **EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.**—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover requirements under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) **IMPLEMENTING ACTIONS.**—After the date of the enactment of this Act—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations; as may be necessary to ensure that any provision of this

Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

Sections 2(a) and 3(c) of the Trade Agreements Act of 1979

[19 U.S.C. 2503, 2504; Public Law 96-39]

SEC. 2. APPROVAL OF TRADE AGREEMENTS.

(a) APPROVAL OF AGREEMENTS AND STATEMENTS OF ADMINISTRATIVE ACTION.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves the trade agreements described in subsection (c) submitted to the congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

SEC. 3. RELATIONSHIP OF TRADE AGREEMENTS TO UNITED STATES LAW.

* * * * *

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) PRESIDENTIAL DETERMINATION.—Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on

Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) CONDITIONS FOR TAKING EFFECT UNDER UNITED STATES LAW.—No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) RECOMMENDATIONS AS TO APPLICATION.—The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 102(f) of the Trade Act of 1974, with respect to a trade agreement.

(4) CONGRESSIONAL PROCEDURES APPLICABLE.—The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 151 of the Trade Act of 1974, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 151 of such Act to such bill—

(A) the term “trade agreement” shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term “implementing bill” or “implementing revenue bill”, whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

4. Uruguay Round/WTO Implementation, Tariff Modifications, and Dispute Settlement

Sections 101(a and b), 102, 111(a, b, c, and e), and 121-129 of the Uruguay Round Agreements Act

[19 U.S.C. 3511, 3512, 3521, 3531-3538; Public Law 103-465]

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE URUGUAY ROUND AGREEMENTS.

(a) **APPROVAL OF AGREEMENTS AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the trade agreements described in subsection (d) resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, entered into on April 15, 1994, and submitted to the Congress on September 27, 1994; and

(2) the statement of administrative action proposed to implement the agreements that was submitted to the Congress on September 27, 1994.

(b) **ENTRY INTO FORCE.**—At such time as the President determines that a sufficient number of foreign countries are accepting the obligations of the Uruguay Round Agreements, in accordance with article XIV of the WTO Agreement, to ensure the effective operation of, and adequate benefits for the United States under, those Agreements, the President may accept the Uruguay Round Agreements and implement article VIII of the WTO Agreement.

SEC. 102. RELATIONSHIP OF THE AGREEMENTS TO UNITED STATES LAW AND STATE LAW.

(a) **RELATIONSHIP OF AGREEMENTS TO UNITED STATES LAW.**—

(1) **UNITED STATES LAW TO PREVAIL IN CONFLICT.**—No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

(2) **CONSTRUCTION.**—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, including any law relating to—

(i) the protection of human, animal, or plant life or health,

(ii) the protection of the environment, or

(iii) worker safety, or

(B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974, unless specifically provided for in this Act.

(b) **RELATIONSHIP OF AGREEMENTS TO STATE LAW.**—

(1) **FEDERAL-STATE CONSULTATION.**—

(A) IN GENERAL.— Upon the enactment of this Act, the President shall, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c(2)(A)), consult with the States for the purpose of achieving conformity of State laws and practices with the Uruguay Round Agreements.

(B) FEDERAL-STATE CONSULTATION PROCESS.—The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Uruguay Round Agreements that directly relate to, or will potentially have a direct effect on, the States. The Federal-State consultation process shall include procedures under which—

(i) the States will be informed on a continuing basis of matters under the Uruguay Round Agreements that directly relate to, or will potentially have a direct impact on, the States;

(ii) the States will be provided an opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (i); and

(iii) the Trade Representative will take into account the information and advice received from the States under clause (ii) when formulating United States positions regarding matters referred to in clause (i).

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal-State consultation process established by this paragraph.

(C) FEDERAL-STATE COOPERATION IN WTO DISPUTE SETTLEMENT.—

(i) When a WTO member requests consultations with the United States under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) (hereafter in this subsection referred to as the “Dispute Settlement Understanding”) concerning whether the law of a State is inconsistent with the obligations undertaken by the United States in any of the Uruguay Round Agreements, the Trade Representative shall notify the Governor of the State or the Governor's designee, and the chief legal officer of the jurisdiction whose law is the subject of the consultations, as soon as possible after the request is received, but in no event later than 7 days thereafter.

(ii) Not later than 30 days after receiving such a request for consultations, the Trade Representative shall consult with representatives of the State concerned regarding the matter. If the consultations involve the laws of a large number of States, the Trade Representative may consult with an appropriate group of representatives of the States concerned, as determined by those

States.

(iii) The Trade Representative shall make every effort to ensure that the State concerned is involved in the development of the position of the United States at each stage of the consultations and each subsequent stage of dispute settlement proceedings regarding the matter. In particular, the Trade Representative shall—

(I) notify the State concerned not later than 7 days after a WTO member requests the establishment of a dispute settlement panel or gives notice of the WTO member's decision to appeal a report by a dispute settlement panel regarding the matter; and

(II) provide the State concerned with the opportunity to advise and assist the Trade Representative in the preparation of factual information and argumentation for any written or oral presentations by the United States in consultations or in proceedings of a panel or the Appellate Body regarding the matter.

(iv) If a dispute settlement panel or the Appellate Body finds that the law of a State is inconsistent with any of the Uruguay Round Agreements, the Trade Representative shall consult with the State concerned in an effort to develop a mutually agreeable response to the report of the panel or the Appellate Body and shall make every effort to ensure that the State concerned is involved in the development of the United States position regarding the response.

(D) NOTICE TO STATES REGARDING CONSULTATIONS ON FOREIGN SUBCENTRAL GOVERNMENT LAWS.—

(i) Subject to clause (ii), the Trade Representative shall, at least 30 days before making a request for consultations under Article 4 of the Dispute Settlement Understanding regarding a subcentral government measure of another WTO member, notify, and solicit the views of, appropriate representatives of each State regarding the matter.

(ii) In exigent circumstances clause (i) shall not apply, in which case the Trade Representative shall notify the appropriate representatives of each State not later than 3 days after making the request for consultations referred to in clause (i).

(2) LEGAL CHALLENGE.—

(A) IN GENERAL.—No State law, or the application of such a State law, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with any of the Uruguay Round Agreements, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(B) PROCEDURES GOVERNING ACTION.—In any action described in subparagraph (A) that is brought by the United States against a State or

any subdivision thereof—

(i) a report of a dispute settlement panel or the Appellate Body convened under the Dispute Settlement Understanding regarding the State law, or the law of any political subdivision thereof, shall not be considered as binding or otherwise accorded deference;

(ii) the United States shall have the burden of proving that the law that is the subject of the action, or the application of that law, is inconsistent with the agreement in question;

(iii) any State whose interests may be impaired or impeded in the action shall have the unconditional right to intervene in the action as a party, and the United States shall be entitled to amend its complaint to include a claim or cross-claim concerning the law of a State that so intervenes; and

(iv) any State law that is declared invalid shall not be deemed to have been invalid in its application during any period before the court's judgment becomes final and all timely appeals, including discretionary review, of such judgment are exhausted.

(C) REPORTS TO CONGRESSIONAL COMMITTEES.—At least 30 days before the United States brings an action described in subparagraph (A), the Trade Representative shall provide a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(i) describing the proposed action;

(ii) describing efforts by the Trade Representative to resolve the matter with the State concerned by other means; and

(iii) if the State law was the subject of consultations under the Dispute Settlement Understanding, certifying that the Trade Representative has substantially complied with the requirement of paragraph (1)(C) in connection with the matter.

Following the submission of the report, and before the action is brought, the Trade Representative shall consult with the committees referred to in the preceding sentence concerning the matter.

(3) DEFINITION OF STATE LAW.—For purposes of this subsection—

(A) the term “State law” includes—

(i) any law of a political subdivision of a State; and

(ii) any State law regulating or taxing the business of insurance; and

(B) the terms “dispute settlement panel” and “Appellate Body” have the meanings given those terms in section 121.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—

(1) LIMITATIONS.—No person other than the United States—

(A) shall have any cause of action or defense under any of the Uruguay Round Agreements or by virtue of congressional approval of such an agreement, or

(B) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with such agreement.

(2) INTENT OF CONGRESS.—It is the intention of the Congress through paragraph (1) to occupy the field with respect to any cause of action or defense under or in connection with any of the Uruguay Round Agreements, including by precluding any person other than the United States from bringing any action against any State or political subdivision thereof or raising any defense to the application of State law under or in connection with any of the Uruguay Round Agreements—

(A) on the basis of a judgment obtained by the United States in an action brought under any such agreement; or

(B) on any other basis.

(d) STATEMENT OF ADMINISTRATIVE ACTION.—The statement of administrative action approved by the Congress under section 101(a) shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.

* * * * *

SEC. 111. TARIFF MODIFICATIONS.

(a) IN GENERAL.—In addition to the authority provided by section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902), the President shall have the authority to proclaim—

- (1) such other modification of any duty,
- (2) such other staged rate reduction, or
- (3) such additional duties, as the President determines to be necessary or appropriate to carry out Schedule XX.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover requirements of section 115, the President may proclaim—

(1) the modification of any duty or staged rate reduction of any duty set forth in Schedule XX if—

(A) the United States agrees to such modification or staged rate reduction in a multilateral negotiation under the auspices of the WTO, and

(B) such modification or staged rate reduction applies to the rate of duty on an article contained in a tariff category that was the subject of reciprocal duty elimination or harmonization negotiations during the Uruguay Round of multilateral trade negotiations, and

(2) such modifications as are necessary to correct technical errors in

Schedule XX or to make other rectifications to the Schedule.

(c) AUTHORITY TO INCREASE DUTIES ON ARTICLES FROM CERTAIN COUNTRIES.—

(1) IN GENERAL.—

(A) DETERMINATION WITH RESPECT TO CERTAIN COUNTRIES.—

Notwithstanding section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881), after the entry into force of the WTO Agreement with respect to the United States, if the President—

(i) determines that a foreign country (other than a foreign country that is a WTO member country) is not according adequate trade benefits to the United States, including substantially equal competitive opportunities for the commerce of the United States, and

(ii) consults with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate,

the President may proclaim an increase in the rate of duty with respect to any article of such country in accordance with subparagraph (B).

(B) RATE OF DUTY DESCRIBED.—The President may proclaim a rate of duty on any article of a country identified under subparagraph (A) that is equal to the greater of—

(i) the rate of duty set forth for such article in the base rate of duty column of Schedule XX, or

(ii) the rate of duty set forth for such article in the bound rate of duty column of Schedule XX.

(2) TERMINATION OF INCREASED DUTIES.—The President shall terminate any increase in the rate of duty proclaimed under this subsection by a proclamation which shall be effective on the earlier of—

(A) the date set out in such proclamation of termination, or

(B) the date the WTO Agreement enters into force with respect to the foreign country with respect to which the determination under paragraph (1) was made.

(3) PUBLICATION OF DETERMINATION AND TERMINATION.—The President shall publish in the Federal Register notice of a determination made under paragraph (1) and a termination occurring by reason of paragraph (2).

* * * * *

(e) AUTHORITY TO CONSOLIDATE SUBHEADINGS AND MODIFY COLUMN 2 RATES OF DUTY FOR TARIFF SIMPLIFICATION PURPOSES.—

(1) IN GENERAL.—Whenever the HTS column 1 general rates of duty for 2 or more 8-digit subheadings are at the same level and such subheadings are subordinate to a provision required by the International Convention on

the Harmonized Commodity Description and Coding System, the President may proclaim, subject to the consultation and layover requirements of section 115, that the goods described in such subheadings be provided for in a single 8-digit subheading of the HTS, and that—

(A) the HTS column 1 general rate of duty for such single subheading be the column 1 general rate of duty common to all such subheadings, and

(B) the HTS column 2 rate of duty for such single subheading be the highest column 2 rate of duty for such subheadings that is in effect on the day before the effective date of such proclamation.

(2) SAME LEVEL OF DUTY.—The provisions of this subsection apply to subheadings described in paragraph (1) that have the same column 1 general rate of duty—

(A) on the date of the enactment of this Act, or

(B) after such date of enactment as a result of a staged reduction in such column 1 rates of duty.

* * * * *

SEC. 121. DEFINITIONS.

For purposes of this subtitle:

(1) ADMINISTERING AUTHORITY.—The term “administering authority” has the meaning given that term in section 771(1) of the Tariff Act of 1930.

(2) APPELLATE BODY.—The term “Appellate Body” means the Appellate Body established under Article 17.1 of the Dispute Settlement Understanding.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES; CONGRESSIONAL COMMITTEES.—

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the committees referred to in subparagraph (B) and any other committees of the Congress that have jurisdiction involving the matter with respect to which consultations are to be held.

(B) CONGRESSIONAL COMMITTEES.—The term “congressional committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(4) DISPUTE SETTLEMENT PANEL; PANEL.—The terms “dispute settlement panel” and “panel” mean a panel established pursuant to Article 6 of the Dispute Settlement Understanding.

(5) DISPUTE SETTLEMENT BODY.—The term “Dispute Settlement Body” means the Dispute Settlement Body administering the rules and procedures as set forth in the Dispute Settlement Understanding.

(6) DISPUTE SETTLEMENT UNDERSTANDING.—The term “Dispute Settlement Understanding” means the Understanding on Rules and

Procedures Governing the Settlement of Disputes referred to in section 101(d)(16).

(7) **GENERAL COUNCIL.**—The term “General Council” means the General Council established under paragraph 2 of Article IV of the WTO Agreement.

(8) **MINISTERIAL CONFERENCE.**—The term “Ministerial Conference” means the Ministerial Conference established under paragraph 1 of Article IV of the WTO Agreement.

(9) **OTHER TERMS.**—The terms “Antidumping Agreement”, “Agreement on Subsidies and Countervailing Measures”, and “Safeguards Agreement” mean the agreements referred to in section 101(d)(7), (12), and (13), respectively.

SEC. 122. IMPLEMENTATION OF URUGUAY ROUND AGREEMENTS.

(a) **DECISIONMAKING.**—In the implementation of the Uruguay Round Agreements and the functioning of the World Trade Organization, it is the objective of the United States to ensure that the Ministerial Conference and the General Council continue the practice of decisionmaking by consensus followed under the GATT 1947, as required by paragraph 1 of article IX of the WTO Agreement.

(b) **CONSULTATIONS WITH CONGRESSIONAL COMMITTEES.**—In furtherance of the objective set forth in subsection (a), the Trade Representative shall consult with the appropriate congressional committees before any vote is taken by the Ministerial Conference or the General Council relating to—

(1) the adoption of an interpretation of the WTO Agreement or another multilateral trade agreement,

(2) the amendment of any such agreement,

(3) the granting of a waiver of any obligation under any such agreement,

(4) the adoption of any amendment to the rules or procedures of the Ministerial Conference or the General Council,

(5) the accession of a state or separate customs territory to the WTO Agreement, or

(6) the adoption of any other decision, if the action described in paragraph (1), (2), (3), (4), (5), or (6) would substantially affect the rights or obligations of the United States under the WTO Agreement or another multilateral trade agreement or potentially entails a change in Federal or State law.

(c) **REPORT ON DECISIONS.**—

(1) **IN GENERAL.**—Not later than 30 days after the end of any calendar year in which the Ministerial Conference or the General Council adopts by vote any decision to take any action described in paragraph (1), (2), (4), or (6) of subsection (b), the Trade Representative shall submit a report to the appropriate congressional committees describing—

(A) the nature of the decision;

(B) the efforts made by the United States to have the matter decided

by consensus pursuant to paragraph 1 of article IX of the WTO Agreement and the results of those efforts;

(C) which countries voted for, and which countries voted against, the decision;

(D) the rights or obligations of the United States affected by the decision and any Federal or State law that would be amended or repealed, if the President after consultation with the Congress determined that such amendment or repeal was an appropriate response; and

(E) the action the President intends to take in response to the decision or, if the President does not intend to take any action, the reasons therefor.

(2) ADDITIONAL REPORTING REQUIREMENTS.—

(A) GRANT OF WAIVER.—In the case of a decision to grant a waiver described in subsection (b)(3), the report under paragraph (1) shall describe the terms and conditions of the waiver and the rights and obligations of the United States that are affected by the waiver.

(B) ACCESSION.—In the case of a decision on accession described in subsection (b)(5), the report under paragraph (1) shall state whether the United States intends to invoke Article XIII of the WTO Agreement.

(d) CONSULTATION ON REPORT.—Promptly after the submission of a report under subsection (c), the Trade Representative shall consult with the appropriate congressional committees with respect to the report.

SEC. 123. DISPUTE SETTLEMENT PANELS AND PROCEDURES.

(a) REVIEW BY PRESIDENT.—The President shall review annually the WTO panel roster and shall include the panel roster and the list of persons serving on the Appellate Body in the annual report submitted by the President under section 163(a) of the Trade Act of 1974.

(b) QUALIFICATIONS OF APPOINTEES TO PANELS.—The Trade Representative shall—

(1) seek to ensure that persons appointed to the WTO panel roster are well-qualified, and that the roster includes persons with expertise in the subject areas covered by the Uruguay Round Agreements; and

(2) inform the President of persons nominated to the roster by other WTO member countries.

(c) RULES GOVERNING CONFLICTS OF INTEREST.—The Trade Representative shall seek the establishment by the General Council and the Dispute Settlement Body of rules governing conflicts of interest by persons serving on panels and members of the Appellate Body and shall describe, in the annual report submitted under section 124, any progress made in establishing such rules.

(d) NOTIFICATION OF DISPUTES.—Promptly after a dispute settlement panel is established to consider the consistency of Federal or State law with any of the Uruguay Round Agreements, the Trade Representative shall notify the appropriate congressional committees of—

(1) the nature of the dispute, including the matters set forth in the request for the establishment of the panel, the legal basis of the complaint, and the specific measures, in particular any State or Federal law cited in the request for establishment of the panel;

(2) the identity of the persons serving on the panel; and

(3) whether there was any departure from the rule of consensus with respect to the selection of persons to serve on the panel.

(e) NOTICE OF APPEALS OF PANEL REPORTS.—If an appeal is taken of a report of a panel in a proceeding described in subsection (d), the Trade Representative shall, promptly after the notice of appeal is filed, notify the appropriate congressional committees of—

(1) the issues under appeal; and

(2) the identity of the persons serving on the Appellate Body who are reviewing the report of the panel.

(f) ACTIONS UPON CIRCULATION OF REPORTS.—Promptly after the circulation of a report of a panel or of the Appellate Body to WTO members in a proceeding described in subsection (d), the Trade Representative shall—

(1) notify the appropriate congressional committees of the report;

(2) in the case of a report of a panel, consult with the appropriate congressional committees concerning the nature of any appeal that may be taken of the report; and

(3) if the report is adverse to the United States, consult with the appropriate congressional committees concerning whether to implement the report's recommendation and, if so, the manner of such implementation and the period of time needed for such implementation.

(g) REQUIREMENTS FOR AGENCY ACTION.—

(1) CHANGES IN AGENCY REGULATIONS OR PRACTICE.—In any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until—

(A) the appropriate congressional committees have been consulted under subsection (f);

(B) the Trade Representative has sought advice regarding the modification from relevant private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(C) the head of the relevant department or agency has provided an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification;

(D) the Trade Representative has submitted to the appropriate congressional committees a report describing the proposed modification, the reasons for the modification, and a summary of the

advice obtained under subparagraph (B) with respect to the modification;

(E) the Trade Representative and the head of the relevant department or agency have consulted with the appropriate congressional committees on the proposed contents of the final rule or other modification; and

(F) the final rule or other modification has been published in the Federal Register.

(2) **EFFECTIVE DATE OF MODIFICATION.**—A final rule or other modification to which paragraph (1) applies may not go into effect before the end of the 60-day period beginning on the date on which consultations under paragraph (1)(E) begin, unless the President determines that an earlier effective date is in the national interest.

(3) **VOTE BY CONGRESSIONAL COMMITTEES.**—During the 60-day period described in paragraph (2), the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate may vote to indicate the agreement or disagreement of the committee with the proposed contents of the final rule or other modification. Any such vote shall not be binding on the department or agency which is implementing the rule or other modification.

(4) **INAPPLICABILITY TO ITC.**—This subsection does not apply to any regulation or practice of the International Trade Commission.

(h) **CONSULTATIONS REGARDING REVIEW OF WTO RULES AND PROCEDURES.**—Before the review is conducted of the dispute settlement rules and procedures of the WTO that is provided for in the Decision on the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, as such decision is set forth in the Ministerial Declarations and Decisions adopted on April 15, 1994, together with the Uruguay Round Agreements, the Trade Representative shall consult with congressional committees regarding the policy of the United States concerning the review.

SEC. 124. ANNUAL REPORT ON THE WTO.

Not later than March 1 of each year beginning in 1996, the Trade Representative shall submit to the Congress a report describing, for the preceding fiscal year of the WTO—

(1) the major activities and work programs of the WTO, including the functions and activities of the committees established under article IV of the WTO Agreement, and the expenditures made by the WTO in connection with those activities and programs;

(2) the percentage of budgetary assessments by the WTO that were accounted for by each WTO member country, including the United States;

(3) the total number of personnel employed or retained by the Secretariat of the WTO, and the number of professional, administrative, and support staff of the WTO;

(4) for each personnel category described in paragraph (3), the number of citizens of each country, and the average salary of the personnel, in that category;

(5) each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law, and any efforts by the Trade Representative to provide for implementation of the recommendations contained in a report that is adverse to the United States;

(6) each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the status of the proceeding, and the matter at issue;

(7) the status of consultations with any State whose law was the subject of a report adverse to the United States that was issued by a panel or the Appellate Body; and

(8) any progress achieved in increasing the transparency of proceedings of the Ministerial Conference and the General Council, and of dispute settlement proceedings conducted pursuant to the Dispute Settlement Understanding.

SEC. 125. REVIEW OF PARTICIPATION IN THE WTO.

(a) **REPORT ON THE OPERATION OF THE WTO.**—The first annual report submitted to the Congress under section 124—

(1) after the end of the 5-year period beginning on the date on which the WTO Agreement enters into force with respect to the United States, and

(2) after the end of every 5-year period thereafter, shall include an analysis of the effects of the WTO Agreement on the interests of the United States, the costs and benefits to the United States of its participation in the WTO, and the value of the continued participation of the United States in the WTO.

(b) **CONGRESSIONAL DISAPPROVAL OF U.S. PARTICIPATION IN THE WTO.**—

(1) **GENERAL RULE.**—The approval of the Congress, provided under section 101(a), of the WTO Agreement shall cease to be effective if, and only if, a joint resolution described in subsection (c) is enacted into law pursuant to the provisions of paragraph (2).

(2) **PROCEDURAL PROVISIONS.**—

(A) The requirements of this paragraph are met if the joint resolution is enacted under subsection (c), and

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 90-day period (excluding any day described in section 154(b) of the Trade Act of 1974), beginning on the date on which the Congress receives a report referred to in subsection (a), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override that veto on or before the later of the last day of the 90-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section

154(b) of the Trade Act of 1974) beginning on the date on which the Congress receives the veto message from the President.

(B) A joint resolution to which this section applies may be introduced at any time on or after the date on which the President transmits to the Congress a report described in subsection (a), and before the end of the 90-day period referred to in subparagraph (A).

(c) JOINT RESOLUTIONS.—

(1) JOINT RESOLUTIONS.—For purposes of this section, the term “joint resolution” means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress withdraws its approval, provided under section 101(a) of the Uruguay Round Agreements Act, of the WTO Agreement as defined in section 2(9) of that Act.”.

(2) PROCEDURES.—

(A) Joint resolutions may be introduced in either House of the Congress by any member of such House.

(B) Subject to the provisions of this subsection, the provisions of subsections (b), (d), (e), and (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192(b), (d), (e), and (f)) apply to joint resolutions to the same extent as such provisions apply to resolutions under such section.

(C) If the committee of either House to which a joint resolution has been referred has not reported it by the close of the 45th day after its introduction (excluding any day described in section 154(b) of the Trade Act of 1974), such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(D) It is not in order for—

(i) the Senate to consider any joint resolution unless it has been reported by the Committee on Finance or the committee has been discharged under subparagraph (C); or

(ii) the House of Representatives to consider any joint resolution unless it has been reported by the Committee on Ways and Means or the committee has been discharged under subparagraph (C).

(E) A motion in the House of Representatives to proceed to the consideration of a joint resolution may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his or her intention to do so.

(3) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a joint resolution (other than a joint resolution received from the other House), if that House has previously adopted a joint resolution under this section.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—

(1) 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, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

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

SEC. 126. INCREASED TRANSPARENCY.

The Trade Representative shall seek the adoption by the Ministerial Conference and General Council of procedures that will ensure broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions, through the observance of open and equitable procedures in trade matters by the Ministerial Conference and the General Council, and by the dispute settlement panels and the Appellate Body under the Dispute Settlement Understanding.

SEC. 127. ACCESS TO THE WTO DISPUTE SETTLEMENT PROCESS.

(a) **IN GENERAL.**—Whenever the United States is a party before a dispute settlement panel established pursuant to Article 6 of the Dispute Settlement Understanding, the Trade Representative shall, at each stage of the proceeding before the panel or the Appellate Body, consult with the appropriate congressional committees, the petitioner (if any) under section 302(a) of the Trade Act of 1974 (19 U.S.C. 2412) with respect to the matter that is the subject of the proceeding, and relevant private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), and shall consider the views of representatives of appropriate interested private sector and nongovernmental organizations concerning the matter.

(b) **NOTICE AND PUBLIC COMMENT.**—In any proceeding described in subsection (a), the Trade Representative shall—

(1) promptly after requesting the establishment of a panel, or receiving a request from another WTO member country for the establishment of a panel, publish a notice in the Federal Register—

(A) identifying the initial parties to the dispute,

(B) setting forth the major issues raised by the country requesting the establishment of a panel and the legal basis of the complaint,

(C) identifying the specific measures, including any State or Federal law cited in the request for establishment of the panel, and

(D) seeking written comments from the public concerning the issues raised in the dispute; and

(2) take into account any advice received from appropriate congressional committees and relevant private sector advisory committees referred to in subsection (a), and written comments received pursuant to paragraph (1)(D), in preparing United States submissions to the panel or the Appellate

Body.

(c) ACCESS TO DOCUMENTS.—In each proceeding described in subsection (a), the Trade Representative shall—

(1) make written submissions by the United States referred to in subsection (b) available to the public promptly after they are submitted to the panel or Appellate Body, except that the Trade Representative is authorized to withhold from disclosure any information contained in such submissions identified by the provider of the information as proprietary information or information treated as confidential by a foreign government;

(2) request each other party to the dispute to permit the Trade Representative to make that party's written submissions to the panel or the Appellate Body available to the public; and

(3) make each report of the panel or the Appellate Body available to the public promptly after it is circulated to WTO members, and inform the public of such availability.

(d) REQUESTS FOR NONCONFIDENTIAL SUMMARIES.—In any dispute settlement proceeding conducted pursuant to the Dispute Settlement Understanding, the Trade Representative shall request each party to the dispute to provide nonconfidential summaries of its written submissions, if that party has not made its written submissions public, and shall make those summaries available to the public promptly after receiving them.

(e) PUBLIC FILE.—The Trade Representative shall maintain a file accessible to the public on each dispute settlement proceeding to which the United States is a party that is conducted pursuant to the Dispute Settlement Understanding. The file shall include all United States submissions in the proceeding and a listing of any submissions to the Trade Representative from the public with respect to the proceeding, as well as the report of the dispute settlement panel and the report of the Appellate Body.

[(f) CONFORMING AMENDMENT.—Amends section 135(a)(1)(B) of the Trade Act of 1974, reprinted elsewhere.]

[SEC. 128. ADVISORY COMMITTEE PARTICIPATION.

[Amends section 135(b)(1) of the Trade Act of 1974, reprinted elsewhere.]

SEC. 129. ADMINISTRATIVE ACTION FOLLOWING WTO PANEL REPORTS.

(a) ACTION BY UNITED STATES INTERNATIONAL TRADE COMMISSION.—

(1) ADVISORY REPORT.—If a dispute settlement panel finds in an interim report under Article 15 of the Dispute Settlement Understanding, or the Appellate Body finds in a report under Article 17 of that Understanding, that an action by the International Trade Commission in connection with a particular proceeding is not in conformity with the obligations of the United States under the Antidumping Agreement, the Safeguards Agreement, or the Agreement on Subsidies and Countervailing Measures, the Trade Representative may request the Commission to issue an advisory report on whether title VII of the Tariff Act of 1930 or title II of the Trade Act of 1974, as the case may be, permits the Commission to take steps in

connection with the particular proceeding that would render its action not inconsistent with the findings of the panel or the Appellate Body concerning those obligations. The Trade Representative shall notify the congressional committees of such request.

(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative—

(A) in the case of an interim report described in paragraph (1), within 30 calendar days after the Trade Representative requests the report; and

(B) in the case of a report of the Appellate Body, within 21 calendar days after the Trade Representative requests the report.

(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representative shall consult with the congressional committees concerning the matter.

(4) COMMISSION DETERMINATION.—Notwithstanding any provision of the Tariff Act of 1930 or title II of the Trade Act of 1974, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel or Appellate Body. The Commission shall issue its determination not later than 120 days after the request from the Trade Representative is made.

(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees before the Commission's determination under paragraph (4) is implemented.

(6) REVOCATION OF ORDER.—If, by virtue of the Commission's determination under paragraph (4), an antidumping or countervailing duty order with respect to some or all of the imports that are subject to the action of the Commission described in paragraph (1) is no longer supported by an affirmative Commission determination under title VII of the Tariff Act of 1930 or this subsection, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the antidumping or countervailing duty order in whole or in part.

(7) MODIFICATION OF ACTION UNDER TITLE II OF TRADE ACT OF 1974.—Section 204(b) of the Trade Act of 1974 (19 U.S.C. 2254(b)) is amended by adding at the end the following new paragraph:

“(3) Notwithstanding paragraph (1), the President may, after receipt of a Commission determination under section 129(a)(4) of the Uruguay Round Agreements Act and consulting with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under

section 203.”.

(b) ACTION BY ADMINISTERING AUTHORITY.—

(1) CONSULTATIONS WITH ADMINISTERING AUTHORITY AND CONGRESSIONAL COMMITTEES.—Promptly after a report by a dispute settlement panel or the Appellate Body is issued that contains findings that an action by the administering authority in a proceeding under title VIII of the Tariff Act of 1930 is not in conformity with the obligations of the United States under the Antidumping Agreement or the Agreement on Subsidies and Countervailing Measures, the Trade Representative shall consult with the administering authority and the congressional committees on the matter.

(2) DETERMINATION BY ADMINISTERING AUTHORITY.—Notwithstanding any provision of the Tariff Act of 1930, the administering authority shall, within 180 days after receipt of a written request from the Trade Representative, issue a determination in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel or the Appellate Body.

(3) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees with respect to such determination.

(4) IMPLEMENTATION OF DETERMINATION.—The Trade Representative may, after consulting with the administering authority and the congressional committees under paragraph (3), direct the administering authority to implement, in whole or in part, the determination made under paragraph (2).

(c) EFFECTS OF DETERMINATIONS; NOTICE OF IMPLEMENTATION.—

(1) EFFECTS OF DETERMINATIONS.—Determinations concerning title VII of the Tariff Act of 1930 that are implemented under this section shall apply with respect to unliquidated entries of the subject merchandise (as defined in section 771 of that Act) that are entered, or withdrawn from warehouse, for consumption on or after—

(A) in the case of a determination by the Commission under subsection (a)(4), the date on which the Trade Representative directs the administering authority under subsection (a)(6) to revoke an order pursuant to that determination, and

(B) in the case of a determination by the administering authority under subsection (b)(2), the date on which the Trade Representative directs the administering authority under subsection (b)(4) to implement that determination.

(2) NOTICE OF IMPLEMENTATION.—

(A) The administering authority shall publish in the Federal Register notice of the implementation of any determination made under this section with respect to title VII of the Tariff Act of 1930.

(B) The Trade Representative shall publish in the Federal Register notice of the implementation of any determination made under this section with respect to title II of the Trade Act of 1974.

(d) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Prior to issuing a determination under this section, the administering authority or the Commission, as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

Section 5201 of the Trade Act of 2002

[19 U.S.C. 3539; Public Law 107-210]

SEC. 5201. FUND FOR WTO DISPUTE SETTLEMENTS.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury a fund for the payment of settlements under this section.

(b) AUTHORITY OF USTR TO PAY SETTLEMENTS.—Amounts in the fund established under subsection (a) shall be available, as provided in appropriations Acts, only for the payment by the United States Trade Representative of the amount of the total or partial settlement of any dispute pursuant to proceedings under the auspices of the World Trade Organization, if—

(1) in the case of a total or partial settlement in an amount of not more than \$10,000,000, the Trade Representative certifies to the Secretary of the Treasury that the settlement is in the best interests of the United States; and

(2) in the case of a total or partial settlement in an amount of more than \$10,000,000, the Trade Representative certifies to the Congress that the settlement is in the best interests of the United States.

(c) APPROPRIATIONS.—There are authorized to be appropriated to the fund established under subsection (a)—

(1) \$50,000,000; and

(2) amounts equivalent to amounts recovered by the United States pursuant to the settlement of disputes pursuant to proceedings under the auspices of the World Trade Organization.

Amounts appropriated to the fund are authorized to remain available until expended.

(d) MANAGEMENT OF FUND.—Sections 9601 and 9602(b) of the Internal Revenue Code of 1986 shall apply to the fund established under subsection (a) to the same extent as such provisions apply to trust funds established under subchapter A of chapter 98 of such Code.

C. SPECIFIC TRADE AGREEMENT AUTHORITIES

1. Compensation Authority

Section 123 of the Trade Act of 1974, as amended

[19 U.S.C. 2133; Public Law 93-618, as amended by Public Law 100-418 and Public Law 106-286]

SEC. 123. COMPENSATION AUTHORITY.

(a) NEW CONCESSIONS.—Whenever—

- (1) any action taken under chapter 1 of title II or chapter 1 of title III; or
- (2) any judicial or administrative tariff reclassification that becomes final after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988;

increases or imposes any duty or other import restriction, the President—

(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b) REDUCTIONS IN RATES OF DUTY.—

(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 1102(a) by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under section 1102(a).

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant action under sections 203(e) and 204.

(c) CONSIDERATION OF PAST VIOLATIONS OF TRADE CONCESSIONS.—Before

entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) BASIC AUTHORITY FOR TRADE AGREEMENTS AS AUTHORITY FOR GRANTING NEW CONCESSIONS AS COMPENSATION.—Notwithstanding the provisions of subsection (a), the authority delegated under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e) INTERNATIONAL OBLIGATIONS DETERMINATION PREREQUISITE TO APPLICATION OF AUTHORITY.—The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary or appropriate to meet the international obligations of the United States.

2. Termination and Withdrawal Authority

Section 125 of the Trade Act of 1974

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

SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.

(a) GRANT OF AUTHORITY FOR TERMINATION OR WITHDRAWAL AT END OF PERIOD SPECIFIED IN AGREEMENT.—Every trade agreement entered into under this Act shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) AUTHORITY TO TERMINATE PROCLAMATIONS AT ANY TIME.—The President may at any time terminate, in whole or in part, any proclamation made under this Act.

(c) INCREASED DUTIES OR OTHER IMPORT RESTRICTIONS FOLLOWING WITHDRAWAL, SUSPENSION, OR MODIFICATION OF OBLIGATIONS WITH RESPECT TO TRADE OF FOREIGN COUNTRIES OR INSTRUMENTALITIES.—Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights

or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher. [Section 421 of the Uruguay Round Agreements Act provides that in the application of section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) with respect to any item provided for in subheadings 2401.10.60, 2401.20.30, 2401.20.80, 2401.30.30, 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, or 2403.99.00 of the HTS, "350" shall be substituted for "20" where it appears in such section.]

(d) RETALIATORY AUTHORITY.—Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights granted to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality; and

(2) proclaim under subsection (c) such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) CONTINUATION OF DUTIES OR OTHER IMPORT RESTRICTIONS AFTER TERMINATION OF OR WITHDRAWAL FROM AGREEMENTS.—Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930 shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) PUBLIC HEARINGS.—Before taking any action pursuant to subsection (b), (c), or (d), the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

[Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 applies section 125 to trade agreements entered into under section 1102 of that Act.]

Section 2110(b) of the Trade Act of 2002

[19 U.S.C. 3810; Public Law 107-210]

SEC. 2110. CONFORMING AMENDMENTS.

* * * * *

(b) APPLICATION OF CERTAIN PROVISIONS.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 2103 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 2103 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.

3. ACCESSION OF STATE TRADING REGIMES TO THE GATT OR THE WTO

Section 1106 of the Omnibus Trade and Competitiveness Act of 1988, as amended

[19 U.S.C. 2905; Public Law 100-418, as amended by Public Law 103-465 and Public Law 104-295]

SEC. 1106. ACCESSION OF STATE TRADING REGIMES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE OR THE WTO.

(a) IN GENERAL.— Before any major foreign country accedes, after the date of enactment of this Act, to the GATT 1947, or the WTO Agreement, the President shall determine—

(1) whether state trading enterprises account for a significant share of—

(A) the exports of such major foreign country, or

(B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and

(2) whether such state trading enterprises—

(A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or

(B) are likely to result in such a burden, restriction, or effect.

(b) EFFECTS OF AFFIRMATIVE DETERMINATION.—If both of the determinations

made under paragraphs (1) and (2) of subsection (a) with respect to a major foreign country are affirmative—

(1) the President shall reserve the right of the United States to withhold extension of the application of the GATT 1947 or the WTO Agreement, between the United States and such major foreign country, and

(2) the GATT 1947 or the WTO Agreement shall not apply between the United States and such major foreign country until—

(A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

(I) make purchases which are not for the use of such foreign country, and

(II) make sales in international trade, in accordance with commercial considerations (including price, quality, availability, marketability, and transportation), and

(ii) will afford United States business firms adequate opportunity, in accordance with customary practice, to compete for participation in such purchases or sales; or

(B) a bill submitted under subsection (c) which approves of the extension of the application of the GATT 1947 or the WTO Agreement between the United States and such major foreign country is enacted into law.

(c) EXPEDITED CONSIDERATION OF BILL TO APPROVE EXTENSION.—

(1) The President may submit to the Congress any draft of a bill which approves of the extension of the application of the GATT 1947 or the WTO Agreement between the United States and a major foreign country.

(2) Any draft of a bill described in paragraph (1) that is submitted by the President to the Congress shall—

(A) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress; and

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 151 of the Trade Act of 1974.

(d) PUBLICATION.—The President shall publish in the Federal Register each determination made under subsection (a).

(e) DEFINITIONS.—For purposes of this section:

(1) The term “GATT 1947” has the meaning given that term in section 2(1)(A) of the Uruguay Round Agreements Act.

(2) The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994 and the multilateral trade agreements (as such term is defined in section 2(4) of the Uruguay Round Agreements Act).

4. GATT and WTO Authorizations

Section 5201 of the Trade Act of 2002

[19 U.S.C. 3539; Public Law 107-210]

SEC. 5201. FUND FOR WTO DISPUTE SETTLEMENTS.

(a) **ESTABLISHMENT OF FUND.**—There is established in the Treasury a fund for the payment of settlements under this section.

(b) **AUTHORITY OF USTR TO PAY SETTLEMENTS.**—Amounts in the fund established under subsection (a) shall be available, as provided in appropriations Acts, only for the payment by the United States Trade Representative of the amount of the total or partial settlement of any dispute pursuant to proceedings under the auspices of the World Trade Organization, if—

(1) in the case of a total or partial settlement in an amount of not more than \$10,000,000, the Trade Representative certifies to the Secretary of the Treasury that the settlement is in the best interests of the United States; and

(2) in the case of a total or partial settlement in an amount of more than \$10,000,000, the Trade Representative certifies to the Congress that the settlement is in the best interests of the United States.

(c) **APPROPRIATIONS.**—There are authorized to be appropriated to the fund established under subsection (a)—

(1) \$50,000,000; and

(2) amounts equivalent to amounts recovered by the United States pursuant to the settlement of disputes pursuant to proceedings under the auspices of the World Trade Organization.

Amounts appropriated to the fund are authorized to remain available until expended.

(d) **MANAGEMENT OF FUND.**—Sections 9601 and 9602(b) of the Internal Revenue Code of 1986 shall apply to the fund established under subsection (a) to the same extent as such provisions apply to trust funds established under subchapter A of chapter 98 of such Code.

Section 121 of the Trade Act of 1974, as amended

[19 U.S.C. 2131; Public Law 93-618, as amended by Public Law 100-418 and Public Law 100-647]

SEC. 121. AUTHORIZATION OF APPROPRIATION FOR GATT REVERSION.

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

Section 101(c) of the Uruguay Round Agreements Act

[19 U.S.C. 3511; Public Law 103-465]

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE URUGUAY ROUND AGREEMENTS.

(c) Authorization of Appropriations.—There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the WTO.

D. TRADE NEGOTIATION PROCEDURAL REQUIREMENTS

Sections 131-134 of the Trade Act of 1974, as amended

[19 U.S.C. 2151-2154; Public Law 93-618, as amended by Public Law 100-418 and Public Law 107-210]

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

(1) In connection with any proposed trade agreement under section 123 of this Act or section 2103(a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the “Commission”) with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period

of time than the minimum period provided for in section 2103(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002.

(c) **ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.**—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) **COMMISSION STEPS IN PREPARING ITS ADVICE TO THE PRESIDENT.**—In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) **PUBLIC HEARING.**—In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, the

President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

SEC. 133. PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) SUMMARY OF HEARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.

SEC. 134. PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

- (1) the Commission;
 - (2) any advisory committee established under section 135; or
 - (3) any organization that holds public hearings under section 133;
- with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

Sections 127(a) and (b) of the Trade Act of 1974

[19 U.S.C. 2137; Public Law 93-618]

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) NATIONAL SECURITY CONSIDERATIONS.—No proclamation shall be made pursuant to the provisions of this Act reducing or eliminating the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) ACTION TAKEN UNDER OTHER LAWS.—Where there is in effect with respect to any article any action taken under section 203 of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

- (A) any duty on such article,
- (B) any import restriction imposed under such section, or
- (C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

[Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 applies section 127 to trade agreements entered into under section 1102 of that Act.]

E. IDENTIFICATION OF, AND ACTION ON, SPECIFIC FOREIGN TRADE BARRIERS

1. National Trade Estimates Report

Section 181 of the Trade Act of 1974, as amended

[19 U.S.C. 2241; Public Law 93-618, as added by Public Law 98-573, section 303(a) and amended by Public Law 100-418, Public Law 103-465, and Public Law 105-277]

SEC. 181. ESTIMATES OF BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) **IN GENERAL.**—For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 and with the assistance of the interagency advisory committee established under section 141(d)(2), shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and

(iii) United States electronic commerce,

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States,

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce, that would have been exported to, or invested in or transacted with, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) **CERTAIN FACTORS TAKEN INTO ACCOUNT IN MAKING ANALYSIS AND ESTIMATE.**—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate committees established pursuant to section 135; and

(E) the actual increase in—

(i) the value of goods and services of the United States exported to,

(ii) the value of foreign direct investment made in, and
(iii) the value of electronic commerce transacted with, the
foreign country during the calendar year for which the estimate
under paragraph (1)(C) is made.

(3) ANNUAL REVISIONS AND UPDATES.—The Trade Representative shall
annually revise and update the analysis and estimate under paragraph (1).

(b) REPORT.—

(1) On or before April 30, 1989, and on or before March 31 of each
succeeding calendar year, the Trade Representative shall submit a report on
the analysis and estimates made under subsection (a) for the calendar year
preceding such calendar year (which shall be known as the “National Trade
Estimate”) to the President, the Committee on Finance of the Senate, and
appropriate committees of the House of Representatives.

(2) REPORTS TO INCLUDE INFORMATION WITH RESPECT TO ACTION BEING
TAKEN.—The Trade Representative shall include in each report submitted
under paragraph (1) information with respect to any action taken (or the
reasons for no action taken) to eliminate any act, policy, or practice
identified under subsection (a), including, but not limited to—

- (A) any action under section 301,
- (B) negotiations or consultations with foreign governments, or
- (C) a section on foreign anticompetitive practices, the toleration of
which by foreign governments is adversely affecting exports of United
States goods or services.

(3) CONSULTATION WITH CONGRESS ON TRADE POLICY PRIORITIES.—The
Trade Representative shall keep the committees described in paragraph (1)
currently informed with respect to trade policy priorities for the purposes of
expanding market opportunities. After the submission of the report required
by paragraph (1), the Trade Representative shall also consult periodically
with, and take into account the views of, the committees described in that
paragraph regarding means to address the foreign trade barriers identified in
the report, including the possible initiation of investigations under section
302 or other trade actions.

(c) ASSISTANCE OF OTHER AGENCIES.—

(1) FURNISHING OF INFORMATION.—The head of each department or
agency of the executive branch of the Government, including any
independent agency, is authorized and directed to furnish to the Trade
Representative or to the appropriate agency, upon request, such data,
reports, and other information as is necessary for the Trade Representative
to carry out his functions under this section. In preparing the section of the
report required by subsection (b)(2)(C), the Trade Representative shall
consult in particular with the Attorney General.

(2) RESTRICTIONS ON RELEASE OR USE OF INFORMATION.—Nothing in this
subsection shall authorize the release of information to, or the use of
information by, the Trade Representative in a manner inconsistent with law

or any procedure established pursuant thereto.

(3) **PERSONNEL AND SERVICES.**—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

(d) **ELECTRONIC COMMERCE.**—For purposes of this section, the term “electronic commerce” has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.

2. Intellectual Property Rights

Section 182 of the Trade Act of 1974, as amended

[19 U.S.C. 2242; Public Law 93-618, as added by Public Law 100-418, section 1303(b), and amended by Public Law 103-182, Public Law 103-465, and Public Law 106-113]

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) **IN GENERAL.**—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the “Trade Representative”) shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) **SPECIAL RULES FOR IDENTIFICATIONS.**—

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property

rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary Commence for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2), and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

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

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17, United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there

are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or plant breeder's right, through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act.

(e) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).

(f) SPECIAL RULE FOR ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.—

(1) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) SPECIAL RULES FOR IDENTIFICATIONS.—For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of

the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

(3) CULTURAL INDUSTRIES.— For purposes of this subsection, the term “cultural industries” means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcasting network services.

(g) ANNUAL REPORT.—The Trade Representative shall, by not later than the date by which countries are identified under subsection (a), transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights.

3. Telecommunications Trade

Telecommunications Trade Act of 1988

(Title I, Subtitle C, Part 4 (Sections 1371-1382) of the Omnibus Trade and Competitiveness Act of 1988)

[19 U.S.C. 3101 et seq.; Public Law 100-418, as amended by Public Law 103-465]

SEC. 1371. SHORT TITLE.

This part may be cited as the “Telecommunications Trade Act of 1988”.

SEC. 1372. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services is likely to continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has contributed, and will continue to contribute, to an increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications;

(5) unless this imbalance is corrected through the achievement of mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries, the United States should avoid granting continued open access to the telecommunications products and services of such foreign countries in the United States market; and

(6) the unique business conditions in the worldwide market for telecommunications products and services caused by the combination of deregulation and divestiture in the United States, which represents a unilateral liberalization of United States trade with the rest of the world, and continuing government intervention in the domestic industries of many other countries create a need to make an exception in the case of telecommunications products and services that should not necessarily be a precedent for legislating specific sectoral priorities in combating the closed markets or unfair foreign trade practices of other countries.

(b) PURPOSES.—The purposes of this part are—

(1) to foster the economic and technological growth of, and employment in, the United States telecommunications industry;

(2) to secure a high quality telecommunications network for the benefit of the people of the United States;

(3) to develop an international consensus in favor of open trade and competition in telecommunications products and services;

(4) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(5) to achieve a more open world trading system for telecommunications products and services through negotiation and provision of mutually advantageous market opportunities for United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

SEC. 1373. DEFINITIONS.

For purposes of this part—

(1) The term “Trade Representative” means the United States Trade Representative.

(2) The term “telecommunications product” means—

(A) any paging devices provided for under item 685.65 of such Schedules, and

(B) any article classified under any of the following item numbers of such Schedules:

684.57	685.16	685.34
684.58	685.24	685.39
684.59	685.25	685.48
684.65	685.28	688.17
684.66	685.30	688.41
684.67	685.31	707.90
684.80	685.33	

SEC. 1374. INVESTIGATION OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(a) **IN GENERAL.**—The Trade Representative shall conduct an investigation to identify priority foreign countries. Such investigation shall be concluded by no later than the date that is 5 months after the date of enactment of this Act.

(b) **FACTORS TO BE TAKEN INTO ACCOUNT.**—In identifying priority foreign countries under subsection (a), the Trade Representative shall take into account, among other relevant factors—

(1) the nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms;

(2) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market;

(3) the potential size of the market of a foreign country for

telecommunications products and services of United States firms;

(4) the potential to increase United States exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(5) measurable progress being made to eliminate the objectionable acts, policies, or practices.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time, after taking into account the factors described in subsection (b)—

(A) revoke the identification of any priority foreign country that was made under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) of the Trade Act of 1974 a detailed explanation of the reasons for the revocation under paragraph (1) of this subsection of any identification of any foreign country as a priority foreign country.

(d) REPORT TO CONGRESS.—By no later than the date that is 30 days after the date on which the investigation conducted under subsection (a) is completed, the United States Trade Representative shall submit a report on the investigation to the President and to appropriate committees of the Congress.

SEC. 1375. NEGOTIATIONS IN RESPONSE TO INVESTIGATION.

(a) IN GENERAL.—Upon—

(1) the date that is 30 days after the date on which any foreign country is identified in the investigation conducted under section 1374(a) as a priority foreign country, and

(2) the date on which any foreign country is identified under section 1374(c)(1)(B) as a priority foreign country,

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under part 1 of subtitle A which meets the specific negotiating objectives established by the President under subsection (b) for such priority foreign country.

(b) ESTABLISHMENT OF SPECIFIC NEGOTIATING OBJECTIVES FOR EACH FOREIGN PRIORITY COUNTRY.—

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including—

- (i) changed practices by the priority foreign country,
- (ii) tangible substantive developments in multilateral negotiations,
- (iii) changes in competitive positions, technological developments, or
- (iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) GENERAL NEGOTIATING OBJECTIVES.—The general negotiating objectives of the United States under this section are—

- (1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;
- (2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and
- (3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflects the competitiveness of the United States telecommunications industry.

(d) SPECIFIC NEGOTIATING OBJECTIVES.—The specific negotiating objectives of the United States under this section regarding telecommunications products and services are to obtain—

- (1) national treatment for telecommunications products and services that are provided by United States firms;
- (2) most-favored-nation treatment for such products and services;
- (3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;
- (4) the reduction or elimination of customs duties on telecommunications products;
- (5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;
- (6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country, be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel;

(8) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.

SEC. 1376. ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.

(a) IN GENERAL.—

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 1374 which achieves the general negotiating objectives described in section 1375(b) as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) ACTIONS AUTHORIZED.—

(1) The President is authorized to take any of the following actions under

subsection (a) with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—

- (i) the Trade Act of 1974,
- (ii) section 201 of the Trade Expansion Act of 1962, or
- (iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended to such country pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(c) NEGOTIATING PERIOD.—

(1) For purposes of this section, the term “negotiating period” means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 1374(a), the 18-month period beginning on the date of the enactment of this Act, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which

the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

- (i) a finding by the President that substantial progress is being made in negotiations with such country, and
- (ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) **MODIFICATION AND TERMINATION AUTHORITY.**—The President may modify or terminate any action taken under subsection (a) if, after taking into consideration the factors described in section 1374(b), the President determines that changed circumstances warrant such modification or termination.

(e) **REPORT.**—The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) or of the modification or termination of any such action under subsection (d).

SEC. 1377. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) **IN GENERAL.**—

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), the Trade Representative shall review the operation and effectiveness of—

- (A) each trade agreement negotiated by reason of this part that is in force with respect to the United States; and
- (B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)—

- (A) is not in compliance with the terms of such agreement, or
- (B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.

(b) **REVIEW FACTORS.**—

(1) In conducting reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports to a foreign country of telecommunications products and services, including sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission with regard to the actual patterns of trade

described in paragraph (1).

(c) ACTION IN RESPONSE TO AFFIRMATIVE DETERMINATION.—

(1) Any affirmative determination made by the Trade Representative under subsection (a)(2) with respect to any act, policy, or practice of a foreign country shall, for purposes of chapter 1 of title III of the Trade Act of 1974, be treated as an affirmative determination under section 304(a)(1)(A) of such Act that such act, policy, or practice violates a trade agreement.

(2) In taking actions under section 301 by reason of paragraph (1), the Trade Representative shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the Trade Representative determines that actions against other economic sectors would be more effective in achieving compliance by the foreign country with the trade agreement that is the subject of the affirmative determination made under subsection (a)(2).

SEC. 1378. COMPENSATION AUTHORITY.

If—

(1) the President has taken action under section 1376(a) with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (8) and (4), respectively, of section 2 of the Uruguay Round Agreements Act), the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

SEC. 1379. CONSULTATIONS.

(a) **ADVICE FROM DEPARTMENTS AND AGENCIES.—**Prior to taking any action under this part, the President shall seek information and advice from the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872).

(b) **ADVICE FROM THE PRIVATE SECTOR.—**Before—

(1) the Trade Representative concludes the investigation conducted under section 1374(a) or takes action under section 1374(c),

(2) the President establishes specific negotiating objectives under section 1375(b) with respect to any foreign country, or

(3) the President takes action under section 1376,

the Trade Representative shall provide an opportunity for the presentation of views by any interested party with respect to such investigation, objectives, or action, including appropriate committees established pursuant to section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(c) **CONSULTATIONS WITH CONGRESS AND OFFICIAL ADVISORS.—**For

purposes of conducting negotiations under section 1375(a), the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, currently informed with respect to—

- (1) the negotiating priorities and objectives for each priority foreign country;
- (2) the assessment of negotiating prospects, both bilateral and multilateral; and
- (3) any United States concessions which might be included in negotiations to achieve the objectives described in subsections (c) and (d) of section 1375.

(d) **MODIFICATION OF SPECIFIC NEGOTIATING OBJECTIVES.**—Before the President takes any action under section 1375(b)(2)(A) to refine or modify specific negotiating objectives, the President shall consult with the Congress and with members of the industry, and representatives of labor, affected by the proposed refinement or modification.

SEC. 1380. SUBMISSION OF DATA; ACTION TO ENSURE COMPLIANCE.

(a) **SUBMISSION OF DATA.**—The Federal Communications Commission (hereafter in this section referred to as the “Commission”) shall periodically submit to appropriate committees of the House of Representatives and of the Senate any data collected and otherwise made public under Report No. DC-1105, “Information Reporting Requirements Established for Common Carriers”, adopted February 25, 1988, relating to FCC Docket No. 86-494, adopted December 23, 1987.

(b) **ACTION TO ENSURE COMPLIANCE.**—

(1)(A) Any product of a foreign country that is subject to registration or approval by the Commission may be entered only if—

- (i) such product conforms with all applicable rules and regulations of the Commission, and
- (ii) the information which is required on Federal Communications Commission Form 740 on the date of enactment of this Act is provided to the appropriate customs officer at the time of such entry in such form and manner as the Secretary of the Treasury may prescribe.

(B) For purposes of this paragraph, the term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) The Commission, the Secretary of Commerce, and the Trade Representative shall provide such assistance in the enforcement of paragraph (1) as the Secretary of the Treasury may request.

(3) The Secretary of the Treasury shall compile the information collected under paragraph (1)(A)(ii) into a summary and shall annually submit such summary to the Congress until the authority to negotiate trade agreements under part 1 of subtitle A expires. Such information shall also be made

available to the public.

SEC. 1381. STUDY ON TELECOMMUNICATIONS COMPETITIVENESS IN THE UNITED STATES.

(a) **IN GENERAL.**—The Secretary of Commerce, in consultation with the Federal Communications Commission and the United States Trade Representative, shall conduct a study of the competitiveness of the United States telecommunications industry and the effects of foreign telecommunications policies and practices on such industry in order to assist the Congress and the President in determining what actions might be necessary to preserve the competitiveness of the United States telecommunications industry.

(b) **PUBLIC COMMENT.**—The Secretary of Commerce may, as appropriate, provide notice and reasonable opportunity for public comment as part of the study conducted under subsection (a).

(c) **REPORT.**—The Secretary of Commerce shall, by no later than the date that is 1 year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached by the Secretary of Commerce as a result of the study conducted under subsection (a). Such report shall be referred to the appropriate committees of the House of Representatives and of the Senate.

SEC. 1382. INTERNATIONAL OBLIGATIONS.

Nothing in this part may be construed to require actions inconsistent with the international obligations of the United States, including the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act).

**F. NORMAL TRADE RELATIONS (NONDISCRIMINATORY)
TREATMENT**

1. NTR Principle

Section 5003 of Public Law 105-206: Clarification of Designation of Normal Trade Relations

[19 U.S.C. 2481 note]

SEC. 5003. CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

(a) **FINDINGS AND POLICY.**—

(1) **FINDINGS.**—The Congress makes the following findings:

(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as “most-favored-nation” treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term “most-favored-nation” is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as “most favored”. To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term “normal trade relations” is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

(2) POLICY.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term “normal trade relations” should, where appropriate, be substituted for the term “most-favored-nation”.

(b) CHANGE IN TERMINOLOGY.—

[Amends several trade statutes to reflect change in terminology, several reprinted elsewhere.]

(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of “most-favored-nation” (or “most favored nation”) treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

Section 251 of the Trade Expansion Act of 1962

[19 U.S.C. 1881; Public Law 87-794, as amended by Public Law 105-206]

SEC. 251. NORMAL TRADE RELATIONS.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

Section 126(a) of the Trade Act of 1974

[19 U.S.C. 2136; Public Law 93-618 and Public Law 105-362]

SEC. 126. RECIPROCAL NONDISCRIMINATORY TREATMENT.

(a) **DIRECT AND INDIRECT IMPORTS.**—Except as otherwise provided in this Act or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title shall apply to products of all foreign countries, whether imported directly or indirectly.

[Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 applies section 126(a) to trade agreements entered into under section 1102 of that Act.]

Section 1103(a)(3) of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2903; Public Law 100-418]

SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS.

* * * * *

(a) **IN GENERAL.**—

(3) To ensure that a foreign country which receives benefits under a trade agreement entered into under section 1102(b) or (c) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

2. Trade Relations with Nonmarket Economy Countries

General Note 3(b) of the Harmonized Tariff Schedule

*Rate of Duty Column 2.*¹

Notwithstanding any of the foregoing provisions of this note, the rates of duty shown in column 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the

¹ Nondiscriminatory treatment was restored to goods that are products of Serbia or Montenegro, effective Dec. 4, 2003. See Notice of the Department of State, 68 F.R. 64410.

Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, to section 404(a) of the Trade Act of 1974 or to any other applicable section of law, or to action taken by the President thereunder:

Cuba	North Korea
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Title IV of the Trade Act of 1974, as amended

[19 U.S.C. 2431 et seq., Public Law 93-618, as amended by Public Law 96-39, Reorganization Plan No. 3 of 1979, Public Law 100-418, Public Law 101-382, Public Law 104-295, Public Law 105-206 and Public Law 106-286]

SEC. 401. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) ACTIONS OF NONMARKET ECONOMY COUNTRIES MAKING THEM INELIGIBLE FOR NORMAL TRADE RELATIONS, PROGRAMS OF CREDITS, CREDIT GUARANTEES, OR INVESTMENT GUARANTEES, OR COMMERCIAL AGREEMENTS.—To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) PRESIDENTIAL DETERMINATION AND REPORT TO CONGRESS THAT NATION IS NOT VIOLATING FREEDOM OF EMIGRATION.—After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which

extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c) WAIVER AUTHORITY OF PRESIDENT.—

(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d) EXTENSION OF WAIVER AUTHORITY.—

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 153(a) is enacted into law pursuant to the provisions of paragraph (2).

(2)(A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 153, and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 153 apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) COUNTRIES NOT COVERED.—This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 403. UNITED STATES PERSONNEL MISSING IN ACTION IN SOUTHEAST ASIA.

(a) PENALTY FOR NONCOOPERATING COUNTRIES.—Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and
(3) to return the remains of such personnel who are dead to the United States,
then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive nondiscriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this title between such country and the United States will take effect.

(b) EXCEPTION.—This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

SEC. 404. EXTENSION OF NONDISCRIMINATORY TREATMENT.

(a) PRESIDENTIAL PROCLAMATION.—Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) LIMITATION ON PERIOD OF EFFECTIVENESS.—The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to period during which such country is not in arrears on its obligations under such agreement.

(c) SUSPENSION OR WITHDRAWAL OF EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States.

SEC. 405. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

(a) PRESIDENTIAL AUTHORITY.—Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) TERMS OF AGREEMENTS.—Any such bilateral commercial agreement

shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after the date of the enactment of the Act, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will

promote the purpose of this Act.

(c) CONGRESSIONAL ACTION.—An agreement referred to in subsection (a), and a proclamation referred to in section 404(a) implementing such agreement, shall take effect only if a joint resolution described in section 151(b)(3) that approves of the agreement referred to in subsection (a) is enacted into law.

[SEC. 406. MARKET DISRUPTION.

See separate section under Chapter 9.]

SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS.

(a) TRANSMISSION OF NONDISCRIMINATORY TREATMENT DOCUMENTS TO CONGRESS.—Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) TRANSMISSION OF FREEDOM OF EMIGRATION DOCUMENTS TO CONGRESS.—The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c) EFFECTIVE DATE OF PROCLAMATIONS AND AGREEMENTS; DISAPPROVAL OF REPORTS.—

(1) In the case of a document referred to in subsection (a), the proclamation set forth in the document may become effective and the agreement set forth in the document may enter into force and effect only if a joint resolution described in section 151(b)(3) that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 152(a)(1)(B) is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United

States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

SEC. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS.

(a) RENEGOTIATION OF 1974 AGREEMENT.—The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.

(b) PROVISIONAL RETENTION OF GOLD.—The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

SEC. 409. FREEDOM TO EMIGRATE TO JOIN A VERY CLOSE RELATIVE IN THE UNITED STATES.

(a) SANCTIONS FOR EMIGRATION RESTRICTIONS.—To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) REPORT TO CONGRESS CONCERNING EMIGRATION POLICIES.—After the

date of the enactment of this Act, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) EXEMPTION FROM APPLICATION OF SECTION.—This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

(d) ADDITIONAL EXEMPTION FROM APPLICATION OF SECTION.—During any period that a waiver is in effect with respect to any nonmarket economy country under section 402(c), the provisions of subsections (a) and (b) shall not apply with respect to such country.

[SEC. 410. EAST-WEST TRADE STATISTICS MONITORING SYSTEM.

Repealed by Public Law 104-295, section 17.]

[SEC. 411. EAST-WEST FOREIGN TRADE BOARDS.

Abolished by section 6 and functions transferred to the President and interagency trade organization by section 5 (c) and (e) of Reorganization Plan No. 3 of 1979.]

Sections 1 and 2 of Public Law 102-182

NTR Treatment for Hungary and the Czech and Slovak Republics

[19 U.S.C. 2434 note]

SECTION 1. CONGRESSIONAL FINDINGS AND PREPARATORY PRESIDENTIAL ACTION.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that the Czech and Slovak Federal Republic and the Republic of Hungary both have—

- (1) dedicated themselves to respect for fundamental human rights;
- (2) accorded to their citizens the right to emigrate and to travel freely;
- (3) reversed over 40 years of communist dictatorship and embraced the establishment of political pluralism, free and fair elections, and multi-party political systems;
- (4) introduced far-reaching economic reforms based on market-oriented principles and have decentralized economic decisionmaking; and

(5) demonstrated a strong desire to build friendly relationships with the United States.

(b) PREPARATORY PRESIDENTIAL ACTION.—The Congress notes that the President in anticipation of the enactment of section 2, has directed the United States Trade Representative to negotiate with the Czech and Slovak Federal Republic and the Republic of Hungary, respectively, in order to—

- (1) preserve the commitments of that country under the bilateral commercial agreement in effect between that country and the United States that are consistent with the General Agreement on Tariffs and Trade; and
- (2) obtain other appropriate commitments.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO CZECHOSLOVAKIA AND HUNGARY.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

- (1) determine that such title should no longer apply to the Czech and Slovak Federal Republic or to the Republic of Hungary, or to both; and
- (2) after making a determination under paragraph (1) with respect to a country, proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of a country, title IV of the Trade Act of 1974 shall cease to apply to that country.

Title I of Public Law 102-182

NTR Treatment for Estonia, Latvia, and Lithuania

[19 U.S.C. 2434 note]

SEC. 101. CONGRESSIONAL FINDINGS.

The Congress finds the following:

- (1) The Government of the United States extended full diplomatic recognition to Estonia, Latvia, and Lithuania in 1922.
- (2) The Government of the United States entered into agreements extending most-favored-nation treatment with the Government of Estonia on August 1, 1925, the Government of Latvia on April 30, 1926, and the Government of Lithuania on July 10, 1926.
- (3) The Union of Soviet Socialist Republics incorporated Estonia, Latvia, and Lithuania involuntarily into the Union as a result of a secret protocol to a German-Soviet agreement in 1939 which assigned those three states to the Soviet sphere of influence; and the Government of the United States has at no time recognized the forcible incorporation of those states into the Union of Soviet Socialist Republics.

(4) The Trade Agreements Extension Act of 1951 required the President to suspend, withdraw, or prevent the application of trade benefits, including most-favored-nation treatment, to countries under the domination or control of the world Communist movement.

(5) In 1951, responsible representatives of Estonia, Latvia, and Lithuania stated that they did not object to the imposition of "such controls as the Government of the United States may consider to be appropriate" to the products of those countries, for such time as those countries remained under Soviet domination or control.

(6) In 1990, the democratically elected governments of Estonia, Latvia, and Lithuania declared the restoration of their independence from the Union of Soviet Socialist Republics.

(7) The Government of the United States established diplomatic relations with Estonia, Latvia, and Lithuania on September 2, 1991, and on September 6, 1991, the State Council of the transitional government of the Union of Soviet Socialist Republics recognized the independence of Estonia, Latvia, and Lithuania, thereby ending the involuntary incorporation of those countries into, and the domination of those countries by, the Soviet Union.

(8) Immediate action should be taken to remove the impediments, imposed in response to the circumstances referred to in paragraph (5), in United States trade laws to the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries.

(9) As a consequence of establishment of United States diplomatic relations with Estonia, Latvia, and Lithuania, these independent countries are eligible to receive the benefits of the Generalized System of Preferences provided for in title V of the Trade Act of 1974.

SEC. 102. EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

(a) **IN GENERAL.**—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) or any other provision of law, nondiscriminatory treatment (most-favored-nation treatment) applies to the products of Estonia, Latvia, and Lithuania.

[(b) **CONFORMING TARIFF SCHEDULE AMENDMENTS.**—Amendments to General Note 3(b) of the Harmonized Tariff Schedule of the United States relating to the application of column 2 rates of duty.]

(c) **EFFECTIVE DATE.**—Subsection (a) and the amendments made by subsection (b) apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

SEC. 103. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE BALTICS.

Title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall cease to apply to Estonia, Latvia, and Lithuania effective as of the 15th day after the date of the

enactment of this Act.

SEC. 104. SENSE OF THE CONGRESS REGARDING PROMPT PROVISION OF GSP TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

It is the sense of the Congress that the President should take prompt action under title V of the Trade Act of 1974 to provide preferential tariff treatment to the products of Estonia, Latvia, and Lithuania pursuant to the Generalized System of Preferences.

NTR Withdrawal from Serbia and Montenegro

[19 U.S.C. 2434 note; Section 1 of Public Law 102-420]

SECTION 1. WITHDRAWAL OF MOST FAVORED NATION STATUS FROM SERBIA AND MONTENEGRO.

(a) **FINDINGS.**—The Congress finds that Serbia or Montenegro are not complying with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the “Helsinki Final Act”), particularly the provisions regarding human rights and humanitarian affairs and are not respecting minority rights in Kosovo and Vojvodina.

(b) **WITHDRAWAL OF MFN STATUS.**—Except as provided in subsection (c), nondiscriminatory treatment shall not apply with respect to any goods that—

(1) are the product of Serbia or Montenegro; and

(2) are entered into the customs territory of the United States on or after the 15th day after the date of the enactment of this Act.

(c) **RESTORATION OF NONDISCRIMINATORY TREATMENT.**—Notwithstanding subsection (b), the President may restore nondiscriminatory treatment to goods that are the product of Serbia or Montenegro, as the case may be, 30 days after he certifies to the Congress that Serbia or Montenegro, as the case may be—

(1) has ceased its armed conflict with the other ethnic peoples of the region formerly comprising the Socialist Federal Republic of Yugoslavia;

(2) has agreed to respect the borders of the 6 republics that comprised the Socialist Federal Republic of Yugoslavia under the 1974 Yugoslav Constitution; and

(3) has ceased all support of Serbian forces inside Bosnia-Herzegovina.²

NTR Treatment for Bulgaria

[19 U.S.C. 2434 note; Public Law 104-162]

SECTION 1. CONGRESSIONAL FINDINGS AND SUPPLEMENTAL ACTION.

(a) **CONGRESSIONAL FINDINGS.**—The Congress finds that Bulgaria—

(1) has received most-favored-nation treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements

² As described in Chapter 6, the President has made this certification.

under title IV of the Trade Act of 1974 since 1993;

(2) has reversed many years of Communist dictatorship and instituted a constitutional republic ruled by a democratically elected government as well as basic market-oriented reforms, including privatization;

(3) is in the process of acceding to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), and extension of unconditional most-favored-nation treatment would enable the United States to avail itself of all rights under the GATT and the WTO with respect to Bulgaria; and

(4) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

(b) SUPPLEMENTAL ACTION.—The Congress notes that the United States Trade Representative intends to negotiate with Bulgaria in order to preserve the commitments of that country under the bilateral commercial agreement in effect between that country and the United States that are consistent with the GATT and the WTO.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO BULGARIA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Bulgaria; and

(2) after making a determination under paragraph (1) with respect to Bulgaria, proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Bulgaria, title IV of the Trade Act of 1974 shall cease to apply to that country.

NTR Treatment for Romania

[19 U.S.C. 2434 note; Public Law 104-171]

SECTION 1. FINDINGS.

The Congress finds that—

(1) Romania emerged from years of brutal Communist dictatorship in 1989 and approved a new Constitution and elected a Parliament by 1991, laying the foundation for a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and respect for private property;

(2) local elections, parliamentary elections, and presidential elections have been held in Romania, and 1996 will mark the second nationwide presidential elections under the new Constitution;

(3) Romania has undertaken significant economic reforms, including the

establishment of a two-tier banking system, the introduction of a modern tax system, the freeing of most prices and elimination of most subsidies, the adoption of a tariff-based trade regime, and the rapid privatization of industry and nearly all agriculture;

(4) Romania concluded a bilateral investment treaty with the United States in 1993, and both United States investment in Romania and bilateral trade are increasing rapidly;

(5) Romania has received most-favored-nation treatment since 1993, and has been found by the President to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974;

(6) Romania is a member of the World Trade Organization and extension of unconditional most-favored-nation treatment to the products of Romania would enable the United States to avail itself of all rights under the World Trade Organization with respect to Romania; and

(7) Romania has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ROMANIA.

(a) **PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.**—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Romania; and

(2) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(b) **TERMINATION OF APPLICATION OF TITLE IV.**—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania, title IV of the Trade Act of 1974 shall cease to apply to that country.

NTR Treatment for Armenia

[19 U.S.C. 2434 note, Public Law 108-429]

SEC. 2001 TERMINATION OF APPLICATION OF TITLE IV OF TRADE ACT OF 1974 TO ARMENIA.

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

(1) Armenia has found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2004.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many

bilateral treaties and agreements with the United States.

(5) Total United States-Armenia bilateral trade for 2002 amounted to more than \$134,200,000.

(b) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(c) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

NTR Treatment for Cambodia

[Gen. Note 3(b) of the Harmonized Tariff Schedule; Public Law 104-203]

SECTION 1. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) despite recent increases in acts of repression by the Cambodian Government and growing government corruption that has contributed to substantial environmental degradation, Cambodia has made some progress towards democratic rule after 20 years of undemocratic regimes and civil war, and is striving to rebuild its market economy;

(2) extension of unconditional most-favored-nation treatment would assist Cambodia in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with Cambodia will promote United States exports to the rapidly growing Southeast Asian region and expand opportunities for United States business and investment in the Cambodian economy; and

(4) expanding bilateral trade relations that includes a commercial agreement may promote further progress by Cambodia on human rights and democratic rule and assist Cambodia in adopting regional and world trading rules and principles.

SEC. 2. EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF CAMBODIA.

(a) HARMONIZED TARIFF SCHEDULE AMENDMENT.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking “Kampuchea”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a notice published in the Federal Register by the

United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between Cambodia and the United States has entered into force.

SEC. 3. REPORT TO CONGRESS.

The President shall submit to the Congress, not later than 18 months after the date of the enactment of this Act, a report on the trade relations between the United States and Cambodia pursuant to the trade agreement described in section 2(b).

NTR Treatment for Laos

[Gen. Note 3(b) of the Harmonized Tariff Schedule; Public Law 108-429]

SEC. 2005 EXTENSION OF NORMAL TRADE RELATIONS TO LAOS.

(a) FINDINGS.—The Congress finds that—

(1) the Lao People's Democratic Republic is pursuing a broad policy of adopting market-based reforms to enhance its economic competitiveness and achieve an attractive climate for investment;

(2) extension of normal trade relations treatment would assist the Lao People's Democratic Republic in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with the Lao People's Democratic Republic will promote United States exports to the rapidly growing southeast Asian region and expand opportunities for United States business and investment in the Lao People's Democratic Republic economy;

(4) United States and Laotian commercial interests would benefit from the bilateral trade agreement between the United States and the Lao People's Democratic Republic, signed in 2003, providing for market access and the protection of intellectual property rights;

(5) the Lao People's Democratic Republic has taken cooperative steps with the United States in the global war on terrorism, combating the trafficking of narcotics, and the accounting for American servicemen and civilians still missing from the Vietnam war; and

(6) expanding bilateral trade relations that include a commercial agreement may promote further progress by the Lao People's Democratic Republic on human rights, religious tolerance, democratic rule, and transparency, and assist that country in adopting regional and world trading rules and principles.

(b) EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC.—

(1) HARMONIZED TARIFF SCHEDULE AMENDMENT.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking "Laos."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a notice published in the Federal Register by the United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between the Lao People's Democratic Republic and the United States has entered into force.

NTR Treatment for Mongolia

[19 U.S.C. 2434 note; Public Law 106-36]

SEC. 2424. EXTENSION OF NONDISCRIMINATORY TREATMENT (NORMAL TRADE RELATIONS TREATMENT) TO THE PRODUCTS OF MONGOLIA.

(a) FINDINGS.—The Congress finds that Mongolia—

(1) has received normal trade relations treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974;

(2) has emerged from nearly 70 years of communism and dependence on the former Soviet Union, approving a new constitution in 1992 which has established a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and an independent judiciary;

(3) has held four national elections under the new constitution, two presidential and two parliamentary, thereby solidifying the nation's transition to democracy;

(4) has undertaken significant market-based economic reforms, including privatization, the reduction of government subsidies, the elimination of most price controls and virtually all import tariffs, and the closing of insolvent banks;

(5) has concluded a bilateral trade treaty with the United States in 1991, and a bilateral investment treaty in 1994;

(6) has acceded to the Agreement Establishing the World Trade Organization, and extension of unconditional normal trade relations treatment to the products of Mongolia would enable the United States to avail itself of all rights under the World Trade Organization with respect to Mongolia; and

(7) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO MONGOLIA.—

(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Mongolia;

and

(B) after making a determination under subparagraph (A) with respect to Mongolia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Mongolia, title IV of the Trade Act of 1974 shall cease to apply to that country.

NTR Treatment for Albania and Kyrgyzstan

[19 U.S.C. 2434 note; Public Law 106-200]

SEC. 301. NORMAL TRADE RELATIONS FOR ALBANIA.

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

(1) Albania has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Since its emergence from communism, Albania has made progress toward democratic rule and the creation of a free-market economy.

(3) Albania has concluded a bilateral investment treaty with the United States.

(4) Albania has demonstrated a strong desire to build a friendly relationship with the United States and has been very cooperative with NATO and the international community during and after the Kosova crisis.

(5) The extension of unconditional normal trade relations treatment to the products of Albania will enable the United States to avail itself of all rights under the World Trade Organization with respect to Albania when that country becomes a member of the World Trade Organization.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ALBANIA.—

(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Albania; and

(B) after making a determination under subparagraph (A) with respect to Albania, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Albania, title IV of the Trade Act of 1974 shall cease to apply to that country.

SEC. 302. NORMAL TRADE RELATIONS FOR KYRGYZSTAN.

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

(1) Kyrgyzstan has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Since its independence from the Soviet Union in 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system.

(3) Kyrgyzstan concluded a bilateral investment treaty with the United States in 1994.

(4) Kyrgyzstan has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

(5) The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will enable the United States to avail itself of all rights under the World Trade Organization with respect to Kyrgyzstan.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO KYRGYZSTAN.—

(1) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Kyrgyzstan; and

(B) after making a determination under subparagraph (A) with respect to Kyrgyzstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kyrgyzstan, title IV of the Trade Act of 1974 shall cease to apply to that country.

NTR Treatment for the People's Republic of China

[19 U.S.C. 2431 note, 22 U.S.C. 6901-6903, 6911-6919, 6931, 6941-6943, 6951, 6961-6965, 6981-6984, 6991, 7001; Public Law 106-286 as amended by Public Law 107-228.]

SEC. 101. TERMINATION OF APPLICATION OF CHAPTER 1 OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of chapter 1 of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), as designated by section 3(a)(2) of this Act, the President may—

(1) determine that such chapter should no longer apply to the People's Republic of China; and

(2) after making a determination under paragraph (1) with respect to the People's Republic of China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE

ORGANIZATION.—Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for the accession of the People's Republic of China to the World Trade Organization are at least equivalent to those agreed between the United States and the People's Republic of China on November 15, 1999.

SEC. 102. EFFECTIVE DATE OF NONDISCRIMINATORY TREATMENT OF PRODUCTS OF PEOPLE'S REPUBLIC OF CHINA; TERMINATION OF APPLICABILITY OF TITLE IV.

(a) EFFECTIVE DATE OF NONDISCRIMINATORY TREATMENT.—The extension of nondiscriminatory treatment pursuant to section 101(a) shall be effective no earlier than the effective date of the accession of the People's Republic of China to the World Trade Organization.

(b) TERMINATION OF APPLICABILITY OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of the People's Republic of China, chapter 1 of title IV of the Trade Act of 1974 (as designated by section 103(a)(2) of this Act) shall cease to apply to that country.

SEC. 103. RELIEF FROM MARKET DISRUPTION.

[Adds new Sections 921-423 to Title IV of Trade Act of 1974, reprinted elsewhere.]

SEC. 104. AMENDMENT TO SECTION 123 OF THE TRADE ACT OF 1974—COMPENSATION AUTHORITY.

[Amends Section 123(a)(1) of the Trade Act of 1974 (19 U.S.C. 2133(a)(1)), reprinted elsewhere.]

* * * * *

SEC. 202. FINDINGS.

The Congress finds the following:

- (1) In 1980, the United States opened trade relations with the People's Republic of China by entering into a bilateral trade agreement, which was approved by joint resolution enacted pursuant to section 405(c) of the Trade Act of 1974.
- (2) Since 1980, the President has consistently extended nondiscriminatory treatment to products of the People's Republic of China, pursuant to his authority under section 404 of the Trade Act of 1974.
- (3) Since 1980, the United States has entered into several additional trade-related agreements with the People's Republic of China, including a memorandum of understanding on market access in 1992, two agreements on intellectual property rights protection in 1992 and 1995, and an agreement on agricultural cooperation in 1999.
- (4) Trade in goods between the People's Republic of China and the

United States totaled almost \$95,000,000,000 in 1999, compared with approximately \$18,000,000,000 in 1989, representing growth of approximately 428 percent over 10 years.

(5) The United States merchandise trade deficit with the People's Republic of China has grown from approximately \$6,000,000,000 in 1989 to over \$68,000,000,000 in 1999, a growth of over 1,000 percent.

(6) The People's Republic of China currently restricts imports through relatively high tariffs and nontariff barriers, including import licensing, technology transfer, and local content requirements.

(7) United States businesses attempting to sell goods to markets in the People's Republic of China have complained of uneven application of tariffs, customs procedures, and other laws, rules, and administrative measures affecting their ability to sell their products in the Chinese market.

(8) On November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning terms of the People's Republic of China's eventual accession to the World Trade Organization.

(9) The commitments that the People's Republic of China made in its November 15, 1999, agreement with the United States promise to eliminate or greatly reduce the principal barriers to trade with and investment in the People's Republic of China, if those commitments are effectively complied with and enforced.

(10) The record of the People's Republic of China in implementing trade-related commitments has been mixed. While the People's Republic of China has generally met the requirements of the 1992 market access memorandum of understanding and the 1992 and 1995 agreements on intellectual property rights protection, other measures remain in place or have been put into place which tend to diminish the benefit to United States businesses, farmers, and workers from the People's Republic of China's implementation of those earlier commitments. Notably, administration of tariff-rate quotas and other trade-related laws remains opaque, new local content requirements have proliferated, restrictions on importation of animal and plant products are not always supported by sound science, and licensing requirements for importation and distribution of goods remain common. Finally, the Government of the People's Republic of China has failed to cooperate with the United States Customs Service in implementing a 1992 memorandum of understanding prohibiting trade in products made by prison labor.

(11) The human rights record of the People's Republic of China is a matter of very serious concern to the Congress. The Congress notes that the Department of State's 1999 Country Reports on Human Rights Practices for the People's Republic of China finds that "[t]he Government's poor human rights record deteriorated markedly throughout the year, as the Government intensified efforts to suppress dissent, particularly organized dissent."

(12) The Congress deplors violations by the Government of the People's

Republic of China of human rights, religious freedoms, and worker rights that are referred to in the Department of State's 1999 Country Reports on Human Rights Practices for the People's Republic of China, including the banning of the Falun Gong spiritual movement, denial in many cases, particularly politically sensitive ones, of effective representation by counsel and public trials, extrajudicial killings and torture, forced abortion and sterilization, restriction of access to Tibet and Xinjiang, perpetuation of "reeducation through labor", denial of the right of workers to organize labor unions or bargain collectively with their employers, and failure to implement a 1992 memorandum of understanding prohibiting trade in products made by prison labor.

SEC. 203. POLICY.

It is the policy of the United States—

- (1) to develop trade relations that broaden the benefits of trade, and lead to a leveling up, rather than a leveling down, of labor, environmental, commercial rule of law, market access, anticorruption, and other standards across national borders;
- (2) to pursue effective enforcement of trade-related and other international commitments by foreign governments through enforcement mechanisms of international organizations and through the application of United States law as appropriate;
- (3) to encourage foreign governments to conduct both commercial and noncommercial affairs according to the rule of law developed through democratic processes;
- (4) to encourage the Government of the People's Republic of China to afford its workers internationally recognized worker rights;
- (5) to encourage the Government of the People's Republic of China to protect the human rights of people within the territory of the People's Republic of China, and to take steps toward protecting such rights, including, but not limited to—
 - (A) ratifying the International Covenant on Civil and Political Rights;
 - (B) protecting the right to liberty of movement and freedom to choose a residence within the People's Republic of China and the right to leave from and return to the People's Republic of China; and
 - (C) affording a criminal defendant—
 - (i) the right to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing;
 - (ii) the right to be informed, if he or she does not have legal assistance, of the right set forth in clause (i);
 - (iii) the right to have legal assistance assigned to him or her in any case in which the interests of justice so require and without payment by him or her in any such case if he or she does not have

sufficient means to pay for it;

(iv) the right to a fair and public hearing by a competent, independent, and impartial tribunal established by the law;

(v) the right to be presumed innocent until proved guilty according to law; and

(vi) the right to be tried without undue delay; and

(6) to highlight in the United Nations Human Rights Commission and in other appropriate fora violations of human rights by foreign governments and to seek the support of other governments in urging improvements in human rights practices.

SEC. 204. DEFINITIONS.

In this division:

(1) DISPUTE SETTLEMENT UNDERSTANDING.—The term “Dispute Settlement Understanding” means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(16)).

(2) GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA.—The term “Government of the People's Republic of China” means the central Government of the People's Republic of China and any other governmental entity, including any provincial, prefectural, or local entity and any enterprise that is controlled by the central Government or any such governmental entity or as to which the central Government or any such governmental entity is entitled to receive a majority of the profits.

(3) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term “internationally recognized worker rights” has the meaning given that term in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)) and includes the right to the elimination of the “worst forms of child labor”, as defined in section 507(6) of the Trade Act of 1974 (19 U.S.C. 2467(6)).

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

(5) WTO; WORLD TRADE ORGANIZATION.—The terms “WTO” and “World Trade Organization” mean the organization established pursuant to the WTO Agreement.

(6) WTO AGREEMENT.—The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(7) WTO MEMBER.—The term “WTO member” has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

SEC. 301. ESTABLISHMENT OF CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA.

There is established a Congressional-Executive Commission on the People's Republic of China (in this title referred to as the “Commission”).

SEC. 302. FUNCTIONS OF THE COMMISSION.

(a) MONITORING COMPLIANCE WITH HUMAN RIGHTS.—The Commission shall monitor the acts of the People's Republic of China which reflect compliance with or violation of human rights, in particular, those contained in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights, including, but not limited to, effectively affording—

- (1) the right to engage in free expression without fear of any prior restraints;
- (2) the right to peaceful assembly without restrictions, in accordance with international law;
- (3) religious freedom, including the right to worship free of involvement of and interference by the government;
- (4) the right to liberty of movement and freedom to choose a residence within the People's Republic of China and the right to leave from and return to the People's Republic of China;
- (5) the right of a criminal defendant—
 - (A) to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing;
 - (B) to be informed, if he or she does not have legal assistance, of the right set forth in subparagraph (A);
 - (C) to have legal assistance assigned to him or her in any case in which the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - (D) to a fair and public hearing by a competent, independent, and impartial tribunal established by the law;
 - (E) to be presumed innocent until proved guilty according to law; and
 - (F) to be tried without undue delay;
- (6) the right to be free from torture and other forms of cruel or unusual punishment;
- (7) protection of internationally recognized worker rights;
- (8) freedom from incarceration as punishment for political opposition to the government;
- (9) freedom from incarceration as punishment for exercising or advocating human rights (including those described in this section);
- (10) freedom from arbitrary arrest, detention, or exile;
- (11) the right to fair and public hearings by an independent tribunal for the determination of a citizen's rights and obligations; and
- (12) free choice of employment.

(b) VICTIMS LISTS.—The Commission shall compile and maintain lists of persons believed to be imprisoned, detained, or placed under house arrest, tortured, or otherwise persecuted by the Government of the People's Republic of China due to their pursuit of the rights described in subsection (a). In compiling

such lists, the Commission shall exercise appropriate discretion, including concerns regarding the safety and security of, and benefit to, the persons who may be included on the lists and their families.

(c) MONITORING DEVELOPMENT OF RULE OF LAW.—The Commission shall monitor the development of the rule of law in the People's Republic of China, including, but not limited to—

(1) progress toward the development of institutions of democratic governance;

(2) processes by which statutes, regulations, rules, and other legal acts of the Government of the People's Republic of China are developed and become binding within the People's Republic of China;

(3) the extent to which statutes, regulations, rules, administrative and judicial decisions, and other legal acts of the Government of the People's Republic of China are published and are made accessible to the public;

(4) the extent to which administrative and judicial decisions are supported by statements of reasons that are based upon written statutes, regulations, rules, and other legal acts of the Government of the People's Republic of China;

(5) the extent to which individuals are treated equally under the laws of the of the People's Republic of China without regard to citizenship;

(6) the extent to which administrative and judicial decisions are independent of political pressure or governmental interference and are reviewed by entities of appellate jurisdiction; and

(7) the extent to which laws in the People's Republic of China are written and administered in ways that are consistent with international human rights standards, including the requirements of the International Covenant on Civil and Political Rights.

(d) BILATERAL COOPERATION.—The Commission shall monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward increasing the interchange of people and ideas between the United States and the People's Republic of China and expanding cooperation in areas that include, but are not limited to—

(1) increasing enforcement of human rights described in subsection (a); and

(2) developing the rule of law in the People's Republic of China.

(e) CONTACTS WITH NONGOVERNMENTAL ORGANIZATIONS.—In performing the functions described in subsections (a) through (d), the Commission shall, as appropriate, seek out and maintain contacts with nongovernmental organizations, including receiving reports and updates from such organizations and evaluating such reports.

(f) COOPERATION WITH SPECIAL COORDINATOR.—In performing the functions described in subsections (a) through (d), the Commission shall cooperate with the Special Coordinator for Tibetan Issues in the Department of State.

(g) ANNUAL REPORTS.—The Commission shall issue a report to the President and the Congress not later than 12 months after the date of the enactment of this Act, and not later than the end of each 12-month period thereafter, setting forth the findings of the Commission during the preceding 12-month period, in carrying out subsections (a) through (c). The Commission's report may contain recommendations for legislative or executive action.

(h) SPECIFIC INFORMATION IN ANNUAL REPORTS.—The Commission's report under subsection (g) shall include—

(1) specific information as to the nature and implementation of laws or policies concerning the rights set forth in paragraphs (1) through (12) of subsection (a), and as to restrictions applied to or discrimination against persons exercising any of the rights set forth in such paragraphs; and

(2) a description of the status of negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives, and measures taken to safeguard Tibet's distinct historical, religious, cultural, and linguistic identity and the protection of human rights.

(i) CONGRESSIONAL HEARINGS ON ANNUAL REPORTS.—

(1) The Committee on International Relations of the House of Representatives shall, not later than 30 days after the receipt by the Congress of the report referred to in subsection (g), hold hearings on the contents of the report, including any recommendations contained therein, for the purpose of receiving testimony from Members of Congress, and such appropriate representatives of Federal departments and agencies, and interested persons and groups, as the committee deems advisable, with a view to reporting to the House of Representatives any appropriate legislation in furtherance of such recommendations. If any such legislation is considered by the Committee on International Relations within 45 days after receipt by the Congress of the report referred to in subsection (g), it shall be reported by the committee not later than 60 days after receipt by the Congress of such report.

(2) The provisions of paragraph (1) are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such are deemed a part of the rules of the House, and they supersede other rules only to the extent that they are inconsistent therewith; and

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

(j) SUPPLEMENTAL REPORTS.—The Commission may submit to the President and the Congress reports that supplement the reports described in subsection (g), as appropriate, in carrying out subsections (a) through (c).

SEC. 303. MEMBERSHIP OF THE COMMISSION.

(a) SELECTION AND APPOINTMENT OF MEMBERS.—The Commission shall be

composed of 23 members as follows:

(1) Nine Members of the House of Representatives appointed by the Speaker of the House of Representatives. Five members shall be selected from the majority party and four members shall be selected, after consultation with the minority leader of the House, from the minority party.

(2) Nine Members of the Senate appointed by the President of the Senate. Five members shall be selected, after consultation with the majority leader of the Senate, from the majority party, and four members shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One representative of the Department of State, appointed by the President of the United States from among officers and employees of that Department.

(4) One representative of the Department of Commerce, appointed by the President of the United States from among officers and employees of that Department.

(5) One representative of the Department of Labor, appointed by the President of the United States from among officers and employees of that Department.

(6) Two at-large representatives, appointed by the President of the United States, from among the officers and employees of the executive branch.

(b) CHAIRMAN AND COCHAIRMAN.—

(1) DESIGNATION OF CHAIRMAN.—At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Chairman of the Commission. At the beginning of each even-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Chairman of the Commission.

(2) DESIGNATION OF COCHAIRMAN.—At the beginning of each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Cochairman of the Commission. At the beginning of each even-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Cochairman of the Commission.

SEC. 304. VOTES OF THE COMMISSION.

Decisions of the Commission, including adoption of reports and recommendations to the executive branch or to the Congress, shall be made by a majority vote of the members of the Commission present and voting. Two-thirds of the Members of the Commission shall constitute a quorum for purposes of conducting business.

SEC. 305. EXPENDITURE OF APPROPRIATIONS.

For each fiscal year for which an appropriation is made to the Commission,

the Commission shall issue a report to the Congress on its expenditures under that appropriation.

SEC. 306. TESTIMONY OF WITNESSES, PRODUCTION OF EVIDENCE; ISSUANCE OF SUBPOENAS; ADMINISTRATION OF OATHS.

In carrying out this title, the Commission may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, and electronically recorded data as it considers necessary. Subpoenas may be issued only pursuant to a two-thirds vote of members of the Commission present and voting. Subpoenas may be issued over the signature of the Chairman of the Commission or any person designated by the Chairman, and may be served by any person designated by the Chairman or such member. The Chairman of the Commission, or any member designated by the Chairman, may administer oaths to any witness.

SEC. 307. APPROPRIATIONS FOR THE COMMISSION.

(a) AUTHORIZATION; DISBURSEMENTS.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Commission for fiscal year 2001, and each fiscal year thereafter, such sums as may be necessary to enable it to carry out its functions. Appropriations to the Commission are authorized to remain available until expended.

(2) DISBURSEMENTS.—Appropriations to the Commission shall be disbursed on vouchers approved—

(A) jointly by the Chairman and the Cochairman; or

(B) by a majority of the members of the personnel and administration committee established pursuant to section 308.

(b) FOREIGN TRAVEL FOR OFFICIAL PURPOSES.—Foreign travel for official purposes by members and staff of the Commission may be authorized by either the Chairman or the Cochairman.

SEC. 308. STAFF OF THE COMMISSION.

(a) PERSONNEL AND ADMINISTRATION COMMITTEE.—The Commission shall have a personnel and administration committee composed of the Chairman, the Cochairman, the senior member of the Commission from the minority party of the House of Representatives, and the senior member of the Commission from the minority party of the Senate.

(b) COMMITTEE FUNCTIONS.—All decisions pertaining to the hiring, firing, and fixing of pay of personnel of the Commission shall be by a majority vote of the personnel and administration committee, except that—

(1) the Chairman shall be entitled to appoint and fix the pay of the staff director, and the Cochairman shall be entitled to appoint and fix the pay of the Cochairman's senior staff member; and

(2) The Chairman and Cochairman shall each have the authority to appoint, with the approval of the personnel and administration committee, at least four professional staff members who shall be responsible to the Chairman or the Cochairman (as the case may be) who appointed them.

Subject to subsection (d), the personnel and administration committee may appoint and fix the pay of such other personnel as it considers desirable.

(c) **STAFF APPOINTMENTS.**—All staff appointments shall be made without regard to the provisions of title 5, United States Code, government appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

(d) **QUALIFICATIONS OF PROFESSIONAL STAFF.**—The personnel and administration committee shall ensure that the professional staff of the Commission consists of persons with expertise in areas including human rights, internationally recognized worker rights, international economics, law (including international law), rule of law and other foreign assistance programming, Chinese politics, economy and culture, and the Chinese language.

(e) **COMMISSION EMPLOYEES AS CONGRESSIONAL EMPLOYEES.**—

(1) **IN GENERAL.**—For purposes of pay and other employment benefits, rights, and privileges, and for all other purposes, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of title 5, United States Code.

(2) **COMPETITIVE STATUS.**—For purposes of section 3304(c)(1) of title 5, United States Code, employees of the Commission shall be considered as if they are in positions in which they are paid by the Secretary of the Senate or the Clerk of the House of Representatives.

SEC. 309. PRINTING AND BINDING COSTS.

For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

SEC. 401. REVIEW WITHIN THE WTO.

It shall be the objective of the United States to obtain as part of the Protocol of Accession of the People's Republic of China to the WTO, an annual review within the WTO of the Compliance by the People's Republic of China with its terms of accession to the WTO.

SEC. 411. FINDINGS.

The Congress finds as follows:

(1) The opening of world markets through the elimination of tariff and nontariff barriers has contributed to a 56-percent increase in exports of United States goods and services since 1992.

(2) Such export expansion, along with an increase in trade generally, has helped fuel the longest economic expansion in United States history.

(3) The United States Government must continue to be vigilant in monitoring and enforcing the compliance by our trading partners with trade agreements in order for United States businesses, workers, and farmers to continue to benefit from the opportunities created by market-opening trade agreements.

(4) The People's Republic of China, as part of its accession to the World

Trade Organization, has committed to eliminating significant trade barriers in the agricultural, services, and manufacturing sectors that, if realized, would provide considerable opportunities for United States farmers, businesses, and workers.

(5) For these opportunities to be fully realized, the United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO.

SEC. 412. PURPOSE.

The purpose of this subtitle is to authorize additional resources for the agencies and departments engaged in monitoring and enforcement of United States trade agreements and trade laws with respect to the People's Republic of China.

SEC. 413. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Department of Commerce, in addition to amounts otherwise available for such purposes, such sums as many be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff for—

(1) monitoring compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China;

(2) enforcement of United States trade laws with respect to products of the People's Republic of China; and

(3) a Trade Law Technical Assistance Center to assist small- and medium-sized businesses, workers, and unions in evaluating potential remedies available under the trade laws of the United States with respect to trade involving the People's Republic of China.

(b) OVERSEAS COMPLIANCE PROGRAM.—

(1) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to the Department of Commerce and the Department of State, in addition to amounts otherwise available, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, to provide staff for monitoring in the People's Republic of China that country's compliance with its international trade obligations and to support the enforcement of the trade laws of the United States, as part of an Overseas Compliance Program which monitors abroad compliance with international trade obligations and supports the enforcement of United States trade laws.

(2) REPORTING.—The annual report on compliance by the People's Republic of China submitted to the Congress under section 421 of this Act shall include the findings of the Overseas Compliance Program with respect to the People's Republic of China.

(c) UNITED STATES TRADE REPRESENTATIVE.—There are authorized to be appropriated to the Office of the United States Trade Representative, in addition

to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff in—

(1) the Office of the General Counsel, the Monitoring and Enforcement Unit, and the Office of the Deputy United States Trade Representative in Geneva, Switzerland, to investigate, prosecute, and defend cases before the WTO, and to administer United States trade laws, including title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) and other trade laws relating to intellectual property, government procurement, and telecommunications, with respect to the People's Republic of China;

(2) the Office of Economic Affairs, to analyze the impact on the economy of the United States, including United States exports, of acts of the Government of the People's Republic of China and to support the Office of the General Counsel in presenting cases to the WTO involving the People's Republic of China;

(3) the geographic office for the People's Republic of China; and

(4) offices relating to the WTO and to different sectors of the economy, including agriculture, industry, services, and intellectual property rights protection, to monitor and enforce the trade agreement obligations of the People's Republic of China in those sectors.

(d) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Department of Agriculture, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff to increase legal and technical expertise in areas covered by trade agreements and United States trade law, including food safety and biotechnology, for purposes of monitoring compliance by the People's Republic of China with its trade agreement obligations.

SEC. 421. REPORT ON COMPLIANCE.

(a) IN GENERAL.—Not later than 1 year after the entry into force of the Protocol of Accession of the People's Republic of China to the WTO, and annually thereafter, the Trade Representative shall submit a report to Congress on compliance by the People's Republic of China with commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

(b) PUBLIC PARTICIPATION.—In preparing the report described in subsection (a), the Trade Representative shall seek public participation by publishing a notice in the Federal Register and holding a public hearing.

SEC. 501. ESTABLISHMENT OF TASK FORCE.

There is hereby established a task force on prohibition of importation of products of forced or prison labor from the People's Republic of China (hereafter in this subtitle referred to as the “Task Force”).

SEC. 502. FUNCTIONS OF TASK FORCE.

The Task Force shall monitor and promote effective enforcement of

compliance with section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) by performing the following functions:

(1) Coordinate closely with the United States Customs Service to promote maximum effectiveness in the enforcement by the Customs Service of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China. In order to assure such coordination, the Customs Service shall keep the Task Force informed, on a regular basis, of the progress of its investigations of allegations that goods are being entered into the United States, or that such entry is being attempted, in violation of the prohibition in section 307 of the Tariff Act of 1930 on entry into the United States of goods mined, produced, or manufactured wholly or in part in the People's Republic of China by convict labor, forced labor, or indentured labor under penal sanctions. Such investigations may include visits to foreign sites where goods allegedly are being mined, produced, or manufactured in a manner that would lead to prohibition of their importation into the United States under section 307 of the Tariff Act of 1930.

(2) Make recommendations to the Customs Service on seeking new agreement with the People's Republic of China to allow Customs Service officials to visit sites where goods may be mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions.

(3) Work with the Customs Service to assist the People's Republic of China and other foreign governments in monitoring the sale of goods mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions to ensure that such goods are not exported to the United States.

(4) Coordinate closely with the Customs Service to promote maximum effectiveness in the enforcement by the Customs Service of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China. In order to assure such coordination, the Customs Service shall keep the Task Force informed, on a regular basis, of the progress of its monitoring of ports of the United States to ensure that goods mined, produced, or manufactured wholly or in part in the People's Republic of China by convict labor, forced labor, or indentured labor under penal sanctions are not imported into the United States.

(5) Advise the Customs Service in performing such other functions, consistent with existing authority, to ensure the effective enforcement of section 307 of the Tariff Act of 1930.

(6) Provide to the Customs Service all information obtained by the departments represented on the Task Force relating to the use of convict labor, forced labor, or/and indentured labor under penal sanctions in the mining, production, or manufacture of goods which may be imported into the United States.

SEC. 503. COMPOSITION OF TASK FORCE.

The Secretary of the Treasury, the Secretary of Commerce, the Secretary of

Labor, the Secretary of State, the Commissioner of Customs, and the heads of other executive branch agencies, as appropriate, acting through their respective designees at or above the level of Deputy Assistant Secretary, or in the case of the Customs Service, at or above the level of Assistant Commissioner, shall compose the Task Force. The designee of the Secretary of the Treasury shall chair the Task Force.

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2001, and each fiscal year thereafter, such sums as may be necessary for the Task Force to carry out the functions described in section 502.

SEC. 505. REPORTS TO CONGRESS.

(a) **FREQUENCY OF REPORTS.**—Not later than the date that is 1 year after the date of enactment of this Act, and not later than the end of each 1-year period thereafter, the Task Force shall submit to the Congress a report on the work of the Task Force during the preceding 1-year period.

(b) **CONTENTS OF REPORTS.**—Each report under subsection (a) shall set forth, at a minimum—

(1) the number of allegations of violations of section 307, of the Tariff Act of 1930 with respect to products of the Peoples' Republic of China that were investigated during the preceding 1-year period;

(2) the number of actual violations of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China that were discovered during the preceding 1-year period;

(3) in the case of each attempted entry of products of the People's Republic of China in violation of such section 307 discovered during the preceding 1-year period—

(A) the identity of the exporter of the goods;

(B) the identity of the person or persons who attempted to sell the goods for export; and

(C) the identity of all parties involved in transshipment of the goods; and

(4) such other information as the Task Force considers useful in monitoring and enforcing compliance with section 307 of the Tariff Act of 1930.

SEC. 511. ESTABLISHMENT OF TECHNICAL ASSISTANCE AND RULE OF LAW PROGRAMS.

(a) **COMMERCE RULE OF LAW PROGRAM.**—The Secretary of Commerce, in consultation with the Secretary of State, is authorized to establish a program to conduct rule of law training and technical assistance related to commercial activities in the People's Republic of China.

(b) **LABOR RULE OF LAW PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of Labor, in consultation with the Secretary of State, is authorized to establish a program to conduct rule of law training and technical assistance related to the protection of

internationally recognized worker rights in the People's Republic of China.

(2) USE OF AMOUNTS.—In carrying out paragraph (1), the Secretary of Labor shall focus on activities including, but not limited to—

(A) developing, laws, regulations, and other measures to implement internationally recognized worker rights;

(B) establishing national mechanisms for the enforcement of national labor laws and regulations;

(C) training government officials concerned with implementation and enforcement of national labor laws and regulations; and

(D) developing an education infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

(3) LIMITATION.—The Secretary of Labor may not provide assistance under the program established under this subsection to the All-China Federation of Trade Unions.

(c) LEGAL SYSTEM AND CIVIL SOCIETY RULE OF LAW PROGRAM.—The Secretary of State is authorized to establish a program to conduct rule of law training and technical assistance related to development of the legal system and civil society generally in the People's Republic of China.

(d) CONDUCT OF PROGRAMS.—The programs authorized by this section may be used to conduct activities such as seminars and workshops, drafting of commercial and labor codes, legal training, publications, financing the operating costs of nongovernmental organizations working in this area, and funding the travel of individuals to the United States and to the People's Republic of China to provide and receive training.

SEC. 512. ADMINISTRATIVE AUTHORITIES.

In carrying out the programs authorized by section 511, the Secretary of Commerce and the Secretary of Labor (in consultation with the Secretary of State) may utilize any of the authorities contained in the Foreign Assistance Act of 1961 and the Foreign Service Act of 1980.

SEC. 513. PROHIBITION RELATING TO HUMAN RIGHTS ABUSES.

Amounts made available to carry out this subtitle may not be provided to a component of a ministry or other administrative unit of the national, provincial, or other local governments of the People's Republic of China, to a nongovernmental organization, or to an official of such governments or organizations, if the President has credible evidence that such component, administrative unit, organization or official has been materially responsible for the commission of human rights violations.

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMERCIAL LAW PROGRAM.—There are authorized to be appropriated to the Secretary of Commerce to carry out the program described in section 511(a) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(b) LABOR LAW PROGRAM.—There are authorized to be appropriated to the

Secretary of Labor to carry out the program described in section 511(b) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(c) **LEGAL SYSTEM AND CIVIL SOCIETY RULE OF LAW PROGRAM.**—There are authorized to be appropriated to the Secretary of State to carry out the program described in section 511(c) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(d) **CONSTRUCTION WITH OTHER LAWS.**—Except as provided in this division, funds may be made available to carry out the purposes of this subtitle notwithstanding any other provision of law.

SEC. 605. ACCESSION OF TAIWAN TO THE WTO.

It is the sense of the Congress that—

(1) immediately upon approval by the General Council of the WTO of the terms and conditions of the accession of the People's Republic of China to the WTO, the United States representative to the WTO should request that the General Council of the WTO consider Taiwan's accession to the WTO as the next order of business of the Council during the same session; and

(2) the United States should be prepared to aggressively counter any WTO member, upon the approval of the General Council of the WTO of the terms and conditions of the accession of the People's Republic of China to the WTO, to block the accession Taiwan to the WTO.

SEC. 701. AUTHORIZATIONS OF APPROPRIATIONS FOR BROADCASTING CAPITAL IMPROVEMENTS AND INTERNATIONAL BROADCASTING OPERATIONS.

(a) **BROADCASTING CAPITAL IMPROVEMENTS.**—In addition to such sums as may otherwise be authorized to be appropriated, there are authorized to be appropriated for “Department of State and Related Agency, Related Agency, Broadcasting Board of Governors, Broadcasting Capital Improvements” \$65,000,000 for the fiscal year 2003.

(b) **INTERNATIONAL BROADCASTING OPERATIONS.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to such sums as are otherwise authorized to be appropriated, there are authorized to be appropriated \$34,000,000 for each of the fiscal years 2001, 2002, and 2003 for “Department of State and Related Agency, Related Agency, Broadcasting Board of Governors, International Broadcasting Operations” for the purposes under paragraph (2).

(2) **USES OF FUNDS.**—In addition to other authorized purposes, funds appropriated pursuant to paragraph (1) shall be used for the following:

(A) To increase personnel for the program development office to enhance marketing programming in the People's Republic of China and neighboring countries.

(B) To enable Radio Free Asia's expansion of news research, production, call-in show capability, and web site/Internet enhancement for the People's Republic of China and neighboring countries.

(C) VOA enhancements including the opening of new news bureaus in Taipei and Shanghai, enhancement of TV Mandarin, and an increase of stringer presence abroad.

NTR Treatment for Georgia

[19 U.S.C. 2434 note; Public Law 106-476]

SEC. 3001. FINDINGS.

Congress finds that Georgia has—

- (1) made considerable progress toward respecting fundamental human rights consistent with the objectives of title IV of the Trade Act of 1974;
- (2) adopted administrative procedures that accord its citizens the right to emigrate, travel freely, and to return to their country without restriction;
- (3) been found to be in full compliance with the freedom of emigration provisions in title IV of the Trade Act of 1974;
- (4) made progress toward democratic rule and creating a free market economic system since its independence from the Soviet Union;
- (5) demonstrated strong and effective enforcement of internationally recognized core labor standards and a commitment to continue to improve effective enforcement of its laws reflecting such standards;
- (6) committed to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the “Helsinki Final Act”) regarding human rights and humanitarian affairs;
- (7) endeavored to address issues related to its national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;
- (8) also committed to enacting legislation to provide protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism;
- (9) continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of those communities in the national life of Georgia and establishing the legal framework for completion of this process in the future;
- (10) concluded a bilateral trade agreement with the United States in 1993 and a bilateral investment treaty in 1994;
- (11) demonstrated a strong desire to build a friendly and cooperative relationship with the United States; and
- (12) acceded to the World Trade Organization on June 14, 2000, and the extension of unconditional normal trade relations treatment to the products

of Georgia will enable the United States to avail itself of all rights under the World Trade Organization with respect to Georgia.

SEC. 3002. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO GEORGIA.

(a) **PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.**—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply Georgia; and

(2) after making a determination under paragraph (1) with respect to Georgia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) **TERMINATION OF APPLICATION OF TITLE IV.**—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Georgia, title IV of the Trade Act of 1974 shall cease to apply to that country.

G. TRADE RELATIONS WITH NORTH AMERICA

North American Free Trade Agreement Implementation Act, as amended

[19 U.S.C. 58c note, 19 U.S.C.2112 note, 3301, 3311-3317, 3331-3335, 3351-3358, 3371-3372, 3381-3382, 3391, 3421, 3431-3438, 3431 note, 3451, 3461-3463, 3471-3473; Public Law 103-182, as amended by Public Law 104-295 and Public Law 105-206]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “North American Free Trade Agreement Implementation Act”.

[(b) Table of Contents.]

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) **AGREEMENT.**—The term “Agreement” means the North American Free Trade Agreement approved by the Congress under section 101(a).

(2) **HTS.**—The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) **MEXICO.**—Any reference to Mexico shall be considered to be a reference to the United Mexican States.

(4) **NAFTA COUNTRY.**—Except as provided in section 202, the term “NAFTA country” means—

(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

(5) **INTERNATIONAL TRADE COMMISSION.**—The term “International Trade Commission” means the United States International Trade Commission.

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

**TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING
TO, THE NORTH AMERICAN FREE TRADE AGREEMENT**

**SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE NORTH AMERICAN FREE
TRADE AGREEMENT.**

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as—

(1) the President—

(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

**SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE
LAW.**

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the

Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, including any law regarding—

- (i) the protection of human, animal, or plant life or health,
- (ii) the protection of the environment, or
- (iii) motor carrier or worker safety; or

(B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974;

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) FEDERAL-STATE CONSULTATION.—

(A) IN GENERAL.—Upon the enactment of this Act, the President shall, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.

(B) FEDERAL-STATE CONSULTATION PROCESS.—The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which—

(i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;

(ii) the States will be informed on a continuing basis of matters under the Agreement that directly relate to, or will potentially have a direct impact on, the States;

(iii) the States will be provided opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (ii);

(iv) the Trade Representative will take into account the information and advice received from the States under clause (iii) when formulating United States positions regarding matters referred to clause (ii); and

(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States) to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working

groups established under the Agreement or through dispute settlement processes provided for under the Agreement.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal-State consultation process established by this paragraph.

(2) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(3) DEFINITION OF STATE LAW.—For purposes of this subsection, the term “State law” includes—

- (A) any law of a political subdivision of a State; and
- (B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under—

- (A) the agreement or by virtue of Congressional approval thereof, or
- (B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.

SEC. 103. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAYOVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

- (A) the appropriate advisory committees established under section 135 of Trade Act of 1974, and
- (B) the International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor, and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to

such action, has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) **EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.**—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover requirements under subsection(a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) **IMPLEMENTING ACTIONS.**—After the date of the enactment of this Act—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations; as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) **INITIAL REGULATIONS.**—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 105. UNITED STATES SECTION OF THE NAFTA SECRETARIAT.

(a) **ESTABLISHMENT OF THE UNITED STATES SECTION.**—The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 402, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened under those chapters. The United States Section may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 1993 to the department or agency within which the United States Section is established the lesser of—

- (1) such sums as may be necessary; or
- (2) \$2,000,000;

for the establishment and operations of the United States Section and for the payment of the United States share of the expenses of binational panels and extraordinary challenge committees convened under chapter 19, and of the expenses incurred in dispute settlement proceedings under chapter 20, of the Agreement.

(c) REIMBURSEMENT OF CERTAIN EXPENSES.—If, in accordance with Annex 2002.2 of the Agreement, the Canadian Section or the Mexican Section of the Secretariat provides funds to the United States Section during any fiscal year, as reimbursement for expenses by the Canadian Section or the Mexican Section in connection with settlement proceedings under chapter 19 or 20 of the Agreement, the United States Section may retain and use such funds to carry out the functions described in subsection (a).

SEC. 106. APPOINTMENTS TO CHAPTER 20 PANEL PROCEEDINGS.

(a) CONSULTATION.—The Trade Representative shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the selection and appointment of candidates for the rosters described in article 2009 of the Agreement.

(b) SELECTION OF INDIVIDUALS WITH ENVIRONMENTAL EXPERTISE.—The United States shall, to the maximum extent practicable, encourage the selection of individuals who have expertise and experience in environmental issues for service in panel proceedings under chapter 20 of the Agreement to hear any challenge to a United States or State environmental law.

[SEC. 107. TERMINATION OR SUSPENSION OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

[Amendment to section 501(c) of the United States-Canada Free-Trade Implementation Act of 1988 (reprinted elsewhere).]

[SEC. 108. CONGRESSIONAL INTENT REGARDING FUTURE ACCESSIONS.

[See U.S. negotiating objectives.]

SEC. 109. EFFECTIVE DATES; EFFECT OF TERMINATION OF NAFTA STATUS.

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—This title (other than the amendment made by section 107) takes effect on the date of the enactment of this Act.

(2) SECTION 107 AMENDMENT.—The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada.

(b) TERMINATION OF NAFTA STATUS.—During any period in which a country ceases to be a NAFTA country, sections 101 through 106 shall cease to have effect with respect to such country.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

- (A) such modifications or continuation of any duty,
- (B) such continuation of duty-free or excise treatment, or
- (C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 302, 305, 307, 308, and 703 and Annexes 302.2, 307.1, 308.1, 308.2, 300-B, 703.2, and 703.3 of the Agreement.

(2) EFFECT ON MEXICAN GSP STATUS.—Notwithstanding 502(f)(2) of the Trade Act of 1974, the President shall terminate the designation of Mexico as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement between the United States and Mexico.

(b) OTHER TARIFF MODIFICATIONS.—

(1) IN GENERAL.—Subject to paragraph (2) and the consultation and layover requirements of section 103(a), the President may proclaim—

- (A) such modifications or continuation of any duty,
- (B) such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the Agreement,
- (C) such continuation of duty-free or excise treatment, or
- (D) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the Agreement.

(2) SPECIAL RULE FOR ARTICLES WITH TARIFF PHASEOUT PERIODS OF MORE THAN 10 YEARS.—The President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with respect to such article has been denied in the preceding 3 calendar years.

(c) CONVERSION TO AD VALOREM RATES FOR CERTAIN TEXTILES.—For purposes of subsections (a) and (b), with respect to an article covered by Annex 300-B of the Agreement imported from Mexico for which the base rate in the Schedule of the United States in Annex 300-B is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

(a) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as

otherwise provided in this section, a good originates in the territory or a NAFTA country if—

(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;

(B)(i) each nonoriginating material used in the production of the good—

(I) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or

(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and

(ii) the good satisfies all other applicable requirements of this section;

(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or

(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, does not undergo a change in tariff classification because—

(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or

(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or

(II) the subheading for the good provides for and specifically describes both the good itself and its parts.

(2) Special rules.—

(A) FOREIGN-TRADE ZONES.—Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act) that is entered for consumption in the customs territory of the United States.

(B) REGIONAL VALUE-CONTENT REQUIREMENT.—For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b), is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all

other applicable requirements of this section.

(b) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—Except as provided in paragraph (5), the regional value-content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of—

- (A) the transaction value method described in paragraph (2); or
- (B) the net cost method described in paragraph (3).

(2) TRANSACTION VALUE METHOD.—

(A) IN GENERAL.—An exporter or producer may calculate the regional value-content of a good on the basis of the following transaction value method:

$$\text{RVC} = \frac{\text{TV-VNM}}{\text{TV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

- (i) The term “RVC” means the regional value-content, expressed as a percentage.
- (ii) The term “TV” means the transaction value of the good adjusted to a F.O.B. basis.
- (iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(3) NET COST METHOD.—

(A) IN GENERAL.—An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC-VNM}}{\text{NC}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

- (i) The term “RVC” means the regional value-content, expressed as a percentage.
- (ii) The term “NC” means the net cost of the good.
- (iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(4) VALUE OF NONORIGINATING MATERIALS USED IN ORIGINATING MATERIALS.—Except as provided in subsection (c)(1), and for a motor vehicle identified in subsection (c)(2) or a component identified in Annex 403.2 of the Agreement, the value of nonoriginating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value-content of the good under paragraph (2) or (3), include

the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

(5) Net cost method must be used in certain cases.—An exporter or producer shall calculate the regional value-content of a good solely on the basis of the net cost method described in paragraph (3), if—

(A) there is no transaction value for the good;

(B) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;

(C) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;

(D) the good is—

(i) a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(ii) identified in Annex 403.1 or 403.2 of the Agreement and is for use in a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;

(iii) provided for in subheadings 6401.10 through 6406.10; or

(iv) a word processing machine provided for in subheading 8469.10.00;

(E) the exporter or producer chooses to accumulate the regional value-content of the good in accordance with subsection (d); or

(F) the good is designated as an intermediate material under paragraph (10) and is subject to a regional value-content requirement.

(6) NET COST METHOD ALLOWED FOR ADJUSTMENTS.—If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method and a NAFTA country subsequently notifies the exporter or producer, during the course of a verification conducted in accordance with chapter 5 of the Agreement, that the transaction value of the good or the value of any material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may calculate the regional value-content of the good on the basis of the net cost method.

(7) REVIEW OF ADJUSTMENT.—Nothing in paragraph (6) shall be construed to prevent any review or appeal available in accordance with article 510 of the Agreement with respect to an adjustment to or a rejection of—

(A) the transaction value of a good; or

(B) the value of any material used in the production of a good.

(8) CALCULATING NET COST.—The producer may, consistent with

regulations implementing this section, calculate the net cost of a good under paragraph (3), by—

(A) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and reasonably allocating the resulting net cost of those goods to the good;

(B) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the good; or

(C) reasonably allocating each cost that is part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(9) VALUE OF MATERIAL USED IN PRODUCTION.—Except as provided in paragraph (11), the value of a material used in the production of a good—

(A) shall—

(i) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or

(ii) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and

(B) if not included under clause (i) or (ii) of subparagraph (A), shall include—

(i) freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) duties, taxes, and customs brokerage fees paid on the material in the territory of one or more of the NAFTA countries; and

(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(10) INTERMEDIATE MATERIAL.—Except for goods described in subsection (c)(1), any self-produced material, other than a component identified in Annex 403.2 of the Agreement, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value-content of the good under paragraph (2) or (3); provided that if the intermediate material is

subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is used in the production of the intermediate material may be designated by the producer as an intermediate material.

(11) VALUE OF INTERMEDIATE MATERIAL.—The value of an intermediate material shall be—

(A) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to the intermediate material; or

(B) the aggregate of each cost that is part of the total cost incurred with respect to the intermediate material that can be reasonably allocated to that intermediate material.

(12) INDIRECT MATERIAL.—The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(c) AUTOMOTIVE GOODS.—

(1) PASSENGER VEHICLES AND LIGHT TRUCKS, AND THEIR AUTOMOTIVE PARTS.—For purposes of calculating the regional value-content under the net cost method for—

(A) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, or

(B) a good provided for in the tariff provisions listed in Annex 403.1 of the Agreement, that is subject to a regional value-content requirement and is for use as original equipment in the production of a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31,

the value of nonoriginating materials used by the producer in the production of the good shall be the sum of the values of all nonoriginating materials, determined in accordance with subsection (b)(9) at the time the nonoriginating materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the territories of the NAFTA countries under the tariff provisions listed in Annex 403.1 of the Agreement and are used in the production of the good or that are used in the production of any material used in the production of the good.

(2) OTHER VEHICLES AND THEIR AUTOMOTIVE PARTS.—For purposes of calculating the regional value-content under the net cost method for a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, a motor vehicle for the transport of 16 or more persons provided for in subheading

8702.10.00 or 8702.90.00, or a component identified in Annex 403.2 of the Agreement for use as original equipment in the production of the motor vehicle, the value of nonoriginating materials used by the producer in the production of the good shall be the sum of—

(A) for each material used by the producer listed in Annex 403.2 of the Agreement, whether or not produced by the producer, at the choice of the producer and determined in accordance with subsection (b), either—

(i) the value of such material that is nonoriginating, or

(ii) the value of nonoriginating materials used in the production of such material; and

(B) the value of any other nonoriginating material used by the producer that is not listed in Annex 403.2 of the Agreement determined in accordance with subsection (b).

(3) AVERAGING PERMITTED.—

(A) IN GENERAL.—For purposes of calculating the regional value-content of a motor vehicle described in paragraph (1) or (2), the producer may average its calculation over its fiscal year, using any of the categories described in subparagraph (B), on the basis of either all motor vehicles in the category or on the basis of only the motor vehicles in the category that are exported to the territory of one or more of the other NAFTA countries.

(B) CATEGORY DESCRIBED.—A category is described in this subparagraph if it is—

(i) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a NAFTA country;

(ii) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(iii) the same model line of motor vehicles produced in the territory of a NAFTA country; or

(iv) if applicable, the basis set out in Annex 403.3 of the Agreement.

(4) ANNEX 403.1 AND ANNEX 403.2.—For purposes of calculating the regional value-content for any or all goods provided for in a tariff provision listed in Annex 403.1 of the Agreement, or a component or material identified in Annex 403.2 of the Agreement, produced in the same plant, the producer of the good may—

(A) average its calculation—

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(B) calculate the average referred to in subparagraph (A) separately

for any or all goods sold to one or more motor vehicle producers; or

(C) with respect to any calculation under this paragraph, make a separate calculation for goods that are exported to the territory of one or more NAFTA countries.

(5) PHASE-IN OF REGIONAL VALUE-CONTENT REQUIREMENT.—Notwithstanding Annex 401 of the Agreement, and except as provided in paragraph (6), the regional value-content requirement shall be—

(A) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 56 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 62.5 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31; and

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40, that is for use in a motor vehicle identified in clause (i); and

(B) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 55 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 60 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00;

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40 that is for use in a motor vehicle identified in clause (i); and

(iii) except for a good identified in subparagraph (A)(ii) or a good provided for in subheadings 8482.10 through 8482.80, or subheading 8483.20 or 8483.30, a good identified in Annex 403.1 of the Agreement that is subject to a regional value-content requirement and is for use in a motor vehicle identified in subparagraph (A)(i) or (B)(i).

(6) NEW AND REFITTED PLANTS.—The regional value-content requirement for a motor vehicle identified in paragraph (1) or (2) shall be—

(A) 50 percent for 5 years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if—

(i) it is a motor vehicle of a class, or marque, or, except for a

motor vehicle identified in paragraph (2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries;

(ii) the plant consists of a new building in which the motor vehicle is assembled; and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(B) 50 percent for 2 years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, different from that assembled by the motor vehicle assembler in the plant before the refit.

(7) ELECTION FOR CERTAIN VEHICLES FROM CANADA.—In the case of goods provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, exported from Canada directly to the United States, and entered on or after January 1, 1989, and before the date of entry into force of the Agreement between the United States and Canada, an importer may elect to use the rules of origin set out in this section in lieu of the rules of origin contained in section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) and may elect to use the method for calculating the value of nonoriginating materials established in article 403(2) of the Agreement in lieu of the method established in article 403(1) of the Agreement for purposes of determining eligibility for preferential duty treatment under the United States-Canada Free-Trade Agreement. Any election under this paragraph shall be made in writing to the Customs Service not later than the date that is 180 days after the date of entry into force of the Agreement between the United States and Canada. Any such election may be made only if the liquidation of such entry has not become final. For purposes of averaging the calculation of regional value-content for the goods covered by such entry, where the producer's 1989-1990 fiscal year began after January 1, 1989, the producer may include the period between January 1, 1989, and the beginning of its first fiscal year after January 1, 1989, as part of fiscal year 1989-1990.

(d) ACCUMULATION.—

(1) DETERMINATION OF ORIGINATING GOOD.—For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the NAFTA countries by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of any of the NAFTA countries by that exporter or producer, if—

(A) all nonoriginating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401 of the Agreement;

(B) the good satisfies any applicable regional value-content

requirement; and

(C) the good satisfies all other applicable requirements of this section.

The requirements of subparagraphs (A) and (B) must be satisfied entirely in the territory of one or more of the NAFTA countries.

(2) TREATMENT AS SINGLE PRODUCER.—For purposes of subsection (b)(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph (1) shall be treated as the production of a single producer.

(e) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (3), (4), (5), and (6), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo an applicable change in tariff classification (set out in Annex 401 of the Agreement) is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or

(B) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such nonoriginating materials is not more than 7 percent of the total cost of the good,

provided that the good satisfies all other applicable requirements of this section and, if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good.

(2) GOODS NOT SUBJECT TO REGIONAL VALUE-CONTENT REQUIREMENT.—A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if—

(A)(i) the value of all nonoriginating materials used in the production of the good is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis; or

(ii) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all nonoriginating materials is not more than 7 percent of the total cost of the good; and

(B) the good satisfies all other applicable requirements of this section.

(3) DAIRY PRODUCTS, ETC.—Paragraph (1) does not apply to—

(A) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of a good provided for in chapter 4 of the HTS;

(B) a nonoriginating material provided for in chapter 4 of the HTS or

a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of—

(i) preparations for infants containing over 10 percent by weight of milk solids provided for in subheading 1901.10.00;

(ii) mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.00;

(iii) a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80;

(iv) a good provided for in heading 2105 or subheading 2106.90.05, or preparations containing over 10 percent by weight of milk solids provided for in subheading 2106.90.15, 2106.90.40, 2106.90.50, or 2106.90.65;

(v) a good provided for in subheading 2202.90.10 or 2202.90.20;
or

(vi) animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.30;

(C) a nonoriginating material provided for in heading 0805 or subheadings 2009.11 through 2009.30 that is used in the production of—

(i) a good provided for in subheadings 2009.11 through 2009.30, or subheading 2106.90.16, or concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(ii) a good provided for in subheading 2202.90.30 or 2202.90.35, or fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2202.90.36;

(D) a nonoriginating material provided for in chapter 9 of the HTS that is used in the production of instant coffee, not flavored, provided for in subheading 2101.10.20;

(E) a nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in headings 1501 through 1508, or heading 1512, 1514, or 1515;

(F) a nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;

(G) a nonoriginating material provided for in chapter 17 of the HTS or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(H) a nonoriginating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 through 2208;

(I) a nonoriginating material used in the production of—

(i) a good provided for in subheading 7321.11.30;

(ii) a good provided for in subheading 8415.10, subheadings 8415.81 through 8415.83, subheadings 8418.10 through 8418.21, subheadings 8418.29 through 8418.40, subheading 8421.12 or 8422.11, subheadings 8450.11 through 8450.20, or subheadings 8451.21 through 8451.29;

(iii) trash compactors provided for in subheading 8479.89.60; or

(iv) a good provided for in subheading 8516.60.40; and

(J) a printed circuit assembly that is a nonoriginating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401 of the Agreement, places restrictions on the use of such nonoriginating material.

(4) CERTAIN FRUIT JUICES.—Paragraph (1) does not apply to a nonoriginating single juice ingredient provided for in heading 2009 that is used in the production of—

(A) a good provided for in subheading 2009.90, or concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(B) mixtures of fruit or vegetable juices, fortified with minerals or vitamins, provided for in subheading 2202.90.39.

(5) GOODS PROVIDED FOR IN CHAPTERS 1 THROUGH 27 OF THE HTS.—Paragraph (1) does not apply to a nonoriginating material used in the production of a good provided for in chapters 1 through 27 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(6) GOODS PROVIDED FOR IN CHAPTERS 50 THROUGH 63 OF THE HTS.—A good provided for in chapters 50 through 63 of the HTS, that does not originate because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 401 of the Agreement, shall be considered to be a good that originates if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(f) FUNGIBLE GOODS AND MATERIALS.—For purposes of determining whether a good is an originating good—

(1) if originating and nonoriginating fungible materials are used in the production of the good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in regulations implementing this section; and

(2) if originating and nonoriginating fungible goods are commingled and exported in the same form, the determination may be made on the basis of

any of the inventory management methods set out in regulations implementing this section.

(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Except as provided in paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good's standards accessories, spare parts, or tools shall—

(A) be considered as originating goods if the good is an originating good, and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) in any case in which the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools are taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers in which a good is packed for shipment shall be disregarded—

(1) in determining whether the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement; and

(2) in determining whether the good satisfies a regional value-content requirement.

(k) TRANSSHIPMENT.—A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA

countries, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.

(l) NONQUALIFYING OPERATIONS.—A good shall not be considered to be an originating good merely by reason of—

- (1) mere dilution with water or another substance that does not materially alter the characteristics of the good; or
- (2) any production or pricing practice with respect to which it may be demonstrated, by a preponderance of evidence, that the object was to circumvent this section.

(m) INTERPRETATION AND APPLICATION.—For purposes of this section:

- (1) The basis for any tariff classification is the HTS.
- (2) Except as otherwise expressly provided, whenever in this section there is a reference to a heading or subheading such reference shall be a reference to a heading or subheading of the HTS.
- (3) In applying subsection (a)(4), the determination of whether a heading or subheading under the HTS provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, the rules of interpretation, or notes of the HTS.
- (4) In applying the Customs Valuation Code—
 - (A) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;
 - (B) the provisions of this section shall take precedence over the Customs Valuation Code to the extent of any difference; and
 - (C) the definitions in subsection (p) shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference.

(5) All costs referred to in this section shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(n) ORIGIN OF AUTOMATIC DATA PROCESSING GOODS.—Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

(o) SPECIAL RULE FOR CERTAIN AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of this section, for purposes of applying a rate of duty to a good provided for in—

- (1) heading 1202 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico,
- (2) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 1202 used in the production of that

good is not wholly obtained in the territory of Mexico, or

(3) subheading 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in subheading 1701.99 used in the production of that good is not a qualifying good, such good shall be treated as a nonoriginating good and, for purposes of this subsection, the terms “qualifying good” and “wholly obtained in the territory of” have the meaning given such terms in paragraph 26 of section A of Annex 703.2 of the Agreement.

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

(1) CLASS OF MOTOR VEHICLES.—The term “class of motor vehicles” means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles designed for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00.

(B) Motor vehicles provided for in subheading 8701.10, or subheading 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in subheadings 8703.21 through 8703.90.

(2) CUSTOMS VALUATION CODE.—The term “Customs Valuation Code” means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.

(3) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) FUNGIBLE GOODS AND FUNGIBLE MATERIALS.—The terms “fungible goods” and “fungible materials” means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information, and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices, or procedures.

(6) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF ONE OR MORE OF THE NAFTA COUNTRIES.—The term “goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries” means—

(A) mineral goods extracted in the territory of one or more of the

NAFTA countries;

(B) vegetable goods harvested in the territory of one or more of the NAFTA countries;

(C) live animals born and raised in the territory of one or more of the NAFTA countries;

(D) goods obtained from hunting, trapping, or fishing in the territory of one or more of the NAFTA countries;

(E) goods (such as fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA country and flying its flag;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with the NAFTA country and fly its flag;

(G) goods taken by a NAFTA country or a person of a NAFTA country from the seabed or beneath the seabed outside territorial waters, provided that a NAFTA country has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by a NAFTA country or a person of a NAFTA country and not processed in a country other than a NAFTA country;

(I) waste and scrap derived from—

(i) production in the territory of one or more of the NAFTA countries; or

(ii) used goods collected in the territory of one or more of the NAFTA countries, if such goods are fit only for the recovery of raw materials; and

(J) goods produced in the territory of one or more of the NAFTA countries exclusively from goods referred to in subparagraphs (A) through (I), or from their derivatives, at any stage of production.

(7) IDENTICAL OR SIMILAR GOODS.—The term “identical or similar goods” means “identical goods” and “similar goods”, respectively, as defined in the Customs Valuation Code.

(8) INDIRECT MATERIAL.—

(A) The term “indirect material” means a good—

(i) used in the production, testing, or inspection of a good but not physically incorporated into the good, or

(ii) used in the maintenance of buildings or the operation of equipment associated with the production of a good, in the territory of one or more of the NAFTA countries.

(B) When used for a purpose described in subparagraph (A), the following materials are among those considered to be indirect materials:

(i) Fuel and energy.

(ii) Tools, dies, and molds.

(iii) Spare parts and materials used in the maintenance of equipment and buildings.

(iv) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings.

(v) Gloves, glasses, footwear, clothing, safety equipment, and supplies.

(vi) Equipment, devices, and supplies used for testing or inspecting the goods.

(vii) Catalysts and solvents.

(viii) Any other goods that are not incorporated into the good, if the use of such goods in the production of the good can reasonably be demonstrated to be a part of that production.

(9) INTERMEDIATE MATERIAL.—The term “intermediate material” means a material that is self-produced, used in the production of a good, and designated pursuant to subsection (b)(10).

(10) MARQUE.—The term “marque” means the trade name used by a separate marketing division of a motor vehicle assembler.

(11) MATERIAL.—The term “material” means a good that is used in the production of another good and includes a part or an ingredient.

(12) MODEL LINE.—The term “model line” means a group of motor vehicles having the same platform or model name.

(13) MOTOR VEHICLE ASSEMBLER.—The term “motor vehicle assembler” means a producer of motor vehicles and any related persons or joint ventures in which the producer participates.

(14) NAFTA COUNTRY.—The term “NAFTA country” means the United States, Canada or Mexico for such time as the Agreement is in force with respect to Canada or Mexico, and the United States applies the Agreement to Canada or Mexico.

(15) NEW BUILDING.—The term “new building” means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical, and other utilities to house a complete vehicle assembly process.

(16) NET COST.—The term “net cost” means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost.

(17) NET COST OF A GOOD.—The term “net cost of a good” means the net cost that can be reasonably allocated to a good using one of the methods set out in subsection (b)(8).

(18) NONALLOWABLE INTEREST COSTS.—The term “nonallowable interest costs” means interest costs incurred by a producer as a result of an interest rate that exceeds the applicable Federal Government interest rate for

comparable maturities by more than 700 basis points, determined pursuant to regulations implementing this section.

(19) NONORIGINATING GOOD; NONORIGINATING MATERIAL.—The term “nonoriginating good” or “nonoriginating material” means a good or material that does not qualify as an originating good or material under the rules of origin set out in this section.

(20) ORIGINATING.—The term “originating” means qualifying under the rules of origin set out in this section.

(21) PRODUCER.—The term “producer” means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.

(22) PRODUCTION.—The term “production” means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

(23) REASONABLY ALLOCATE.—The term “reasonably allocate” means to apportion in a manner appropriate to the circumstances.

(24) REFIT.—The term “refit” means a plant closure, for purposes of plant conversion or retooling, that lasts at least 3 months.

(25) RELATED PERSONS.—The term “related persons” means persons specified in any of the following subparagraphs:

(A) Persons who are officers or directors of one another's businesses.

(B) Persons who are legally recognized partners in business.

(C) Persons who are employer and employee.

(D) Persons one of whom owns, controls, or holds 25 percent or more of the outstanding voting stock or shares of the other.

(E) Persons if 25 percent or more of the outstanding voting stock or shares of each of them is directly or indirectly owned, controlled, or held by a third person.

(F) Persons one of whom is directly or indirectly controlled by the other.

(G) Persons who are directly or indirectly controlled by a third person.

(H) Persons who are members of the same family.

For purposes of this paragraph, the term “members of the same family” means natural or adoptive children, brothers, sisters, parents, grandparents, or spouses.

(26) ROYALTIES.—The term “royalties” means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process. It does not include payments under technical assistance or similar agreements that can be related to specific services such as—

(A) personnel training, without regard to where performed; and

(B) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar

computer services, or other services.

(27) SALES PROMOTION, MARKETING, AND AFTER-SALES SERVICE COSTS.—The term “sales promotion, marketing, and after-sales service costs” means the costs related to sales promotion, marketing, and after-sales service for the following:

(A) Sales and marketing promotion, media advertising, advertising and market research, promotional and demonstration materials, exhibits, sales conferences, trade shows, conventions, banners, marketing displays, free samples, sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information), establishment and protection of logos and trademarks, sponsorships, wholesale and retail restocking charges, and entertainment.

(B) Sales and marketing incentives, consumer, retailer, or wholesaler rebates, and merchandise incentives.

(C) Salaries and wages, sales commissions, bonuses, benefits (such as medical, insurance, and pension), traveling and living expenses, and membership and professional fees for sales promotion, marketing, and after-sales service personnel.

(D) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(E) Product liability insurance.

(F) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(G) Telephone, mail, and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(H) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers.

(I) Property insurance, taxes, utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.

(J) Payments by the producer to other persons for warranty repairs.

(28) SELF-PRODUCED MATERIAL.—The term “self-produced material” means a material that is produced by the producer of a good and used in the production of that good.

(29) SHIPPING AND PACKING COSTS.—The term “shipping and packing costs” means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, but does not include the costs of preparing and packaging the good for retail sale.

(30) SIZE CATEGORY.—The term “size category” means with respect to a motor vehicle identified in subsection (c)(1)(A)—

(A) 85 cubic feet or less of passenger and luggage interior volume;

(B) more than 85 cubic feet, but less than 100 cubic feet, of passenger and luggage interior volume;

(C) at least 100 cubic feet, but not more than 110 cubic feet, of passenger and luggage interior volume;

(D) more than 110 cubic feet, but less than 120 cubic feet, of passenger and luggage interior volume; and

(E) 120 cubic feet or more of passenger and luggage interior volume.

(31) TERRITORY.—The term “territory” means a territory described in Annex 201.1 of the Agreement.

(32) TOTAL COST.—The term “total cost” means all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.

(33) TRANSACTION VALUE.—Except as provided in subsection (c)(1) or (c)(2)(A), the term “transaction value” means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3, and 4 of Article 8 of the Customs Valuation Code and determined without regard to whether the good or material is sold for export.

(34) UNDERBODY.—The term “underbody” means the floor pan of a motor vehicle.

(35) USED.—The term “used” means used or consumed in the production of goods.

(q) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as a part of the HTS—

(A) the provisions set out in Appendix 6.A of Annex 300-B, Annex 401, Annex 403.1 Annex 403.2, and Annex 403.3, of the Agreement, and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—Subject to the consultation and layover requirements of section 103, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than the provisions of paragraph A of Appendix 6 of Annex 300-B and section XI of part B of Annex 401 of the Agreement; and

(B) a modified version of the definition of any term set out in

subsection (p) (and such modified version of the definition shall supersede the version in subsection (p)), but only if the modified version reflects solely those modifications to the same term in article 415 of the Agreement that are agreed to by the NAFTA countries before the 1st anniversary of the date of the enactment of this Act.

(3) SPECIAL RULES FOR TEXTILES.—Notwithstanding the provisions of paragraph (2)(A), and subject to the consultation and layover requirements of section 103, the President may proclaim—

(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300-B of the Agreement, and

(B) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of Appendix 6.A of Annex 300-B and section XI of part B of Annex 401 of the Agreement.

SEC. 203. DRAWBACK.

(a) DEFINITION OF A GOOD SUBJECT TO NAFTA DRAWBACK.—For purposes of this Act and the amendments made by subsection (b), the term “good subject to NAFTA drawback” means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to a NAFTA country.

(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good, and

(B) except for a good referred to in paragraph 12 of section A of Annex 703.2 of the Agreement that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.

(3) A good—

(A) that is—

- (i) deemed to be exported from the United States,
- (ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or
- (iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and

(B) that is delivered—

- (i) to a duty-free shop,

- (ii) for ship's stores or supplies for ships or aircraft, or
 - (iii) for use in a project undertaken jointly by the United States and a NAFTA country and destined to become the property of the United States.
- (4) A good exported to a NAFTA country for which a refund of customs duties is granted by reason of—
- (A) the failure of the good to conform to sample or specification, or
 - (B) the shipment of the good without the consent of the consignee.
- (5) A good that qualifies under the rules of origin set out in section 202 that is—
- (A) exported to a NAFTA country,
 - (B) used as a material in the production of another good that is exported to a NAFTA country, or
 - (C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a NAFTA country.
- (6) A good provided for in subheading 1701.11.02 of the HTS that is—
- (A) used as a material, or
 - (B) substituted for by a good of the same kind and quality that is used as a material,
- in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.01 or 1701.99.99 (relating to refined sugar).
- (7) A citrus product that is exported to Canada.
- (8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of—
- (A) apparel, or
 - (B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture moving pads), 5811.00.20, or 5811.00.30 of the HTS,
- that is exported to Canada and that is subject to Canada's most-favored-nation rate of duty upon importation into Canada. Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.

[Tariff Act of 1930, section 562 of the Tariff Act of 1930, and section 3(a) of the Foreign Trade Zones Act.

[(c) CONSEQUENTIAL AMENDMENT WITH IMMEDIATE EFFECT.—Amendment to section 313(j) of the Tariff Act of 1930.]

(d) ELIMINATION OF DRAWBACK FOR SECTION 22 FEES.—Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) with respect to goods included under subsection (a) that are exported to—

(1) Canada after December 31, 1995, for so long as it is a NAFTA country; or

(2) Mexico after December 31, 2000, for so long as it is a NAFTA country.

(e) **INAPPLICABILITY TO COUNTERVAILING AND ANTIDUMPING DUTIES.**—Nothing in this section or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

[SEC. 204. CUSTOMS USER FEES.

Amendment to section 13031(b)(10) of the Consolidated Budget Reconciliation Act of 1985 (reprinted elsewhere).]

[SEC. 205. ENFORCEMENT.

Amendments to sections 508, 509, and 592 of the Tariff Act of 1930 (reprinted elsewhere).]

[SEC. 206. RELIQUIDATION OF ENTRIES FOR NAFTA-ORIGIN GOODS.

Amendment to section 520 of the Tariff Act of 1930.]

[SEC. 207. COUNTRY OF ORIGIN MARKING OF NAFTA GOODS.

Amendments to section 304 of the Tariff Act of 1930 (reprinted elsewhere).]

[SEC. 208. PROTESTS AGAINST ADVERSE ORIGIN DETERMINATIONS.

Amendments to section 514 of the Tariff Act of 1930 (reprinted elsewhere).]

[SEC. 209. EXCHANGE OF INFORMATION.

Amendment to section 628 of the Tariff Act of 1930.]

SEC. 210. PROHIBITION ON DRAWBACK FOR TELEVISION PICTURE TUBES.

Notwithstanding any other provision of law, no customs duties may be refunded, waived, or reduced on color cathode-ray television picture tubes, including video monitor cathode-ray tubes (provided for in subheading 8540.11.00 of the HTS), that are nonoriginating goods under section 202(p)(19) and are—

(A) exported to a NAFTA country;

(B) used as a material in the production of other goods that are exported to a NAFTA country; or

(C) substituted for by goods of the same kind and quality used as a material in the production of other goods that are exported to a NAFTA country.

SEC. 211. MONITORING OF TELEVISION AND PICTURE TUBE IMPORTS.

(a) **MONITORING.**—Beginning on the date the Agreement enters into force with respect to the United States, the United States Customs Service shall, for a period of 5 years, monitor imports into the United States of articles described in subheading 8528.10 of the HTS from NAFTA countries and shall take action to exercise all rights of the United States under chapter 5 of the Agreement with respect to such imports. The United States Customs Service shall take appropriate action under chapter 5 of the Agreement with respect to such imports, including verifications to ensure that the rules of origin under the Agreement are fully complied with and that the duty drawback obligations

contained in article 303 and Annex 303.8 of the Agreement are fully implemented and duties are correctly assessed.

(b) **REPORT TO TRADE REPRESENTATIVE.**—The United States Customs Service shall make the results of the monitoring and verification required by subsection (a) available to the President and the Trade Representative. If, based on such information, the President has reason to believe that articles described in subheading 8540.11 of the HTS, intended for ultimate consumption in the United States, are entering the territory of a NAFTA country inconsistent with the provisions of the Agreement, or have been undervalued in a manner that may raise concerns under United States trade laws, the President shall promptly take such action as may be appropriate under all relevant provisions of the Agreement, including article 317 and chapter 20, and under applicable United States trade statutes.

SEC. 212. TITLE VI AMENDMENTS.

Any amendment in this title to a law that is also amended under title VI shall be made after the title VI amendment is executed.

[**SEC. 213. EFFECTIVE DATES.**]

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

Subtitle A—Safeguards

PART 1—RELIEF FROM IMPORTS BENEFITTING FROM THE AGREEMENT

SEC. 301. DEFINITIONS.

As used in this part:

(1) **CANADIAN ARTICLE.**—The term “Canadian article” means an article that—

- (A) is an originating good under chapter 4 of the Agreement; and
- (B) qualifies under the Agreement to be marked as a good of Canada.

(2) **MEXICAN ARTICLE.**—The term “Mexican article” means an article that—

- (A) is an originating good under chapter 4 of the Agreement; and
- (B) qualifies under the Agreement to be marked as a good of Mexico.

SEC. 302. COMMENCING OF ACTION FOR RELIEF.

(a) **FILING OF PETITION.**—

(1) **IN GENERAL.**—A petition requesting action under this part for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the International Trade Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The International Trade Commission shall transmit a copy of any petition filed under this

subsection to the Trade Representative.

(2) **PROVISIONAL RELIEF.**—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974.

(3) **CRITICAL CIRCUMSTANCES.**—An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated under subsection (b).

(b) **INVESTIGATION AND DETERMINATION.**—Upon the filing of a petition under subsection (a), the International Trade Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of—

(1) serious injury; or

(2) except in the case of a Canadian article, a threat of serious injury;

to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) **APPLICABLE PROVISIONS.**—The provisions of—

(1) paragraphs (1)(B), (3) (except subparagraph (A)), and (4) of subsection (b);

(2) subsection (c); and

(3) subsection (d),

of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b).

(d) **ARTICLES EXEMPT FROM INVESTIGATION.**—No investigation may be initiated under this section with respect to—

(1) any Canadian article or Mexican article if import relief has been provided under this part with respect to that article; or

(2) any textile or apparel article set out in Appendix 1.1 of Annex 300-B of the Agreement.

SEC. 303. INTERNATIONAL TRADE COMMISSION ACTION ON PETITION.

(a) **DETERMINATION.**—By no later than 120 days after the date on which an investigation is initiated under section 302(b) with respect to a petition, the International Trade Commission shall—

(1) make the determination required under that section; and

(2) if the determination referred to in paragraph (1) is affirmative and an allegation regarding critical circumstances was made under section 302(a), make a determination regarding that allegation.

(b) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the International Trade Commission under subsection (a) with respect to imports of an article is affirmative, the International Trade Commission shall find, and recommend to

the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission in the determination. The import relief recommended by the International Trade Commission under this subsection shall be limited to that described in section 304(c).

(c) **REPORT TO PRESIDENT.**—No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the International Trade Commission shall submit to the President a report that shall include—

- (1) a statement of the basis for the determination;
- (2) dissenting and separate views; and
- (3) any finding made under subsection (b) regarding import relief.

(d) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (c), the International Trade Commission shall promptly make public such report (with the exception of information which the International Trade Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) **APPLICABLE PROVISIONS.**—For purposes of this part, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

SEC. 304. PROVISION OF RELIEF.

(a) **IN GENERAL.**—No later than the date that is 30 days after the date on which the President receives the report of the International Trade Commission containing an affirmative determination of the International Trade Commission under section 303(a), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission.

(b) **EXCEPTION.**—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) **NATURE OF RELIEF.**—The import relief (including provisional relief) that the President is authorized to provide under this part is as follows:

- (1) In the case of imports of a Canadian article—
 - (A) the suspension of any further reduction provided for under Annex 401.2 of the United States-Canada Free Trade Agreement in the duty imposed on such article;
 - (B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—
 - (i) the column 1 general rate of duty imposed under the HTS on

like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed on the article for the corresponding season occurring immediately before January 1, 1989.

(2) In the case of imports of a Mexican article—

(A) the suspension of any further reduction provided for under the United States Schedule to Annex 302.2 of the Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season immediately occurring before the date on which the Agreement enters into force.

(d) PERIOD OF RELIEF.—The import relief that the President is authorized to provide under this section may not exceed 3 years, except that, if a Canadian article or Mexican article which is the subject of the action—

(1) is provided for in an item for which the transition period of tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years; and

(2) the President determines that the affected industry has undertaken adjustment and requires an extension of the period of the import relief; the President, after obtaining the advice of the International Trade Commission, may extend the period of the import relief for not more than 1 year, if the duty applied during the initial period of the relief is substantially reduced at the beginning of the extension period.

(e) RATE ON MEXICAN ARTICLES AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this part is terminated with respect to a Mexican article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 302.2 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 302; and

(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 302.2; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 302.2 for the elimination of the tariff.

SEC. 305. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Except as provided in subsection (b), no import relief may be provided under this part—

(1) in the case of a Canadian article, after December 31, 1998; or

(2) in the case of a Mexican article, after the date that is 10 years after the date on which the Agreement enters into force;

unless the article against which the action is taken is an item for which the transition period for tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years, in which case the period during which relief may be granted shall be the period of staged tariff elimination for that article.

(b) EXCEPTION.—Import relief may be provided under this part in the case of a Canadian article or Mexican article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the Government of Canada or Mexico, as the case may be, consents to such provision.

SEC. 306. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 304 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 307. SUBMISSION OF PETITIONS.

A petition for import relief may be submitted to the International Trade Commission under—

(1) this part;

(2) chapter 1 of title II of the Trade Act of 1974; or

(3) under both this part and such chapter 1 at the same time, in which case the International Trade Commission shall consider such petitions jointly.

[SEC. 308. SPECIAL TARIFF PROVISIONS FOR CANADIAN FRESH FRUITS AND VEGETABLES.

[Amendments to section 301(a) of the United States-Canada Free-Trade Implementation Act of 1988.]

SEC. 309. PRICE-BASED SNAPBACK FOR FROZEN CONCENTRATED ORANGE JUICE.

(a) TRIGGER PRICE DETERMINATION.—

(1) IN GENERAL.—The Secretary shall determine—

(A) each period of 5 consecutive business days in which the daily

price for frozen concentrated orange juice is less than the trigger price; and

(B) for each period determined under subparagraph (A), the first period occurring thereafter of 5 consecutive business days in which the daily price for frozen concentrated orange juice is greater than the trigger price.

(2) NOTICE OF DETERMINATIONS.—The Secretary shall immediately notify the Commissioner of Customs and publish notice in the Federal Register of any determination under paragraph (1), and the date of such publication shall be the determination date for that determination.

(b) IMPORTS OF MEXICAN ARTICLES.—Whenever after any determination date for a determination under subsection (a)(1)(A), the quantity of Mexican articles of frozen concentrated orange juice that is entered exceeds—

(1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002; or

(2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007;

the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable limitation in paragraph (1) or (2) is reached and before the determination date for the related determination under subsection (a)(1)(B) shall be the rate of duty specified in subsection (c).

(c) RATE OF DUTY.—The rate of duty specified for purposes of subsection (b) for articles entered on any day is the rate in the HTS that is the lower of—

(1) the column 1 general rate of duty in effect for such articles on July 1, 1991; or

(2) the column 1 general rate of duty in effect on that day.

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

(1) The term “daily price” means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange.

(2) The term “business day” means a day in which contracts for frozen concentrated orange juice are being traded on the New York Cotton Exchange, or any successor as determined by the Secretary.

(3) The term “entered” means entered or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term “frozen concentrated orange juice” means all products classifiable under subheading 2009.11.00 of the HTS.

(5) The term “Secretary” means the Secretary of Agriculture.

(6) The term “trigger price” means the average daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding

month and the year with the lowest average price for the corresponding month.

PART 2—RELIEF FROM IMPORTS FROM ALL COUNTRIES

SEC. 311. NAFTA ARTICLE IMPACT IN IMPORT RELIEF CASES UNDER THE TRADE ACT OF 1974.

(a) **IN GENERAL.**—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether—

- (1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and
- (2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

(b) **FACTORS.**—

(1) **SUBSTANTIAL IMPORT SHARE.**—In determining whether imports from a NAFTA country, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period.

(2) **APPLICATION OF “CONTRIBUTE IMPORTANTLY” STANDARD.**—In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, or threat thereof, the International Trade Commission shall consider such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries. In applying the preceding sentence, imports from a NAFTA country or countries normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

(c) **DEFINITION.**—For purposes of this section and section 312(a), the term “contribute importantly” refers to an important cause, but not necessarily the most important cause.

SEC. 312. PRESIDENTIAL ACTION REGARDING NAFTA IMPORTS.

(a) **IN GENERAL.**—In determining whether to take action under chapter 1 of

title II of the Trade Act of 1974 with respect to imports from a NAFTA country, the President shall determine whether—

(1) imports from such country, considered individually, account for a substantial share of total imports; or

(2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, found by the International Trade Commission.

(b) EXCLUSION OF NAFTA IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from a NAFTA country if the President makes a negative determination under subsection (a) (1) or (2) with respect to imports from such country.

(c) ACTION AFTER EXCLUSION OF NAFTA COUNTRY IMPORTS.—

(1) IN GENERAL.—If the President, under subsection (b), excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action—

(A) the President may take appropriate action under such chapter 1 to include those imports in the action; and

(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.

(2) INVESTIGATION.—Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.

(3) DEFINITION.—For purposes of this subsection, the term “surge” means a significant increase in imports over the trend for a recent representative base period.

(d) CONDITION APPLICABLE TO QUANTITATIVE RESTRICTIONS.—Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article, with allowance for reasonable growth.

* * * * *

PART 3—GENERAL PROVISIONS

[SEC. 315. PROVISIONAL RELIEF.

[Amendments to section 202(d) of the Trade Act of 1974 (reprinted elsewhere).]

SEC. 316. MONITORING.

For purposes of expediting an investigation concerning provisional relief under this subtitle or section 202 of the Trade Act of 1974 regarding—

(1) fresh or chilled tomatoes provided for in subheading 0702.00.00 of the HTS; and

(2) fresh or chilled peppers, other than chili peppers provided for in subheading 0709.60.00 of the HTS;

the International Trade Commission, until January 1, 2009, shall monitor imports of such goods as if proper requests for such monitoring had been made under subsection (d)(1)(C)(i) of such section 202. At the request of the International Trade Commission, the Secretary of Agriculture and the Commissioner of Customs shall provide to the International Trade Commission information relevant to the monitoring carried out under this section.

SEC. 317. PROCEDURES CONCERNING THE CONDUCT OF INTERNATIONAL TRADE COMMISSION INVESTIGATIONS.

(a) PROCEDURES AND RULES.—The International Trade Commission shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement.

[(b) CONFORMING AMENDMENT.—Amendment to section 202(a) of the Trade Act of 1974 (reprinted elsewhere).]

[SEC. 318. EFFECTIVE DATE.]

Subtitle B—Agriculture

SEC. 321. AGRICULTURE.

[(a) MEAT IMPORT ACT OF 1979.—Amendments to the Meat Import Act of 1979 which was repealed by section 403 of the Uruguay Round Agreements Act.]

(b) SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT.—

(1) IN GENERAL.—The President may, pursuant to article 309 and Annex 703.2 of the Agreement, exempt from any quantitative limitation or fee imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, any article which originates in Mexico, if Mexico is a NAFTA country.

(2) QUALIFICATION OF ARTICLES.—The determination of whether an article originates in Mexico shall be made in accordance with section 202, except that operations performed in, or materials obtained from, any country other than the United States or Mexico shall be treated as if

performed in or obtained from a country other than a NAFTA country.

(c) TARIFF RATE QUOTAS.—In implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

(d) PEANUTS.—

(1) EFFECT OF THE AGREEMENT.—

(A) IN GENERAL.—Nothing in the Agreement or this Act reduces or eliminates—

(i) any penalty required under section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)); or

(ii) any requirement under Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts, on peanuts in the domestic market, pursuant to section 108B(f) of the Agricultural Act of 1949 (7 U.S.C. 1445c-3(f)).

(B) REENTRY OF EXPORTED PEANUTS.—Paragraph (6) of section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)(6)) is amended to read as follows:

“(6) REENTRY OF EXPORTED PEANUTS.—

“(A) PENALTY.—If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer of the peanuts shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

“(B) RECORDS.—Each person, firm, or handler who imports peanuts into the United States shall maintain such records and documents as are required by the Secretary to ensure compliance with this subsection.”.

(2) CONSULTATIONS ON IMPORTS.—It is the sense of Congress that the United States should request consultations in the Working Group on Emergency Action, established in the Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight—Emergency Action, if imports of peanuts exceed the in-quota quantity under a tariff rate quota set out in the United States Schedule to Annex 302.2 of the Agreement concerning whether—

(A) the increased imports of peanuts constitute a substantial cause of, or contribute importantly to, serious injury, or threat of serious injury, to the domestic peanut industry; and

(B) recourse under Chapter Eight of the Agreement or Article XIX of the General Agreement on Tariffs and Trade is appropriate.

(e) FRESH FRUITS, VEGETABLES, AND CUT FLOWERS.—

(1) IN GENERAL.—The Secretary of Agriculture shall collect and compile the information specified under paragraph (3), if reasonably available, from appropriate Federal departments and agencies and the relevant counterpart ministries of the Government of Mexico.

(2) DESIGNATION OF AN OFFICE.—The Secretary of Agriculture shall designate an office within the United States Department of Agriculture to be responsible for maintaining and disseminating, in a timely manner, the data accumulated for verifying citrus, fruit, vegetable, and cut flower trade between the United States and Mexico. The information shall be made available to the public and the NAFTA Agriculture Committee Working Groups.

(3) INFORMATION COLLECTED.—The information to be collected if reasonably available, includes—

(A) monthly fresh fruit, fresh vegetable, fresh citrus, and processed citrus product import and export data;

(B) monthly citrus juice production and export data;

(C) data on inspections of shipments of citrus, vegetables, and cut flowers entering the United States from Mexico; and

(D) in the case of fruits, vegetables, and cut flowers entering the United States from Mexico, data regarding—

(i) planted and harvested acreage; and

(ii) wholesale prices, quality, and grades.

(f) END USE CERTIFICATES.—

(1) IN GENERAL.—The Secretary of Agriculture (referred to in this subsection as the “Secretary”) shall implement, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into, or the withdrawal from a warehouse for consumption in, the customs territory of the United States—

(A) of any wheat that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of wheat that is a product of the United States (referred to in this subsection as “United States-produced wheat”); and

(B) of any barley that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of barley that is a product of the United States (referred to in this subsection as “United States-produced barley”).

(2) REGULATIONS.—The Secretary shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as may be necessary and appropriate to carry out this subsection.

(3) PRODUCER PROTECTION DETERMINATION.—At any time after the effective date of the requirements established under paragraph (1), the Secretary may, subject to paragraph (5), suspend the requirements when making a determination, after consultation with domestic producers, that the program implemented under this subsection has directly resulted in—

(A) the reduction of income to the United States producers of

agricultural commodities; or

(B) the reduction of the competitiveness of United States agricultural commodities in the world export markets.

(4) SUSPENSION OF REQUIREMENTS.—

(A) WHEAT.—If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced wheat as of the effective date of the requirement under paragraph (1)(A) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(A) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(B) BARLEY.—If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced barley as of the effective date of the requirement under paragraph (1)(B) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(B) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(5) REPORT TO CONGRESS.—The Secretary shall not suspend the requirements established under paragraph (1) under circumstances identified in paragraph (3) before the Secretary submits a report to Congress detailing the determination made under paragraph (3) and the reasons for making the determination.

(6) COMPLIANCE.—It shall be a violation of section 1001 of title 18, United States Code, for a person to engage in fraud or knowingly violate this subsection or a regulation implementing this subsection.

(7) EFFECTIVE DATE.—This subsection shall become effective on the date that is 120 days after the date of enactment of this Act.

(g) AGRICULTURAL FELLOWSHIP PROGRAM.—Section 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 7 U.S.C. 5622 note) is amended by adding at the end the following new paragraph:

“(3) AGRICULTURAL FELLOWSHIPS FOR NAFTA COUNTRIES.—

“(A) IN GENERAL.—The Secretary shall grant fellowships to individuals from countries that are parties to the North American Free Trade Agreement (referred to in this paragraph as ‘NAFTA’) to study agriculture in the United States, and to individuals in the United States to study agriculture in other NAFTA countries.

“(B) PURPOSE.—The purpose of fellowships granted under this paragraph is—

“(i) to allow the recipients to expand their knowledge and understanding of agricultural systems and practices in other NAFTA countries;

“(ii) to facilitate the improvement of agricultural systems in NAFTA countries; and

“(iii) to establish and expand agricultural trade linkages between

the United States and other NAFTA countries.

“(C) ELIGIBLE RECIPIENTS.—The Secretary may provide fellowships under this paragraph to agricultural producers and consultants, government officials, and other individuals from the private and public sectors.

“(D) ACCEPTANCE OF GIFTS.—The Secretary may accept money, funds, property, and services of every kind by gift, devise, bequest, grant, or otherwise, and may in any manner, dispose of all of the holdings and use the receipts generated from the disposition to carry out this paragraph. Receipts under this paragraph shall remain available until expended.

“(E) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out this paragraph.”.

(h) ASSISTANCE FOR AFFECTED FARMWORKERS.—

(1) IN GENERAL.—Subject to paragraph (3), if at any time the Secretary of Agriculture determines that the implementation of the Agreement has caused low-income migrant or seasonal farmworkers to lose income, the Secretary may make available grants, not to exceed \$20,000,000 for any fiscal year, to public agencies or private organizations with tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, that have experience in providing emergency services to low-income migrant or seasonal farmworkers. Emergency services to be provided with assistance received under this subsection may include such types of assistance as the Secretary determines to be necessary and appropriate.

(2) DEFINITION.—As used in this subsection, the term “low-income migrant or seasonal farmworkers” shall have the same meaning as provided in section 2281(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a(b)).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$20,000,000 for each fiscal year to carry out this subsection.

(i) BIENNIAL REPORT ON EFFECTS OF THE AGREEMENT ON AMERICAN AGRICULTURE.—

(1) IN GENERAL.—The Secretary of Agriculture shall prepare a biennial report on the effects of the Agreement on United States producers of agricultural commodities and on rural communities located in the United States.

(2) CONTENTS OF REPORT.—The report required under this subsection shall include—

(A) an assessment of the effects of implementing the Agreement on the various agricultural commodities affected by the Agreement, on a commodity-by-commodity basis;

(B) an assessment of the effects of implementing the Agreement on investments made in United States agriculture and on rural

communities located in the United States;

(C) an assessment of the effects of implementing the Agreement on employment in United States agriculture, including any gains or losses of jobs in businesses directly or indirectly related to United States agriculture; and

(D) such other information and data as the Secretary determines appropriate.

(3) SUBMISSION OF REPORT.—The Secretary shall furnish the report required under this subsection to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives. The report shall be due every 2 years and shall be submitted by March 1 of the year in which the report is due. The first report shall be due by March 1, 1997, and the final report shall be due by March 1, 2011.

Subtitle C—Intellectual Property

SEC. 331. TREATMENT OF INVENTIVE ACTIVITY.

Amendment to section 104 of title 35, United States Code:

Section 104. Invention made abroad

(a) IN GENERAL.—

(1) PROCEEDINGS.—In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country or a WTO member country, except as provided in sections 119 and 365 of this title.

(2) RIGHTS.—If an invention was made by a person, civil or military—

(A) while domiciled in the United States, and serving in any other country in connection with operations by or on behalf of the United States,

(B) while domiciled in a NAFTA country and serving in another country in connection with operations by or on behalf of that NAFTA country, or

(C) while domiciled in a WTO member country and serving in another country in connection with operations by or on behalf of that WTO member country,

that person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States, that NAFTA country, or that WTO member country, as the case may be.

(3) USE OF INFORMATION.—To the extent that any information in a NAFTA country or a WTO member country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not

been made available for use in a proceeding in the Patent and Trademark Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Director, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) DEFINITIONS.—As used in this section—

(1) the term “NAFTA country” has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act; and

(2) the term “WTO member country” has the meaning given that term in section 2(1) of the Uruguay Round Agreements Act.

SEC. 332. RENTAL RIGHTS IN SOUND RECORDINGS.

[Amendment to section 4 of the Record Rental Amendment of 1984.]

SEC. 333. NONREGISTRABILITY OF MISLEADING GEOGRAPHIC INDICATIONS.

[Amendments to the Trademark Act of 1946.]

SEC. 334. MOTION PICTURES IN THE PUBLIC DOMAIN.

[Amendments to section 104A of title 17, United States Code:

Section 104A. Copyright in restored Works

(a) AUTOMATIC PROTECTION AND TERM.—

(1) TERM.—

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) EXCEPTION.—Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

(b) OWNERSHIP OF RESTORED COPYRIGHT.—A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

(c) FILING OF NOTICE OF INTENT TO ENFORCE RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

(d) REMEDIES FOR INFRINGEMENT OF RESTORED COPYRIGHTS.—

(1) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS IN THE ABSENCE OF A RELIANCE PARTY.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS AS AGAINST RELIANCE PARTIES.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) EXISTING DERIVATIVE WORKS.—

(A) In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act [enacted Dec. 8, 1994], if the source country of the restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) COMMENCEMENT OF INFRINGEMENT FOR RELIANCE PARTIES.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

(e) NOTICES OF INTENT TO ENFORCE A RESTORED COPYRIGHT.—

(1) NOTICES OF INTENT FILED WITH THE COPYRIGHT OFFICE.—

(A) (i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B) (i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708 .

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D) (i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) NOTICES OF INTENT SERVED ON A RELIANCE PARTY.—

(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) EFFECT OF MATERIAL FALSE STATEMENTS.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

(f) IMMUNITY FROM WARRANTY AND RELATED LIABILITY.—

(1) IN GENERAL.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) PERFORMANCES.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

(g) PROCLAMATION OF COPYRIGHT RESTORATION.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

- (1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or
- (2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

(h) DEFINITIONS.—For purposes of this section and section 109(a) :

(1) The term "date of adherence or proclamation" means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

- (A) a nation adhering to the Berne Convention;
 - (B) a WTO member country;
 - (C) a nation adhering to the WIPO Copyright Treaty;
 - (D) a nation adhering to the WIPO Performances and Phonograms Treaty;
- or
- (E) subject to a Presidential proclamation under subsection (g).

(2) The "date of restoration" of a restored copyright is—

- (A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or
- (B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term "eligible country" means a nation, other than the United States, that--

- (A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;
- (B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

- (C) adheres to the WIPO Copyright Treaty;
 - (D) adheres to the WIPO Performances and Phonograms Treaty; or
 - (E) after such date of enactment becomes subject to a proclamation under subsection (g).
- (4) The term "reliance party" means any person who—
- (A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;
 - (B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or
 - (C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.
- (5) The term "restored copyright" means copyright in a restored work under this section.
- (6) The term "restored work" means an original work of authorship that—
- (A) is protected under subsection (a);
 - (B) is not in the public domain in its source country through expiration of term of protection;
 - (C) is in the public domain in the United States due to—
 - (i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;
 - (ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or
 - (iii) lack of national eligibility;
 - (D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country; and
 - (E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.
- (7) The term "rightholder" means the person—
- (A) who, with respect to a sound recording, first fixes a sound recording with authorization, or
 - (B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.
- (8) The "source country" of a restored work is—

- (A) a nation other than the United States;
- (B) in the case of an unpublished work—
 - (i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or
 - (ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and
- (C) in the case of a published work—
 - (i) the eligible country in which the work is first published, or
 - (ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.

[SEC. 335. EFFECTIVE DATES.]

Subtitle D—Temporary Entry of Business Persons

SEC. 341. TEMPORARY ENTRY.

[Provisions relating to, and amendments of, the Immigration and Nationality Act.]

[SEC. 342. EFFECTIVE DATE.]

Subtitle E—Standards

PART 1—STANDARDS AND MEASURES

[SEC. 351. STANDARDS AND SANITARY AND PHYTOSANITARY MEASURES.

[Amendment adding Subtitle E to Title IV of the Trade Agreements Act of 1979.]

SEC. 352. TRANSPORTATION.

No regulation issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee established under article 913(5)(a)(i) of the Agreement may take effect before the date 90 days after the date of issuance.

PART 2—AGRICULTURAL STANDARDS

SEC. 361. AGRICULTURAL TECHNICAL AND CONFORMING AMENDMENTS.

[Subsections (a)-(h) amendments to the Federal Seed Act; the Act of August 10, 1890; section 306 of the Tariff Act of 1930; Honeybee Act; Poultry Products Inspection Act; Federal Meat Inspection Act; provisions on peanut butter and paste and an animal health biocontainment facility.]

(i) REPORTS ON INSPECTION OF IMPORTED MEAT, POULTRY, OTHER FOODS, ANIMALS, AND PLANTS.—

(1) DEFINITIONS.—As used in this subsection:

(A) IMPORTS.—The term “imports” means any meat, poultry, other food, animal, or plant that is imported into the United States in commercially significant quantities.

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

(2) IN GENERAL.—In consultation with representatives of other appropriate agencies, the Secretary shall prepare an annual report on the impact of the Agreement on the inspection of imports.

(3) CONTENTS OF REPORTS.—the report required under this subsection shall, to the maximum extent practicable, include a description of—

(A) the quantity or, with respect to the Customs Service, the number of shipments, of imports from a NAFTA country that are inspected at the borders of the United States with Canada and Mexico during the prior year;

(B) any change in the level or types of inspections of imports in each NAFTA country during the prior year;

(C) in any case in which the Secretary has determined that the inspection system of another NAFTA country is equivalent to the inspection system of the United States, the reasons supporting the determination of the Secretary;

(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year—

(i) at the borders of the United States with Mexico or Canada; or

(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;

(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;

(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;

(G) any incidence of transshipment of imports—

(i) that originate in a country other than a NAFTA country;

(ii) that are shipped to the United States through a NAFTA country during the prior year; and

(iii) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;

(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;

(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and

(J) any other information the Secretary determines to be appropriate.

(4) FREQUENCY OF REPORTS.—The Secretary shall submit—

(A) the initial report required under this subsection not later than January 31, 1995; and

(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.

(5) REPORT TO CONGRESS.—The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Subtitle F—Corporate Average Fuel Economy

SEC. 371. CORPORATE AVERAGE FUEL ECONOMY.

[Amends Section 503(b)(2) of the Motor Vehicle Information and Cost Savings Act (49 U.S.C. 32904):

(a) METHOD OF CALCULATION.—

(1) The Administrator of the Environmental protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)-(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, “electric vehicle” means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle,

considering the kind of vehicle and the mission and weight of the vehicle.

(ii) the national average electrical generation and transmission efficiencies.

(iii) the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) the specific patterns of use of electrical vehicles compared to petroleum-fueled vehicles.

(b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFACTURED DOMESTICALLY AND NOT DOMESTICALLY.—

(1)(A) Except as provided in paragraphs (6) and (7) of this subsection, the Administrator shall make separate calculations under subsection (a)(1)(B) of this section for—

(i) passenger automobiles manufactured domestically by a manufacturer (or included in this category under paragraph (5) of this subsection); and

(ii) passenger automobiles not manufactured domestically by that manufacturer (or excluded from this category under paragraph (5) of this subsection).

(B) Passenger automobiles described in subparagraph (A) (i) and (ii) of this paragraph are deemed to be manufactured by separate manufacturers under this chapter.

(2) In this subsection (except as provided in paragraph (3)), a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada and the automobile is imported into the United States more than 30 days after the end of the model year.

(3)(A) In this subsection, a passenger automobile is deemed to be manufactured domestically in a model year, as provided in subparagraph (B) of this paragraph, if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States, Canada, or Mexico, unless the assembly of the automobile is completed in Canada or Mexico and the automobile is imported into the United States more than 30 days after the end of the model year.

(B) Subparagraph (A) of this paragraph applies to automobiles manufactured by a manufacturer and sold in the United States, regardless of the place of assembly, as follows:

(i) A manufacturer that began assembling automobiles in Mexico before model year 1992 may elect, during the period from January 1, 1997, through January 1, 2004, to have subparagraph (A) of this paragraph apply to all automobiles manufactured by that manufacturer beginning with the model year that begins after the date

of the election.

(ii) For a manufacturer that began assembling automobiles in Mexico after model year 1991, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 1994, or the model year beginning after the date the manufacturer begins assembling automobiles in Mexico, whichever is later.

(iii) A manufacturer not described in clause (i) or (ii) of this subparagraph that assembles automobiles in the United States or Canada, but not in Mexico, may elect, during the period from January 1, 1997, through January 1, 2004, to have subparagraph (A) of this paragraph apply to all automobiles manufactured by that manufacturer beginning with the model year that begins after the date of the election. However, if the manufacturer begins assembling automobiles in Mexico before making an election under this subparagraph, this clause does not apply, and the manufacturer is subject to clause (ii) of this subparagraph.

(iv) For a manufacturer that does not assemble automobiles in the United States, Canada, or Mexico, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 1994.

(v) For a manufacturer described in clause (i) or (iii) of this subparagraph that does not make an election within the specified period, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 2004.

(C) The Secretary of Transportation shall prescribe reasonable procedures for elections under subparagraph (B) of this paragraph.

(4) In this subsection, the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles manufactured by the same manufacturer that are not manufactured domestically.

(5)(A) A manufacturer may submit to the Secretary of Transportation for approval a plan, including supporting material, stating the actions and the deadlines for taking the actions, that will ensure that the model or models referred to in subparagraph (B) of this paragraph will be manufactured domestically before the end of the 4th model year covered by the plan. The Secretary promptly shall consider and act on the plan. The Secretary shall approve the plan unless—

(i) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph; or

(ii) the manufacturer previously has submitted a plan approved by the Secretary under this paragraph.

(B) If the plan is approved, the Administrator shall include under paragraph (1)(A)(i) and exclude under paragraph (1)(A)(ii) of this subsection, for each of the 4 model years covered by the plan, not more than 150,000 passenger automobiles manufactured by that manufacturer but not qualifying as domestically manufactured if—

(i) the model or models involved previously have not been manufactured domestically;

(ii) at least 50 percent of the cost to the manufacturer of each of the automobiles is attributable to value added in the United States or Canada;

(iii) the automobiles, if their assembly was completed in Canada, are imported into the United States not later than 30 days after the end of the model year; and

(iv) the model or models are manufactured domestically before the end of the 4th model year covered by the plan.

(6)(A) A manufacturer may file with the Secretary of Transportation a petition for an exemption from the requirement of separate calculations under paragraph (1)(A) of this subsection if the manufacturer began automobile production or assembly in the United States—

(i) after December 22, 1975, and before May 1, 1980; or

(ii) after April 30, 1980, if the manufacturer has engaged in the production or assembly in the United States for at least one model year ending before January 1, 1986.

(B) The Secretary of Transportation shall grant the exemption unless the Secretary finds that the exemption would result in reduced employment in the United States related to motor vehicle manufacturing during the period of the exemption. An exemption under this paragraph is effective for 5 model years or, if requested by the manufacturer, a longer period provided by the Secretary in the order granting the exemption. The exemption applies to passenger automobiles manufactured by that manufacturer during the period of the exemption.

(C) Before granting an exemption, the Secretary of Transportation shall provide notice of, and reasonable opportunity for, written or oral comment about the petition. The period for comment shall end not later than 60 days after the petition is filed, except that the Secretary may extend the period for not more than another 30 days. The Secretary shall decide whether to grant or deny the exemption, and publish notice of the decision in the Federal Register, not later than 90 days after the petition is filed, except that the Secretary may extend the time for decision to a later date (not later than 150 days after the petition is filed) if the Secretary publishes notice of, and reasons for, the extension in the Federal Register. If the Secretary does not make a decision within the time provided in this subparagraph, the petition is deemed to

have been granted. Not later than 30 days after the end of the decision period, the Secretary shall submit a written statement of the reasons for not making a decision to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives.

(7)(A) A person adversely affected by a decision of the Secretary of Transportation granting or denying an exemption may file, not later than 30 days after publication of the notice of the decision, a petition for review in the United States Court of Appeals for the District of Columbia Circuit. That court has exclusive jurisdiction to review the decision and to affirm, remand, or set aside the decision under section 706(2)(A)-(D) of title 5.

(B) A judgment of the court under this subparagraph may be reviewed by the Supreme Court under section 1254 of title 28. Application for review by the Supreme Court must be made not later than 30 days after entry of the court's judgment.

(C) A decision of the Secretary of Transportation on a petition for an exemption under this paragraph may be reviewed administratively or judicially only as provided in this paragraph.

(8) Notwithstanding section 32903 of this title, during a model year when an exemption under this paragraph is effective for a manufacturer—

(A) credit may not be earned under section 32903(a) of this title by the manufacturer; and

(B) credit may not be made available under section 32903(b)(2) of this title for the manufacturer.

(c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall measure fuel economy for each model and calculate average fuel economy for a manufacturer under testing and calculation procedures prescribed by the Administrator. However, except under section 32908 of this title, the Administrator shall use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results. A measurement of fuel economy or a calculation of average fuel economy (except under section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The Administrator shall decide on the quantity of other fuel that is equivalent to one gallon of gasoline. To the extent practicable, fuel economy tests shall be carried out with emissions tests under section 206 of the Clean Air Act .

(d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Administrator shall prescribe a procedure under this section, or an amendment (except a technical or clerical amendment) in a procedure, at least 12 months before the beginning of the model year to which the procedure or amendment applies.

(e) REPORTS AND CONSULTATION.—The Administrator shall report measurements and calculations under this section to the Secretary of Transportation and shall consult and coordinate with the Secretary in carrying out this section

Subtitle G—Government Procurement

[SEC. 381. GOVERNMENT PROCUREMENT.

[Amendments to Title III of the Trade Agreements Act of 1979 (reprinted elsewhere) and to section 401 of the Rural Electrification Act of 1938.]

**TITLE IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND
COUNTERVAILING DUTY CASES**

**Subtitle A—Organizational, Administrative, and Procedural Provisions
Regarding the Implementation of Chapter 19 of the Agreement**

SEC. 401. REFERENCES IN SUBTITLE.

Any reference in this subtitle to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.

SEC. 402. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS.

**(a) CRITERIA FOR SELECTION OF INDIVIDUALS TO SERVE ON PANELS AND
COMMITTEES.—**

(1) **IN GENERAL.—**The selection of individuals under this section for—

(A) placement on lists prepared by the interagency group under subsection (c)(2)(B) (i) and (ii);

(B) placement on preliminary candidate lists under subsection (c)(3)(A);

(C) placement on final candidate lists under subsection (c)(4)(A);

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 and shall be made without regard to political affiliation.

(2) **ADDITIONAL CRITERIA FOR ROSTER PLACEMENTS AND APPOINTMENTS UNDER PARAGRAPH 1 OF ANNEX 1901.2.—**Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b), appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges offer and are available to serve and such service is authorized by the chief judge of the court on which they sit.

**(b) SELECTION OF CERTAIN JUDGES TO SERVE ON PANELS AND
COMMITTEES.—**

(1) APPLICABILITY.—This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.

(2) CONSULTATION WITH CHIEF JUDGES.—The Trade Representative shall consult, from time to time, with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D), the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.

(3) SUBMISSION OF LISTS TO CONGRESS.—The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv).

(4) APPOINTMENT OF JUDGES TO PANELS OR COMMITTEES.—At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.

(c) SELECTION OF OTHER CANDIDATES.—

(1) APPLICABILITY.—This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) applies.

(2) INTERAGENCY GROUP.—

(A) ESTABLISHMENT.—There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall—

- (i) be chaired by the Trade Representative; and
- (ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) FUNCTIONS.—The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19; and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;

(ii) if the Trade Representative makes a request under paragraph (4)(C)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;

(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 105; and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.

(3) PRELIMINARY CANDIDATE LISTS.—

(A) IN GENERAL.—The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (2)(B)(i) for placement on—

(i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and

(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.

(B) SUBMISSION OF LISTS TO CONGRESSIONAL COMMITTEES.—

(i) IN GENERAL.—No later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the “appropriate Congressional Committees”) the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.

(ii) ADDITIONAL INFORMATION.—At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.

(C) CONSULTATION.—Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional

Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.

(D) REVISION OF LISTS.—The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.

(4) FINAL CANDIDATE LISTS.—

(A) SUBMISSION OF LISTS TO CONGRESSIONAL COMMITTEES.—No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.

(B) FINALITY OF LISTS.—Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(C) AMENDMENT OF LISTS.—

(i) IN GENERAL.—If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(I) request the interagency group established under paragraph (2)(A) to prepare a list of individuals who are qualified to be added to such candidate list;

(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and

(III) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed

amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).

(ii) CONSULTATION WITH CONGRESSIONAL COMMITTEES.—Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(iii) ADJUSTMENT OF PROPOSED AMENDMENT.—The Trade Representatives may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(iv) FINAL AMENDMENT.—

(I) IN GENERAL.—If the Trade Representative submits under clause (i)(III) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause (II), the individuals included in the final form of such amendment shall be added to the final candidate list.

(II) INCLUSION OF INDIVIDUALS.—An individual may be included in the final form of an amendment submitted under subclause (I) only if such individual was included in the proposed form of such amendment or if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted to such Committees under subclause (I).

(III) ELIGIBILITY FOR SERVICE.—Individuals added to a final candidate list under subclause (I) shall be eligible to serve on panels or committees convened under chapter 19 during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(IV) FINALITY OF AMENDMENT.—No additions may be made to the final form of an amendment described in subclause (I) after the final form of such amendment is submitted to the appropriate Congressional Committees under

subclause (I).

(5) TREATMENT OF RESPONSES.—For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subsection (a)(1), shall be treated as matters within the jurisdiction of an agency of the United States.

(d) SELECTION AND APPOINTMENT.—

(1) AUTHORITY OF TRADE REPRESENTATIVE.—The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

that is to be made solely or jointly by the United States Government under the terms of the Agreement.

(2) RESTRICTIONS ON SELECTION AND APPOINTMENT.—Except as provided in paragraph (3)—

(A) the Trade Representative may—

(i) select an individual for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 1-year period beginning on April 1 of any calendar year;

(ii) appoint an individual to serve as one of those members of any panel or committee convened under chapter 19 during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the United States Government; or

(iii) act to make a joint appointment with the Government of a NAFTA country, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under subsection (c)(4)(A) during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I), or on the list submitted under subsection (b)(3) to the Congressional Committees referred to in such subsection; and

(B) no individual may—

(i) be selected by the United States Government for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(ii) be appointed solely or jointly by the United States

Government to serve as a member as a member of a panel or committee convened under chapter 19;

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of subsection (a), and subsection (b) or (c) (as the case may be).

(3) EXCEPTIONS.—Notwithstanding subsection (c)(3) (other than subparagraph (B)), subsection (c)(4), or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) may—

(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 3-month period beginning on the date on which the Agreement enters into force with respect to the United States; and

(B) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.

(e) TRANSITION.—If the Agreement enters into force between the United States and NAFTA country after January 3, 1994, the provisions of subsection (c) shall be applied with respect to the calendar year in which such entering into force occurs—

(1) by substituting “the date that is 30 days after the date on which the Agreement enters into force with respect to the United States” for “January 3 of each calendar year” in subsections (c)(2)(B)(i) and (c)(3)(B)(i); and

(2) by substituting “the date that is 3 months after the date on which the Agreement enters into force with respect to the United States” for “March 31 of each calendar year” in subsection (c)(4)(A).

(f) IMMUNITY.—With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(g) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930, the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.

(h) REPORT TO CONGRESS.—At such time as the final candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv), the Trade Representative shall submit

to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives, and to the Committee on Finance and the Committee on the Judiciary of the Senate, a report regarding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

SEC. 403. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

(a) **AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.**—If an extraordinary challenge committee (hereafter in this section referred to as the “committee”) is convened under paragraph 13 of article 1904, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 1904, for the purposes of carrying out its functions and duties under Annex 1904.13, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity;

(2) may summon witnesses, take testimony, and administer oaths;

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmation, examine witnesses, take testimony, and receive evidence.

(b) **WITNESSES AND EVIDENCE.**—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) **MANDAMUS.**—Any court referred to in subsection (b) shall have

jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) DEPOSITIONS.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

SEC. 404. REQUESTS FOR REVIEW OF DETERMINATION BY COMPETENT INVESTIGATING AUTHORITIES OF NAFTA COUNTRIES.

(a) DEFINITIONS.—As used in this section:

(1) COMPETENT INVESTIGATING AUTHORITY.—The term “competent investigating authority” means the competent investigating authority, as defined in article 1911, of a NAFTA country.

(2) UNITED STATES SECRETARY.—The term “United States Secretary” means that officer of the United States referred to in article 1908.

(b) REQUESTS FOR REVIEW BY THE UNITED STATES.—In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.

(c) REQUESTS FOR REVIEW BY A PERSON.—In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.

(d) SERVICE OF REQUEST FOR REVIEW.—Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.

SEC. 405. RULES OF PROCEDURE FOR PANELS AND COMMITTEES.

(a) RULES OF PROCEDURE AND BINATIONAL PANELS.—The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews—

(1) requests for such review, complaints, other pleadings, and other

papers;

- (2) the amendment, filing, and service of such pleadings and papers;
- (3) the joinder, suspension, and termination of such reviews; and
- (4) other appropriate procedural matters.

(b) **RULES OF PROCEDURE FOR EXTRAORDINARY CHALLENGE COMMITTEES.**—The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.

(c) **RULES OF PROCEDURE FOR SAFEGUARDING THE PANEL REVIEW SYSTEM.**—The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.

(d) **PUBLICATION OF RULES.**—The rules prescribed under subsections (a), (b), and (c) shall be published in the Federal Register.

(e) **ADMINISTERING AUTHORITY.**—As used in this section, the term “administering authority” has the meaning given such term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

SEC. 406. SUBSIDY NEGOTIATIONS.

In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include—

- (1) achievement of increased discipline on domestic subsidies provided by a foreign government, including—
 - (A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;
 - (B) the provision of goods or services at preferential rates;
 - (C) the granting of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and
 - (D) the assumption of any costs or expenses of manufacture, production, or distribution;
- (2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and
- (3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.

SEC. 407. IDENTIFICATION OF INDUSTRIES FACING SUBSIDIZED IMPORTS.

(a) **PETITIONS.**—Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe—

- (1) that—
 - (A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or
 - (B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other

country designated by the President, following consultations with the Congress, as benefitting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and

(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned; may file with the Trade Representative a petition that such industry be identified under this section.

(b) IDENTIFICATION OF INDUSTRY.—Within 90 days after receipt of a petition under subsection (a), the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) and the deterioration described in subsection (a)(2).

(c) ACTION AFTER IDENTIFICATION.—At the request of an entity that is representative of an industry identified under subsection (b), the Trade Representative shall—

(1) compile and make available to the industry information under section 308 of the Trade Act of 1974;

(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930; or

(3) take actions described in both paragraphs (1) and (2).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under paragraph (1) or (2), or both, as the case may be, until an agreement on more effective rules and disciplines relating to government subsidies is reached between the United States and the NAFTA countries.

(d) INITIATION OF ACTION UNDER OTHER LAW.—

(1) IN GENERAL.—The Trade Representative and the Secretary of Commerce shall review information obtained under subsection (c) and consult with the industry identified under subsection (b) with a view to deciding whether any action is appropriate—

(A) under section 301 of the Trade Act of 1974, including the initiation of an investigation under section 302(c) of that Act (in the case of the Trade Representative); or

(B) under subtitle A of title VII of the Tariff Act of 1930, including the initiation of an investigation under section 702(a) of that Act (in the case of the Secretary of Commerce).

(2) CRITERIA FOR INITIATION.—In determining whether to initiate any investigation under section 301 of the Trade Act of 1974 or any other trade law, other than title VII of the Tariff Act of 1930, the Trade Representative, after consultation with the Secretary of Commerce—

(A) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(C) shall coordinate with the interagency organization established under section 242 of the Trade Expansion Act of 1962; and

(D) may ask the President to request advice from the International Trade Commission.

(3) TITLE III ACTIONS.—In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 as a result of a review under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 301(a) of such Act, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.

(e) EFFECT OF DECISIONS.—Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

(1) prejudice the right of any industry to file a petition under any trade law;

(2) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the International Trade Commission, or the Trade Representative pursuant to such a petition; or

(3) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974, title VII of the Tariff Act of 1930, or any other trade law.

(f) STANDING.—Nothing in this section may be construed to alter in any manner the requirements in effect before the date of the enactment of this Act for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

SEC. 408. TREATMENT OF AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(1) section 303 or title VII of the Tariff Act of 1930, or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or successor statute, or

(B) indicates the standard of review to be applied, shall apply to goods from a NAFTA country only to the extent specified in the amendment.

Subtitle B—Conforming Amendments and Provisions

SEC. 411. JUDICIAL REVIEW IN ANTIDUMPING DUTY AND COUNTERVAILING DUTY CASES.

[Amendments to section 516A of the Tariff Act of 1930 (reprinted elsewhere).]

SEC. 412. CONFORMING AMENDMENTS TO OTHER PROVISIONS OF THE TARIFF ACT OF 1930.

[Amendments to sections 502b, 514(b), 771, and 777(f) of the Tariff Act of 1930 (reprinted elsewhere).]

SEC. 413. CONSEQUENTIAL AMENDMENT TO FREE-TRADE AGREEMENT ACT OF 1988.

[Amendment to section 410 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (reprinted elsewhere).]

SEC. 414. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

SEC. 415. EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

(a) **IN GENERAL.**—Except as provided in subsection (b), on the date on which a country ceases to be a NAFTA country, the provisions of this title (other than this section) and the amendments made by this title shall cease to have effect with respect to that country.

(b) **TRANSITION PROVISIONS.**—

(1) **PROCEEDINGS REGARDING PROTECTIVE ORDERS AND UNDERTAKINGS.**—If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(f) of the Tariff Act of 1930 (as amended by this subtitle) or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 777(f).

(2) **BINATIONAL PANEL AND EXTRAORDINARY CHALLENGE COMMITTEE REVIEWS.**—If on the date on which a country ceases to be a NAFTA country—

(A) a binational panel review under article 1904 of the Agreement is pending, or has been requested; or

(B) an extraordinary challenge committee review under article 1904 of the Agreement is pending, or has been requested;

with respect to a determination which involves a class or kind of merchandise and to which section 516A(g)(2) of the Tariff Act of 1930 applies, such determination shall be reviewable under section 516A(a) of the Tariff Act of 1930. In the case of a determination to which the

provisions of this paragraph apply, the time limits for commencing an action under section 516A(a) of the Tariff Act of 1930 shall not begin to run until the date on which the Agreement ceases to be in force with respect to that country.

SEC. 416. EFFECTIVE DATE.

The provisions of this title and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States, but shall not apply—

(1) to any final determination described in paragraph (1)(B), or (2)(B)(i), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 notice of which is published in the Federal Register before such date; or to a determination described in paragraph (2)(B)(vi) of section 516A(a) of such Act notice of which is received by the Government of Canada or Mexico before such date; or

(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.

TITLE V—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

[Subtitle A—NAFTA Transitional Adjustment Assistance Program

[Amendments adding subchapter D and making conforming amendments to chapter 2 of title II of the Trade Act of 1974 (reprinted elsewhere); amendment to section 3306 of the Internal Revenue Code of 1986 on Self-employment Assistance Program and related provisions.]

Subtitle B—Provisions Relating to Performance Under the Agreement

SEC. 511. DISCRIMINATORY TAXES.

It is the sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the terms of the Agreement. When such discriminatory enforcement adversely affects United States producers of goods or United States service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of such discriminatory enforcement, including invocation of the provisions of the Agreement.

SEC. 512. REVIEW OF THE OPERATION AND EFFECTS OF THE AGREEMENT.

(a) **STUDY.**—By not later than July 1, 1997, the President shall provide to the Congress a comprehensive study on the operation and effects of the Agreement. The study shall include an assessment of the following factors:

(1) The net effect of the Agreement on the economy of the United States, including with respect to the United States gross national product, employment, balance of trade, and current account balance.

(2) The industries (including agricultural industries) in the United States that have significantly increased exports to Mexico or Canada as a result of the Agreement, or in which imports into the United States from Mexico or Canada have increased significantly as a result of the Agreement, and the extent of any change in the wages, employment, or productivity in each such industry as a result of the Agreement.

(3) The extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the Agreement, and the effect on United States employment of such redirection.

(4) The extent of any increase in investment, including foreign direct investment and increased investment by United States investors, in new or existing production or other operations in the United States as a result of the Agreement, and the effect on United States employment of such investment.

(5) The extent to which the Agreement has contributed to—

(A) improvement in real wages and working conditions in Mexico,

(B) effective enforcement of labor and environmental laws in Mexico, and

(C) the reduction or abatement of pollution in the region of the United States-Mexico border.

(b) SCOPE.—In assessing the factors listed in subsection (a), to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including—

(1) international competition,

(2) reductions in defense spending,

(3) the shift from traditional manufacturing to knowledge and information based economic activity, and

(4) the Federal debt burden.

(c) RECOMMENDATIONS OF THE PRESIDENT.—The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a).

(d) RECOMMENDATIONS OF CERTAIN COMMITTEES.—The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

SEC. 513. ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.

[Amendment to section 182 of the Trade Act of 1974 (reprinted elsewhere).]

SEC. 514. REPORT ON IMPACT OF NAFTA ON MOTOR VEHICLE EXPORTS TO MEXICO.

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

(1) Trade in motor vehicles and motor vehicle parts is one of the most restricted areas of trade between the United States and Mexico.

(2) The elimination of Mexico's restrictive barriers to trade in motor vehicles and motor vehicle parts over a 10-year period under the Agreement should increase substantially United States exports of such products to Mexico.

(3) The Department of Commerce estimates that the Agreement provides the opportunity to increase United States exports of motor vehicles and motor vehicle parts by \$1,000,000,000 during the first year of the Agreement's implementation with the potential for additional increases over the 10-year transition period.

(4) The United States automotive industry has estimated that United States exports of motor vehicles to Mexico should increase to more than 60,000 units during the first year of the Agreement's implementation, which is substantially above the current level of 4,000 units.

(b) **TRADE REPRESENTATIVE REPORT.**—No later than July 1, 1995, and annually thereafter through 1999, the Trade Representative shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on how effective the provisions of the Agreement are with respect to increasing United States exports of motor vehicles and motor vehicle parts to Mexico. Each report shall identify and determine the following:

(1) The patterns of trade in motor vehicles and motor vehicle parts between the United States and Mexico during the preceding 12-month period.

(2) The level of tariff and nontariff barriers that were in force during the preceding 12-month period.

(3) The amount by which United States exports of motor vehicles and motor vehicle parts to Mexico have increased from the preceding 12-month period as a result of the elimination of Mexican tariff and nontariff barriers under the Agreement.

(4) Whether any such increase in United States exports meets the levels of new export opportunities anticipated under the Agreement.

(5) If the anticipated levels of new United States export opportunities are not reached, what actions the Trade Representative is prepared to take to realize the benefits anticipated under the Agreement, including possible initiation of additional negotiations with Mexico for the purpose of seeking modifications of the Agreement.

SEC. 515. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.

[Amendment adding section 219 to the Caribbean Basin Economic Recovery

Act (reprinted elsewhere).]

SEC. 516. EFFECTIVE DATE.

Subtitle C—Funding

PART 1—CUSTOMS USER FEES

SEC. 521. FEES FOR CERTAIN CUSTOMS SERVICES.

[Amendments to section 13031 by the Consolidated Omnibus Budget Reconciliation Act of 1985 (reprinted elsewhere).]

PART 2—INTERNAL REVENUE CODE AMENDMENTS

SEC. 522. AUTHORITY TO DISCLOSE CERTAIN TAX INFORMATION TO THE UNITED STATES CUSTOMS SERVICE.

Amendments to section 6103 of the Internal Revenue Code by 1986.]

SEC. 523. USE OF ELECTRONIC FUND TRANSFER SYSTEM FOR COLLECTION OF CERTAIN TAXES.

[Amendments to section 6302 of the Internal Revenue Code of 1986.]

Subtitle D—Implementation of NAFTA Supplemental Agreements

PART 1—AGREEMENTS RELATING TO LABOR AND ENVIRONMENT

SEC. 531. AGREEMENT ON LABOR COOPERATION.

(a) **COMMISSION FOR LABOR COOPERATION.—**

(1) **MEMBERSHIP.—**The United States is authorized to participate in the Commission for Labor Cooperation in accordance with the North American Agreement on Labor Cooperation.

(2) **CONTRIBUTIONS TO BUDGET.—**There are authorized to be appropriated to the President (or such agency as the President may designate) \$2,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Labor Cooperation pursuant to Article 47 of the North American Agreement on Labor Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) **DEFINITIONS.—**As used in this section—

(1) the term “Commission for Labor Cooperation” means the commission established by Part Three of the North American Agreement on Labor Cooperation; and

(2) the term “North American Agreement on Labor Cooperation” means the North American Agreement on Labor Cooperation Between the

Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

SEC. 532. AGREEMENT ON ENVIRONMENTAL COOPERATION.

(a) COMMISSION FOR ENVIRONMENTAL COOPERATION.—

(1) **MEMBERSHIP.**—The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.

(2) **CONTRIBUTIONS TO BUDGET.**—There are authorized to be appropriated to the President (or such agency as the President may designate) \$5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) DEFINITIONS.—As used in this section—

(1) the term “Commission for Environmental Cooperation” means the commission established by Part Three of the North American Agreement on Environmental Cooperation; and

(2) the term “North American Agreement on Environmental Cooperation” means the North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

SEC. 533. AGREEMENT ON BORDER ENVIRONMENT COOPERATION COMMISSION.

(a) BORDER ENVIRONMENT COOPERATION COMMISSION.—

(1) **MEMBERSHIP.**—The United States is authorized to participate in the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement.

(2) **CONTRIBUTIONS TO THE COMMISSION BUDGET.**—There are authorized to be appropriated to the President (or such agency as the President may designate) \$5,000,000 for fiscal year 1994 and each fiscal year thereafter for United States contributions to the budget of the Border Environment Cooperation Commission pursuant to section 7 of Article III of Chapter I of the Border Environment Cooperation Agreement. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) CIVIL ACTIONS INVOLVING THE COMMISSION.—For the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located. Any such action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of title 28, United States Code) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.

(c) DEFINITIONS.—As used in this section—

(1) the term “Border Environment Cooperation Agreement” means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;

(2) the terms “Border Environment Cooperation Commission” and “Commission” mean the commission established pursuant to Chapter I of the Border Environment Cooperation Agreement; and

(3) the term “United States” means the United States, its territories and possessions, and the Commonwealth of Puerto Rico.

[PART 2—NORTH AMERICAN DEVELOPMENT BANK AND RELATED PROVISIONS

[TITLE VI—CUSTOMS MODERNIZATION

[Amendments to various sections of the Tariff Act of 1930 and other trade laws; National Customs Automation Program.]

H. BILATERAL TRADE RELATIONS WITH ISRAEL

Section 102(b)(1) of the Trade Act of 1974, as amended

[19 U.S.C. 2112; Public Law 93-618, as amended by Public Law 99-47]

SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(b) PRESIDENTIAL DETERMINATIONS PREREQUISITE TO ENTRY INTO TRADE AGREEMENTS; TRADE WITH ISRAEL.—

(1) Whenever the President determines that any barriers to (or other

distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

Title IV of the Trade and Tariff Act of 1984, as amended

[19 U.S.C. 2112 note; Public Law 98-573, as amended by Public Law 99-47, Public Law 99-514, and Public Law 100-418]

SEC. 401. NEGOTIATION OF TRADE AGREEMENTS TO REDUCE TRADE BARRIERS.

* * * * *

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 301 of the Trade Act of 1974 and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country that provides for the elimination or reduction of any duty imposed by the United States.

[Paragraph (4) was superseded by sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 with respect to bilateral trade agreements with countries other than Israel.]

SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

(a)(1) The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall apply only if—

(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

(B) that article is imported directly from Israel into the customs territory of the United States; and

(C) the sum of—

(i) the cost or value of the materials produced in Israel, plus

(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (c).

(2) No article may be considered to meet the requirements of paragraph

(1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) As used in this section, the phrase “direct costs of processing operations” includes, but is not limited to—

(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(c) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) SUSPENSION OF DUTY-FREE TREATMENT.—The President may by

proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the “Commission”) to the President under section 202(f) of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of section 203 of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under section 203 of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of sections 203 and 204 of the Trade Act of 1974.

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 202(a) of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the taking of action under section 203 of the Trade Act of 1974;

(2) on the day a determination of the President under section 203 of such Act not to take action becomes final;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(e) For purposes of this section, the term “perishable product” means any—

(1) live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202, hereinafter referred to as the “HTS”);

(2) vegetables, edible nuts or fruit provided for in chapters 7 and 8, heading 1105, subheadings 1106.10.00 and 1106.30, heading 1202, subheadings 1214.90.00 and 1704.90.60, headings 2001 through 2008 (excluding subheadings 2001.90.20 and 2004.90.10) and subheading 2103.20.40 of the HTS;

(3) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 405. CONSTRUCTION OF TITLE.

Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1), nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to

any Israeli articles of section 232 of the Trade Expansion Act of 1962, section 337 of title VII of the Tariff Act of 1930, chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974, or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.

United States-Israel Free Trade Area Implementation Act of 1985, as amended

[19 U.S.C. 2112 note; Public Law 99-47, as amended by Public Law 104-234]

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States-Israel Free Trade Area Implementation Act of 1985”.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the authority of section 102 of the Trade Act of 1974;
- (2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and
- (3) to establish free trade between the two nations through the removal of trade barriers.

SEC. 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

Pursuant to section 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves—

- (1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as “the Agreement”) entered into on April 22, 1985, and submitted to the Congress on April 29, 1985, and
- (2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on April 29, 1985.

SEC. 4. PROCLAMATION AUTHORITY.

(a) **TARIFF MODIFICATIONS.**—Except as provided in subsection (c), the President may proclaim—

- (1) such modifications or continuance of any existing duty,
 - (2) such continuance of existing duty-free or excise treatment, or
 - (3) such additional duties,
- as the President determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in annex 1 of the Agreement.

(b) **ADDITIONAL TARIFF MODIFICATION AUTHORITY.**—Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may

proclaim—

- (1) such withdrawal, suspension, modification, or continuance of any duty,
 - (2) such continuance of existing duty-free or excise treatment, or
 - (3) such additional duties,
- as the President determines to be required or appropriate to carry out the Agreement.

(c) EXCEPTION TO AUTHORITY.—No modification of any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) UNITED STATES STATUTES TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with—

- (1) title IV of the Trade and Tariff Act of 1984, or
- (2) any other statute of the United States,

shall be given effect under the laws of the United States.

(b) IMPLEMENTING REGULATIONS.—Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and—

(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States, unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under, the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement only if—

(A) any reduction of such duty provided in such bill—

- (i) takes effect after December 31, 1989, and
- (ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

(C) the consultations required under section 3(c)(1) of such Act occur at least ninety days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

(d) PRIVATE REMEDIES NOT CREATED.—Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

SEC. 6. TERMINATION.

The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

[SEC. 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS.

[Amendment to section 308(4) of the Trade Agreements Act of 1979 (reprinted elsewhere).]

[SEC. 8. TECHNICAL AMENDMENTS.

[Technical amendments to sections 402(a), 404(e), and 406 of the Trade and Tariff Act of 1984 and section 102(b) and Title V of the Trade Act of 1974.]

SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

(a) Elimination or Modifications of Duties.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

(1) that article is wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, or a qualifying industrial zone or is a new or different article of commerce that has been grown, produced, or manufactured in the West Bank, the Gaza Strip, or a qualifying industrial zone;

(2) that article is imported directly from the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone; and

(3) the sum of—

(A) the cost or value of the materials produced in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone, plus

(B) the direct costs of processing operations performed in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone,

is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirement contained in paragraph (3), the cost or value of materials which are used in the production of an article in the West Bank, the Gaza Strip, or a qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

(b) APPLICABILITY OF CERTAIN PROVISIONS OF THE AGREEMENT.—

(1) NONQUALIFYING OPERATIONS.—No article shall be considered a new or different article of commerce under this section, and no material shall be included for purposes of determining the 35 percent requirement of subsection (a)(3), by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material.

(2) REQUIREMENTS FOR NEW OR DIFFERENT ARTICLE OF COMMERCE.—For purposes of subsection (a)(1), an article is a “new or different article of commerce” if it is substantially transformed into an article having a new name, character, or use.

(3) COST OR VALUE OF MATERIALS.—

(A) For purposes of this section, the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone includes—

(i) the manufacturer's actual cost for the materials;

(ii) when not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) the actual cost of waste or spoilage, less the value of recoverable scrap; and

(iv) taxes or duties imposed on the materials by the West Bank, the Gaza Strip, or a qualifying industrial zone, if such taxes or duties are not remitted on exportation.

(B) If a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of—

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) an amount for profit; and

(iii) freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the information necessary to compute the cost or value of a material is not available, the Customs Service may ascertain or estimate the value thereof using all reasonable methods.

(4) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) For purposes of this section, the “direct costs of processing operations performed in the West Bank, Gaza Strip, or a qualifying industrial zone” with respect to an article are those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly, of that article. Such costs include, but are not limited to, the following to the extent that they are includible in the appraised value of articles imported into the United States:

(i) All actual labor costs involved in the growth, production,

manufacture, or assembly of the article, including fringe benefits, on-the-job training, and costs of engineering, supervisory, quality control, and similar personnel.

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the article.

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the article.

(iv) Costs of inspecting and testing the article.

(B) Those items that are not included as direct costs of processing operations with respect to an article are those which are not directly attributable to the article or are not costs of manufacturing the article. Such items include, but are not limited to—

(i) profit; and

(ii) general expenses of doing business which are either not allocable to the article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(5) IMPORTED DIRECTLY.—For purposes of this section—

(A) articles are “imported directly” if—

(i) the articles are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel into the United States without passing through the territory of any intermediate country; or

(ii) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) if articles are shipped through an intermediate country and the invoices and other documents do not specify the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they—

(i) remain under the control of the customs authority in an intermediate country;

(ii) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, but only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer's sales agent; and

(iii) have not been subjected to operations other than loading, unloading, or other activities necessary to preserve the article in good condition.

(6) DOCUMENTATION REQUIRED.—An article is eligible for the duty

exemption under this section only if—

(A) the importer certifies that the article meets the conditions for the duty exemption; and

(B) when requested by the Customs Service, the importer, manufacturer, or exporter submits a declaration setting forth all pertinent information with respect to the article, including the following:

(i) A description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading.

(ii) A description of the operations performed in the production of the article in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel and identification of the direct costs of processing operations.

(iii) A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or United States, and a statement as to the cost or value of such materials.

(iv) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel so as to be materials produced in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel.

(v) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip, or a qualifying industrial zone.

(c) SHIPMENT OF ARTICLES OF ISRAEL THROUGH WEST BANK OR GAZA STRIP.—The President is authorized to proclaim that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

(d) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

(e) QUALIFYING INDUSTRIAL ZONE DEFINED.—For purposes of this section, a

“qualifying industrial zone” means any area that—

- (1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt;
- (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and
- (3) has been specified by the President as a qualifying industrial zone.

Report on Free Trade Agreement with Israel

[Public Law 107-210]

SEC. 3105. REPORT ON FREE TRADE AGREEMENT WITH ISRAEL.

(a) **REPORT TO CONGRESS.**—The United States Trade Representative shall review the implementation of the United States-Israel Free Trade Agreement and shall submit to the Speaker of the House of Representatives, the President of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate a report on the results of such review.

(b) **CONTENTS OF REPORT.**—The report under subsection (a) shall include the following:

- (1) A review of the terms of the United States-Israel Free Trade Agreement, particularly the terms with respect to market access commitments.
- (2) A review of subsequent agreements which may have been reached between the parties to the Agreement and of unilateral concessions of additional benefits received by each party from the other.
- (3) A review of any current negotiations between the parties to the Agreement with respect to implementation of the Agreement and other pertinent matters.
- (4) An assessment of the degree of fulfillment of obligations under the Agreement by the United States and Israel.
- (5) An assessment of improvements in structuring future trade agreements that should be considered based on the experience of the United States under the Agreement.

(c) **TIMING OF REPORT.**—The United States Trade Representative shall submit the report under subsection (a) not later than 6 months after the date of the enactment of this Act.

(d) **DEFINITION.**—In this section, the terms “United States-Israel Free Trade Agreement” and “Agreement” means the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel entered into on April 22, 1985.

I. BILATERAL TRADE RELATIONS WITH CANADA

United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended

[19 U.S.C. 2112 note; Public Law 100-449, as amended by Public Law 101-207, Public Law 101-382 and Public Law 103-182]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Canada Free-Trade Agreement Implementation Act of 1988”.

[(b) Table of Contents.]

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to approve and implement the Free-Trade Agreement between the United States and Canada negotiated under the authority of section 102 of the Trade Act of 1974;
- (2) to strengthen and develop economic relations between the United States and Canada for their mutual benefit;
- (3) to establish a free-trade area between the two nations through the reduction and elimination of barriers to trade in goods and services and to investment; and
- (4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

TITLE I—APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

SEC. 101. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

(a) **APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves—

- (1) the United States-Canada Free-Trade Agreement (hereinafter in this Act referred to as the “Agreement”) entered into on January 2, 1988, and submitted to the Congress on July 25, 1988;
- (2) the letters exchanged between the Governments of the United States and Canada—
 - (A) dated January 2, 1988, relating to negotiations regarding articles 301 (Rules of Origin) and 401 (Tariff Elimination) of the Agreement, and
 - (B) dated January 2, 1988, relating to negotiations regarding article 2008 (Plywood Standards) of the Agreement; and
- (3) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 25, 1988.

(b) **CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.**—At such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement, the President is authorized to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.

(c) **REPORT ON CANADIAN PRACTICES.**—Within 60 days after the date of the enactment of this Act (but not later than December 15, 1988), the United States Trade Representative shall submit to the Congress a report identifying, to the maximum extent practicable, major current Canadian practices (and the legal authority for such practices) that, in the opinion of the United States Trade Representative—

- (1) are not in conformity with the Agreement; and
- (2) require a change of Canadian law, regulation, policy, or practice to enable Canada to conform with its international obligations under the Agreement.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) **UNITED STATES LAWS TO PREVAIL IN CONFLICT.**—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with any law of the United States shall have effect.

(b) **RELATIONSHIP OF AGREEMENT TO STATE AND LOCAL LAW.**—

(1) The provisions of the Agreement prevail over—

(A) any conflicting State law; and

(B) any conflicting application of any State law to any person or circumstance;

to the extent of the conflict.

(2) Upon the enactment of this Act, the President shall, in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c), initiate consultations with the State governments on the implementation of the obligations of the United States under the Agreement. Such consultations shall be held—

(A) through the intergovernmental policy advisory committees on trade established under such section for the purpose of achieving conformity of State laws and practices with the Agreement; and

(B) with the individual States as necessary to deal with particular questions that may arise.

(3) The United States may bring an action challenging any provision of State law, or the application thereof to any person or circumstance, on the ground that the provision or application is inconsistent with the Agreement.

(4) For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) **EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.**—No person other than the United States shall—

(1) have any cause of action or defense under the Agreement or by virtue of congressional approval thereof, or

(2) challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

(d) INITIAL IMPLEMENTING REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(3) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

(e) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—The provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply as if the Agreement were an agreement approved under section 2(a) of that Act whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation, finding or opinion under, the Agreement; but such provisions shall not apply to any bill to implement any such requirement, amendment, recommendation, finding, or opinion that is submitted to the Congress after the close of the 30th month after the month in which the Agreement enters into force.

SEC. 103. CONSULTATION AND LAY-OVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAY-OVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and lay-over requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor, and

(B) the advice obtained under paragraph (1);

(3) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of paragraphs (1) and (2) with

respect to such action has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) **EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.**—No action proclaimed by the President under the authority of this Act, if such action is not subject to the consultation and lay-over requirements under subsection (a), may take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. HARMONIZED SYSTEM.

(a) **DEFINITION.**—As used in this Act, the term “Harmonized System” means the nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on June 14, 1983, and the protocol thereto, done at Brussels on June 24, 1986) as implemented under United States law.

(b) **INTERIM APPLICATION OF TSUS.**—The following apply if the International Convention, and the protocol thereto, referred to in subsection (a) are not implemented under United States law before the Agreement enters into force:

(1) The President, subject to subsection (c), shall proclaim such modifications to the Tariff Schedules of the United States (19 U.S.C. 1202) as may be necessary to give effect, until such time as such Convention and protocol are so implemented, to the rules of origin, schedule of rate reductions, and other provisions that would, but for the absence of such implementation, be proclaimed under the authority of this Act to, or in terms of, the Harmonized System to implement the obligations of the United States under the Agreement.

(2) Until such time as such Convention and protocol are so implemented, any reference in this Act to the nomenclature of such Convention and protocol shall be treated as a reference to the corresponding nomenclature of the Tariff Schedules of the United States as modified under paragraph (1).

(c) **RESTRICTIONS.**—

(1) No modification described in subsection (b)(1) that is to take effect concurrently with the entry into force of the Agreement may be proclaimed unless the text of the modification is published in the Federal Register at least 30 days before the date of entry into force.

(2) All modifications proclaimed under the authority of subsection (b)(1) after the Agreement enters into force with respect to the United States are subject to the consultation and lay-over requirements of section 103(a).

SEC. 105. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE.

Subject to section 103 or 104(c), as appropriate, and any other applicable restriction or limitation in this Act on the proclaiming of actions or the issuing of regulations to carry out this Act or any amendment made by this Act, after the date of the enactment of this Act—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

TITLE II—TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) **TARIFF MODIFICATIONS SPECIFIED IN THE AGREEMENT.**—The President may proclaim—

- (1) such modifications or continuance of any existing duty;
- (2) such continuance of existing duty-free or excise treatment; or
- (3) such additional duties;

as the President determines to be necessary or appropriate to carry out article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 to the Agreement, as approved under section 101(a)(1). For purposes of proclaiming necessary modifications under such Annex 401.2, any article covered under subheading 9813.00.05 (contained in the United States Schedule in such Annex) shall, unless such article is a drawback eligible good under section 204(a), be treated as being subject to any otherwise applicable customs duty if the article, or merchandise incorporating such article, is exported to Canada.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and lay-over requirements of section 103(a), the President may proclaim—

- (1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;
- (2) such modifications or continuance of any existing duty;
- (3) such continuance of existing duty-free or excise treatment; or
- (4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

(c) **MODIFICATIONS AFFECTING PLYWOOD.**—

(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United

States and Canada and may implement the provisions of article 2008 of the Agreement when he determines that the necessary conditions have been met.

(3) Any tariff reduction undertaken pursuant to paragraph (2) shall be in equal annual increments ending January 1, 1998, unless those reductions commence after January 1, 1991.

SEC. 202. RULES OF ORIGIN

(a) IN GENERAL.—

(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if—

(A) they are wholly obtained or produced in the territory of either Party or both Parties; or

(B) they—

(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

(ii) meet the other conditions set out in the Annex.

(2) A good shall not be considered to originate in the territory of a party under paragraph (1)(B) merely by virtue of having undergone—

(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(C) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of chapter 3 of the Agreement.

(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(b) TRANSSHIPMENT.—Goods exported from the territory of one Party originate in the territory of that Party only if—

(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

(c) INTERPRETATION.—In interpreting this section, the following apply:

(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if—

(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff classification because either—

(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if—

(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party; and

(B) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

(4) The provisions of paragraph (3) shall not apply to goods of chapters 61-63 of the Harmonized System.

(5) In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the

goods under consideration.

(6) In applying the Annex rules, a specific rule shall take precedence over a more general rule.

(d) ANNEX RULES.—

(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading “Rules” in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph—

(A) the phrase “headings 2207-2209” in paragraph 7 of section IV of such Annex 301.2 shall be treated as a reference to headings 2203-2209; and

(B) the phrase “any other heading” in paragraph 11 of section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

(e) AUTOMOTIVE PRODUCTS.—

(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Automotive Products Trade Act of 1965) in the general notes of the Harmonized System as may be necessary to conform that definition with chapter 3 of the Agreement.

(2) For purposes of administering the value requirement (as defined in section 304(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

(f) DEFINITIONS.—For purposes of this section:

(1) The term “Annex” means—

(A) the interpretative guidelines set forth in subsection (c); and

(B) the Annex rules.

(2) The term “Annex rules” means the rules proclaimed under subsection (d).

(3) The term “direct cost of processing or direct cost of assembling” means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including—

(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(B) the cost of inspecting and testing the goods;

(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to

whether they originate within the territory of a Party;

(D) development, design, and engineering costs;

(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of goods; and

(F) royalty, licensing, or other like payments for the right to the goods;

but not including—

(i) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) brokerage charges relating to the importation and exportation of goods;

(iii) the costs for telephone, mail, and other means of communication;

(iv) packing costs for exporting the goods;

(v) royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or

(vii) profit on the goods.

(4) The term “goods wholly obtained or produced in the territory of either Party or both Parties” means—

(A) mineral goods extracted in the territory of either Party or both Parties;

(B) goods harvested in the territory of either Party or both Parties;

(C) live animals born and raised in the territory of either Party or both Parties;

(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory ships are registered or recorded with that Party and fly its flag;

(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

(I) goods produced in the territory of either Party or both Parties

exclusively from goods referred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

(5) The term “materials” means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(6) The term “Party” means Canada or the United States.

(7) The term “territory” means—

(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

(B) with respect to the United States—

(i) the customs territory of the United States, which includes the fifty States, the District of Columbia and the Commonwealth of Puerto Rico,

(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(8) The term “third country” means any country other than Canada or the United States or any territory not a part of the territory of either.

(9) The term “value of materials originating in the territory of either Party or both Parties” means the aggregate of—

(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and

(B) when not included in that price, the following costs related thereto—

(i) freight, insurance, packing, and all other costs incurred in transporting any of the materials referred to in subparagraph (A) to the location of the producer;

(ii) duties, taxes, and brokerage fees on such materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade.

(10) The term “value of the goods when exported to the territory of the other Party” means the aggregate of—

(A) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the costs related to—

(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) duties, taxes, and brokerage fees on all materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade; and

(B) the direct cost of processing or the direct cost of assembling the goods.

(g) SPECIAL PROVISION REGARDING APPLICATION OF RULES OF ORIGIN TO CERTAIN APPAREL.—The Secretary of Commerce is authorized to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either Party from fabric produced or obtained in a third country for the purpose of establishing which exports of such products shall be permitted to claim preferential tariff treatment under the rules of origin of the Agreement, to the extent that the Agreement provides for quantitative limits on the availability of preferential tariff treatment for such products.

SEC. 203. CUSTOMS USER FEES.

[Amendment to section 13031(b) of the Consolidated Omnibus Reconciliation Act of 1985.]

SEC. 204. DRAWBACK.

[(a) DEFINITION.—Suspended, as provided in section 501(c)(3) (reprinted elsewhere).]

[(b) IMPLEMENTATION OF ARTICLE 404.—Suspended, as provided in section 501(c)(3).]

[(c) CONSEQUENTIAL AMENDMENTS.—Amendments to sections 311, 312 of the Tariff Act of 1930, amendments adding subsections (n) and (o) to section 313 of the Tariff Act of 1930 concerning drawback, amendments to section 562 of the Tariff Act of 1930, and amendment to section 3(a) of the Act of June 18, 1934, the Foreign Trade Zones Act (reprinted elsewhere).]

SEC. 205. ENFORCEMENT.

[(a) CERTIFICATIONS OF ORIGIN.—Suspended, as provided in section 501(c)(3).]

[(b) RECORDKEEPING REQUIREMENTS.—Amendments to section 508 of the

Tariff Act of 1930.]

SEC. 206. EXEMPTION FROM LOTTERY TICKET EMBARGO.

Section 305(a) of the Tariff Act of 1930 (19 U.S.C. 1305(a)) is amended by striking out the period at the end of the first paragraph and inserting the following: “: Provided further, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.”.

[Section 484H(a) of the Customs and Trade Act of 1990 adds the following new subsection to section 553 of the Tariff Act of 1930 (19 U.S.C. 1553):

[(b) Notwithstanding subsection (a), the entry for transportation in bond through the United States of any lottery ticket, printed paper that may be used as a lottery ticket, or any advertisement of any lottery, that is printed in Canada, shall be permitted without appraisalment or the payment of duties under such regulations as the Secretary of the Treasury may prescribe, except that such regulations shall not permit the transportation of lottery materials in the personal baggage of a traveler.]

SEC. 207. PRODUCTION-BASED DUTY REMISSION PROGRAMS WITH RESPECT TO AUTOMOTIVE PRODUCTS.

(a) USTR STUDY.—The United States Trade Representative shall—

(1) undertake a study to determine whether any of the production-based duty remission programs of Canada with respect to automotive products is either—

(A) inconsistent with the provisions of, or otherwise denies the benefits to the United States under, the General Agreement on Tariffs and Trade, or

(B) being implemented inconsistently with the obligations under article 1002 of the Agreement not—

(i) to expand the extent or the application, or

(ii) to extend the duration,

of such programs; and

(2) determine whether to initiate an investigation under section 302 of the Trade Act of 1974 with respect to any of such production-based duty remission programs.

(b) REPORT AND MONITORING.—

(1) The United States Trade Representative shall submit a report to Congress no later than June 30, 1989 (or no later than September 30, 1989, if the Trade Representative considers an extension to be necessary) containing—

(A) the results of the study under subsection (a)(1), as well as a description of the basis used for measuring and verifying compliance with the obligations referred to in subsection (a)(1)(B); and

(B) any determination made under subsection (a)(2) and the reasons therefor.

(2) Notwithstanding the submission of the report under paragraph (1), the Trade Representative shall continue to monitor the degree of compliance with the obligations referred to in subsection (a)(1)(B).

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

SEC. 301. AGRICULTURE.

(a) SPECIAL TARIFF PROVISIONS FOR FRESH FRUITS AND VEGETABLES.—

(1) The Secretary of Agriculture (hereafter in this section referred to as the “Secretary”) may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall immediately submit for publication in the Federal Register notice of the determination.

(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.

(3) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

(4) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable

concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.

(5) A temporary duty imposed under paragraph (4) shall cease to apply with respect to articles that are entered on or after the earlier of—

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

(6) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974.

(7) For purposes of this subsection:

(A) The term “Canadian fresh fruit or vegetable” means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

- (i) 07.01 (relating to potatoes, fresh or chilled);
- (ii) 07.02 (relating to tomatoes, fresh or chilled);
- (iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);
- (iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);
- (v) 07.05 (relating to lettuce (*lactuca sativa*) and chicory (*cichorium* spp.), fresh or chilled);
- (vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);
- (vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);
- (viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);
- (ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);
- (x) 08.06.10 (relating to grapes, fresh);
- (xi) 08.08.20 (relating to pears and quinces, fresh);
- (xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and
- (xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term “corresponding 5-year average monthly import price” for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term “import price” has the meaning given such term in article 711 of the Agreement.

(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of—

(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied.

(8)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.

(9) For purposes of assisting the Secretary in carrying out this subsection—

(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and

(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.

(10) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

[(b) MEAT IMPORT ACT OF 1979.—Amendments to the Meat Import Act of 1979, repealed by section 403 of the Uruguay Round Agreements Act.]

[(c) AGRICULTURAL ADJUSTMENT ACT.—Amendment to section 22(f) of the Agricultural Adjustment Act, as reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.]

[(d)-(f) Amendments to the Act of March 4, 1913, the Federal Seed Act, the Federal Plant Pest Act, the Act of August 20, 1912, the Federal Noxious Weed Act of 1974, and section 306 of the Tariff Act of 1930.]

SEC. 302. RELIEF FROM IMPORTS.

[Suspended, as provided in section 501(c)(3).]

SEC. 303. ACTS IDENTIFIED IN NATIONAL TRADE ESTIMATES.

With respect to any act, policy, or practice of Canada that is identified in the annual report submitted under section 181 of the Trade Act of 1974 (19 U.S.C. 2241), the United States Trade Representative shall include—

(1) information with respect to the action taken regarding such act, policy, or practice, including but not limited to—

(A) any action under section 301 of the Trade Act of 1974 (including resolution through appropriate dispute settlement procedures),

(B) any action under section 307 of the Trade and Tariff Act of 1984, and

(C) negotiations or consultations, whether on a bilateral or multilateral basis; or

(2) the reasons that no action was taken regarding such act, policy, or practice.

SEC. 304. NEGOTIATIONS REGARDING CERTAIN SECTORS; BIENNIAL REPORTS.

(a) IN GENERAL.—

(1) The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to—

(A) liberalize trade in services in accordance with article 1405 of the Agreement;

(B) liberalize investment rules;

(C) improve the protection of intellectual property rights;

(D) increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States; and

(E) liberalize government procurement practices, particularly with regard to telecommunications.

(2) As an exercise of the foreign relations powers of the President under the Constitution, the President will enter into immediate consultations with the Government of Canada to obtain the exclusion from the transport rates established under Canada's Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

(b) NEGOTIATING OBJECTIVES REGARDING SERVICES, INVESTMENT, AND INTELLECTUAL PROPERTY RIGHTS.—

(1) The objectives of the United States in negotiations conducted under subsection (a)(1)(A) to liberalize trade in services include—

(A) with respect to developing services sectors not covered in the Agreement, the elimination of those tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade;

(B) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of

services;

(C) the elimination of local presence requirements; and

(D) the liberalization of government procurement of services.

In conducting such negotiations, the President shall consult with the services advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(2) The objectives of the United States in any negotiations conducted under subsection (a)(1)(B) to liberalize investment rules include—

(A) the elimination of direct investment screening;

(B) the extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement;

(C) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and

(D) the subjection of all investment disputes to dispute resolution under chapter 18 of the Agreement.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in investment.

(3) The objectives of the United States in any negotiations conducted under subsection (a)(1)(C) to improve the protection of intellectual property rights include—

(A) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and

(B) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in intellectual property.

(c) NEGOTIATING OBJECTIVES REGARDING AUTOMOTIVE PRODUCTS.—

(1) In conducting negotiations under subsection (a)(1)(D) regarding the value requirement for automotive products, the President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement from 50 percent to at least 60 percent.

(2) The President is authorized, through January 1, 1999, to proclaim any agreed increase in the value requirement.

(3) As used in this section, the term “value requirement” means the minimum percentage of the value of an automotive product that must be accounted for by the value of the materials in the product that originated in the United States or Canada, or both, plus the direct cost of processing or assembly performed in the United States or Canada, or both, with respect to the product.

(d) NEGOTIATION OF LIMITATION ON POTATO TRADE.—

(1) During the 5-year period beginning on the date of enactment of this Act, the President is authorized to enter into negotiations with Canada for

the purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the United States and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, desiccated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement negotiated under this subsection shall provide for an annual limitation divided equally into each half of the year.

(2) For the purpose of conducting negotiations under paragraph (1), the Secretary of Agriculture and the United States Trade Representative shall consult with representatives of the potato producing industry, including the Ad Hoc Potato Advisory Group and the United States/Canada Horticultural Industry Advisory Committee, to solicit their views on negotiations with Canada for reciprocal quantitative limits on the potato trade.

(3) The President is authorized to direct the Secretary of the Treasury to—

(A) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement that is entered into under this section; and

(B) enforce any quantitative limitation, restriction, and other terms contained in the agreement.

Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of any article that is subject to the agreement.

(4) The provisions of section 1204 of the Agriculture and Food Act of 1981 (7 U.S.C. 1736j) and the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3) shall not apply in the case of actions taken pursuant to this subsection.

(e) CANADIAN CONTROLS ON FISH.—

(1) Within 30 days of the application by Canada of export controls on unprocessed fish under statutes exempted from the Agreement under article 1203, or the application of landing requirements for fish caught in Canadian waters, the President shall take appropriate action to enforce United States rights under the General Agreement on Tariffs and Trade that are retained in article 1205 of the Agreement.

(2) In enforcing the United States rights referred to in paragraph (1), the President has discretion to—

(A) bring a challenge to the offending Canadian practices before the GATT;

(B) retaliate against such offending practices;

(C) seek resolution directly with Canada;

(D) refer the matter for dispute resolution to the Canada-United States Trade Commission; or

(E) take other action that the President considers appropriate to enforce such United States rights.

[(f) BIENNIAL REPORT.—Suspended as provided in section 501(c)(3).]

SEC. 305. ENERGY.

[(a) ALASKAN OIL.—Amendment to section 7(d)(1) of the Export Administration Act of 1979.]

[(b) URANIUM.—Amendment to section 161(v) of the Atomic Energy Act of 1954.]

SEC. 306. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS.

[Amendment adding subparagraph (D) to section 308(4) of the Trade Agreements Act of 1979 (reprinted elsewhere).]

SEC. 307. TEMPORARY ENTRY FOR BUSINESS PERSONS.

[Provisions relating to, and amendments of, the Immigration and Nationality Act.]

SEC. 308. AMENDMENT TO SECTION 5136 OF THE REVISED STATUTES.

SEC. 309. STEEL PRODUCTS.

Nothing in this Act shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada.

TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

[SEC. 401. AMENDMENTS TO SECTION 516A OF THE TARIFF ACT OF 1930.

Amendments to section 516A of the Tariff Act of 1930 to establish procedures for binational panel review of certain antidumping and countervailing duty determinations (reprinted elsewhere).]

SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

[SEC. 403. CONFORMING AMENDMENTS TO THE TARIFF ACT OF 1930.

Amendments to sections 502(b), 514(b), 771, and 777 of the Tariff Act of 1930 (reprinted elsewhere).]

[SEC. 404. AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.

Suspended, as provided in section 501(c)(3) (reprinted elsewhere).]

SEC. 405. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTERS 18 AND 19 OF THE AGREEMENT.

(a) APPOINTMENT OF INDIVIDUALS TO PANELS AND COMMITTEES.—

(1)(A) There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall—

(i) be chaired by the United States Trade Representative (hereafter in this section referred to as the “Trade Representative”), and

(ii) consist of such officers (or the designees thereof) of the

Government of the United States as the Trade Representative considers appropriate.

(B) The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19 of the Agreement—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19 of the Agreement, and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under such chapter,

(ii) if the Trade Representative makes a request under paragraph (5)(A)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list,

(iii) exercise oversight of the administration of the United States Secretariat that is authorized to be established under subsection (e), and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement.

(2)(A) The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (1)(B)(i) for placement on a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2 of the Agreement and a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 of the Agreement.

(B) The selection of individuals for—

(i) placement on lists prepared by the interagency group under clause (i) or (ii) of paragraph (1)(B),

(ii) placement on preliminary candidate lists under subparagraph (A),

(iii) placement on final candidate lists under paragraph (3),

(iv) placement by the Trade Representative on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, and

(v) appointment by the Trade Representative for service on binational panels and extraordinary challenge committees convened under chapter 19 of the Agreement,

shall be made on the basis of the criteria provided in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement and shall be made without regard to political affiliation.

(C) For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (1) or the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subparagraph (B), shall be treated as matters within the jurisdiction of an agency of the United States.

(3)(A) By no later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the “appropriate Congressional Committees”) the preliminary candidate lists of those individuals selected by the Trade Representative under paragraph (2)(A) to be candidates eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year.

(B) Upon submission of the preliminary candidate lists under subparagraph (A) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals listed on the preliminary candidate lists.

(C) The Trade Representative may add or delete individuals from the preliminary candidate lists submitted under subparagraph (A) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists.

(4)(A) By no later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to the appropriate Congressional Committees under this subparagraph.

(B) Except as provided in paragraph (5), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(5)(A) If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under paragraph (4)(A)

for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(i) request the interagency group established under paragraph (1)(A) to prepare a list of individuals who are qualified to be added to such candidate list,

(ii) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to be included in a proposed amendment to such final candidate list, and

(iii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under clause (ii).

(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(C) The Trade Representative may add or delete individuals from any proposed amendment submitted under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, by no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final candidate list.

(ii) An individual may be included in the final form of an amendment submitted under clause (i) only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted under clause (i).

(iii) Individuals added to a final candidate list under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).

(6)(A) The Trade Representative is the only officer of the Government of the United States authorized to act on behalf of the Government of the United States in making any selection or appointment of an individual to—

(i) the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) the binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement,

that is to be made solely or jointly by the Government of the United States under the terms of the Agreement.

(B) Except as otherwise provided in paragraph (7)(B), the Trade Representative may—

(i) select an individual for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 1-year period beginning on April 1 of any calendar year,

(ii) appoint an individual to serve as one of those members of any binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the Government of the United States, or

(iii) act to make a joint appointment with the Government of Canada, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee,

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under paragraph (4)(A) during such calendar year or on such list as it may be amended under paragraph (5)(D)(i).

(7)(A) Except as otherwise provided in this paragraph, no individual may—

(i) be selected by the Government of the United States for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) be appointed solely or jointly by the Government of the United States to serve as a member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement,

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.

(B)(i) Notwithstanding paragraphs (3), (4), or (6)(B) (other than

paragraph (3)(A)), individuals listed on the preliminary candidate lists submitted to the appropriate Congressional Committees under paragraph (3)(A) may—

(I) be selected by the Trade Representative for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 3-month period beginning on the date on which the Agreement enters into force, and

(II) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of binational panels or extraordinary challenge committees that are convened pursuant to chapter 19 of the Agreement during such 3-month period.

(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force—

(I) by substituting “the date that is 30 days after the date on which the Agreement enters into force” for “January 3 of each calendar year” in paragraphs (1)(B)(i) and (3)(A), and

(II) by substituting “the date that is 3 months after the date on which the Agreement enters into force” for “March 31 of each calendar year” in paragraph (4)(A).

(b) STATUS OF PANELISTS.—Notwithstanding any other provision of law, individuals appointed by the United States to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.

(c) IMMUNITY OF PANELISTS.—With the exception of acts described in section 777f(d)(3) of the Tariff Act of 1930, as added by this Act, individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(d) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930, the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to carry out such functions shall be issued prior to the date of entry into force of the Agreement.

(e) ESTABLISHMENT OF UNITED STATES SECRETARY.—

(1) The President is authorized to establish within any department or agency of the Federal Government a United States Secretariat which, subject to the oversight of the interagency group established under subsection (a)(1)(A), shall facilitate—

(A) the operation of chapters 18 and 19 of the Agreement, and

(B) the work of the binational panels and extraordinary challenge committees convened under chapters 18 and 19 of the Agreement.

(2) The United States Secretariat established by the President under paragraph (1) shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS FOR THE SECRETARIAT, THE PANELS, AND THE COMMITTEES.

(a) **THE SECRETARIAT.**—There are authorized to be appropriated to the department or agency within which the United States Secretariat described in chapter 19 of the Agreement is established the lesser of—

(1) such sums as may be necessary, or

(2) \$5,000,000,

for each fiscal year succeeding fiscal year 1988 for the establishment and operations of such United States Secretariat and for the payment of the United States share of the expenses of the dispute settlement proceedings under chapter 18 of the Agreement.

(b) **PANELS AND COMMITTEES.**—

(1) There are authorized to be appropriated to the Office of the United States Trade Representative for fiscal year 1990, \$1,492,000 to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

(2) The United States Trade Representative is authorized to transfer to any department or agency of the United States, from sums appropriated pursuant to the authorization provided under paragraph (1) or section 141(g)(1) of the Trade Act of 1974, such funds as may be necessary to facilitate the payment of the expenses described in paragraph (1).

(3) Funds appropriated for the payment of expenses described in paragraph (1) during any fiscal year may be expended only to the extent such funds do not exceed the amount authorized to be appropriated under paragraph (1) for such fiscal year. This paragraph shall apply, notwithstanding any law enacted after the date of enactment of this Act, unless such subsequent law specifically provides that this paragraph shall not apply and specifically cites this paragraph.

(4) If the Canadian Secretariat described in chapter 19 of the Agreement provides funds during any fiscal year for the purpose of paying, in accordance with Annex 1901.2 of the Agreement, the Canadian share of the expenses of binational panels, the United States Secretariat established under section 405(e)(1) may hereafter retain and use such funds for such

purposes.

SEC. 407. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

(a) **AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.**—If an extraordinary challenge committee (hereinafter referred to in this section as the “committee”) is convened pursuant to article 1904(13) of the Agreement, and the allegations before the committee include a matter referred to in article 1904(13)(a)(i) of the Agreement, for the purposes of carrying out its functions and duties under Annex 1904.13 of the Agreement, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity,

(2) may summon witnesses, take testimony, and administer oaths,

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question, and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) **WITNESSES AND EVIDENCE.**—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) **MANDAMUS.**—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) DEPOSITIONS.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

SEC. 408. REQUESTS FOR REVIEW OF CANADIAN ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS.

(a) REQUESTS FOR REVIEW BY THE UNITED STATES.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, requests by the United States for binational panel review under article 1904 of the Agreement shall be made by the United States Secretary, described in article 1909(4) of the Agreement.

(b) REQUESTS FOR REVIEW BY A PERSON.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, a person, within the meaning of article 1904(5) of the Agreement, may request a binational panel review of such determination by filing with the United States Secretary, described in article 1909(4) of the Agreement, such a request within the time limit provided for in article 1904(4) of the Agreement. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority shall prescribe by regulations. The request for such panel review shall not preclude the United States, Canada, or any other person from challenging before a binational panel the basis for a particular request for review.

(c) SERVICE OF REQUEST FOR REVIEW.—Whenever binational panel review is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under Canadian law to commence procedures for judicial review of a final antidumping or countervailing duty determination made by a competent investigating authority of Canada.

[SEC. 409. SUBSIDIES.

Suspended, as provided in section 501(c)(3) (reprinted elsewhere).]

SEC. 410. TERMINATION OF AGREEMENT.

(a) IN GENERAL.—If—

- (1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties

before the date that is 7 years after the date on which the Agreement enters into force, and

(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement, the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.

[(b) TRANSITION PROVISIONS.—Suspended as provided in section 501(c)(3).]

TITLE V—EFFECTIVE DATES AND SEVERABILITY

SEC. 501. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this Act, and the amendments made by this Act, shall take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 and 2, title I, section 304 (except subsection (f)), section 309, this section and section 502 shall take effect on the date of enactment of this Act.

(c) TERMINATION OR SUSPENSION OF AGREEMENT.—

(1) TERMINATION OF AGREEMENT.—On the date the Agreement ceases to be in force, the provision of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

(2) EFFECT OF AGREEMENT SUSPENSION.—An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within the meaning of paragraph (1).

(3) SUSPENSION RESULTING FROM NAFTA.—On the date the United States and Canada agree to suspend the operation of the Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:

(A) Sections 204(a) and (b) and 205(a).

(B) Sections 302 and 304(f).

(C) Sections 404, 409, and 410(b).

SEC. 502. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application of such a provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or

circumstances other than those to which it is held invalid, shall not be affected thereby.

Automotive Products Trade Act of 1965, as amended

[Excerpts]

[19 U.S.C. 2001 et seq.; Public Law 89-283, as amended by Public Law 96-39 and Public Law 100-418]

TITLE I—SHORT TITLE AND PURPOSES

SEC. 101. SHORT TITLE.

This Act may be cited as the “Automotive Products Trade Act of 1965.”

SEC. 102. CONGRESSIONAL DECLARATION OF PURPOSES.

The purposes of this Act are—

- (1) to provide for the implementation of the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada signed on January 16, 1965 (hereinafter referred to as the “Agreement”), in order to strengthen the economic relations and expand trade in automotive products between the United States and Canada; and
- (2) to authorize the implementation of such other international agreements providing for the mutual reduction or elimination of duties applicable to automotive products as the Government of the United States may hereafter enter into.

TITLE II—BASIC AUTHORITIES

SEC. 201. IMPLEMENTATION OF THE AGREEMENT.

(a) IMPLEMENTATION OF THE AGREEMENT.—The President is authorized to proclaim the modifications of the “Harmonized Tariff Schedule” of the United States provided for in title IV of this Act.

(b) DUTY-FREE TREATMENT OF CANADIAN MOTOR-VEHICLE EQUIPMENT.—At any time after the issuance of the proclamation authorized by subsection (a), the President is authorized to proclaim further modifications of the “Harmonized Tariff Schedule” of the United States to provide for the duty-free treatment of any Canadian article which is original motor-vehicle equipment (as defined by such Schedules as modified pursuant to subsection (a)) if he determines that the importation of such article is actually or potentially of commercial significance and that such duty-free treatment is required to carry out the Agreement.

SEC. 202. IMPLEMENTATION OF OTHER AGREEMENTS.

This section (Act Oct. 21, 1965, P.L. 89-283, Title II, § 202, 79 Stat. 1016) terminated by its own terms on Oct. 22, 1965. This section related to the modification of tariff schedules to implement duty free motor vehicle

agreements and duty reduced or duty free automotive product agreements, the necessity for advice and public notice prior to negotiation of such agreements, the transmission to the Congress of copies of such agreements, and Presidential proclamations to implement such agreements.

SEC. 203. EFFECTIVE DATE OF PROCLAMATIONS.

(a) **RETROACTIVE EFFECT; AUTHORITY OF PRESIDENT.**—Subject to subsection (b), the President is authorized, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C., sec. 1514) or any other provision of law, to give retroactive effect to any proclamation issued pursuant to section 201 of this Act as of the earliest date after January 17, 1965, which he determines to be practicable.

(b) **FILING OF REQUEST WITH CUSTOMS OFFICER.**—In the case of liquidated customs entries, the retroactive effect pursuant to subsection (a) of any proclamation shall apply only upon request therefor filed with the customs officer concerned on or before the 90th day after the date of such proclamation and subject to such other conditions as the President may specify.

SEC. 204. TERMINATION OF PROCLAMATIONS.

The President is authorized at any time to terminate, in whole or in part, any proclamation issued pursuant to section 201 or 202 of this Act.

SEC. 205. SPECIAL REPORTS TO CONGRESS.

(a) **REPORT ON COMPREHENSIVE REVIEW.**—No later than August 31, 1968, the President shall submit to the Senate and the House of Representatives a special report on the comprehensive review called for by Article IV(c) of the Agreement. In such report he shall advise the Congress of the progress made toward the achievement of the objectives of Article I of the Agreement.

(b) **REPORT ON INCREASE ON CANADIAN VALUE ADDED.**—Whenever the President finds that any manufacturer has entered into any undertaking, by reason of governmental action, to increase the Canadian value added of automobiles, buses, specified commercial vehicles, or original equipment parts produced by such manufacturer in Canada after August 31, 1968, he shall report such finding to the Senate and the House of Representatives. The President shall also report whether such undertaking is additional to undertakings agreed to in letters of undertaking submitted by such manufacturer before the date of enactment of this Act.

(c) **RECOMMENDATIONS.**—The reports provided for in subsections (a) and (b) of this section shall include recommendations for such further steps, including legislative action, if any, as may be necessary for the achievement of the purposes of the Agreement and this Act.

TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

SEC. 301. GENERAL AUTHORITY.

Subject to section 302 of this Act, a petition may be filed for tariff adjustment or for a determination of eligibility to apply for adjustment assistance under title

III of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1901-1991) as though the reduction or elimination of a duty proclaimed by the President pursuant to section 201 or 202 of this Act were a concession granted under a trade agreement referred to in section 301 of the Trade Expansion Act of 1962.

SEC. 302. SPECIAL AUTHORITY DURING TRANSITIONAL PERIOD UNDER THE AGREEMENT.

[Omitted]

SEC. 303. ADJUSTMENT ASSISTANCE RELATED TO OTHER AGREEMENTS.

[Omitted]

These sections (Act Oct. 21, 1965, P.L. 89-283, Title III, §§ 302, 303, 79 Stat. 1018, 1021; Nov. 6, 1978, P.L. 95-598, Title III, § 316, 92 Stat. 2678) were omitted from the Code as obsolete. Section 2022 set forth procedures for Presidential certification of petitions filed by firms or group of workers for determination of eligibility to apply for adjustment assistance after the 90th day after Oct. 21, 1965, and before July 1, 1968. Section 2023 required the President, at the time he transmitted an agreement under former 19 USC § 2012(d)(1), to recommend legislation concerning adjustment assistance to firms and works in light of the anticipated economic impact of the reduction of duties provided for by such agreement.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary from time to time to carry out the provisions of this title, which sums are authorized to be appropriated to remain available until expended.

TITLE V—GENERAL PROVISIONS

SEC. 501. AUTHORITIES; DELEGATION OF FUNCTIONS; RULES AND REGULATIONS.

The head of any agency performing functions authorized by this Act may—

- (1) authorize the head of any agency to perform any of such functions; and
- (2) prescribe such rules and regulations as may be necessary to perform such functions.

SEC. 502. ANNUAL REPORT TO CONGRESS.

The President shall submit to the Congress an annual report on the implementation of this Act. Such report shall include information regarding new negotiations, reductions or eliminations of duties, reciprocal concessions obtained, and other information relating to activities under this Act. Such report shall also include information providing an evaluation of the Agreement and this Act in relation to the total national interest, and specifically shall include, to the extent practicable, information with respect to—

- (1) the production of motor vehicles and motor vehicle parts in the United States and Canada,

(2) the retail prices of motor vehicles and motor vehicles parts in the United States and Canada,

(3) employment in the motor vehicle industry and motor vehicle parts in industry in the United States and Canada, and

(4) United States and Canadian trade in motor vehicles and motor vehicle parts, particularly trade between the United States and Canada.

SEC. 503. APPLICABILITY OF ANTIDUMPING AND ANTITRUST LAWS.

Nothing contained in this Act shall be construed to affect or modify the provisions of subtitle B of title VII of the Tariff Act of 1930, or of any of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12).

General Note 5 of the Harmonized Tariff Schedule

AUTOMOTIVE PRODUCTS AND MOTOR VEHICLES ELIGIBLE FOR SPECIAL TARIFF TREATMENT.—Articles entered under the Automotive Products Trade Act are subject to the following provisions:

(a) Motor vehicles and original motor-vehicle equipment which are Canadian articles and which fall in provisions for which the rate of duty "Free (B)" appears in the "Special" subcolumn may be entered free of duty. As used in this note—

(1) The term "Canadian article" means an article which originates in Canada, as defined in general note 12.

(2) The term "original motor-vehicle equipment", as used with reference to a Canadian article (as defined above), means such a Canadian article which has been obtained from a supplier in Canada under or pursuant to a written order, contract or letter of intent of a bona fide motor vehicle manufacturer in the United States, and which is a fabricated component originating in Canada, as defined in general note 12, and intended for use as original equipment in the manufacture in the United States of a motor vehicle, but the term does not include trailers or articles to be used in their manufacture.

(3) The term "motor vehicle", as used in this note, means a motor vehicle of a kind described in headings 8702, 8703 and 8704 of chapter 87 (excluding an electric trolley bus and a three-wheeled vehicle) or an automobile truck tractor principally designed for the transport of persons or goods.

(4) The term "bona fide motor-vehicle manufacturer" means a person who, upon application to the Secretary of Commerce, is determined by the Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the previous 12 months, and to have installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. The Secretary of Commerce shall maintain, and publish from time to time in the *Federal Register*, a list of the names and addresses of

bona fide motor-vehicle manufacturers.

(b) If any Canadian article accorded the status of original motor-vehicle equipment is not so used in the manufacture in the United States of motor vehicles, such Canadian article or its value (to be recovered from the importer or other person who diverted the article from its intended use as original motor-vehicle equipment) shall be subject to forfeiture, unless at the time of the diversion of the Canadian article the United States Customs Service is notified in writing, and, pursuant to arrangements made with the Service—

(1) the Canadian article is, under customs supervision, destroyed or exported, or

(2) duty is paid to the United States Government in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor-vehicle equipment.

J. BILATERAL TRADE RELATIONS WITH JORDAN

United States-Jordan Free Trade Area Implementation Act

[19 U.S.C. 2112 note, Public Law 107-043]

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States-Jordan Free Trade Area Implementation Act”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to implement the agreement between the United States and Jordan establishing a free trade area;

(2) to strengthen and develop the economic relations between the United States and Jordan for their mutual benefit; and

(3) to establish free trade between the two nations through the removal of trade barriers.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) **AGREEMENT.**—The term “Agreement” means the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000.

(2) **HTS.**—The term “HTS” means the Harmonized Tariff Schedule of the United States.

TITLE I—TARIFF MODIFICATIONS; RULES OF ORIGIN

SEC. 101. TARIFF MODIFICATIONS.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.**—The President may proclaim—

(1) such modifications or continuation of any duty;

(2) such continuation of duty-free or excise treatment; or
(3) such additional duties,
as the President determines to be necessary or appropriate to carry out article 2.1 of the Agreement and the schedule of duty reductions with respect to Jordan set out in Annex 2.1 of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—The President may proclaim—

- (1) such modifications or continuation of any duty;
- (2) such continuation of duty-free or excise treatment; or
- (3) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Jordan provided for by the Agreement.

SEC. 102. RULES OF ORIGIN.

(a) IN GENERAL.—

(1) ELIGIBLE ARTICLES.—

(A) IN GENERAL.—The reduction or elimination of any duty imposed on any article by the United States provided for in the Agreement shall apply only if—

(i) that article is imported directly from Jordan into the customs territory of the United States; and

(ii) that article—

(I) is wholly the growth, product, or manufacture of Jordan;
or

(II) is a new or different article of commerce that has been grown, produced, or manufactured in Jordan and meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—

(i) GENERAL RULE.—The requirements of this subparagraph are that with respect to an article described in subparagraph (A)(ii)(II), the sum of—

(I) the cost or value of the materials produced in Jordan,
plus

(II) the direct costs of processing operations performed in Jordan,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(ii) MATERIALS PRODUCED IN UNITED STATES.—If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in clause (i).

(2) EXCLUSIONS.—No article may be considered to meet the requirements

of paragraph (1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) DIRECT COSTS OF PROCESSING OPERATIONS.—

(1) IN GENERAL.—As used in this section, the term "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

(2) EXCLUDED COSTS.—The term "direct costs of processing operations" does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as—

(A) profit; and

(B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(c) TEXTILE AND APPAREL ARTICLES.—

(1) IN GENERAL.—A textile or apparel article imported directly from Jordan into the customs territory of the United States shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) only if—

(A) the article is wholly obtained or produced in Jordan;

(B) the article is a yarn, thread, twine, cordage, rope, cable, or braiding, and—

(i) the constituent staple fibers are spun in Jordan, or

(ii) the continuous filament is extruded in Jordan;

(C) the article is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in Jordan; or

(D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

(2) DEFINITION.—For purposes of paragraph (1), an article is "wholly obtained or produced in Jordan" if it is wholly the growth, product, or manufacture of Jordan.

(3) SPECIAL RULES.—

(A) CERTAIN MADE-UP ARTICLES, TEXTILE ARTICLES IN THE PIECE, AND CERTAIN OTHER TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in

subparagraphs (C) and (D) of this paragraph, subparagraph (A), (B), or (C) of paragraph (1), as appropriate, shall determine whether a good that is classified under one of the following headings or subheadings of the HTS shall be considered to meet the requirements of paragraph (1)(A) of subsection (a): 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, and 9404.90.

(B) CERTAIN KNIT-TO-SHAPE TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, a textile or apparel article which is knit-to-shape in Jordan shall be considered to meet the requirements of paragraph (1)(A) of subsection (a).

(C) CERTAIN DYED AND PRINTED TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D), a good classified under heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95 of the HTS, except for a good classified under any such heading as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric in the good is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(D) FABRICS OF SILK, COTTON, MANMADE FIBER OR VEGETABLE FIBER.—Notwithstanding paragraph (1)(C), a fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(4) MULTICOUNTRY RULE.—If the origin of a textile or apparel article cannot be determined under paragraph (1) or (3), then that article shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if—

(A) the most important assembly or manufacturing process occurs in Jordan; or

(B) if the applicability of paragraph (1)(A) of subsection (a) cannot be determined under subparagraph (A), the last important assembly or manufacturing occurs in Jordan.

(d) EXCLUSION.—A good shall not be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the good—

(1) is imported into Jordan, and, at the time of importation, would be

classified under heading 0805 of the HTS; and

(2) is processed in Jordan into a good classified under any of subheadings 2009.11 through 2009.30 of the HTS.

(e) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

TITLE II—RELIEF FROM IMPORTS

Subtitle A—General Provisions

SEC. 201. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(2) JORDANIAN ARTICLE.—The term "Jordanian article" means an article that qualifies for reduction or elimination of a duty under section 102.

Subtitle B—Relief From Imports Benefiting From The Agreement

SEC. 211. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974.

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—

(1) IN GENERAL.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Jordanian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Jordanian article alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) CAUSATION.—For purposes of this subtitle, a Jordanian article is being imported into the United States in increased quantities as a result of

the reduction or elimination of a duty provided for under the Agreement if the reduction or elimination is a cause that contributes significantly to the increase in imports. Such cause need not be equal to or greater than any other cause.

(c) **APPLICABLE PROVISIONS.**—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

- (1) Paragraphs (1)(B) and (3) of subsection (b).
- (2) Subsection (c).
- (3) Subsection (d).

(d) **ARTICLES EXEMPT FROM INVESTIGATION.**—No investigation may be initiated under this section with respect to any Jordanian article if import relief has been provided under this subtitle with respect to that article.

SEC. 212. COMMISSION ACTION ON PETITION.

(a) **DETERMINATION.**—By no later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 211(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, the Commission shall find, and recommend to the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 213(c).

(c) **REPORT TO PRESIDENT.**—No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that shall include—

- (1) a statement of the basis for the determination;
- (2) dissenting and separate views; and
- (3) any finding made under subsection (b) regarding import relief.

(d) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (c), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) **APPLICABLE PROVISIONS.**—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

SEC. 213. PROVISION OF RELIEF.

(a) IN GENERAL.—No later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination of the Commission under section 212(a), the President shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to prevent or remedy the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition, unless the President determines that the provision of such relief is not in the national economic interest of the United States or, in extraordinary circumstances, that the provision of such relief would cause serious harm to the national security of the United States.

(b) NATIONAL ECONOMIC INTEREST.—The President may determine under subsection (a) that providing import relief is not in the national economic interest of the United States only if the President finds that taking such action would have an adverse impact on the United States economy clearly greater than the benefits of taking such action.

(c) NATURE OF RELIEF.—The import relief (including provisional relief) that the President is authorized to provide under this subtitle with respect to imports of an article is—

(1) the suspension of any further reduction provided for under the United States Schedule to Annex 2.1 of the Agreement in the duty imposed on that article;

(2) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

(3) in the case of a duty applied on a seasonal basis to that article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season occurring immediately before the date on which the Agreement enters into force.

(d) PERIOD OF RELIEF.—The import relief that the President is authorized to provide under this section may not exceed 4 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this subtitle is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 2.1 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 211; and

(2) the tariff treatment for that article after December 31 of the year in

which termination occurs shall be, at the discretion of the President, either—

(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 2.1; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 2.1 for the elimination of the tariff.

SEC. 214. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Except as provided in subsection (b), no import relief may be provided under this subtitle after the date that is 15 years after the date on which the Agreement enters into force.

(b) EXCEPTION.—Import relief may be provided under this subtitle in the case of a Jordanian article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the Government of Jordan consents to such provision.

SEC. 215. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 213 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 216. SUBMISSION OF PETITIONS.

A petition for import relief may be submitted to the Commission under—

(1) this subtitle;

(2) chapter 1 of title II of the Trade Act of 1974; or

(3) under both this subtitle and such chapter 1 at the same time, in which case the Commission shall consider such petitions jointly.

Subtitle C—Cases Under Title II of The Trade Act of 1974

SEC. 221. FINDINGS AND ACTION ON JORDANIAN IMPORTS.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Jordan are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL ACTION REGARDING JORDANIAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Jordan are a substantial cause of the serious injury found by the Commission and, if such determination is in the negative, may exclude from such action imports from Jordan.

[SEC. 222. TECHNICAL AMENDMENT.]

TITLE III—TEMPORARY ENTRY

SEC. 301. NONIMMIGRANT TRADERS AND INVESTORS.

Upon the basis of reciprocity secured by the Agreement, an alien who is a national of Jordan (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) of the alien, if accompanying or following to join the alien) shall be considered as entitled to enter the United States under and in pursuance of the provisions of the Agreement as a nonimmigrant described in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), if the entry is solely for a purpose described in clause (i) or (ii) of such section and the alien is otherwise admissible to the United States as such a nonimmigrant.

TITLE IV—GENERAL PROVISIONS

SEC. 401. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) **RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—**

(1) **UNITED STATES LAW TO PREVAIL IN CONFLICT.—**No provision of the Agreement, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

(2) **CONSTRUCTION.—**Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States; or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) **RELATIONSHIP OF AGREEMENT TO STATE LAW.—**

(1) **LEGAL CHALLENGE.—**No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) **DEFINITION OF STATE LAW.—**For purposes of this subsection, the term "State law" includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) **EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—**No person other than the United States—

(1) shall have any cause of action or defense under the Agreement; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the

ground that such action or inaction is inconsistent with the Agreement.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year after fiscal year 2001 to the Department of Commerce not more than \$100,000 for the payment of the United States share of the expenses incurred in dispute settlement proceedings under article 17 of the Agreement.

SEC. 403. IMPLEMENTING REGULATIONS.

After the date of enactment of this Act—

- (1) the President may proclaim such actions; and
- (2) other appropriate officers of the United States may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

SEC. 404. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) **EXCEPTIONS.**—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act, shall cease to be effective.

K. BILATERAL TRADE RELATIONS WITH CHILE

United States-Chile Free Trade Agreement Implementation Act

[19 U.S.C. 3805 note; Public Law 108-77]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Chile Free Trade Agreement Implementation Act”.

(b) [Omitted--This subsection contained a table of contents.]

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to approve and implement the Free Trade Agreement between the United States and the Republic of Chile entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002;
- (2) to strengthen and develop economic relations between the United States and Chile for their mutual benefit;

- (3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and
- (4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:

- (1) AGREEMENT.—The term “Agreement” means the United States-Chile Free Trade Agreement approved by the Congress under section 101(a)(1).
- (2) HTS.—The term “HTS” means the Harmonized Tariff Schedule of the United States.
- (3) Textile or apparel good. The term 'textile or apparel good' means a good listed in the Annex 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)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

- (1) the United States-Chile Free Trade Agreement entered into on June 6, 2003, with the Government of Chile and submitted to the Congress on July 15, 2003; and
- (2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 15, 2003.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Chile has taken measures necessary to bring it into compliance with the provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Chile providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.— No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

- (A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term 'State law' includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of Congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAYOVER REQUIREMENTS.—

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS. —

(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action referred to in section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—

The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 22 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 22 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

(a) **SUBMISSION OF CERTAIN CLAIMS.**—The United States is authorized to resolve any claim against the United States covered by article 10.15(1)(a)(i)(C) or 10.15(1)(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

(b) **CONTRACT CLAUSES.**—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) **EXCEPTIONS.**—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II--CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.** —

- (1) **PROCLAMATION AUTHORITY.**—The President may proclaim—
- (A) such modifications or continuation of any duty,
 - (B) such continuation of duty-free or excise treatment, or
 - (C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.7, 3.9, article 3.20 (8), (9), (10), and (11), and Annex 3.3 of the Agreement.

(2) **EFFECT ON CHILEAN GSP STATUS.**— Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Chile as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 103(a), the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Chile regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided for by the Agreement.

(c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFEGUARD GOODS.—

(1) IN GENERAL.—In addition to any duty proclaimed under subsection (a) or (b), and subject to paragraphs (3) through (5), the Secretary of the Treasury shall assess a duty, in the amount prescribed under paragraph (2), on an agricultural safeguard good if the Secretary of the Treasury determines that the unit import price of the good when it enters the United States, determined on an F.O.B. basis, is less than the trigger price indicated for that good in Annex 3.18 of the Agreement or any amendment thereto.

(2) CALCULATION OF ADDITIONAL DUTY.—The amount of the additional duty assessed under this subsection shall be determined as follows:

(A) If the difference between the unit import price and the trigger price is less than, or equal to, 10 percent of the trigger price, no additional duty shall be imposed.

(B) If the difference between the unit import price and the trigger price is greater than 10 percent, but less than or equal to 40 percent, of the trigger price, the additional duty shall be equal to 30 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(C) If the difference between the unit import price and the trigger price is greater than 40 percent, but less than or equal to 60 percent, of the trigger price, the additional duty shall be equal to 50 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(D) If the difference between the unit import price and the trigger price is greater than 60 percent, but less than or equal to 75 percent, of the trigger price, the additional duty shall be equal to 70 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(E) If the difference between the unit import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall be equal to 100 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(3) EXCEPTIONS.—No additional duty under this subsection shall be assessed on an agricultural safeguard good if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—This subsection shall cease to apply on the date that is 12 years after the date on which the Agreement enters into force.

(5) **TARIFF-RATE QUOTAS.**—If an agricultural safeguard good is subject to a tariff-rate quota, and the in-quota duty rate for the good proclaimed pursuant to subsection (a) or (b) is zero, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) **NOTICE.**—Not later than 60 days after the Secretary of the Treasury first assesses additional duties on an agricultural safeguard good under this subsection, the Secretary shall notify the Government of Chile in writing of such action and shall provide to the Government of Chile data supporting the assessment of additional duties.

(7) **MODIFICATION OF TRIGGER PRICES.**—Not later than 60 calendar days before agreeing with the Government of Chile pursuant to article 3.18(2)(b) of the Agreement on a modification to a trigger price for a good listed in Annex 3.18 of the Agreement, the President shall notify the Committees on Ways and Means and Agriculture of the House of Representatives and the Committees on Finance and Agriculture of the Senate of the proposed modification and the reasons therefor.

(8) **DEFINITIONS.**—In this subsection:

(A) **AGRICULTURAL SAFEGUARD GOOD.**—The term “agricultural safeguard good” means a good—

- (i) that qualifies as an originating good under section 202;
- (ii) that is included in the United States Agricultural Safeguard Product List set forth in Annex 3.18 of the Agreement; and
- (iii) for which a claim for preferential tariff treatment under the Agreement has been made.

(B) **F.O.B.** The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(C) **Unit import price.** The term “unit import price” means the price expressed in dollars per kilogram.

(d) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

(a) **ORIGINATING GOODS.**—

(1) **IN GENERAL.**—For purposes of this Act and for purposes of implementing the tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(A) the good is wholly obtained or produced entirely in the territory of Chile, the United States, or both;

(B) the good—

- (i) is produced entirely in the territory of Chile, the United States, or both, and

(I) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 of the Agreement, or

(II) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and

(ii) satisfies all other applicable requirements of this section; or

(C) the good is produced entirely in the territory of Chile, the United States, or both, exclusively from materials described in subparagraph (A) or (B).

(2) SIMPLE COMBINATION OR MERE DILUTION.—A good shall not be considered to be an originating good and a material shall not be considered to be an originating material by virtue of having undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good or material.

(b) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(B) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement; and

(C) the good meets all other applicable requirements of this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS, that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS, or nonoriginating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the HTS, that are used in the production of the following goods:

(i) Infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the HTS.

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the HTS.

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS.

(iv) Goods provided for in heading 2105 of the HTS.

(v) Beverages containing milk provided for in subheading 2202.90 of the HTS.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the HTS.

(C) A nonoriginating material provided for in heading 0805 of the HTS, or any of subheadings 2009.11.00 through 2009.39 of the HTS, that is used in the production of a good provided for in any of subheadings 2009.11.00 through 2009.39 of the HTS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90 of the HTS.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, 1512, 1514, and 1515 of the HTS.

(E) A nonoriginating material provided for in heading 1701 of the HTS that is used in the production of a good provided for in any of headings 1701 through 1703 of the HTS.

(F) A nonoriginating material provided for in chapter 17 of the HTS or in heading 1805.00.00 of the HTS that is used in the production of a good provided for in subheading 1806.10 of the HTS.

(G) A nonoriginating material provided for in any of headings 2203 through 2208 of the HTS that is used in the production of a good provided for in heading 2207 or 2208 of the HTS.

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) GOODS PROVIDED FOR IN CHAPTERS 50 THROUGH 63 OF THE HTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be

an originating good only if such yarns are wholly formed in the territory of Chile or the United States.

(c) ACCUMULATION.—

(1) ORIGINATING GOODS INCORPORATED IN GOODS OF OTHER COUNTRY.— Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) Multiple procedures. A good that is produced in the territory of Chile, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

(d) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (a)(1)(B), the regional value-content of a good referred to in Annex 4.1 of the Agreement shall be calculated, at the choice of the person claiming preferential tariff treatment for the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3), unless otherwise provided in Annex 4.1 of the Agreement.

(2) BUILD-DOWN METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

$$\text{RVC} = \frac{\text{AV-VNM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “AV” means the adjusted value.

(iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

- (i) The term "RVC" means the regional value-content, expressed as a percentage.
- (ii) The term "AV" means the adjusted value.
- (iii) The term "VOM" means the value of originating materials used by the producer in the production of the good.

(e) VALUE OF MATERIALS.—

(1) IN GENERAL.—For purposes of calculating the regional value-content of a good under subsection (d), and for purposes of applying the de minimis rules under subsection (b), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material with respect to that importation;

(B) in the case of a material acquired in the territory in which the good is produced, except for a material to which subparagraph (C) applies, the producer's price actually paid or payable for the material;

(C) in the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

- (i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
- (ii) an amount for profit; or

(D) in the case of a material that is self-produced, the sum of—

- (i) all expenses incurred in the production of the material, including general expenses; and
- (ii) an amount for profit.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIALS.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Chile, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.

(B) NONORIGINATING MATERIALS.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Chile, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of originating materials used in the production of the nonoriginating material in the territory of Chile or the United States.

(f) ACCESSORIES, SPARE PARTS, OR TOOLS.—Accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall be regarded as a material used in the production of the good, if—

(1) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and

(2) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term “inventory management method” means—

(i) averaging;

(ii) “last-in, first-out”;

(iii) “first-in, first-out”; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or materials shall continue to use that method for those goods or materials throughout the fiscal year of that person.

(h) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether—

(1) the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement; and

(2) the good satisfies a regional value-content requirement.

(j) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced.

(k) TRANSIT AND TRANSSHIPMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (a) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Chile or the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4.1 of the Agreement, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(m) APPLICATION AND INTERPRETATION.—In this section:

(1) The basis for any tariff classification is the HTS.

(2) Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term “adjusted value” means the value determined in accordance with articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, except that

such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

(2) FUNGIBLE GOODS OR FUNGIBLE MATERIALS.— The terms “fungible goods” and “fungible materials” mean goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical.

(3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term “generally accepted accounting principles” means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of Chile or the United States, as the case may be.

(4) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF CHILE, THE UNITED STATES, OR BOTH.—The term “goods wholly obtained or produced entirely in the territory of Chile, the United States, or both” means—

(A) mineral goods extracted in the territory of Chile, the United States, or both;

(B) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of Chile, the United States, or both;

(C) live animals born and raised in the territory of Chile, the United States, or both;

(D) goods obtained from hunting, trapping, or fishing in the territory of Chile, the United States, or both;

(E) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Chile or the United States and flying the flag of that country;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with Chile or the United States and fly the flag of that country;

(G) goods taken by Chile or the United States or a person of Chile or the United States from the seabed or beneath the seabed outside territorial waters, if Chile or the United States has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by Chile or the United States or a person of Chile or the United States and not processed in the territory of a country other than Chile or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Chile, the United States, or both;

or

(ii) used goods collected in the territory of Chile, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) recovered goods derived in the territory of Chile or the United States from used goods, and used in the territory of that country in the production of remanufactured goods; and

(K) goods produced in the territory of Chile, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs (A) through (I), or

(ii) from the derivatives of goods referred to in clause (i), at any stage of production.

(5) HARMONIZED SYSTEM.—The term “Harmonized System” means the Harmonized Commodity Description and Coding System.

(6) INDIRECT MATERIAL.—The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(7) MATERIAL.—The term “material” means a good that is used in the production of another good, including a part, ingredient, or indirect material.

(8) MATERIAL THAT IS SELF-PRODUCED.—The term “material that is self-produced” means a material that is an originating good produced by a producer of a good and used in the production of that good.

(9) NONORIGINATING GOOD OR NONORIGINATING MATERIAL.—The terms “nonoriginating good” and “nonoriginating material” mean a good or material, as the case may be, that does not qualify as an originating good under this section.

(10) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term “packing materials and containers for shipment” means the goods used to protect a good during its transportation, and does not include the packaging materials and containers in which a good is packaged for retail sale.

(11) PREFERENTIAL TARIFF TREATMENT.—The term ‘preferential tariff treatment’ means the customs duty rate that is applicable to an originating good pursuant to chapter 3 of the Agreement.

(12) PRODUCER.—The term “producer” means a person who engages in the production of a good in the territory of Chile or the United States.

(13) PRODUCTION.—The term “production” means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(14) RECOVERED GOODS.—

(A) IN GENERAL.—The term “recovered goods” means materials in the form of individual parts that are the result of—

(i) the complete disassembly of used goods into individual parts; and

(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the processes described in subparagraph (B), in order for such parts to be assembled with other parts, including other parts that have undergone the processes described in this paragraph, in the production of a remanufactured good.

(B) PROCESSES.—The processes referred to in subparagraph (A)(ii) are welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding.

(15) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good assembled in the territory of Chile or the United States, that is listed in Annex 4.18 of the Agreement, and—

(A) is entirely or partially comprised of recovered goods;

(B) has the same life expectancy and meets the same performance standards as a new good; and

(C) enjoys the same factory warranty as such a new good.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4.1 of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other

than provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 103(a), the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an agreement with Chile pursuant to article 3.20(5) of the Agreement; and

(ii) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

SEC. 203. DRAWBACK.

(a) DEFINITION OF A GOOD SUBJECT TO CHILE FTA DRAWBACK.—For purposes of this Act and the amendments made by subsection (b), the term “good subject to Chile FTA drawback” means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to Chile.

(2)(A) A good exported to Chile in the same condition as when imported into the United States.

(B) For purposes of subparagraph (A)—

(i) processes such as testing, cleaning, repacking, inspecting, sorting, or marking a good, or preserving it in its same condition, shall not be considered to change the condition of the good; and

(ii) if a good described in subparagraph (A) is commingled with fungible goods and exported in the same condition, the origin of the good for the purposes of subsection (j)(1) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313(j)(1)) may be determined on the basis of the inventory methods provided for in the regulations implementing this title.

(3) A good—

(A) that is—

(i) deemed to be exported from the United States;

(ii) used as a material in the production of another good that is deemed to be exported to Chile; or

(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to Chile; and

(B) that is delivered—

(i) to a duty-free shop;

(ii) for ship's stores or supplies for a ship or aircraft; or

(iii) for use in a project undertaken jointly by the United States and Chile and destined to become the property of the United States.

(4) A good exported to Chile for which a refund of customs duties is granted by reason of—

- (A) the failure of the good to conform to sample or specification; or
- (B) the shipment of the good without the consent of the consignee.

(5) A good that qualifies under the rules of origin set out in section 202 that is—

- (A) exported to Chile;
- (B) used as a material in the production of another good that is exported to Chile; or
- (C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to Chile.

(b) [Omitted—This subsection amended 19 USCS §§ 81c(a), 1311, 1312, 1313, and 1562.]

(c) INAPPLICABILITY TO COUNTERVAILING AND ANTIDUMPING DUTIES.—Nothing in this section or the amendments made by this section shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

SEC. 204. [Omitted—This section amended 19 USCS § 58c(b).]

SEC. 205. [Omitted—This section amended 19 USCS §§ 1514 and 1592.]

SEC. 206. [Omitted—This section amended 19 USCS § 1520(d).]

SEC. 207. [Omitted—This section amended 19 USCS § 1508.]

SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES OF ORIGIN.

(a) ACTION DURING VERIFICATION.—If the Secretary of the Treasury requests the Government of Chile to conduct a verification pursuant to article 3.21 of the Agreement for purposes of determining that—

(1) an exporter or producer in Chile is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, or

(2) claims that textile or apparel goods exported or produced by such exporter or producer—

- (A) qualify as originating goods under section 202 of this Act, or
- (B) are goods of Chile,

are accurate,

the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a) includes—

(1) suspension of liquidation of entries of textile and apparel goods exported or produced by the person that is the subject of the verification, in

a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) publication of the name of the person that is the subject of the verification.

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a) is insufficient to make a determination under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (c) includes—

(1) publication of the identity of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to any textile or apparel goods exported or produced by the person that is the subject of the verification; and

(3) denial of entry into the United States of any textile or apparel goods exported or produced by the person that is the subject of the verification.

SEC. 209. [Omitted—This section amended 19 USCS § 1508(b)(2)(B)(i)(I).]

SEC. 210. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 202, and sections 203 and 204;

(2) amendments made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 202(o).

TITLE III--RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) COMMISSION.—The term “Commission” means the United States International Trade Commission.

(2) CHILEAN ARTICLE.—The term “Chilean article” means an article that qualifies as an originating good under section 202(a) of this Act.

(3) CHILEAN TEXTILE OR APPAREL ARTICLE.—The term “Chilean textile or apparel article” means an article—

(A) that is listed in the Annex 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)); and

(B) that is a Chilean article.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) **FILING OF PETITION.**—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(b) **INVESTIGATION AND DETERMINATION.**—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Chilean article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Chilean article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) **APPLICABLE PROVISIONS.**—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

- (1) Paragraphs (1)(B) and (3) of subsection (b).
- (2) Subsection (c).
- (3) Subsection (i).

(d) **ARTICLES EXEMPT FROM INVESTIGATION.**—No investigation may be initiated under this section with respect to any Chilean article if, after the date that the Agreement enters into force, import relief has been provided with respect to that Chilean article under this subtitle, or if, at the time the petition is filed, the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) **DETERMINATION.**—Not later than 120 days after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) **APPLICABLE PROVISIONS.**—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the

President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) **REPORT TO PRESIDENT.**—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

- (1) the determination made under subsection (a) and an explanation of the basis for the determination;
- (2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and
- (3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) **IN GENERAL.**—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) **EXCEPTION.**—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) **NATURE OF RELIEF.**—

(1) IN GENERAL.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 8.2(2) of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section, including any extensions thereof, may not, in the aggregate, exceed 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—If the initial period for any import relief provided under this section is less than 3 years, the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—

(i) Upon a petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and

consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) **RATE AFTER TERMINATION OF IMPORT RELIEF.**—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States in Annex 3.3 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable rate of duty for that article set out in the Schedule of the United States in Annex 3.3 of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule in Annex 3.3 of the Agreement for the elimination of the tariff.

(f) **ARTICLES EXEMPT FROM RELIEF.**—No import relief may be provided under this section on any article subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) **GENERAL RULE.**—No import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) **EXCEPTION.**—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is 12 years, no relief under this subtitle may be provided for that article after the date that is 12 years after the date on which the Agreement enters into force.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. [Omitted—This section amended 19 USCS § 2252(a)(8).]

Subtitle B--Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) **IN GENERAL.**—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) **PUBLICATION OF REQUEST.**—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) **DETERMINATION.**—

(1) **IN GENERAL.**—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) **SERIOUS DAMAGE.**—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) **PROVISION OF RELIEF.**—

(1) **IN GENERAL.**—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) **NATURE OF RELIEF.**—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) **IN GENERAL.**—The import relief that the President is authorized to provide under section 322, including any extensions thereof, may not, in the aggregate, exceed 3 years.

(b) **EXTENSION.**—If the initial period for any import relief provided under this section is less than 3 years, the President may extend the effective period of any import relief provided under this section, subject to the limitation set forth in subsection (a), if the President determines that—

- (1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment; and
- (2) there is evidence that the industry is making a positive adjustment to import competition.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if import relief previously has been provided under this subtitle with respect to that article.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be duty-free.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 8 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of that Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in which the business confidential information is summarized or, if necessary, deleted.

TITLE IV--TEMPORARY ENTRY OF BUSINESS PERSONS

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Chile (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term “national” has the meaning given such term in article 14.9 of the Agreement.

SEC. 402. [Omitted—This section amended 8 USCS §§ 1101(a)(15)(H)(i)(b), 1182, 1184, and 1356(s)(1).]

SECS. 403, 404. [Omitted—These sections amended 8 USCS § 1184.)]

L. BILATERAL TRADE RELATIONS WITH SINGAPORE

United States-Singapore Free Trade Agreement Implementation Act.

[19 U.S.C. 3805 note; Public Law 108-78]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Singapore Free Trade Agreement Implementation Act”.

(b) [Omitted—This subsection contained a table of contents.]

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and the Republic of Singapore entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002;

(2) to strengthen and develop economic relations between the United States and Singapore for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the United States-Singapore Free Trade Agreement approved by Congress under section 101(a).

(2) **HTS.**—The term “HTS” means the Harmonized Tariff Schedule of the United States.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) **APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Singapore Free Trade Agreement entered into on May 6, 2003, with the Government of Singapore and submitted to Congress on July 15, 2003; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2003.

(b) **CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.**—At such time as the President determines that Singapore has taken measures necessary to bring it into compliance with those provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Singapore providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) **RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.**—

(1) **UNITED STATES LAW TO PREVAIL IN CONFLICT.**—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) **CONSTRUCTION.** Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) **RELATIONSHIP OF AGREEMENT TO STATE LAW.** —

(1) **LEGAL CHALLENGE.**—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) **DEFINITION OF STATE LAW.**—For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) **EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.**—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAYOVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974; and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days beginning on the first day on which the requirements of paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.— Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations—

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) **WAIVER OF 15-DAY RESTRICTION.**—The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) **INITIAL REGULATIONS.**—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.**—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. Such office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CERTAIN CLAIMS.

(a) **SUBMISSION OF CERTAIN CLAIMS.**—The United States is authorized to resolve any claim against the United States covered by article 15.15.1(a)(i)(C) or article 15.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section C of chapter 15 of the Agreement.

(b) **CONTRACT CLAUSES.**—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) **EXCEPTIONS.**—

(1) Sections 1 through 3 and this title take effect on the date of enactment of this Act.

(2) Section 205 takes effect on the date on which the textile and apparel provisions of the Agreement take effect pursuant to article 5.10 of the Agreement.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.**—The President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such continuation of duty-free or excise treatment, or
- (3) such additional duties—

as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 and Annex 2B of the Agreement.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 103(a), the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Singapore regarding the staging of any duty treatment set forth in Annex 2B of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties—

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Singapore provided for by the Agreement.

(c) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States set forth in Annex 2B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

(a) **ORIGINATING GOODS.**—For purposes of this Act and for purposes of implementing the tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

- (1) the good is wholly obtained or produced entirely in the territory of Singapore, the United States, or both;
- (2) each nonoriginating material used in the production of the good—
 - (A) undergoes an applicable change in tariff classification set out in Annex 3A of the Agreement as a result of production occurring entirely in the territory of Singapore, the United States, or both; or
 - (B) if no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; or

(3) the good itself, as imported, is listed in Annex 3B of the Agreement and is imported into the territory of the United States from the territory of Singapore.

(b) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided for in paragraphs (2) and (3), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo the required change in tariff classification under Annex 3A of the Agreement does not exceed 10 percent of the adjusted value of the good;

(B) if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good; and

(C) the good satisfies all other applicable requirements of this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in heading 2105 or in any of subheadings 1901.10, 1901.20, 1901.90, 2106.90, 2202.90, and 2309.90 of the HTS.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11.00 through 2009.39, of the HTS, that is used in the production of a good provided for in any of subheadings 2009.11.00 through 2009.39 or in subheading 2106.90 or 2202.90 of the HTS.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, 1512, 1514, and 1515 of the HTS.

(E) A nonoriginating material provided for in heading 1701 of the HTS that is used in the production of a good provided for in any of headings 1701 through 1703 of the HTS.

(F) A nonoriginating material provided for in chapter 17 of the HTS or heading 1805.00.00 of the HTS that is used in the production of a good provided for in subheading 1806.10 of the HTS.

(G) A nonoriginating material provided for in any of headings 2203 through 2208 of the HTS that is used in the production of a good provided for in heading 2207 or 2208 of the HTS.

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) GOODS PROVIDED FOR IN CHAPTERS 50 THROUGH 63 OF THE HTS. —

(A) IN GENERAL.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—

(i) TREATMENT AS ORIGINATING GOOD.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Singapore or the United States.

(ii) DEFINITION OF TEXTILE OR APPAREL GOOD.—For purposes of this subparagraph, the term 'textile or apparel good' means a product listed in the Annex 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)).

(c) ACCUMULATION.—

(1) ORIGINATING GOODS INCORPORATED IN GOODS OF OTHER COUNTRY.—Originating materials from the territory of either Singapore or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Singapore, the United States, or both, by 1 or more producers is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

(d) REGIONAL VALUE-CONTENT. —

(1) IN GENERAL.—For purposes of subsection (a)(2), the regional value-content of a good referred to in Annex 3A of the Agreement shall be calculated, at the choice of the person claiming preferential tariff treatment for the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3), unless otherwise provided in Annex 3A of the Agreement.

(2) BUILD-DOWN METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

$$\text{RVC} = \frac{\text{AV-VNM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “AV” means the adjusted value.

(iii) The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the good.

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “AV” means the adjusted value.

(iii) The term “VOM” means the value of originating materials that are acquired or self-produced and are used by the producer in the production of the good.

(e) VALUE OF MATERIALS.—

(1) IN GENERAL.—For purposes of calculating the regional value-content of a good under subsection (d), and for purposes of applying the de minimis rules under subsection (b), the value of a material is—

(A) in the case of a material imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, except for a material to which subparagraph (C) applies, the adjusted value of the material; or

(C) in the case of a material that is self-produced, or in a case in which the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS. —

(A) **ORIGINATING MATERIALS.**—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Singapore, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(B) **NONORIGINATING MATERIALS.**—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Singapore, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(iv) The cost of processing incurred in the territory of Singapore or the United States in the production of the nonoriginating material.

(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Singapore or the United States.

(f) **ACCESSORIES, SPARE PARTS, OR TOOLS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 3A of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term “inventory management method” means—

(i) averaging;

(ii) “last-in, first-out”;

(iii) “first-in, first-out”; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Singapore or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or materials shall continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

(h) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3A of the Agreement and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether—

(1) the nonoriginating materials used in the production of a good undergo an applicable change in tariff classification set out in Annex 3A of the

Agreement; and

(2) the good satisfies a regional value-content requirement.

(j) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(k) THIRD COUNTRY OPERATIONS.—A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of Singapore and the United States, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of Singapore or the United States.

(l) SPECIAL RULE FOR APPAREL GOODS LISTED IN CHAPTER 61 OR 62 OF THE HTS.—

(1) IN GENERAL.—An apparel good listed in chapter 61 or 62 of the HTS shall be considered to be an originating good if it is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Singapore, the United States, or both, from fabric or yarn, regardless of origin, designated in the manner described in paragraph (2) as fabric or yarn not available in commercial quantities in a timely manner in the United States.

(2) DESIGNATION OF CERTAIN FABRIC AND YARN.—The designation referred to in paragraph (1) means a designation made in a notice published in the Federal Register on or before November 15, 2002, identifying apparel goods made from fabric or yarn eligible for entry into the United States under subheading 9819.11.24 or 9820.11.27 of the HTS. For purposes of this subsection, a reference in the notice to fabric or yarn formed in the United States is deemed to include fabric or yarn formed in Singapore.

(m) APPLICATION AND INTERPRETATION.—In this section:

(1) The basis for any tariff classification is the HTS.

(2) Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Singapore or the United States).

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term “adjusted value” means the value of a good determined under articles 1 through 8, article 15, and the corresponding interpretative notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, except that such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) FUNGIBLE GOODS AND FUNGIBLE MATERIALS.—The terms “fungible

goods” and “fungible materials” mean goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical.

(3) **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**—The term “generally accepted accounting principles” means the recognized consensus or substantial authoritative support in the territory of Singapore or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, and assets and liabilities, the disclosure of information, and the preparation of financial statements. The standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(4) **GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF SINGAPORE, THE UNITED STATES, OR BOTH.**—The term “goods wholly obtained or produced entirely in the territory of Singapore, the United States, or both” means—

(A) mineral goods extracted in the territory of Singapore, the United States, or both;

(B) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of Singapore, the United States, or both;

(C) live animals born and raised in the territory of Singapore, the United States, or both;

(D) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Singapore, the United States, or both;

(E) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Singapore or the United States and flying the flag of that country;

(F) goods produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Singapore or the United States and flying the flag of that country;

(G) goods taken by Singapore or the United States, or a person of Singapore or the United States, from the seabed or beneath the seabed outside territorial waters, if Singapore or the United States has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by Singapore or the United States or a person of Singapore or the United States and not processed in the territory of a country other than Singapore or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Singapore, the United States, or both; or

(ii) used goods collected in the territory of Singapore, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) recovered goods derived in the territory of Singapore, the United States, or both, from used goods; or

(K) goods produced in the territory of Singapore, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs (A) through (I); or

(ii) from the derivatives of goods referred to in clause (i).

(5) HARMONIZED SYSTEM.—The term “Harmonized System” means the Harmonized Commodity Description and Coding System.

(6) INDIRECT MATERIAL.—The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(7) MATERIAL.—The term “material” means a good that is used in the production of another good.

(8) MATERIAL THAT IS SELF-PRODUCED.—The term “material that is self-produced” means a material, such as a part or ingredient, produced by a producer of a good and used by the producer in the production of another good.

(9) NONORIGINATING MATERIAL.—The term “nonoriginating material” means a material that does not qualify as an originating good under the rules set out in this section.

(10) PREFERENTIAL TARIFF TREATMENT.—The term “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to chapter 2 of the Agreement.

(11) PRODUCER.—The term “producer” means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles, or disassembles a good.

(12) PRODUCTION.—The term “production” means growing, mining,

harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(13) RECOVERED GOODS.—

(A) IN GENERAL.—The term “recovered goods” means materials in the form of individual parts that are the result of—

(i) the complete disassembly of used goods into individual parts; and

(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the processes described in subparagraph (B), in order for such parts to be assembled with other parts, including other parts that have undergone the processes described in this paragraph, in the production of a remanufactured good described in Annex 3C of the Agreement.

(B) PROCESSES.—The processes referred to in subparagraph (A)(ii) are welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding.

(14) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good assembled in the territory of Singapore or the United States, that is listed in Annex 3C of the Agreement, and—

(A) is entirely or partially comprised of recovered goods;

(B) has the same life expectancy and meets the same performance standards as a new good; and

(C) enjoys the same factory warranty as such a new good.

(15) TERRITORY.—The term “territory” has the meaning given that term in Annex 1A of the Agreement.

(16) USED.—The term “used” means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annexes 3A, 3B, and 3C of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than—

(i) the provisions of Annex 3B of the Agreement; and

(ii) provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.— Notwithstanding subparagraph

(A), and subject to the consultation and layover provisions of section 103(a), the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an agreement with Singapore pursuant to article 3.18.4(c) of the Agreement; and

(ii) before the 1st anniversary of the date of enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

SEC. 203. [Omitted—This section amended 19 USCS § 58c(b).]

Sec. 204. [Omitted—This section amended 19 USCS § 1592(c).]

SEC. 205. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) DENIAL OF PERMISSION TO CONDUCT SITE VISITS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Treasury proposes to conduct a site visit at an enterprise registered under article 5.3 of the Agreement, and responsible officials of the enterprise do not consent to the proposed visit, the President may exclude from the customs territory of the United States textile and apparel goods produced or exported by that enterprise.

(2) TERMINATION OF EXCLUSION.—An exclusion of textile and apparel goods produced or exported by an enterprise under paragraph (1) shall terminate when the President determines that the enterprise's production of, and capability to produce, the goods are consistent with statements by the enterprise that textile or apparel goods the enterprise produces or has produced are originating goods or products of Singapore, as the case may be.

(b) KNOWING OR WILLFUL CIRCUMVENTION.—

(1) IN GENERAL.—If the President finds that an enterprise of Singapore has knowingly or willfully engaged in circumvention, the President may exclude from the customs territory of the United States textile and apparel goods produced or exported by the enterprise. An exclusion under this paragraph may be imposed on the date beginning on the date a finding of knowing or willful circumvention is made and shall be in effect for a period not longer than the applicable period described in paragraph (2).

(2) TIME PERIODS.—

(A) FIRST FINDING.—With respect to a first finding under paragraph (1), the applicable period is 6 months.

(B) SECOND FINDING.—With respect to a second finding under paragraph (1), the applicable period is 2 years.

(C) THIRD AND SUBSEQUENT FINDING.—With respect to a third or subsequent finding under paragraph (1), the applicable period is 2

years. If, at the time of a third or subsequent finding, an exclusion is in effect as a result of a previous finding, the 2-year period applicable to the third or subsequent finding shall begin on the day after the day on which the previous exclusion terminates.

(c) CERTAIN OTHER INSTANCES OF CIRCUMVENTION.—If the President consults with Singapore pursuant to article 5.8 of the Agreement, the consultations fail to result in a mutually satisfactory solution to the matters at issue, and the President presents to Singapore clear evidence of circumvention under the Agreement, the President may—

(1) deny preferential tariff treatment to the goods involved in the circumvention; and

(2) deny preferential tariff treatment, for a period not to exceed 4 years from the date on which consultations pursuant to article 5.8 of the Agreement conclude, to—

(A) textile and apparel goods produced by the enterprise found to have engaged in the circumvention, including any successor of such enterprise; and

(B) textile and apparel goods produced by any other entity owned or operated by a principal of the enterprise, if the principal also is a principal of the other entity.

(d) DEFINITIONS.—In this section:

(1) GENERAL DEFINITIONS.—The terms “circumvention”, “preferential tariff treatment”, “principal”, and “textile and apparel goods” have the meanings given such terms in chapter 5 of the Agreement.

(2) ENTERPRISE.—The term “enterprise” has the meaning given that term in article 1.2.3 of the Agreement.

SEC. 206. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 202, and section 203;

(2) amendments made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 202(o).

TITLE III--RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) COMMISSION.—The term “Commission” means the United States International Trade Commission.

(2) SINGAPOREAN ARTICLE.—The term “Singaporean article” means an article that qualifies as an originating good under section 202(a) of this Act.

(3) SINGAPOREAN TEXTILE OR APPAREL ARTICLE.—The term “Singaporean textile or apparel article” means an article—

(A) that is listed in the Annex 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)); and
(B) that is a Singaporean article.

Subtitle A--Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Singaporean article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Singaporean article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

- (1) Paragraphs (1)(B) and (3) of subsection (b).
- (2) Subsection (c).
- (3) Subsection (d).
- (4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Singaporean article if, after the date that the Agreement enters into force, import relief has been provided with respect to that Singaporean article under—

- (1) this subtitle;
- (2) subtitle B;
- (3) chapter 1 of title II of the Trade Act of 1974;

(4) article 6 of 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)); or

(5) article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 7.28 of the

Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section may not exceed 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to prevent or remedy serious injury and to facilitate adjustment; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—

(i) Upon a petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—The effective period of any import relief imposed under this section, including any extensions thereof, may not, in the aggregate, exceed 4 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that has been subject to import relief, after the entry

into force of the Agreement, under—

- (1) this subtitle;
- (2) subtitle B;
- (3) chapter 1 of title II of the Trade Act of 1974;
- (4) article 6 of 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)); or
- (5) article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—No import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) EXCEPTION.—Import relief may be provided under this subtitle in the case of a Singaporean article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Singapore has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. [Omitted—This section amended 19 USCS § 2252(a)(8).]

Subtitle B--Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—Pursuant to a request made by an interested party, the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Singaporean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under

such conditions that imports of the article constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) **SERIOUS DAMAGE.**—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(3) **SUBSTANTIAL CAUSE.**—For purposes of this subsection, the term “substantial cause” means a cause that is important and not less than any other cause.

(b) **PROVISION OF RELIEF.**—

(1) **IN GENERAL.**—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) **Nature of relief.** The relief that the President is authorized to provide under this subsection with respect to imports of an article is—

(A) the suspension of any further reduction provided for under Annex 2B of the Agreement in the duty imposed on the article; or

(B) an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) **IN GENERAL.**—Subject to subsection (b), the import relief that the President is authorized to provide under section 322 may not exceed 2 years.

(b) **EXTENSION.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—The effective period of any action under this subtitle, including any extensions thereof, may not, in the aggregate, exceed 4 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if import relief previously has been provided under this subtitle with respect to that article.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to an article after the date that is 10 years after the date on which the provisions of the Agreement relating to trade in textile and apparel goods take effect pursuant to article 5.10 of the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in which the business confidential information is summarized or, if necessary, deleted.

Subtitle C--Cases Under Title II of the Trade Act of 1974

SEC. 331. FINDINGS AND ACTION ON GOODS FROM SINGAPORE.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Singapore are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING SINGAPOREAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by

the Commission and, if such determination is in the negative, may exclude from such action imports from Singapore.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Singapore (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term 'national' has the meaning given such term in Annex 1A of the Agreement.

SEC. 402. [OMITTED--THIS SECTION AMENDED 8 USCS § 1184(G)(8).]

M. BILATERAL TRADE RELATIONS WITH AUSTRALIA

United States-Australia Free Trade Agreement Implementation Act

[19 U.S.C. 3805 note, Public Law 108-286]

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Australia Free Trade Agreement Implementation Act”.

(b) [Omitted—This subsection contained a table of contents.]

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Australia, entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Australia for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the United States-Australia Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS. The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term “textile or apparel good” means a good listed in the Annex 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)).

TITLE I--APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Australia Free Trade Agreement entered into on May 18, 2004, with the Government of Australia and submitted to Congress on July 6, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 6, 2004.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Australia has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Australia providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term 'State law' includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104, may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued

within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.**—The President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such continuation of duty-free or excise treatment, or
- (3) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6, and Annex 2-B of the Agreement.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 104, the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Australia regarding the staging of any duty treatment set forth in Annex 2-B of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Australia provided for by the Agreement.

(c) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2-B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) **GENERAL PROVISIONS.**—

(1) **APPLICABILITY OF SUBSECTION.**—This subsection applies to additional duties assessed under subsections (b), (c), and (d).

(2) **APPLICABLE NTR (MFN) RATE OF DUTY.**—For purposes of subsections (b), (c), and (d), the term “applicable NTR (MFN) rate of duty” means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, at the time the additional duty is imposed under subsection (b), (c), or (d), as the case may be; or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, on December 31, 2004.

(3) SCHEDULE RATE OF DUTY.—For purposes of subsections (b) and (c), the term “schedule rate of duty” means, with respect to a safeguard good, the rate of duty for that good set out in the Schedule of the United States to Annex 2-B of the Agreement.

(4) SAFEGUARD GOOD.—In this subsection, the term “safeguard good” means—

- (A) a horticulture safeguard good described subsection (b)(1)(B); or
- (B) a beef safeguard good described in subsection (c)(1) or subsection (d)(1)(A).

(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b), (c), or (d) if, at the time of entry, the good is subject to import relief under—

- (A) subtitle A of title III of this Act; or
- (B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) or (c), whichever is applicable, shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2-B of the Agreement.

(7) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under subsection (b), (c), or (d), the Secretary shall notify the Government of Australia in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON HORTICULTURE SAFEGUARD GOODS.—

(1) DEFINITIONS.—In this subsection:

(A) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(B) HORTICULTURE SAFEGUARD GOOD.—The term “horticulture safeguard good” means a good

- (i) that qualifies as an originating good under section 203;
- (ii) that is included in the United States Horticulture Safeguard List set forth in Annex 3-A of the Agreement; and
- (iii) for which a claim for preferential treatment under the Agreement has been made.

(C) UNIT IMPORT PRICE.—The “unit import price” of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the United States Horticulture Safeguard List set forth in Annex 3-A of the Agreement.

(D) TRIGGER PRICE.—The “trigger price” for a good is the trigger price indicated for that good in the United States Horticulture

Safeguard List set forth in Annex 3-A of the Agreement or any amendment thereto.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section, the Secretary of the Treasury shall assess a duty on a horticulture safeguard good, in the amount determined under paragraph (3), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on a horticulture safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(c) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON QUANTITY OF IMPORTS.—

(1) DEFINITION.—In this subsection, the term “beef safeguard good” means a good—

- (A) that qualifies as an originating good under section 203;
- (B) that is listed in paragraph 3 of Annex I of the General Notes to the Schedule of the United States to Annex 2-B of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) and (5) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of beef safeguard goods imported into the United States in that calendar year is equal to or greater than 110 percent of the volume set out for beef safeguard goods in the corresponding year in the table contained in paragraph 3(a) of Annex I of the General Notes to the Schedule of the United States to Annex 2-B of the Agreement. For purposes of this subsection, the years 1 through 19 set out in the table contained in paragraph 3(a) of such Annex I correspond to the calendar years 2005 through 2023.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(4) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the

Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(5) EFFECTIVE DATES.—This subsection takes effect on January 1, 2013, and shall not be effective after December 31, 2022.

(d) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON PRICE.—

(1) DEFINITIONS.—In this subsection:

(A) BEEF SAFEGUARD GOOD.—The term “beef safeguard good” means a good—

- (i) that qualifies as an originating good under section 203;
- (ii) that is classified under subheading 0201.10.50, 0201.20.80, 0201.30.80, 0202.10.50, 0202.20.80, or 0202.30.80 of the HTS; and
- (iii) for which a claim for preferential treatment under the Agreement has been made.

(B) CALENDAR QUARTER.—

(i) IN GENERAL.—The term “calendar quarter” means any 3-month period beginning on January 1, April 1, July 1, or October 1 of a calendar year.

(ii) FIRST CALENDAR QUARTER.—The term “first calendar quarter” means the calendar quarter beginning on January 1.

(iii) SECOND CALENDAR QUARTER.—The term “second calendar quarter” means the calendar quarter beginning on April 1.

(iv) THIRD CALENDAR QUARTER.—The term “third calendar quarter” means the calendar quarter beginning on July 1.

(v) FOURTH CALENDAR QUARTER.—The term “fourth calendar quarter” means the calendar quarter beginning on October 1.

(C) MONTHLY AVERAGE INDEX PRICE.—The term “monthly average index price” means the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1-3 Central U.S. 600-750 lbs., or its equivalent, as such simple average is reported by the Agricultural Marketing Service of the Department of Agriculture in Report LM-XB459 or any equivalent report.

(D) 24-MONTH TRIGGER PRICE.—The term “24-month trigger price” means, with respect to any calendar month, the average of the monthly average index prices for the 24 preceding calendar months, multiplied by 0.935.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) through (6) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States if—

(A)(i) the good is imported in the first calendar quarter, second calendar quarter, or third calendar quarter of a calendar year; and

- (ii) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or
- (B)(i) the good is imported in the fourth calendar quarter of a calendar year; and
 - (ii)(I) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or
 - (II) the monthly average index price, in any of the 4 calendar months preceding January 1 of the succeeding calendar year, is less than the 24-month trigger price.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 65 percent of the applicable NTR (MFN) rate of duty for that good.

(4) LIMITATION.—An additional duty shall be assessed under this subsection on a beef safeguard good imported into the United States in a calendar year only if, prior to the importation of that good, the total quantity of beef safeguard goods imported into the United States in that calendar year is equal to or greater than the sum of—

- (A) the quantity of goods of Australia eligible to enter the United States in that year specified in Additional United States Note 3 to Chapter 2 of the HTS; and
- (B)(i) in 2023, 70,420 metric tons; or
- (ii) in 2024, and in each year thereafter, a quantity that is 0.6 percent greater than the quantity provided for in the preceding year under this subparagraph.

(5) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

- (i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and
- (ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(6) EFFECTIVE DATE.—This subsection takes effect on January 1, 2023.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

(3) COST OR VALUE.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Australia or the United States).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both;

(2) the good—

(A) is produced entirely in the territory of Australia, the United States, or both, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4-A or Annex 5-A of the Agreement;

(ii) the good otherwise satisfies any applicable regional value-content requirement referred to in Annex 5-A of the Agreement; or

(iii) the good meets any other requirements specified in Annex 4-A or Annex 5-A of the Agreement; and

(B) the good satisfies all other applicable requirements of this section;

(3) the good is produced entirely in the territory of Australia, the United States, or both, exclusively from materials described in paragraph (1) or (2);

or

(4) the good otherwise qualifies as an originating good under this section.

(c) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 5-A of the Agreement is an originating good if—

- (A) the value of all nonoriginating materials that—
 - (i) are used in the production of the good, and
 - (ii) do not undergo the required change in tariff classification,does not exceed 10 percent of the adjusted value of the good;
- (B) the good meets all other applicable requirements of this section; and
- (C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in subheading 1901.10, 1901.20, or 1901.90, heading 2105, or subheading 2106.90, 2202.90, or 2309.90.

(C) A nonoriginating material provided for in heading 0805 or any of subheadings 2009.11 through 2009.39 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, or in heading 1512, 1514, or 1515.

(E) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(F) A nonoriginating material provided for in chapter 17 of the HTS or heading 1805.00.00 that is used in the production of a good provided for in subheading 1806.10.

(G) A nonoriginating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in heading 2207 or 2208.

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE AND APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that

determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Australia or the United States.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term 'component of the good that determines the tariff classification of the good' means all of the fibers in the yarn, fabric, or group of fibers.

(d) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF OTHER COUNTRY.—Originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Australia, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(e) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 5-A of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) BUILD-DOWN METHOD. —

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

$$\text{RVC} = \frac{\text{AV-VNM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term “AV” means the adjusted value of the good.

(iii) VNM.—The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(3) BUILD-UP METHOD. —

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS. —In subparagraph (A):

(i) RVC. The term “RVC” means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term “AV” means the adjusted value of the good.

(iii) VOM.—The term “VOM” means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 5-A of the Agreement shall be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC-VNM}}{\text{NC}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) AUTOMOTIVE GOOD.—The term “automotive good” means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC.—The term “RVC” means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC.—The term “NC” means the net cost of the automotive

good.

(iv) VNM.—The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

(C) MOTOR VEHICLES.—

(i) BASIS OF CALCULATION.—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer's fiscal year—

(I) with respect to all motor vehicles in any one of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Australia.

(ii) CATEGORIES.—A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in either the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated.

(D) OTHER AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(ii) determine the average referred to in clause (i) separately for such goods sold to one or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of the United States or Australia.

(E) CALCULATING NET COST.—Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the automotive good under subparagraph (B) shall be calculated by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(f) VALUE OF MATERIALS.—

(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (e), and for purposes of applying the de minimis rules under subsection (c), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

(C) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of processing incurred in the territory of Australia, the United States, or both, in the production of the nonoriginating material.

(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Australia, the United States, or both.

(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraph (2), accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term “inventory management method” means—

- (i) averaging;
- (ii) “last-in, first-out”;
- (iii) “first-in, first-out”; or
- (iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Australia or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4-A or Annex 5-A of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether—

- (1) the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification set out in Annex 4-A or Annex 5-A of the Agreement; and
- (2) the good satisfies a regional value-content requirement.

(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(l) THIRD COUNTRY OPERATIONS.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Australia or the United States.

(m) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4-A of the Agreement, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term “adjusted value” means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) CLASS OF MOTOR VEHICLES.—The term “class of motor vehicles” means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8703.21

through 8703.90.

(3) **FUNGIBLE GOOD OR FUNGIBLE MATERIAL.**—The term “fungible good” or “fungible material” means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(4) **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**—The term “generally accepted accounting principles” means the recognized consensus or substantial authoritative support in the territory of Australia or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(5) **GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE UNITED STATES, OR BOTH.**—The term “good wholly obtained or produced entirely in the territory of Australia, the United States, or both” means—

(A) a mineral good extracted in the territory of Australia, the United States, or both;

(B) a vegetable good, as such goods are provided for in the HTS, harvested in the territory of Australia, the United States, or both;

(C) a live animal born and raised in the territory of Australia, the United States, or both;

(D) a good obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Australia, the United States, or both;

(E) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Australia or the United States and flying the flag of that country;

(F) a good produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Australia or the United States and flying the flag of that country;

(G) a good taken by Australia or the United States or a person of Australia or the United States from the seabed or beneath the seabed outside territorial waters, if Australia or the United States has rights to exploit such seabed;

(H) a good taken from outer space, if such good is obtained by Australia or the United States or a person of Australia or the United States and not processed in the territory of a country other than Australia or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Australia, the United States, or both; or

(ii) used goods collected in the territory of Australia, the United

States, or both, if such goods are fit only for the recovery of raw materials;

(J) a recovered good derived in the territory of Australia or the United States from goods that have passed their life expectancy, or are no longer usable due to defects, and utilized in the territory of that country in the production of remanufactured goods; or

(K) a good produced in the territory of Australia, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs (A) through (I), or

(ii) from the derivatives of goods referred to in clause (i), at any stage of production.

(6) **INDIRECT MATERIAL.**—The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(7) **MATERIAL.**—The term “material” means a good that is used in the production of another good.

(8) **MATERIAL THAT IS SELF-PRODUCED.**—The term “material that is self-produced” means an originating material that is produced by a producer of a good and used in the production of that good.

(9) **MODEL LINE.**—The term “model line” means a group of motor vehicles having the same platform or model name.

(10) **NONALLOWABLE INTEREST COSTS.**—The term “nonallowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country (whether Australia or the United States).

(11) **NONORIGINATING MATERIAL.**—The term “nonoriginating material” means a material that does not qualify as originating under this section.

(12) PREFERENTIAL TREATMENT.—The term “preferential treatment” means the customs duty rate, and the treatment under article 2.12 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(13) PRODUCER.—The term “producer” means a person who engages in the production of a good in the territory of Australia or the United States.

(14) PRODUCTION.—The term “production” means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(15) REASONABLY ALLOCATE.—The term “reasonably allocate” means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(16) RECOVERED GOODS.—The term “recovered goods” means materials in the form of individual parts that result from—

(A) the complete disassembly of goods which have passed their life expectancy, or are no longer usable due to defects, into individual parts; and

(B) the cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(17) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good that is assembled in the territory of Australia or the United States, that is classified under chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516 or any of headings 8701 through 8706, and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to a like good that is new.

(18) TOTAL COST.—The term “total cost” means all product costs, period costs, and other costs for a good incurred in the territory of Australia, the United States, or both.

(19) USED.—The term “used” means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY. —

(1) IN GENERAL. The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4-A and Annex 5-A of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the

provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

(B) **ADDITIONAL PROCLAMATIONS.**—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Australia pursuant to article 4.2.5 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

SEC. 204. [Omitted—This section amended 19 USCS § 58c(b).]

SEC. 205. [Omitted—This section amended 19 USCS § 1592(c).]

SEC. 206. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) **ACTION DURING VERIFICATION.**—

(1) **IN GENERAL.**—If the Secretary of the Treasury requests the Government of Australia to conduct a verification pursuant to article 4.3 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) **DETERMINATION.**—A determination under this paragraph is a determination—

(A) that an exporter or producer in Australia is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act;

or

(ii) is a good of Australia,
is accurate.

(b) **APPROPRIATE ACTION DESCRIBED.**—Appropriate action under subsection

(a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for

which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 207. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 203 and section 204;

(2) amendments to existing law made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

As used in this title:

(1) AUSTRALIAN ARTICLE.—The term “Australian article” means an article that qualifies as an originating good under section 203(b) of this Act.

(2) AUSTRALIAN TEXTILE OR APPAREL ARTICLE.—The term “Australian textile or apparel article” means an article—

(A) that is listed in the Annex 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)); and

(B) that is an Australian article.

(3) COMMISSION.—The term “Commission” means the United States International Trade Commission.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) Filing of petition.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Australian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Australian article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

- (1) Paragraphs (1)(B) and (3) of subsection (b).
- (2) Subsection (c).
- (3) Subsection (d).
- (4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Australian article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Australian article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2-B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 9.2.7 of the Agreement) of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

- (i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and
- (ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—

(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

(e) Rate after termination of import relief. When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2-B of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2-B of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2-B of the Agreement for the elimination of the tariff.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to—

(A) import relief under subtitle B; or

(B) an assessment of additional duty under subsection (b), (c), or (d) of section 202; or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) EXCEPTION.—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 2-B of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which such period ends.

(c) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this subtitle in the case of an Australian article after the date on which such relief would, but for this subsection, terminate under subsection (a) or (b), if the President determines that Australia has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. [Omitted—This section amended 19 USCS § 2252(a)(8).]

Subtitle B--Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) ALLEGATION OF CRITICAL CIRCUMSTANCES.—An interested party filing a request under this section may—

(1) allege that critical circumstances exist such that delay in the provision of relief would cause damage that would be difficult to repair; and

(2) based on such allegation, request that relief be provided on a

provisional basis.

(c) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.— If a positive determination is made under section 321(c), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(c) CRITICAL CIRCUMSTANCES.—

(1) PRESIDENTIAL DETERMINATION.—When a request filed under section 321(a) contains an allegation of critical circumstances and a request for provisional relief under section 321(b), the President shall, not later than 60 days after the request is filed, determine, on the basis of available information, whether—

(A) there is clear evidence that—

(i) imports from Australia have increased as the result of the reduction or elimination of a customs duty under the Agreement; and

(ii) such imports are causing serious damage, or actual threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(B) delay in taking action under this subtitle would cause damage to that industry that would be difficult to repair.

(2) EXTENT OF PROVISIONAL RELIEF.—If the determinations under subparagraphs (A) and (B) of paragraph (1) are affirmative, the President shall determine the extent of provisional relief that is necessary to remedy or prevent the serious damage. The nature of the provisional relief available shall be the relief described in subsection (b)(2). Within 30 days after making affirmative determinations under subparagraphs (A) and (B) of paragraph (1), the President, if the President considers provisional relief to be warranted, shall provide, for a period not to exceed 200 days, such provisional relief that the President considers necessary to remedy or prevent the serious damage.

(3) SUSPENSION OF LIQUIDATION.—If provisional relief is provided under paragraph (2), the President shall order the suspension of liquidation of all imported articles subject to the affirmative determinations under subparagraphs (A) and (B) of paragraph (1) that are entered, or withdrawn from warehouse for consumption, on or after the date of the determinations.

(4) TERMINATION OF PROVISIONAL RELIEF.—

(A) IN GENERAL.—Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) the President makes a negative determination under subsection (a) regarding serious damage or actual threat thereof by imports of such article;

(ii) action described in subsection (b) takes effect with respect to such article;

(iii) a decision by the President not to take any action under subsection (b) with respect to such article becomes final; or

(iv) the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) SUSPENSION OF LIQUIDATION.—Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall

terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) RATES OF DUTY.—If an increase in, or the imposition of, a duty that is provided under subsection (b) on an imported article is different from a duty increase or imposition that was provided for such an article under this subsection, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) RATE OF DUTY IF PROVISIONAL RELIEF.—If provisional relief is provided under this subsection with respect to an imported article and neither a duty increase nor a duty imposition is provided under subsection (b) for such article, the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at the rate of duty that applied before the provisional relief was provided.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsections (b) and (c) of section 322 may not, in the aggregate, be in effect for more than 2 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) import relief previously has been provided under this subtitle with respect to that article; or

(2) the article is subject to import relief under—

(A) subtitle A; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

Subtitle C—Cases Under Title II of the Trade Act of 1974

SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUSTRALIA.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Australia are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING AUSTRALIAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Australia are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is in the negative, may exclude from such action imports from Australia.

TITLE IV—PROCUREMENT

SEC. 401. [Omitted—This section amended 19 U.S.C. 2518(4)(A).]

N. BILATERAL TRADE RELATIONS WITH MOROCCO

United States-Morocco Free Trade Agreement Implementation Act

[19 U.S.C. 3805 note, Public Law 108-302]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “United States-Morocco Free Trade Agreement Implementation Act”.

(b) [Omitted--This subsection contained a table of contents.]

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Morocco entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term “textile or apparel good” means a good listed in the Annex 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)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on July 15, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2004.

(b) **CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.**—At such time as the President determines that Morocco has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Morocco providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.³

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) **RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.**—

(1) **UNITED STATES LAW TO PREVAIL IN CONFLICT.**—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) **CONSTRUCTION.**—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) **RELATIONSHIP OF AGREEMENT TO STATE LAW.**—

(1) **LEGAL CHALLENGE.**—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) **DEFINITION OF STATE LAW.**—For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) **EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.**—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the

³ [As of date of this writing, Morocco has not yet taken all of the necessary steps to implement, so the agreement has not entered into force.]

United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act [for full classification, consult USCS Tables volumes], that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor;

and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,
as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annex IV of the Agreement.

(2) EFFECT ON MOROCCAN GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Morocco as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Morocco regarding the staging of any duty treatment set forth in Annex IV of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex IV of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL SAFEGUARD GOOD.—The term “agricultural safeguard good” means a good—

- (A) that qualifies as an originating good under section 203;
- (B) that is included in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement; and
- (C) for which a claim for preferential treatment under the Agreement has been made.

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—The term “applicable NTR (MFN) rate of duty” means, with respect to an agricultural safeguard good, a rate of duty that is the lesser of—

- (A) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the additional duty is imposed under subsection (b); or
- (B) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on December 31, 2004.

(3) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) SCHEDULE RATE OF DUTY.—The term “schedule rate of duty” means, with respect to an agricultural safeguard good, the rate of duty for that good set out in the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TRIGGER PRICE.—The “trigger price” for a good means the trigger price indicated for that good in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement or any amendment thereto.

(6) UNIT IMPORT PRICE.—The “unit import price” of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement.

(b) ADDITIONAL DUTIES ON AGRICULTURAL SAFEGUARD GOODS.—

(1) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to paragraphs (3), (4), (5), and (6) of this subsection, the Secretary of the Treasury shall assess a duty on an agricultural safeguard good, in the amount determined under paragraph (2), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on an agricultural safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.

More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(3) EXCEPTIONS.—No additional duty shall be assessed on a good under this subsection if, at the time of entry, the good is subject to import relief under—

- (A) subtitle A of title III of this Act; or
- (B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—The assessment of an additional duty on a good under this subsection shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota under the Agreement, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under this subsection, the Secretary shall notify the Government of Morocco in writing of such action and shall provide to the Government of Morocco data supporting the assessment of additional duties.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or sub-heading, such reference shall be a reference to a heading or subheading of the HTS.

(b) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

- (A) the good is imported directly—
 - (i) from the territory of Morocco into the territory of the United States; or
 - (ii) from the territory of the United States into the territory of Morocco; and

(B)(i) the good is a good wholly the growth, product, or manufacture of Morocco or the United States, or both;

(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both, and meets the requirements of paragraph (2); or

(iii)(I) the good is a good covered by Annex 4-A or 5-A of the Agreement;

(II) (aa) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Morocco or the United States, or both; or

(bb) the good otherwise satisfies the requirements specified in such Annex; and

(III) the good satisfies all other applicable requirements of this section.

(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—

(A) the value of each material produced in the territory of Morocco or the United States, or both, and

(B) the direct costs of processing operations performed in the territory of Morocco or the United States, or both,

is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) CUMULATION.—

(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good or a material produced in the territory of Morocco or the United States, or both, that is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is grown, produced, or manufactured in the territory of Morocco or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Morocco or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of such good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Morocco, the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Morocco or the United States, as the case may be.

(2) EXCEPTION.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Morocco or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

(e) PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers have been included in meeting the requirements set forth in subsection (b)(2).

(f) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

(g) TRANSIT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Morocco or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Morocco or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of the United States or Morocco.

(h) TEXTILE AND APPAREL GOODS.—

(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Morocco or the United States.

(C) YARN, FABRIC, OR GROUP OF FIBERS.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term 'component of the good that determines the tariff classification of the good' means all of the fibers in the yarn, fabric, or group of fibers.

(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 4-A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(i) DEFINITIONS.—In this section:

(1) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) IN GENERAL.—The term “direct costs of processing operations”, with respect to a good, includes, to the extent they are includable in the appraised value of the good when imported into Morocco or the United States, as the case may be, the following:

(i) All actual labor costs involved in the growth, production, or manufacture of the good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel.

(ii) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the good.

(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

(iv) Costs of inspecting and testing the good.

(v) Costs of packaging the good for export to the territory of the other country.

(B) EXCEPTIONS.—The term “direct costs of processing operations” does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

(i) profit; and

(ii) general expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

(2) GOOD.—The term “good” means any merchandise, product, article, or material.

(3) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF MOROCCO, THE UNITED STATES, OR BOTH.—The term “good wholly the growth, product, or manufacture of Morocco, the United States, or both” means—

(A) a mineral good extracted in the territory of Morocco or the United States, or both;

(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Morocco or the United States, or both;

(C) a live animal born and raised in the territory of Morocco or the United States, or both;

(D) a good obtained from live animals raised in the territory of Morocco or the United States, or both;

(E) a good obtained from hunting, trapping, or fishing in the territory of Morocco or the United States, or both;

(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Morocco or the United States and flying the flag of that country;

(G) a good produced from goods referred to in subparagraph (F) on board factory ships registered or recorded with Morocco or the United States and flying the flag of that country;

(H) a good taken by Morocco or the United States or a person of Morocco or the United States from the seabed or beneath the seabed outside territorial waters, if Morocco or the United States has rights to exploit such seabed;

(I) a good taken from outer space, if such good is obtained by Morocco or the United States or a person of Morocco or the United States and not processed in the territory of a country other than Morocco or the United States;

(J) waste and scrap derived from—

(i) production or manufacture in the territory of Morocco or the United States, or both; or

(ii) used goods collected in the territory of Morocco or the United States, or both, if such goods are fit only for the recovery of raw materials;

(K) a recovered good derived in the territory of Morocco or the United States from used goods and utilized in the territory of that country in the production of remanufactured goods; and

(L) a good produced in the territory of Morocco or the United States, or both, exclusively—

(i) from goods referred to in subparagraphs (A) through (J), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(4) **INDIRECT MATERIAL.**—The term “indirect material” means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment and buildings;

(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

(5) **MATERIAL.**—The term “material” means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both.

(6) **MATERIAL PRODUCED IN THE TERRITORY OF MOROCCO OR THE UNITED STATES, OR BOTH.**—The term “material produced in the territory of Morocco or the United States, or both” means a good that is either wholly the growth, product, or manufacture of Morocco, the United States, or both, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of Morocco or the United States, or both.

(7) **NEW OR DIFFERENT ARTICLE OF COMMERCE.**—

(A) **IN GENERAL.**—The term “new or different article of commerce” means, except as provided in subparagraph (B), a good that—

(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both; and

(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

(B) **EXCEPTION.**—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

(8) RECOVERED GOODS.—The term “recovered goods” means materials in the form of individual parts that result from—

(A) the complete disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

(9) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good that is assembled in the territory of Morocco or the United States and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to that of a like good that is new.

(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term “simple combining or packaging operations” means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

(11) SUBSTANTIALLY TRANSFORMED.—The term “substantially transformed” means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(ii) the physical properties of the good or material are changed to a significant extent; or

(iii) the operation undergone by the good or material is complex by reason of the number of processes and materials involved and the time and level of skill required to perform those processes; and

(B) the good or material loses its separate identity in the manufacturing or processing operation.

(j) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4-A and Annex 5-A of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

(B) **ADDITIONAL PROCLAMATIONS.**—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Morocco pursuant to article 4.3.6 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) **ACTION DURING VERIFICATION.**—

(1) **IN GENERAL.**—If the Secretary of the Treasury requests the Government of Morocco to conduct a verification pursuant to article 4.4 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) **DETERMINATION.**—A determination under this paragraph is a determination—

(A) that an exporter or producer in Morocco is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act,

or

(ii) is a good of Morocco,

is accurate.

(b) **APPROPRIATE ACTION DESCRIBED.**—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) **ACTION WHEN INFORMATION IS INSUFFICIENT.**—If the Secretary of the Treasury determines that the information obtained within 12 months after

making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 205. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (i) of section 203;

(2) amendments to existing law made by the subsections referred to in paragraph (1); and

(3) proclamations issued under section 203(j).

TITLE III--RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) MOROCCAN ARTICLE.—The term “Moroccan article” means an article that qualifies as an originating good under section 203(b) of this Act or receives preferential tariff treatment under paragraphs 9 through 15 of article 4.3 of the Agreement.

(2) MOROCCAN TEXTILE OR APPAREL ARTICLE.—The term “Moroccan textile or apparel article” means an article that—

(A) is listed in the Annex 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)); and

(B) is a Moroccan article.

(3) COMMISSION.—The term “Commission” means the United States International Trade Commission.

Subtitle A--Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES. Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Moroccan article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Moroccan article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Moroccan article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is

initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) **APPLICABLE PROVISIONS.**—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) **REPORT TO PRESIDENT.**—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) **IN GENERAL.**—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the

Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex IV of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under

subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—

(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to an assessment of additional duty under section 202(b); or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle with respect to a good after the date that is 5 years

after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement.

(b) **PRESIDENTIAL DETERMINATION.**—Import relief may be provided under this subtitle in the case of a Moroccan article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Morocco has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. [Omitted--This section amended 19 USCS § 2252(a)(8).]

Subtitle B--Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) **IN GENERAL.**—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) **PUBLICATION OF REQUEST.**—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) **DETERMINATION.**—

(1) **IN GENERAL.**—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) **SERIOUS DAMAGE.**—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) **PROVISION OF RELIEF.—**

(1) **IN GENERAL.—**If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) **NATURE OF RELIEF.—**The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) **IN GENERAL.—**Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) **EXTENSION.—**

(1) **IN GENERAL.—**Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) **LIMITATION.—**Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.