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COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

# OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES

## 1997 EDITION

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**COMMITTEE ON WAYS AND MEANS**

**U.S. HOUSE OF REPRESENTATIVES**

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ONE HUNDRED FIFTH CONGRESS

BILL ARCHER, TEXAS, *Chairman*

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A.L. SINGLETON, *Chief of Staff*

This document was prepared by the staff of the Committee on Ways and Means and is issued under the authority of Chairman Bill Archer. This document has not been reviewed or officially approved by the Members of the Committee.

## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
*Washington, DC, May 15, 1997.*

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: In 1987, the Committee first published a resource document entitled "Overview and Compilation of U.S. Trade Statutes" for use by Committee Members and interested parties in the international trade community. This document was unique in that it contained not only an overview of the operation of foreign trade statutes, but also an up-to-date statutory text of such laws, which integrated numerous separate acts of Congress into a single statutory compilation.

This document was so well received by Members of Congress, congressional staff, government officials, the international trade community and the general public that an updated version was published in 1989 and updated and expanded versions were published in 1991, 1993, and 1995. In order to update the changes in various trade statutes since the publication of the 1995 edition, the staff has prepared a new version, incorporating all statutory provisions enacted through the 104th Congress.

As was the case with the earlier versions, the statutory authorities selected are the major provisions of federal law which are directly related to the conduct of U.S. international trade. The compilation is not meant to be a comprehensive treatise of every trade-related law or program, not does it cover provisions to regulate domestic commerce. The laws and programs which are within the jurisdiction of the Committee on Ways and Means are the main focus of this document and are discussed in the greatest detail. In addition, some of the laws and programs described may be within the jurisdiction of other committees of the House of Representatives. These provisions are included in order to provide a complete survey of the principal trade authorities.

The document has been prepared by the Committee's trade staff with assistance from the Office of the Legislative Counsel and various government agencies, to which the staff extends its most sincere thanks.

Any suggestions on how to improve this document as a reference tool in subsequent editions of this publication are always welcome.

Sincerely yours,

A.L. SINGLETON,
*Chief of Staff.*

## PREFACE

The role of Congress in formulating international economic policy and regulating international trade is based on a specific constitutional grant of power. Article I of the U.S. Constitution sets forth the various powers and responsibilities of the legislature. Article I, section 8 lists certain specific express powers of the Congress. Among these express powers are the powers:

> "to lay and collect taxes, duties, imposts and excises . . . [and] to regulate commerce with foreign nations, and among the several states. . . ."

The Congress therefore is the fundamental authority responsible for federal government regulation of international transactions. Within the House of Representatives, jurisdiction over trade legislation lies in the Committee on Ways and Means, based on its jurisdiction over taxes, tariffs, and trade agreements. Throughout the history of U.S. trade law and policy, the Committee on Ways and Means has been at the forefront of its development. The Committee's jurisdiction ranges from regulation of tariff affairs, to regulation of non-tariff trade barriers such as quotas and standards, regulation of unfair trade practices such as dumping, subsidization, or counterfeiting, provision of temporary relief from import competition and adjustment assistance, providing for bilateral and multilateral trade agreements with foreign trading partners, and responsibility for authorizing and overseeing the departments and agencies charged with implementation of the trade laws and programs.

The difficulties of retaining and exercising full control over international trade matters within the legislative branch were recognized by Congress shortly after enactment of the Smoot-Hawley Tariff Act of 1930. In 1934, the Congress enacted the Reciprocal Trade Agreements Act which delegated to the President authority to negotiate international trade agreements for the reduction of tariffs. This Act, which marked the beginning of the trade agreements program for the United States, represented the first significant delegation of authority from Congress to the President with respect to international trade policy.

Since 1934, the delegation of authority from Congress to the President has varied in scope and degree, reflecting congressional concern over maintaining careful control of international trade policy. When the trade agreements negotiating authority granted to the President expired in 1967, for example, it was not renewed again until 1974. In the Trade Act of 1974, presidential negotiating authority was substantially revised, extended to non-tariff as well as tariff negotiations, and made subject to specific consultation and notification requirements both prior to and during the course of negotiation. The Omnibus Trade and Competitiveness Act of 1988, in addition to providing negotiating authority and explicit negotiating objectives for the Uruguay Round, expands the consultation requirements be-

tween the USTR and the Congress and requires the formulation of an annual trade policy agenda. Finally, both the Uruguay Round Agreements Act and the North American Free Trade Agreement Implementation Act provide for the involvement of Congress in a number of key trade policy areas.

Due to the central role of Congress in formulating international economic policy, an understanding of U.S. international trade law and policy must begin with the statutory authorities and programs which provide the foundation for our trade policy. This document provides two essential tools for those interested in obtaining a better understanding of U.S. trade law and policy. Part I contains a general overview of current provisions of our trade laws. This overview was prepared by the staff of the Subcommittee on Trade with the assistance of the Congressional Research Service and provides a thorough yet understandable explanation of how these laws operate. Part II contains a compilation of the actual text of these laws, as amended. This updated statutory compilation incorporates all major provisions of U.S. trade law and includes all amendments to these laws as of the beginning of the 105th Congress. While this integrated text should not be treated as a substitute for official public laws or the United States Code, it is an accurate and highly useful document which integrates numerous separate Acts of Congress into one text. We hope this document will prove useful to official policymakers as well as the interested public.

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# PART I: OVERVIEW

## Chapter 1: TARIFF AND CUSTOMS LAWS

### Harmonized Tariff Schedule of the United States

*Historical background*

The Harmonized Tariff Schedule of the United States (HTS) was enacted by subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988[1] and became effective on January 1, 1989.[2] The HTS replaced the Tariff Schedules of the United States (TSUS), enacted as title I of the Tariff Act of 1930 (19 U.S.C. 1202) by the Tariff Classification Act of 1962;[3] the TSUS had been in effect since August 31, 1963.

The HTS is based upon the internationally adopted Harmonized Commodity Description and Coding System (known as the Harmonized System or HS) of the Customs Cooperation Council. Incorporated into a multilateral convention effective as of January 1, 1988, the HS was derived from the earlier Customs Cooperation Council Nomenclature, which in turn was a new version of the older Brussels Tariff Nomenclature. The HS is an up-to-date, detailed nomenclature structure intended to be utilized by contracting parties as the basis for their tariff, statistical and transport documentation programs.

The United States did not adopt either of the two previous nomenclatures but, because it was a party to the convention creating the Council and because of the potential benefits from using a modern, widely adopted nomenclature, became involved in the technical work to develop the HS. Section 608(c) of the Trade Act of 1974[4] directed the U.S. International Trade Commission (ITC) to investigate the principles and concepts which should underlie such an international nomenclature and to participate fully in the Council's technical work on the HS. The ITC, the U.S. Customs Service (which represents the United States at the Council), and other agencies were involved in this work through the mid and late 1970's; in 1981, the President requested that the ITC prepare a draft conversion of the U.S. tariff into the nomenclature format of the HS, even as the international efforts to complete the nomenclature continued. The Commission's report and converted tariff were issued in June 1983. After considerable review and the receipt of comments from interested parties, legislation to repeal the TSUS and replace it with the HTS was introduced. Following the August

[1] Public Law 100–418, approved August 23, 1988.
[2] Presidential Proclamation No. 5911, November 19, 1988.
[3] Public Law 87–456, approved May 24, 1962.
[4] Public Law 93–618, approved January 3, 1975.

23, 1988 enactment of the Omnibus Trade and Competitiveness Act, the United States became a party to the HS Convention, joining over 75 other major trading partners.

*Structure of the HTS*

Under the HS Convention, the contracting parties are obliged to base their import and export schedules on the HS nomenclature, but the rates of duty are set by each contracting party. The HS is organized into 21 sections and 96 chapters, with accompanying general interpretive rules and legal notes. Goods in trade are assigned in the system, in general, to categories beginning with crude and natural products and continue in further degrees of complexity through advanced manufactured goods. These product headings are designated, at the broadest coverage level, with 4-digit numerical codes and are further subdivided into narrower categories assigned 2 additional digits. The contracting parties must employ all 4- and 6-digit provisions and all international rules and notes without deviation; they may also adopt still narrower subcategories and additional notes for national purposes, and they determine all rates of duty. Thus, a common product description and numbering system to the 6-digit level of detail exists for all contracting parties, facilitating international trade in goods. Two final chapters, 98 and 99, are reserved for national use (chapter 77 is reserved for future international use).

The HTS therefore sets forth all the international nomenclature through the 6-digit level and, where needed, contains added subdivisions assigned 2 more digits, for a total of 8 at the tariff-rate line (legal) level. Two final (non-legal) digits are assigned as statistical reporting numbers where further statistical detail is needed (for a total of 10 digits to be listed on entries). Chapter 98 comprises special classification provisions (former TSUS schedule 8), and chapter 99 (former appendix to the TSUS) contains temporary modifications pursuant to legislation or to presidential action.

Each section's chapters contain numerous 4-digit headings (which may, when followed by 4 zeroes, serve as U.S duty rate lines) and 6- and 8-digit subheadings. Additional U.S. notes may appear after HS notes in a chapter or section. Most of the general headnotes of the former TSUS appear as general notes to the HTS set forth before chapter 1, along with notes covering more recent trade programs (and the non-legal statistical notes). These notes contain definitions or rules on the scope of the pertinent provisions, or set additional requirements for classification purposes. In addition, the HTS contains a table of contents, an index, footnotes, and other administrative material, which are provided for ease of reference and, along with the statistical reporting provisions, have no legal significance or effect.

The HTS is not published as a part of the statutes and regulations of the United States but is instead subsumed in a document produced and updated regularly by the ITC entitled "Harmonized Tariff Schedule of the United States: Annotated for Statistical Reporting Purposes." Changes in the TSUS became so frequent and voluminous that its inclusion in title 19 of the United States Code effectively ceased with the 1979 supplement to the 1976 edition. The Commission is charged by section 1207 of the 1988 Omnibus

Trade and Competitiveness Act (19 U.S.C. 3007) with the responsibility of compiling and publishing, "at appropriate intervals," and keeping up to date the HTS and any related materials. The initial document appeared as USITC Publication 2030. That document, and subsequent issuances, have included both the current legal text of the HTS and all statistical provisions adopted under section 484(f) of the Tariff Act of 1930 (19 U.S.C. 1484(f)). It is presented as a looseleaf publication so that pages being issued in supplements to modify the schedule's basic edition for any year edition may be inserted as replacements. Two or more supplements may appear between the publication of each basic edition.

Unlike the TSUS, which applied exclusively to imported goods, the HTS can, for almost all goods, be used to document both imports and exports. The small number of exceptions enumerated before chapter 1 require particular exports to be reported under schedule B provisions. That schedule, which prior to 1989 served as the means of reporting all exports, has been converted to the HS nomenclature structure. For certain goods that are significant U.S. exports, variations in the desired product description and detail compel the use of schedule B reporting provisions that cannot be accommodated in the HTS under the international nomenclature structure.

The HTS, like its predecessor the TSUS, is presented in a tabular format containing 7 columns, each with a particular type of information. A sample page of the HTS is set forth on the next page.

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1997)

**Annotated for Statistical Reporting Purposes**

| Heading/ subheading | Stat. suffix | Article description | Units of quantity | Rates of duty 1 General | Rates of duty 1 Special | Rates of duty 2 |
|---|---|---|---|---|---|---|
| 7213 | | Bars and rods, hot-rolled, in irregularly wound coils, of iron or non alloy steel: | | | | |
| 7213.10.00 | 00 | Concrete reinforcing bars and rods | kg | 3.4% | Free (E,IL,J)<br>0.4% (CA)<br>2.9% (MX) | 20% |
| 7213.20.00 | 00 | Other, of free-cutting steel | kg | 1.3% | Free (E,IL,J)<br>0.1% (CA)<br>1.1% (MX) | 5.5% |
| | | Other: | | | | |
| 7213.91 | | Of circular cross section measuring less than 14 mm in diameter: | | | | |
| 7213.91.30 | 00 | Not tempered, not treated and not partly manufactured | kg | 1.3% | Free (E,IL,J)<br>0.1% (CA)<br>1.1% (MX) | 5.5% |
| | | Other: | | | | |
| 7213.91.45 | 00 | Containing by weight 0.6 percent or more of carbon | kg | 1.3% | Free (E,IL,J)<br>0.1% (CA)<br>1.1% (MX) | 5.5% |
| 7213.91.60 | 00 | Other | kg | 1.6% | Free (E,IL,J)<br>0.2% (CA)<br>1.3% (MX) | 6% |
| 7213.99.00 | | Other | | 1.3% | Free (E,IL,J)<br>0.1% (CA)<br>1.1% (MX) | 5.5% |
| | 30 | Of circular cross section: | | | | |
| | | With a diameter of 14 mm or more but less than 19 mm | kg | | | |
| | 60 | With a diameter of 19 mm or more | kg | | | |
| | 90 | Other | kg | | | |

The first column, entitled "Heading/subheading," sets forth the 4-, 6-, or 8-digit number assigned to the class of goods described to its right. It should be recalled that 8-digit-level provisions bear the only numerical codes at the legal level which are determined solely by the United States, because the 4- and 6-digit designators are part of the international convention.

The second column is labeled "Stat. suffix," meaning statistical suffix. Wherever a tariff rate line is annotated to permit collection of trade data on narrower classes of merchandise, the provisions adopted administratively by an interagency committee under section 484(f) of the 1930 Act (19 U.S.C. 1484(f)) are given 2 more digits which must be included on the entry filed with customs officials. Where no annotations exist, 2 additional zeroes are added to the 8-digit legal code applicable to the goods in question. The goods falling in all 10-digit statistical reporting numbers of a particular 8-digit legal provision receive the same duty treatment.

The third column, "Article description," contains the detailed description of the goods falling within each tariff provision and statistical reporting number.

In the fourth column, "Units of quantity," the unit of measure in which the goods in question are to be reported for statistical purposes is set forth. These units are administratively determined under section 484(f) of the Tariff Act of 1930. In many instances, the unit of quantity is also the basis for the assessment of the duty. For many categories of products, two or three different figures in different units must be reported (e.g., for some textiles, weight and square meters; for some apparel, the number of garments, value, and weight), with the second unit of quantity frequently being the basis for administering a measure regulating imports, such as a quota. If an "X" appears in this column, only the value of the shipment must be reported.

The remaining columns appear under the common heading "Rates of duty" and are designated as column 1 (subdivided into "General" and "Special" subcolumns) and column 2. These columns contain the various rates of duty that apply to the goods of the pertinent legal provision, depending on the source of the goods and other criteria. Their application to goods originating in particular countries is discussed below under the heading "Applicable duty treatment."

A rate of duty generally has one of three forms: ad valorem, specific or compound. An ad valorem rate of duty is expressed in terms of a percentage to be assessed upon the customs value of the goods in question. A specific rate is expressed in terms of a stated amount payable on some quantity of the imported goods, such as 17 cents per kilogram. Compound duty rates combine both ad valorem and specific components (such as 5 percent ad valorem plus 17 cents per kilogram).

Chapter 98 comprises special classification provisions permitting, in specified circumstances, duty-free entry or partial duty-free entry of goods which would otherwise be subject to duty. The article descriptions in the provisions of this chapter enunciate the circumstances in which goods are eligible for this duty treatment. Some of the goods eligible for such duty treatment include: articles reimported after having been exported from the United States;

goods subject to personal exemptions (such as those for returning U.S. residents); government importations; goods for religious, educational, scientific, or other qualifying institutions; samples; and, articles admitted under bond.

Chapter 99 contains temporary modifications of the duty treatment of specified articles in the other chapters. Additional duties and suspensions or reductions of duties enacted by Congress are included, as are temporary modifications (increases or decreases in duty rates) and import restrictions (quotas, import fees, and so forth) proclaimed by the President under trade agreements or pursuant to legislation. Separate subchapters contain temporary special duty treatment for certain goods of Canada or of Mexico pursuant to the NAFTA. However, antidumping and countervailing duties imposed under the authority of the Tariff Act of 1930, as amended, are not included. These duties are announced in the Federal Register.

*Applicable duty treatment*

*Column 1—General.*—The rates of duty appearing in the "General" subcolumn of column 1 of the HTS are imposed on products of countries that have been extended most-favored-nation (MFN) or non-discriminatory trade treatment by the United States, unless such imports are claimed to be eligible for treatment under one of the preferential tariff schemes discussed below. The general duty rates are concessional and have been set through reductions of full statutory rates in negotiations with other countries, generally under the GATT.

*Column 1—Special.*—General Note 3 to the HTS sets forth the special tariff treatment afforded to covered products of designated countries or under specified measures. These programs and the corresponding symbols by which they are indicated in the "Special" subcolumn along with the appropriate rates of duty are as follows:

| | |
|---|---|
| Generalized System of Preferences [GSP] | A or A* |
| Automotive Products Trade Act [APTA] | B |
| Agreement on Trade in Civil Aircraft [ATCA] | C |
| North American Free Trade Agreement:. | |
| Goods of Canada | CA |
| Goods of Mexico | MX |
| Caribbean Basin Economic Recovery Act [CBERA] | E or E* |
| United States-Israel Free Trade Area | IL |
| Andean Trade Preference Act [ATPA] | J or J* |

The presence of one or more of these symbols indicates the eligibility of the described articles under the respective program. In the case of the GSP (when in effect), a symbol followed by an asterisk indicates that, although the described articles are generally eligible for duty-free entry, such tariff treatment does not apply to products of the designated beneficiary countries specified in General Note 4(d). In the case of CBERA and the ATPA, the asterisk indicates that some of the described articles are ineligible for duty-free entry. These programs are discussed in greater detail below.

*Column 2.*—The column 2 rates of duty apply to products of countries that have been denied MFN status by the United States (see General Note 3(b)); these rates are the full statutory rates, generally as enacted by the Tariff Act of 1930. (See separate de-

scription of most-favored-nation treatment and HTS General Note 3(b) for a list of countries subject to column 2 rates of duty.)

*Special duty exemptions and preferences*

Certain notable provisions in chapter 98 of the HTS grant duty-free entry to various categories of American goods returned from abroad and allow U.S. tourists to import foreign articles free of duty. Other provisions in the general notes of the HTS provide duty-free entry to imports from the U.S. insular possessions, to imports of Canadian auto products under the Automotive Products Trade Act, and to articles imported for use in civil aircraft under the Agreement on Trade in Civil Aircraft.

*American goods returned (HTS subheading 9801.00.10).*—American goods not advanced or improved abroad may be returned to the United States free of duty under HTS subheading 9801.00.10. The courts have interpreted this provision to allow duty-free entry of American goods which had been exported for sorting, separating (e.g., by grade, color, size, etc.), culling out, and discarding defective items and repackaging in certain containers, so long as the goods themselves were not advanced in value or improved in condition while abroad.

*American goods repaired or altered abroad (HTS subheading 9802.00.40).*—HTS subheading 9802.00.40 provides that goods exported from the United States for repairs or alterations abroad are subject to duty upon their reimportation into the United States (at the duty rate applicable to the imported article) only upon the value of such repairs or alterations. The provision applies to processing such as restoration, renovation, adjustment, cleaning, correction of manufacturing defects, or similar treatment that changes the condition of the exported article but does not change its essential character. The value of the repairs or processing for purposes of assessing duties is generally determined, in accordance with U.S. note 3 to subchapter II of chapter 98, by—

(1) the cost of the repairs or alterations to the importer; or

(2) if no charge is made, the value of the repairs or alterations, as set out in the customs entry.

However, if the customs officer finds that the amount shown in the entry document is not reasonable, the value of the repairs or alterations will be determined in accordance with the valuation standards set out in section 402 of the Tariff Act of 1930, as amended.[5]

*American metal articles processed abroad (HTS subheading 9802.00.60).*—HTS subheading 9802.00.60 provides that an article of metal (except precious metal) which is exported from the United States for processing abroad may be subject to duty on the value of the processing only upon its return to the United States. To qualify for this duty treatment, the exported article (1) must have been manufactured or subjected to a process of manufacture in the United States; and (2) must be returned "for further processing" in the United States.

The term "processing" refers to such operations as melting, molding, casting, machining, grinding, drilling, tapping, threading, cutting, punching, rolling, forming, plating, and galvanizing.

[5] 19 U.S.C. 1401a.

As in the case of articles imported under subheading 9802.00.40 (repairs or alterations), discussed above, the duty on metal articles processed abroad is assessed against the value of such processing, determined in accordance with U.S. note 3 to subchapter II of chapter 98.

*American components assembled abroad (HTS subheading 9802.00.80).*—Articles assembled abroad from American-made components may be exempt from duty on the value of such components when the assembled article is imported into the United States under HTS subheading 9802.00.80. This provision enables American manufacturers of relatively labor-intensive products to take advantage of low-cost labor and fiscal incentives in other countries by exporting American parts for assembly in such countries and returning the assembled products to the United States, with partial exemption from U.S. duties.

Subheading 9802.00.80 applies to articles assembled abroad in whole or in part of fabricated components, the product of the United States, which—

(1) were exported in condition ready for assembly without further fabrication;

(2) have not lost their physical identity in such articles by change in form, shape, or otherwise; and

(3) have not been advanced in value or improved in condition abroad except by being assembled and by operations incidental to the assembly process such as cleaning, lubricating, and painting.

The exported articles used in the imported goods must be fabricated U.S. components, i.e., U.S.-manufactured articles ready for assembly in their exported condition, except for operations incidental to the assembly process. Integrated circuits, compressors, zippers, and precut sections of a garment are examples of fabricated components, but uncut bolts of cloth, lumber, sheet metal, leather, and other materials exported in basic shapes and forms are not considered to be fabricated components for this purpose.

To be considered U.S. components, the exported articles do not necessarily need to be fabricated from articles or materials wholly produced in the United States. If a foreign article or material undergoes a manufacturing process in the United States resulting in its "substantial transformation" into a new and different article, then the component that emerges may qualify as an exported product of the United States for purposes of subheading 9802.00.80.

The assembly operations performed abroad can involve any method used to join solid components together, such as welding, soldering, gluing, sewing, or fastening with nuts and bolts. Mixing, blending, or otherwise combining liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as "assembling" for purposes of subheading 9802.00.80.

The rate of duty that applies to the dutiable portion of an assembled article is the same rate that would apply to the imported article. The assembled article is also treated as being entirely of foreign origin for purposes of any import quota or similar restriction applicable to that class of merchandise, and for purposes of country-of-origin marking requirements. All requirements regard-

ing labeling, radiation standards, flame retarding properties, etc., that apply to imported products apply equally to subheading 9802.00.80 merchandise.

An article imported under subheading 9802.00.80 is treated as a foreign article for appraisement purposes. That is, the full appraised value of the article must first be determined under the usual appraisement provisions. The dutiable value, however, is determined by deducting the cost or value of the American-made fabricated components from the appraised value of the assembled merchandise entered under subheading 9802.00.80.

*Personal (tourist) exemption.*—Subchapter IV of chapter 98 of the HTS sets forth various personal exemptions for residents and nonresidents that arrive in the United States from abroad. The relevant customs regulations are set forth at 19 CFR 148 et seq. In particular, HTS subheading 9804.00.65 provides that U.S. residents returning from a journey abroad may import up to 400 dollars' worth of articles free of duty. The articles must be for personal or household use and may include not more than 1 liter of alcoholic beverages, not more than 200 cigarettes and not more than 100 cigars. Special rules provide increased duty-free allowances for U.S. residents returning from U.S. insular possessions or from beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and under the Andean Trade Preference Act (ATPA). An increased duty-free allowance of $1200 is provided under HTS subheading 9804.00.70 for U.S. residents returning from the U.S. insular possessions, and an increased duty-free allowance of $600 is provided under HTS subheading 9804.00.72 for U.S. residents returning from beneficiary countries under the CBERA and the ATPA. U.S. note 3 to chapter 98 provides that, in addition to being exempt from customs duty, all such articles are exempt from any internal revenue taxes as well.

The Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) amended the exemption from duty for personal and household goods accompanying returning U.S. residents. Section 321(a)(2)(B) of the Tariff Act of 1930 originally applied to returning residents arriving from foreign countries other than the insular possessions. Due to a split in tariff classification numbers, the tariff numbers applicable to residents returning from a foreign country were inadvertently dropped. The Miscellaneous Trade and Technical Corrections Act of 1996 restored HTS number 9804.00.65 to correct the error and allow the Customs Service to apply administrative exemptions from duty for personal and household goods of returning residents arriving from foreign countries other than insular possessions. It ensures that U.S. residents returning from foreign countries other than insular possessions are entitled to bring articles for personal or household use free of duty, if such articles are valued at not more than $400. The provision was made retroactive to December 8, 1993, the date on which the customs provisions within the NAFTA (Public Law 103–182) became law.

In addition, the Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) amended the personal allowance exemption for merchandise purchased in duty-free sales enterprises. Previously, under section 555(b)(6) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(6)), merchandise purchased in duty-free sales

enterprises which was brought back to U.S. customs territory was not eligible for a duty-free exemption under the personal allowance exemption for returning U.S. residents. The Miscellaneous Trade and Technical Corrections Act of 1996 amended section 555(b)(6) to make merchandise purchased by returning U.S. residents in duty-free enterprises eligible for a duty-free exemption under HTS subheadings 9804.00.65, 9804.00.70, and 9804.00.72, if the person meets the eligibility requirements of the exemption. This provision does not apply in the case of travel involving transit to, from, or through an insular possession of the United States.

*Products of U.S. insular possessions (General Note 3(a)(iv)).*—Imports from the Virgin Islands, Guam, American Samoa, Wake Island, Kingman Reef, Johnson Island, and Midway Islands are entitled to duty-free entry under certain conditions, designed to promote the economic development of these U.S. insular possessions. This provision does not apply to Puerto Rico, which is part of the "customs territory of the United States."

As provided in General Note 3(a)(iv) of the HTS, an article imported directly from a possession is exempt from duty if—

(1) it was grown or mined in the possession;

(2) it was produced or manufactured in the possession, and the value of foreign materials contained in that article does not exceed 70 percent of its total value. Materials of U.S. origin are not considered foreign for this purpose. Likewise, materials that could be imported into the United States duty free (except from Cuba or the Philippines) are not counted as foreign materials for purposes of the 70 percent foreign-content limitation; or

(3) in the case of any article excluded from duty-free entry under section 213(b) of the Caribbean Basin Economic Recovery Act, it was produced or manufactured in the possession, and the value of foreign materials does not exceed 50 percent of its total value.

In addition, an article previously imported into the United States with duty or tax paid thereon, shipped to a possession without benefit of remission, refund, or drawback of such duty or tax, may be returned to the United States duty free. General Note 3(a)(iv) also provides that articles from insular possessions are entitled to no less favorable duty treatment than that accorded to eligible articles under the Generalized System of Preferences and the Caribbean Basin Initiative described below.

In applying the 70 percent foreign-materials test, Customs determines the value of the foreign materials by their actual purchase price, plus the transportation cost to the possession, excluding any duties or taxes assessed by the possession and excluding any post-landing charges. The value thus determined is then compared with the appraised value of the products imported into the United States, determined in accordance with the usual appraisement methods. If the differential is 30 percent or more, the foreign materials limitation is satisfied. This procedure is set out in 19 C.F.R. 7.8(d).

As previously noted, the product imported from a possession must have been produced or manufactured there (unless grown or mined there). It is not sufficient for foreign goods to be shipped to

a possession for nominal handling or manipulation, followed by a price mark-up to meet the 70 percent test.

*Canadian motor vehicles and original equipment entry pursuant to the Automotive Products Trade Act of 1965 (APTA) (General Note 5).*—Throughout the HTS there are a number of specific provisions which provide for duty-free entry of imported motor vehicles and specified original equipment parts that qualify as "Canadian articles" under General Note 5. These provisions were added to the HTS pursuant to the Automotive Products Trade Act of 1965,[6] which was enacted to implement the U.S.-Canadian Automotive Agreement. The purpose of the Agreement was to create a North American common market for motor vehicles and original equipment parts (replacement parts are not covered).

The term "Canadian article" refers to an article produced in Canada but does not include any article produced with non-Canadian or non-U.S. materials unless the article satisfies the criteria set forth in the NAFTA (General Note 12).

Most of the product categories established by the APTA are applicable to "original motor-vehicle equipment," which is defined in General Note 5(a)(ii) as a Canadian fabricated component intended for use as original equipment in the manufacture of a motor vehicle in the United States and which was obtained from a Canadian supplier pursuant to "a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States." The phrase "bona fide motor-vehicle manufacturer" is defined as a person determined by the Secretary of Commerce to have produced at least 15 motor vehicles in the previous 12 months and to have the capacity to produce at least 10 motor vehicles per week.

*Civil aircraft products (ATCA) (General Note 6).*—Title VI of the Trade Agreements Act of 1979 gave the President the authority to proclaim new headnote 3 to part 6C of schedule 6; to make specific headnotes to designated TSUS items in order to implement the Tokyo Round Agreement on Trade in Civil Aircraft; and to provide duty-free treatment, in accordance with the annex to the Agreement for the civil aircraft articles described therein. These changes were implemented by Presidential Proclamation 4707 of December 11, 1979. This duty treatment is continued in the "Special" rates subcolumn of the HTS.

The provisions work much like those implementing the APTA in that a number of specific product breakouts are spread throughout the HTS providing duty-free entry to specifically described articles which are "certified for use in civil aircraft" in accordance with General Note 6.

Section 234 of the Trade and Tariff Act of 1984 enacted on October 30, 1984, gave the President the authority to make additional tariff breakouts in designated TSUS items in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Aircraft Agreement pursuant to the extension of the annex to the Agreement agreed to in Geneva on October 6, 1983. This duty treatment has been continued in the "Special" rates subcolumn of the HTS for the relevant articles.

[6] Public Law 89–283, 19 U.S.C. 2001, et seq.

The Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) significantly amended General Note 6. The note now requires importers of duty-free civil aircraft parts to maintain such supporting documentation as the Secretary of the Treasury may require. Importers must also certify that the imported article is a civil aircraft, or has been imported for use in a civil aircraft and will be so used. The importer may amend the entry or file a written statement to claim duty-free treatment under General Note 6 at any time before the liquidation of the entry becomes final, except that any refund resulting from any such claim shall be without interest.

The amendment to General Note 6 also changed the definition of "civil aircraft" to mean any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof):

(A) that is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(B)(1) that is manufactured or operated pursuant to a certificate issued by the Federal Aviation Administration (FAA), or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for an FAA certificate;

(2) for which an application for such certificate has been submitted to, and accepted by, the FAA by an existing type and production certificate holder; or

(3) for which an application for such approval or certificate will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA. This section applies only to quantities of parts, components, and subassemblies as are required to meet the design and technical requirements stipulated by the FAA. The Commissioner of Customs may also require the importer to estimate the quantities of parts, components, and subassemblies covered under this section.

The term "civil aircraft" does not include any aircraft, aircraft engine, or ground flight simulator purchased for use by the Department of Defense or the U.S. Coast Guard, unless such aircraft, aircraft engine, or ground flight simulator satisfies the requirements outlined above.

## Generalized System of Preferences (GSP)

### TITLE V OF THE TRADE ACT OF 1974, AS AMENDED

The concept of a Generalized System of Preferences (GSP) was first introduced in the United Nations Conference on Trade and Development (UNCTAD) in 1964. Developing countries (LDCs) asserted that one of the major impediments to accelerated economic growth and development was their inability to compete on an equal basis with developed countries in the international trading system. Through tariff preferences in developed country markets, the LDCs claimed they could increase exports and foreign exchange earnings

needed to diversify their economies and reduce dependence on foreign aid.

After several international meetings and long internal debate, in 1968 the United States joined other industrialized countries in supporting the concept of GSP. As initially conceived, GSP systems were to be (1) temporary, unilateral grants of preferences by developed to developing countries; (2) designed to extend benefits to sectors of developing country economies which were not competitive internationally; and (3) designed to include safeguard mechanisms to protect domestic industries sensitive to import competition from articles receiving preferential tariff treatment. In the early 1970's, 19 other members of the Organization for Economic Cooperation and Development (OECD) also instituted and have since renewed GSP schemes.

In order to implement their GSP systems, the developed countries obtained a waiver from the most-favored-nation (MFN) obligation of article I of the General Agreement on Tariffs and Trade (GATT), which provides that trade must be conducted among countries on a non-discriminatory basis. A 10-year MFN waiver was granted in June 1971 and was made permanent in 1979 through the "enabling clause" of the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo Round of GATT multilateral trade negotiations. The enabling clause, which has no expiration date, provides the legal basis for "special and differential treatment" for developing countries. The enabling clause also requires that developing countries accept the principle of graduation, under which such countries agree to assume "increased GATT responsibilities as their economies progress."

*U.S. GSP basic authority*

Statutory authority for the U.S. Generalized System of Preferences program is set forth in title V of the Trade Act of 1974, as amended.[7] Authority to grant GSP duty-free treatment on eligible articles from beneficiary developing countries (BDCs) became effective under that Act on January 3, 1975, for a 10-year period expiring on January 3, 1985. The program was actually implemented on January 1, 1976 under Executive Order 11888. Relatively minor amendments to the statute were made under section 1802 of the Tax Reform Act of 1976[8] and section 1111 of the Trade Agreements Act of 1979.[9] Title V of the Trade and Tariff Act of 1984[10] renewed the GSP program for 8½ years until July 4, 1993, with significant amendments effective on January 4, 1985, particularly with respect to the criteria for designating beneficiary countries and limitations on duty-free treatment.

The GSP program was extended without amendment for 15 months, until September 30, 1994, by section 13802 of the Omnibus Budget Reconciliation Act of 1993.[11] The program was again

[7] Public Law 93–618, approved January 3, 1975.
[8] Public Law 94–455, approved October 4, 1976.
[9] Public Law 96–39, approved July 26, 1979.
[10] Public Law 98–573, title V, approved October 30, 1984.
[11] Public Law 103–66, approved August 10, 1993.

extended without amendment for 10 months, until July 31, 1995, by section 601 of the Uruguay Round Agreements Act.[12]

Subtitle J of title I of the Small Business Jobs Protection Act of 1996 renewed the GSP program for 1 year and 10 months, through May 31, 1997, with amendments effective October 1, 1996. This law also revised and reorganized title V.[13] An additional technical change was made by the Miscellaneous Trade and Technical Corrections Act of 1996.[14]

The U.S. Trade Representative (USTR) administers the GSP program and makes recommendations to the President through an interagency committee that conducts annual reviews under regulatory procedures of petitions by interested parties and self-initiated actions to add or remove GSP eligibility for individual products or countries.

Section 501 of the Trade Act of 1974, as amended, authorizes the President to provide GSP duty-free treatment on any eligible article from designated beneficiary developing countries, subject to certain conditions and limits, having due regard for (1) the effect of such action on furthering the economic development of developing countries through the expansion of their exports; (2) the extent other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences on their products (i.e., burden-sharing); (3) the anticipated impact on U.S. producers of like or directly competitive products; and (4) the extent of the BDC's competitiveness with respect to eligible articles. In 1995, the program provided duty-free treatment on imports valued at about $18.4 billion from 140 designated developing countries and territories.

*Designation of beneficiary developing countries*

Section 502 of the Trade Act of 1974 authorizes the President to designate a country or territory as a BDC. It also authorizes the President to designate any BDC as a least-developed beneficiary developing country (LDBDC). However, the President is expressly prohibited from designating the following developed countries as BDCs:

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|---|---|
| Australia | Japan |
| Canada | Monaco |
| European Union member states | New Zealand |
| Iceland | Norway |
| | Switzerland |

The President is also prohibited from designating any country for GSP benefits which:

(1) is a communist country unless (a) its products receive non-discriminatory (MFN) treatment; (b) it is a WTO member and a member of the International Monetary Fund (IMF); and (c) it is not dominated or controlled by international communism;

(2) is party to an arrangement and participates in any action which withholds supplies of vital commodity resources or raises

[12] Public Law 103–465, approved December 8, 1994.
[13] Public Law 104–188, approved August 20, 1996.
[14] Public Law 104–295, approved October 11, 1996.

their price to unreasonable levels, causing serious disruption of the world economy;

(3) affords "reverse preferences" to other developed countries which have or are likely to have a significant adverse effect on U.S. commerce;

(4) has nationalized or expropriated U.S. property, including patents, trademarks, or copyrights, or taken actions with similar effect, unless the President determines and reports to Congress there is adequate and effective compensation, negotiations underway to provide compensation, or a dispute over compensation is in arbitration;

(5) fails to recognize as binding or to enforce arbitral awards in U.S. favor;

(6) aids or abets by granting sanctuary from prosecution to, any individual or group which has committed international terrorism, or is the subject of a determination by the Secretary of State under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. app. 2405) regarding repeated support for terrorism; or

(7) has not taken or is not taking steps to afford internationally recognized workers rights to its workers.[15]

The President may waive conditions (4), (5), (6), and (7), if he determines and reports with reasons to the Congress that designation of the particular country is in the national economic interest.

In addition, the President must take certain other factors into account under section 502(c) in designating BDCs: (1) an expressed desire of the country to be designated; (2) the country's level of economic development; (3) whether other major developed countries extend GSP to the country; (4) the extent the country has assured the United States it will provide "equitable and reasonable access" to its markets and basic commodity resources and refrain from engaging in unreasonable export practices; (5) the extent the country is providing adequate and effective means under its laws for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; (6) the extent the country has taken action to reduce trade distorting investment practices and policies and reduce or eliminate barriers to trade in services; and (7) whether the country has taken or is taking steps to afford its workers internationally-recognized worker rights.

If the President determines that a BDC has become a "high income" country as defined by the World Bank, the President is required to remove the country from eligibility under the program. The statute provides for a transition period of up to 2 years for country graduation from the GSP program. In 1994 the World Bank designated countries with a per capita GNP of approximately $8,600 as "high income" countries.

Before designating any country as a BDC, the President must notify the Congress of his intention and the considerations entering

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[15] Defined by amendment under section 503 of the 1984 Act for purposes of GSP to include:
"(A) the right to 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".

into the decision. Before terminating designation of any beneficiary, the President must provide the Congress and the country concerned at least 60 days advance notice of his intention, together with the reasons. The President must withdraw or suspend the designation if he determines the country no longer meets the conditions for designation.

The countries currently designated as BDCs of GSP are listed under General Note 4(a) of the Harmonized Tariff Schedule of the United States (HTS). Countries designated as LDBDCs are listed under General Note 4(b).

*Eligible articles*

The President designates articles under section 503 eligible for GSP duty-free treatment after considering advice required through public hearings, from the U.S. International Trade Commission (ITC) on the probable domestic economic impact, and from executive branch agencies.

In general, GSP duty-free treatment is prohibited by statute on textile and apparel articles which were not eligible articles on January 1, 1994; watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or U.S. insular possessions;[16] import-sensitive electronic articles; import-sensitive steel articles; footwear, handbags, luggage, flat goods (e.g., wallets, change purses, eyeglass cases), work gloves, and leather wearing apparel which were ineligible for GSP as of January 1, 1995; and import-sensitive semi-manufactured and manufactured glass products. The President must also exclude any other articles he determines to be import sensitive in the context of GSP. Articles are ineligible for GSP during any period they are subject to import relief under sections 201–204 of the Trade Act of 1974 or to national security actions under section 232 of the Trade Expansion Act of 1962. Also, no quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity may be eligible for duty-free treatment under GSP.

The President may designate any article that is the growth, product or manufacture of an LDBDC as an eligible article with respect to LDBDCs after receiving advice from the ITC, if he determines such an article is not import-sensitive in the context of imports from LDBDCs. However, he may not designate the statutorily exempt articles—textiles and apparel, footwear and related articles, and watches. The President must notify Congress at least 60 days in advance of LDBDC designations.

The USTR has established by regulation an interagency procedure for annual review of petitions from any interested party to have articles added to, or removed from, the GSP eligible list. The interagency committee also considers modifications on its own motion. However, section 503 prohibits consideration of an article for

[16] This amendment was made by section 1903 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, approved August 23, 1988.

designation of eligibility for 3 years following formal consideration and denial of that article.

GSP duty-free treatment applies only to an eligible article which is the growth, product, or manufacture of a BDC (i.e., has undergone "substantial transformation" in an exporting BDC)[17] and which meets the following rule-of-origin requirements:

(1) the article must be imported directly from a BDC into the U.S. customs territory; and

(2) the sum of (a) the cost or value of materials produced in a beneficiary country, plus (b) the direct cost of processing performed in such country is not less than 35 percent of the appraised value of the article when it enters into the U.S. customs territory.

Materials and processing costs in two or more beneficiary countries which are members of the same association of countries which is a customs union or free trade area may be treated as one BDC and cumulated to meet the 35 percent minimum local content. Materials imported into a BDC may be counted toward the 35 percent minimum valued-added requirement only if they are substantially transformed into new and different articles in the BDC, before they are incorporated into the GSP eligible article.

*Treatment of sugar imports under GSP*

Under the tariff-rate quota system for sugar,[18] the Secretary of Agriculture establishes the quota quantity that can be entered at the lower tier import duty rate, and the U.S. Trade Representative (USTR) allocates the quantity among sugar exporting quantities. The quantities allocated to beneficiary countries under the Generalized System of Preferences receive duty-free treatment. Imports above the in-quota amount from beneficiary countries are tariffed at the higher, over-quota rate. Certificates of quota eligibility (CQE) are issued to the exporting countries and must be returned with the shipment of sugar in order to receive quota treatment.

*Limitations on preferential treatment*

The President has general authority under section 503(c) to withdraw, suspend, or limit application of GSP and restore MFN duties with respect to any article or any country after considering the factors in sections 501 and 502(c), but he cannot establish any intermediate rates of duty. Since 1981, this authority has been used in the context of the annual interagency review process for "discretionary graduation" from GSP of particular products from particular countries which have demonstrated their competitiveness and to promote a shifting of benefits to less advanced developing countries.

Pursuant to the authority of this section, the President on January 29, 1988, notified the Congress of his intention to remove Hong Kong, the Republic of Korea, Singapore, and Taiwan from their sta-

[17] An amendment made by section 226 of the Caribbean Basin Economic Recovery Act of 1990, Public Law 101–382, title II, approved August 20, 1990, 19 U.S.C. 2463(b), conformed GSP rules to treatment under the Caribbean Basin Initiative.

[18] Presidential Proclamation No. 6763, December 23, 1994, 60 Fed. Reg. 1007.

tus as beneficiaries under the GSP program,[19] effective on January 2, 1989. Removal from GSP status was based on the President's assessment that these four BDCs had "achieved an impressive level of economic development and competitiveness, which can be sustained without the preferences provided by the program." Similarly, on October 17, 1996, the President made a determination that Malaysia was "sufficiently advanced in economic development and improved trade competitiveness" and that designation of Malaysia as a beneficiary developing country would be terminated efffective January 1, 1997.[20] Pursuant to 502(e) of the Act the President also determined on October 17, 1996, that Cyprus, Aruba, Macau, the Netherlands Antilles, Greenland, and the Cayman Islands meet the definition of a "high income" country as defined by official statistics of the World Bank, terminating preferential treatment under GSP for imports from these countries effective January 1, 1998.[21] On March 21, 1995, the President notified Congress of his determination to designate the West Bank and Gaza Strip as a beneficiary country.[22]

In addition to the annual review of petitions on article or country eligibility, section 503(c) establishes statutory "competitive need" limitations on GSP duty-free treatment, subject to waiver under certain conditions. The basic purposes of the competitive need limitations are to (1) establish a benchmark for determining when products from particular countries are competitive in the U.S. market and therefore no longer warrant preferential tariff treatment; and (2) to reallocate GSP benefits to less competitive producing countries. The limits have also provided some measure of import protection to domestic producers of like or directly competitive products.

Under the competitive need limits, if imports of a particular article from a particular BDC exceed either (1) a value level adjusted annually (in calendar year 1996, $75 million, and in each subsequent year, the amount for the preceding year plus $5 million); or (2) 50 percent of total U.S. imports of the article in a particular calendar year, GSP treatment on that article from that country must be removed and the normal rate of duty imposed on all imports of the article from that country by July 1 of the following year. GSP treatment may be reinstated in a subsequent calendar year if imports of the product from the excluded country have fallen below the competitive need ceilings then in effect during the preceding calendar year.

There are four statutory circumstances in which competitive need limits may not apply:

(1) If the President determines that an article like or directly competitive with a particular GSP article was not produced in the United States on January 1, 1995, then that article is ex-

[19] Message from the President of the United States transmitting notification of his intent to remove Hong Kong, the Republic of Korea, Singapore, and Taiwan from the list of beneficiary developing countries under the Generalized System of Preferences (GSP), pursuant to 19 U.S.C. 2462(a), House Document 100–162, February 1, 1988.

[20] Presidential Proclamation No. 6942, October 17, 1996, 61 Fed. Reg. 54719.

[21] Ibid.

[22] Message from the President of the United states transmitting notification of his intent to add the West Bank and Gaza Strip to the list of beneficiary developing countries under the Generalized System of Preferences (GSP), pursuant to 19 U.S.C. 2462(a), House Document 104–47, March 21, 1995.

empt from the 50-percent, but not the dollar value, competitive need limit.

(2) The President may waive the 50-percent, but not the dollar, competitive need limit on articles for which total U.S. imports are de minimis, i.e., not more than $13 million in calendar year 1996, and in each subsequent year, the amount for the preceding year plus $500,000.

(3) Neither of the competitive need limits applies to any BDC the President determines to be a least developed developing country.

(4) The President may waive the competitive need limits for a particular country based on a determination that (a) there has been an historical preferential trade relationship between the United States and such country; (b) there is a treaty or trade agreement in force covering economic relations between such country and the United States; and (c) such country does not discriminate against or impose unjustifiable or unreasonable barriers to U.S. commerce. This waiver authority, which was designed for possible exemption of the Philippines, has never been utilized.

The President may waive competitive need limits on any article if he (1) receives ITC advice on whether any U.S. industry is likely to be adversely affected; (2) determines a waiver is in the national economic interest based upon the country designation factors under sections 501 and 502(c) as amended; and (3) publishes his determination. In making the national interest determination the President must give great weight to (1) assurances of equitable and reasonable market access in the BDC; and (2) the extent the country provides adequate and effective intellectual property rights protection. Total waivers for all countries above existing competitive need limits cannot exceed 30 percent of total GSP duty-free imports in any year, of which not more than one-half (i.e., 15 percent of total GSP duty-free imports) may apply to waivers on articles from countries which account for at least a 10-percent share of total GSP duty-free imports or have a per capita GNP of $5,000 or more in that year.

*Other provisions*

Section 504 requires the President to submit an annual report to the Congress on the status of internationally-recognized worker rights within each BDC.

Section 506 requires appropriate U.S. agencies to assist BDCs to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of foodstuff production for their own citizens.

## Caribbean Basin Initiative (CBI)

The Caribbean Basin Economic Recovery Act (CBERA),[23] commonly referred to as the Caribbean Basin Initiative or CBI, was enacted on August 5, 1983, authorizing the grant of certain U.S. uni-

[23] Public Law 98–67, title II, approved August 5, 1983, 19 U.S.C. 2701 et seq.

lateral preferential trade and tax benefits for Caribbean Basin countries and territories.

The United States developed this program for responding to the economic crisis in the Caribbean in close consultation with governments and private sectors of potential recipients and with other donor countries in the region. On February 24, 1982, President Reagan outlined the CBI before the Organization of American States and on March 17, 1982, he first submitted this plan to the Congress. H.R. 7397, containing amended versions of the trade and tax proposals, was passed by the House of Representatives in the 97th Congress on December 17, 1982, but was not acted on by the Senate. The President resubmitted the House-passed version of the plan on February 23, 1983; the Initiative as further amended became title II of the conference report on H.R. 2973, to repeal the withholding of tax from interest and dividends, agreed to by both Houses on July 28, 1983. Separate foreign assistance legislation increased aid to the region as the third element of the program.

Following extensive congressional consideration and consultations with representatives of the countries involved and U.S. private sector interests on measures to improve the program, the Caribbean Basin Economic Recovery Expansion Act of 1990, so-called CBI II, was enacted as title II of the Customs and Trade Act of 1990.[24] CBI II amended the CBERA to make the trade benefits permanent by repealing the 12-year September 30, 1995, termination date and to make certain improvements in the trade and tax benefits. The Act also included measures to promote tourism and created a scholarship assistance program for the region.

The centerpiece of the CBI is authority granted to the President to provide unilateral duty-free treatment on U.S. imports of eligible articles from designated Caribbean Basin countries and territories. Duty-free treatment became effective as of January 1, 1984, and currently applies to imports from 24 designated beneficiary countries or territories.[25]

*Beneficiary countries or territories*

Section 212 of the CBERA lists the following 27 countries and territories as potentially eligible for designation by the President as CBI beneficiary countries:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Cayman Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Turks and Caicos Islands
Virgin Islands, British

[24] Public Law 101–382, title II, approved August 20, 1990.

[25] Anguilla, Cayman Islands, Suriname, and the Turks and Caicos Islands are not currently designated; Aruba, originally part of the Netherlands Antilles, is designated separately.

The countries currently designated as CBI beneficiaries are listed under General Note 7 of the Harmonized Tariff Schedule of the United States.

Section 212(b) of the CBERA, as amended, prohibits the President from designating a country or territory as a beneficiary of CBI trade or tax benefits if it:

(1) is a Communist country;

(2) has nationalized or expropriated U.S. property, including any patent, trademark, or other intellectual property, or taken actions with similar effect, without compensation or submission to arbitration;

(3) fails to recognize or enforce awards arbitrated in favor of U.S. citizens;

(4) affords preferential tariff treatment to products of other developed countries that has or is likely to have a significant adverse effect on U.S. commerce;

(5) broadcasts U.S. copyrighted material without the owners' consent;

(6) has not signed an extradition agreement with the United States; and

(7) has not or is not taking steps to afford internationally-recognized worker rights (as defined for the Generalized System of Preferences program) to workers in the country (including any designated zone in that country).

The President may waive conditions (1), (2), (3), (5), and (7) if he determines that designation of the particular country would be in the national economic or security interest of the United States and so reports to the Congress.

In addition, the President must take into account certain other factors under section 212(c) in determining whether to designate a country a CBI beneficiary: (1) the country's expressed desire to be designated; (2) economic conditions and living standards in the country; (3) the extent the country has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources; (4) the degree the country follows accepted rules of international trade under the World Trade Organization and applicable trade agreements; (5) the degree the country uses export subsidies or imposes export performance or local content requirements; (6) the degree the country's trade policies contribute to regional revitalization; (7) the degree the country is undertaking self-help measures; (8) whether or not the country has taken or is taking steps to afford its workers (including in any designated zone of the country) internationally-recognized worker rights; (9) the extent the country provides adequate and effective means under its law for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; (10) the extent the country prohibits its nationals from broadcasting U.S. copyrighted materials without permission; and (11) the extent to which the country is prepared to cooperate in the administration of the CBI. The President must notify the Congress of his intention to designate countries, together with the considerations entering the decision.

The President may later withdraw or suspend the designation of any country as a beneficiary country or withdraw, suspend, or limit

the application of duty-free treatment for any eligible article of any country if he determines that, based on changed circumstances, such country would be barred from designation under the criteria set forth in subsection (b) of section 212.[26] The President is required to publish at least 30 days advance notice of such proposed action in the Federal Register. During the 30-day notice period, USTR is required to hold a public hearing and accept public comments on the proposed action.

The President must submit a complete report to the Congress by October 1, 1993, and every 3 years thereafter regarding the operation of the CBI. This report must include general reviews of CBI beneficiary countries based upon all section 212 designation criteria.

*Eligible articles*

CBI duty-free treatment under section 213(a) of the CBERA applies only to articles which meet three rule-of-origin requirements:

(1) The article must be imported directly from a beneficiary country into the U.S. customs territory;

(2) The article must contain a minimum 35 percent local content of one or more beneficiary countries (up to 15 percent of the total value of the article from U.S.-made materials may count toward the 35 percent requirement); and

(3) The article must be wholly the growth, product, or manufacture of a beneficiary country or, if it contains foreign materials, be substantially transformed into a new or different article in a beneficiary country.

Other provisions and regulations preclude minor pass-through operations or transshipments from qualification.

Special criteria have been established for the duty-free entry of ethanol under the CBI program. The Tax Reform Act of 1986[27] amended the 1983 CBI legislation to require increasing amounts of CBI feedstock in order for ethanol to qualify for duty-free treatment—30 percent in 1987; 60 percent in 1988; and 75 percent in 1989 and thereafter. Several companies were "grandfathered" for 2 years, allowing them to operate under pre-1986 criteria through 1989.

The Omnibus Trade and Competitiveness Act of 1988[28] extended the "grandfather" through the end of 1989 for six dehydration plants already built or under construction but imposed an import cap of 20 million gallons per facility. The Act also requested reports by the ITC and the General Accounting Office (GAO) on whether or not the current local feedstock requirements make CBI ethanol production economically feasible. Those reports concluded that CBI ethanol production would not be economically feasible under those local feedstock requirements.

The Steel Trade Liberalization Program Implementation Act of 1989[29] provided that for calendar years 1990 and 1991, ethanol (and any mixture thereof) that is only dehydrated within a CBI beneficiary country or an insular possession receives duty-free

[26] Section 1909 of the Omnibus Trade and Competitiveness Act (Public Law 100–418).
[27] Public Law 99–514, section 423, approved October 22, 1986.
[28] Public Law 100–418, section 1910, approved August 23, 1988.
[29] Public Law 101–221, section 7, approved December 12, 1989.

treatment only if it meets the applicable local feedstock requirement: (1) no feedstock requirement is imposed on imports up to a level of 60 million gallons or 7 percent of the domestic ethanol market (as determined by the ITC, based on the 12-month period ending on the preceding September 30), whichever is greater; (2) a local feedstock requirement of 30 percent by volume applies to the next 35 million gallons of imports above the 60 million gallon or 7 percent level described above; and (3) a local feedstock requirement of 50 percent by volume applies to any additional imports. Ethyl alcohol (or a mixture thereof) that is produced by a process of full fermentation in an insular possession or beneficiary country continues to be eligible for duty-free treatment in unlimited quantities without regard to feedstock requirements.

The Customs and Trade Act of 1990 extended the above provisions through 1992. The Omnibus Budget Reconciliation Act of 1990 [30] further extended them through September 30, 2000.

Section 213(b) of the CBERA exempts the following articles from CBI duty-free treatment: textiles and apparel subject to textile agreements; footwear, handbags, luggage, flat goods (such as wallets, change purses and key and eyeglass cases), work gloves, and leather wearing apparel not eligible for duty-free treatment under the GSP program as of August 5, 1983; canned tuna; petroleum and petroleum products; and watches and watch parts containing components from non-most-favored-nation (column 2) sources.

Section 212 of CBI II amended section 213 of the CBERA to authorize the President to proclaim a tariff reduction of 20 percent, but not more than 2.5 percent ad valorem on any article, in the duties applicable to handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles under the GSP program on August 5, 1983 from CBI beneficiary countries, to be phased in in five equal annual stages beginning on January 1, 1992.

Section 222 of CBI II also extended duty-free treatment to articles, other than textiles and apparel and petroleum and petroleum products, that are processed or assembled wholly from U.S. fabricated components or materials or processed wholly from U.S. ingredients (except water) in a CBI beneficiary country and neither the components, materials, and ingredients after export from the United States nor the article itself before importation into the United States enters the commerce of any third country.

Under the tariff-rate quota system for sugar,[31] the Secretary of Agriculture establishes the quota quantity that can be entered at the lower tier import duty rate, and the U.S. Trade Representative (USTR) allocates the quantity among sugar exporting quantities. The quantities allocated to beneficiary countries under the Caribbean Basin Initiative receive duty-free treatment. Imports above the in-quota amount from beneficiary countries are tariffed at the higher, over-quota rate. Certificates of quota eligibility (CQE) are issued to the exporting countries and must be returned with the shipment of sugar in order to receive quota treatment.

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[30] Public Law 101–508, section 11502, approved November 5, 1990.
[31] Presidential Proclamation No. 6763, December 23, 1994, 60 Fed. Reg. 1007.

Section 213(c) requires the President to suspend duty-free treatment on imports of sugar and beef products from any beneficiary country that does not submit a satisfactory stable food production plan within 90 days after its designation, or while the country is not making a good faith effort to implement the plan or the plan is not achieving its purpose. The President must withhold suspension if the country agrees to consultations within a reasonable period of time and undertakes to formulate and implement remedial action.

The import relief procedures and authorities under sections 201–204 of the Trade Act of 1974, as amended, and national security measures under section 232 of the Trade Expansion Act of 1962 apply to imports from CBI beneficiary countries. Section 213(e) authorizes the President to suspend CBI duty-free treatment and proclaim a rate of duty or other relief measures on CBI imports as on imports of the article from non-CBI countries. Alternatively, the President may maintain duty-free treatment or establish a margin of preference on imports from CBI countries. In its report to the President on import relief investigations covering CBI eligible articles, the ITC must state whether its findings with respect to serious injury to the domestic industry and its recommended remedy apply to imports from CBI beneficiary countries.

Under a special procedure under section 213(b), petitioners for import relief on agricultural perishable products may also file a request with the Secretary of Agriculture for emergency relief. Within 14 days, the Secretary must determine whether there is reason to believe a CBI perishable product is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and recommend to the President emergency relief, if warranted. The President must determine within 7 days after receiving the Secretary's recommendation whether to take emergency action restoring the normal rate of duty pending final action on the import relief petition.

Section 215 requires the ITC to report annually to the Congress on the actual economic impact and its assessment of the probable future effects of the Act on the U.S. economy generally and on specific domestic industries. Section 216 also requires an annual report to the Congress by the Secretary of Labor on the impact of the CBI on U.S. labor.

*Other trade benefits*

Under the antidumping and countervailing duty laws, imports from two or more countries subject to investigation must generally be aggregated for the purpose of determining whether the unfair trade practice causes material injury to a U.S. industry, absent certain exceptions. Section 224 of CBI II created an exception to the general cumulation rule for imports from CBI beneficiary countries. If imports from a CBI country are under investigation in an antidumping or countervailing duty case, imports from that country may not be aggregated with imports from non-CBI countries under investigation for purposes of determining whether the imports from the CBI country are causing, or threatening to cause, material injury to a U.S. industry. They may be aggregated with imports from other CBI countries under investigation. Imports from CBI coun-

tries continue to be cumulated with imports from non-CBI countries for purposes of determining material injury in investigations of imports from non-CBI countries.

CBI II also increased the duty-free tourist allowance for U.S. residents returning directly or indirectly from a CBI beneficiary country from $400 to $600 and allows such tourists to enter 1 additional liter of alcoholic beverages duty free if produced in a CBI beneficiary country.

*Measures for Puerto Rico and U.S. insular possessions*

The CBERA contains a number of provisions to maintain and improve the competitive position of Puerto Rico and the U.S. insular possessions (including the Virgin Islands, American Samoa, Guam):

(1) Imports from Puerto Rico and the Virgin Islands may be counted toward the 35 percent minimum local content rule of origin requirement for CBI duty-free treatment. Section 235 of the Tariff and Trade Act of 1984 amended section 213(a) also to permit articles from CBI beneficiary countries to enter under bond for processing or manufacture in Puerto Rico without payment of duty upon withdrawal if they meet CBI rule of origin requirements. As amended by CBI II, any article which is the growth, product, or manufacture of Puerto Rico qualifies for duty-free treatment under the CBI if (a) the article is imported directly from a CBI beneficiary country into the United States; (b) the article was advanced in value in a CBI beneficiary country; and (c) if any materials are added to the article in a CBI beneficiary country, such materials are a product of a beneficiary country or the United States.

(2) The permissible foreign content was increased from 50 to 70 percent for duty-free treatment of imports of CBI eligible articles from U.S. insular possessions.

(3) Duty-free entry of alcoholic beverages by returning U.S. residents arriving directly from insular possessions was increased from 4 to 5 liters provided at least 1 liter is the product of an insular possession. CBI II increased the duty-free allowance for U.S. residents returning from U.S. insular possessions from $800 to $1,200.

(4) Section 221 of the CBERA amended section 7652 of the Internal Revenue Code to require that all excise taxes collected on foreign rum imported into the United States, whether or not from Caribbean countries, be paid to the treasuries of Puerto Rico and the Virgin Islands. Section 214(c) requires the President to consider compensatory measures for the governments of Puerto Rico and the Virgin Islands if there is a reduction in the amount of rum excise tax rebates.

(5) The term "industry" under the import relief provisions of section 201 of the Trade Act of 1974 was clarified to enable producers in the insular possessions to petition for import relief.

(6) Non-toxic rum stillage discharges in the Virgin Islands are exempt from certain provisions of the Federal Water Pollution Control Act if the discharges are 1,500 feet from the shore and are determined by the Governor of the Virgin Islands not to constitute a health or environmental hazard.

*Tax measures*

Section 222 of the CBERA amended section 274(h) of the Internal Revenue Code to allow deductions for business expenses incurred while attending conventions and meetings in a designated Caribbean Basin beneficiary country (or Bermuda) if the country enters into an executive agreement with the United States to provide, on a reciprocal basis, for information relating to U.S. tax matters to be made available to U.S. tax officials, including agreement to exchange bearer share and bank account information for criminal tax purposes. No deduction is available for attending a convention in a country found by the Secretary of the Treasury to discriminate in its tax laws against conventions held in the United States.

Under section 936 of the Internal Revenue Code, qualified investment income earned in U.S. possessions is exempt from U.S. tax. Most of the tax benefits claimed under this provision are claimed by corporations in Puerto Rico. Prior to the Tax Reform Act of 1986 (1986 Act), this investment income, commonly referred to as "qualified possessions source investment income" or QPSII, had to be derived from sources inside Puerto Rico. Section 936(d)(4), added to the Code in the 1986 Act, amended the definition of QPSII to allow for investments outside of Puerto Rico. Under section 936(d)(4), interest income will qualify as QPSII if derived from loans by qualified financial institutions (including the Puerto Rican Government Development Bank) for the acquisition of active business assets and for the construction of development projects located in eligible Caribbean Basin countries. Section 227 of CBI II requires the government of Puerto Rico to take such steps as may be necessary to ensure that at least $100,000,000 of new investments which qualify under section 936(d)(4) in eligible Caribbean Basin countries shall be made each calendar year. Refinancings of existing investments shall not constitute "new investments" for this purpose.

In general, section 1601y of the Small Business Job Protection Act of 1996: (1) repealed the QPSII exclusion effective July 1, 1996; (2) repealed the section 936 credit for new businesses effective for taxable years beginning after December 31, 1995; and (3) repealed the section 936 credit for existing possession businesses effective for taxable years beginning before January 1, 2006.[32]

*Tourism promotion and scholarship assistance*

Section 233 of CBI II required the Commissioner of Customs to carry out preclearance operations during fiscal years 1991 and 1992 at a U.S. Customs Service facility in a Caribbean Basin country which the Commissioner considered appropriate for testing the extent to which the availability of preclearance operations can assist in the development of tourism in the region. The Commissioner of Customs and Commissioner of the Immigration and Naturalization Service were to first determine the viability of establishing such operations in either Aruba or Jamaica. The Commissioner of Customs was required to submit a report to the Congress as soon as practicable after September 30, 1992, regarding the program, including the efficacy of extending preclearance operations to other

[32] Public Law 104–188, section 1601, approved August 20, 1996, 26 U.S.C. 30A.

Caribbean countries. In December 1994, the Customs Service signed a bilateral agreement with the government of Aruba regarding the future construction of a preclearance facility.

Section 231 of CBI II requires the Administrator of the Agency for International Development (AID) to establish and administer a program of scholarship assistance, in cooperation with state governments, universities, community colleges, and businesses, to enable students (particularly the economically and socially disadvantaged) from CBI beneficiary countries that also receive U.S. foreign assistance to study in the United States. The Administrator may make grants to states (including the District of Columbia, Puerto Rico, and U.S. possessions and territories) to provide scholarship assistance for undergraduate degree programs and for training programs of at least 1 year in study areas related to the critical development needs of the students' respective countries. The federal share for each year for which a state receives payment will be not less than 50 percent, funded from amounts otherwise made available for Latin American and Caribbean regional programs under the economic support fund of the Foreign Assistance Act of 1961. To the maximum extent practicable, each participating state shall enlist private sector assistance to meet the non-federal share of payments.

## Andean Initiative

The Andean Trade Preference Act (ATPA), commonly referred to as the Andean Initiative, was enacted on December 4, 1991 as title II of Public Law 102–182, to authorize preferential trade benefits for the Andean nations similar to those benefits to beneficiary countries under the Caribbean Basin Initiative program. On July 23, 1990, President Bush announced that he would seek congressional approval of a special preferential tariff program for four Andean countries—Bolivia, Ecuador, Colombia, and Peru—to fulfill a commitment made at the February 1990 Cartagena Drug Summit to expand economic incentives to encourage these countries to move out of the production, processing, and shipment of illegal drugs into legitimate products. Increased access to the U.S. market through tariff preferences was part of a package of measures that included expanded agricultural development assistance, additional product coverage under the Generalized System of Preferences program, and negotiation of long-term trade and investment liberalization building on the "Enterprise for the Americas Initiative" announced by the President on June 27, 1990.

On October 5, 1990, President Bush transmitted to Congress proposed implementing legislation. H.R. 661, the "Andean Trade Preference Act of 1991," was introduced on January 28, 1991 reflecting the Administration's proposal. The bill as reported to the House on November 19 was amended during consideration by the Committee on Ways and Means to conform the country designation criteria, rule-of-origin requirements, and the import relief and emergency relief criteria to the conditions and procedures for granting duty-free treatment under the CBI program. Certain preferential trade benefits, as well as the tax benefits under the CBI program, were maintained for the Caribbean Basin countries and not extended to the Andean countries by the legislation. The authority for the An-

dean Initiative was also limited to a 10-year period, to terminate as of December 4, 2001. H.R. 661 as amended was incorporated in a House amendment to a Senate amendment to H.R. 1724, passed by both Houses in a conference report on November 26, 1991.

The ATPA went into effect on December 4, 1991. The designations of Columbia and Bolivia as ATPA beneficiary countries became effective July 22, 1992.[33] Designations of Ecuador[34] and Peru[35] became effective, respectively, on April 30, 1993 and August 31, 1993.

*Beneficiary countries*

The ATPA authorizes the President to proclaim duty-free treatment on all eligible articles from Bolivia, Ecuador, Colombia, and Peru as potential beneficiary countries. Designation by the President of beneficiary status is subject to seven conditions identical to the mandatory criteria for designation under the CBI program and subject to the same authority to waive certain conditions in the U.S. national economic or security interest. A country is prohibited from designation under these conditions if it is a communist country, has nationalized or expropriated U.S. property without compensation or submission to arbitration, fails to recognize arbitral awards in favor of U.S. citizens, affords preferential tariff treatment to products of other developed countries having or likely to have a significant adverse effect on U.S. commerce, broadcasts U.S. copyrighted material without the owner's consent, has not signed an extradition agreement with the United States, or has or is not taking steps to afford internationally-recognized worker rights. In addition, the President must take into account 12 discretionary factors prior to designating any of the 4 countries, similar to factors under the CBI, plus whether the country has met narcotics cooperation certification criteria required to be eligible for U.S. foreign aid.

Before designating any country, the President must notify the Congress of his intention to make the designation and the considerations entering into the decision. The President may withdraw or suspend beneficiary country status or duty-free treatment on any article if he determines subsequently that the country should be barred from designation as a result of changed circumstances.

*Eligible articles*

Duty-free treatment is granted under the ATPA to any otherwise eligible article which is the growth, product, or manufacture of a designated beneficiary country if (1) that article is imported directly from a beneficiary country into the U.S. customs territory; and (2) the sum of the cost or value of materials produced in one or more Andean beneficiary countries or one or more CBI beneficiary countries, plus the direct costs of processing operations performed in one or more Andean or CBI beneficiary countries is not less than 35 percent of the appraised value of the article. Puerto Rico and the Virgin Islands are also considered beneficiary countries for this purpose. Up to 15 percent of the value attributable

[33] Presidential Proclamation 6455 and 6456; 57 Fed. Reg. 30069 and 30097.
[34] Presidential Proclamation 6544; 58 Fed. Reg. 195547.
[35] Presidential Proclamation 6585; 58 Fed. Reg. 43239.

to the cost or value of materials produced in the United States may be applied toward the 35 percent minimum local content requirement. These rules and requirements to preclude transshipment or pass-through operations are identical to CBI provisions, except that content from CBI beneficiary countries may also be counted toward the minimum 35 percent local content requirement for determining the product of an Andean country.

A statutory list of products that are ineligible for duty-free treatment under the ATPA is also identical to the product exclusion list under the CBI except that rum is also excluded from ATPA eligibility in order to preserve preferential benefits for Caribbean, Virgin Islands, and Puerto Rican producers. Unlike under the CBI, duty-free treatment does not apply to imports of certain excluded articles assembled or processed wholly from U.S. components or materials.

In addition to rum, ATPA duty-free treatment does not apply to textiles and apparel articles subject to textile agreements; footwear not designated eligible for GSP duty-free treatment; canned tuna; petroleum or petroleum products; certain watches and watch parts; certain leather-related products; and sugar, syrups, and molasses subject to over-quota rates of duty. As under the CBI and GSP programs, duty-free treatment applies only to imports of sugar entering within the tariff-quota level; over-quota sugar imports remain subject to a high tariff. As under the CBI, duty rate reductions of 20 percent, not to exceed 2.5 percent ad valorem, implemented in five equal annual stages beginning January 1, 1992, apply to imports of Andean leather-related products (handbags, luggage, flat goods, work gloves, and leather wearing apparel).

*Import safeguard provisions*

Authorities under the ATPA to grant import relief measures and to take emergency action on imports of agricultural perishables are identical to provisions under the CBI program. The President may suspend duty-free treatment and proclaim a duty rate on any eligible article under the import relief provisions of the Trade Act of 1974 or the national security provisions of the Trade Expansion Act of 1962. The U.S. International Trade Commission must state in its report to the President on any import relief investigation involving an eligible article under the ATPA whether and to what extent its injury findings and remedy recommendations apply to imports of the article from beneficiary countries.

Under an emergency relief procedure for agricultural perishables, petitions may be filed with the Secretary of Agriculture at the same time as a petition for import relief is filed with the ITC. Within 14 days, the Secretary advises the President whether he has reason to believe that a perishable product from a beneficiary country is being imported in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry and that emergency action is warranted, or publishes notice and advises the petitioner of a determination not to recommend emergency action. Within 7 days after receiving a recommendation, the President must proclaim the withdrawal of duty-free treatment or publish notice of his determination not to take emergency action.

No proclamation under the ATPA shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933.

*Other provisions*

The ATPA increased the duty-free tourist allowance for U.S. residents returning from Andean beneficiary countries from $400 to $600 and 1 additional liter of alcoholic beverages may enter duty free if produced in an Andean beneficiary country.

The President must submit a triennial report to the Congress on the operation of the program. The ITC must report annually to the Congress on the economic impact of the ATPA on U.S. industries and consumers and on the effectiveness of duty-free treatment in promoting drug-related crop eradication and crop substitution efforts of beneficiary countries. The Secretary of Labor must also report annually on the impact of the ATPA on U.S. labor.

## Customs Valuation

*Historical background*

In order to assess applicable duty rates under the Harmonized Tariff Schedule of the United States (HTS) and to collect appropriate import statistics, the dutiable value of all imported merchandise must be determined. The process by which Customs determines the dutiable value of imported merchandise is referred to as "appraisement" or "valuation."

Merchandise exported to the United States on or after July 1, 1980, is subject to appraisement under a uniform system of valuation established by title II of the Trade Agreements Act of 1979. Title II, which implements the Customs Valuation Agreement (entitled the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade) negotiated as one of the Tokyo Round of multilateral trade negotiations (MTN) agreements, was put into effect by Presidential Proclamation 4768 of June 28, 1980.[36]

Title II revised section 402 of the Tariff Act of 1930[37] and repealed the American Selling Price (ASP) method of valuation. However, under section 204(c) of the Trade Agreements Act of 1979, the ASP method of valuation continues to apply to certain rubber footwear exported to the United States before July 1, 1981. Title II also repealed the alternative valuation system under section 402a of the Tariff Act of 1930.[38]

Prior to the Trade Agreements Act of 1979, separate valuation standards—commonly referred to as the "old law" and the "new law"—existed side by side. Section 402a of the Tariff Act of 1930 was called the "old law" because it was enacted as part of the Tariff Act of 1930. It provided for the following order of progression in appraising merchandise: (1) foreign value or export value, whichever is higher; (2) U.S. value; (3) cost of production. It also provided for the application of the ASP basis of appraisement for designated articles such as benzenoid chemicals and certain footwear. The ASP method was based on the value of a domestic product rather than

[36] 45 Fed. Reg. 45135 (1980).
[37] 19 U.S.C. 1401a.
[38] 19 U.S.C. 1402.

an imported product in order to protect the U.S. industry from foreign competition.

During the early 1950's the Department of the Treasury proposed eliminating the foreign value basis of appraisement, which as its name implies is based on the value of merchandise sold in foreign markets. The Department of the Treasury argued that data for determining export value were more readily available and the elimination of foreign value would streamline the appraisement process by obviating the need to make simultaneous appraisements under export value and foreign value.

In response to these proposals, the Customs Simplification Act of 1956 created a new group of valuation standards. These standards were contained in section 402 of the Tariff Act of 1930[39] and referred to as the "new law." The "new law" eliminated the foreign value standard and made export value the primary basis for appraisement. With certain modifications, both U.S. value and cost of production (renamed the constructed value) were retained as the first and second alternative standards. The meaning of each standard was modified, however, by changes in the statutory language and by the inclusion in the law of definitions for certain of the terms.

However, Congress was unwilling to make these changes applicable to all imported articles. Because the new provisions were expected to have a duty-reducing effect for many articles, the Secretary of the Treasury was instructed to prepare a list of commodities which, if appraised under the new valuation standards, would have been appraised at 95 percent or less of the value at which they were actually appraised in the 12 months ending June 30, 1954 (i.e., dutiable value reduced by 5 percent or more). The articles so identified were published in Treasury Decision 54521 (January 20, 1958), which is referred to as "the Final List" and such articles continued to be appraised under the "old law" standards of section 402a of the Tariff Act. Thus, after the enactment of the Customs Simplification Act of 1956,[40] there were nine separate bases of appraisement (five under the old law and four under the new) applicable to imported products.

It was largely this complexity of U.S. valuation laws as well as foreign objections to the American Selling Price basis of appraisement which prompted our trading partners to enter into negotiations at the Tokyo Round of MTN on the development of a new system of customs valuation.

## THE GATT/WTO CUSTOMS VALUATION AGREEMENT

The Customs Valuation Agreement was signed by most major U.S. trading partners at the conclusion of the Tokyo Round. The WTO Agreement on Customs Valuation, which is essentially the same document, is included in the Uruguay Round Agreements applicable to all WTO members. Internationally-agreed rules governing customs valuation will apply to the overwhelming majority of trading countries. Newly joining developing countries may delay implementation for up to 5 years.

[39] 19 U.S.C. 1401a.
[40] Act of August 2, 1956, ch. 887.

The Agreement consists of four major parts in addition to a preamble and three annexes. Part I sets out the substantive rule of customs valuation, the substance of which was codified in U.S. law by the Trade Agreements Act of 1979 as an amendment to section 402 of the Tariff Act of 1930. Part II provides for the international administration of the Agreement and for dispute resolution among signatories. Part III provides for special and differential treatment for developing countries, and part IV contains so-called final provisions dealing with matters such as acceptance and accession of the Agreement, reservations, and servicing of the Agreement.

*Administration and dispute resolution.*—As mentioned above, the Agreement establishes two committees—a "Committee on Customs Valuation" (referred to as "the Committee") and a "Technical Committee on Customs Valuation" (referred to as the "Technical Committee")—to administer the Agreement and creates a mechanism for resolving disputes between parties to the Agreement. The rules under the WTO Dispute Settlement Understanding apply to disputes over the interpretation or application of the Agreement.

The Committee, which is composed of representatives from each of the parties, meets annually in Geneva "to consult on matters relating to the administration of the customs valuation system by any party to Agreement as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the parties." The WTO secretariat acts as the secretariat to the Committee, and the Office of the U.S. Trade Representative is the U.S. representative to this Committee.

The Technical Committee was created under the auspices of the Customs Cooperation Council (CCC) to carry out the responsibilities assigned to it by the parties and set forth in annex II to the Agreement with a view towards achieving uniformity in interpretation and application of the Agreement at the technical level. Among the responsibilities assigned to the Technical Committee are—

(1) to examine specific technical problems arising in the administration of the customs valuation systems and to give advisory opinions offering solutions to such problems;

(2) to study, as requested, and prepare reports on valuation laws, procedures and practices as they relate to the Agreement; and

(3) to furnish such information and advice on customs valuation matters as may be requested by parties to the Agreement.

The Technical Committee meets periodically in Brussels, and the U.S. Customs Service serves as the U.S. representative to this technical committee.

*Dispute resolution.*—Several steps are provided for a party to follow if it considers that any benefit accruing to it under the Agreement is being nullified or impaired, or if any objectives of the Agreement are being impeded by the actions of another party.

First, the aggrieved party should request consultations with the party in question with a view to reaching a mutually satisfactory solution. If no mutually satisfactory solution is reached between the parties within a reasonably short period of time, the Committee shall meet at the request of either party (within 30 days of receiv-

ing such request) and attempt to facilitate a mutually satisfactory solution. If the dispute is of a technical nature, the Technical Committee will be asked to examine the matter and report to the Committee within 3 months.

In the absence of a mutually agreeable solution from the Committee up to this point, the Committee shall, upon the request of either party, establish a panel (within 3 months from the date of the parties' request for the Committee to investigate where the matter is not referred to the Technical Committee, otherwise within 1 month from the date of the Technical Committee's report) to examine the matter and make such finding as will assist the Committee in making recommendations or giving a ruling on the matter.

After the investigation is complete, the Committee shall take appropriate action (in the form of recommendations or rulings). If the Committee considers the circumstances to be serious enough, it may authorize one or more parties to suspend the application to any other party of obligations under the valuation agreement.

*Special and different treatment*.—Part III of the Agreement allows developing countries which are party to the Agreement—

(1) to delay application of its provisions for a period of 5 years from the date the Agreement enters into force;

(2) to delay application of articles 1, 2(b)(iii) and 6 (both of which provide for a determination of the computed value of imported goods) for a period of 3 years; and

(3) to receive technical assistance (such as training of personnel, assistance in preparing implementation measures and advice on the application of the Agreement's provisions) upon request, from developed countries party to the Agreement.

## CURRENT LAW [41]

Section 402 of the Tariff Act of 1930 [42] as amended by the Trade Agreements Act of 1979 establishes "Transaction Value" as the primary basis for determining the value of imported merchandise. Generally, transaction value is the price actually paid or payable for the goods, with additions for certain items not included in that price.

If the first valuation basis cannot be used, the secondary bases are considered. These secondary bases, in the order of precedence for use, are: transaction value of identical or similar merchandise; deductive value; computed value. The order of precedence of the last two bases can be reversed if the importer so requests. Each of these bases is discussed in detail below:

*Transaction value of imported merchandise*.—Several concepts relating to the transaction value of imported merchandise are also applicable to the transaction value of identical or similar merchandise, as discussed in the next section. These concepts, concerning the nature of transaction value itself, are discussed in terms of the transaction value of imported merchandise.

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[41] Most of the description of current law was taken from "Customs Valuation Under the Trade Agreements Act of 1979," Department of the Treasury, U.S. Customs Service, Office of Commercial Operations, October 1981.

[42] 19 U.S.C. 1401a.

DEFINITIONS

The transaction value of imported merchandise (i.e., the merchandise undergoing appraisement) is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

(1) the packing costs incurred by the buyer;

(2) any selling commission incurred by the buyers;

(3) the value of any assist;[43]

(4) any royalty or license fee that the buyer is required to pay as a condition of the sale; and

(5) the proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise.

These amounts (1 through 5) are added only to the extent that each is not included in the price, and is based on information establishing the accuracy of the amount. If sufficient information is not available, then the transaction value cannot be determined; and the next basis of value, in order of precedence, must be considered for appraisement.

The price actually paid (or payable) for the imported merchandise is the total payment, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller.

Amounts to be disregarded in determining transaction value are:

(1) The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.

(2) Any decrease in the price actually paid or payable that is made or effected between the buyer and seller after the *date of importation* of the goods into the United States.

As well as, *if identified separately:*

(3) Any reasonable cost or charge incurred for constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods importation into the United States; or transporting the goods after importation.

(4) The customs duties and other federal taxes, including any federal excise tax for which sellers in the United States are ordinarily liable.

LIMITATIONS ON THE APPLICABILITY OF TRANSACTION VALUE

The transaction value of imported merchandise is the appraised value of that merchandise, provided certain limitations do not exist. If any of these limitations are present, then transaction value

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[43] An "assist" is any of the following items that the buyer of imported merchandise provides directly or indirectly, and free of charge or at reduced cost, for use in the production of or the sale for export to the United States of the imported merchandise:

Materials, components, parts, and similar items incorporated in the imported merchandise;

Tools, dies, molds, and similar items used in producing the imported merchandise;

Merchandise consumed in producing the imported merchandise;

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States.

The last item listed above ("Engineering, development . . .") will not be treated as an assist if the service or work is (1) performed by a person domiciled within the United States, (2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and (3) incident to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

(1) *Restrictions on the disposition or use of merchandise.*—The first category of limitations which preclude the use of transaction value is the imposition of restrictions by a seller on a buyer's disposition or use of the imported merchandise. Exceptions are made to this rule. Thus, certain restrictions are acceptable, and their presence will still allow the use of transaction value. The acceptable restrictions are: (a) those imposed or required by law, (b) those limiting the geographical area in which the goods may be resold, and (c) those not substantially affecting the value of the goods. An example of the last restriction occurs when a seller stipulates that a buyer of new-model cars cannot sell or exhibit the cars until the start of the new sales year.

(2) *Conditions for which a value cannot be determined.*—If the sale of, or the price actually paid or payable for, the imported merchandise is subject to any condition or consideration for which a value cannot be determined, then transaction value cannot be used. Some examples of this group include when the price of the imported merchandise depends on (a) the buyer's also buying from the seller other merchandise in specified quantities, (b) the price at which the buyer sells other goods to the seller, or (c) a form of payment extraneous to the imported merchandise, such as, the seller's receiving a specified quantity of the finished product that results after the buyer further processes the imported goods.

(3) *Proceeds accruing to the seller.*—If part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer accrues directly or indirectly to the seller, then transaction value cannot be used. There is an exception. If an appropriate adjustment can be made for the partial proceeds the seller receives, then transaction value can still be considered. Whether an adjustment is made depends on whether the price actually paid or payable includes such proceeds and, if it does not, the availability of sufficient information to determine the amount of such proceeds.

(4) *Related-party transactions where the transaction value is unacceptable.*—Finally, the relationship between the buyer and seller may preclude the application of transaction value. The fact that the buyer and seller are related[44] does not automatically negate using their transaction value; however, the transaction value must be acceptable under prescribed procedures. To be acceptable for transaction value, relationship between the buyer and seller must not have influenced the price actually paid or payable. Alternatively, the transaction value may be acceptable if the imported merchandise closely approximates any one of the following test values, pro-

[44] For appraisement purposes, any of the following persons are considered related—

Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants;

Any officer or director of an organization and such organization;

An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization;

Partners;

Employer and employee;

Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

vided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

(A) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States,

(B) The deductive value or computed value for identical merchandise or similar merchandise, or

(C) The transaction value of imported merchandise in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical to the imported merchandise under apprisement, except for having been produced in a different country. No two sales to unrelated buyers can be used for comparison unless the sellers are unrelated.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining whether the transaction value is close to one of the foregoing test values (A, B, or C), an adjustment is made if the sales involved differ in commercial levels, quantity levels; the costs, commissions, values, fees, and proceeds described in (1) through (5) of the "definition" of value; and the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

As stated, the test values are alternatives to the relationship criterion. If one of the test values is met, it is not necessary to examine the question of whether the relationship influenced the price.

*Transaction value of identical merchandise or similar merchandise.*—If the transaction value of imported merchandise cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise.

The same additions, exclusions, and limitations, previously discussed in determining the transaction value of imported merchandise, also apply in determining the transaction value of identical or similar merchandise.

Besides the data common to all three transaction values, certain factors specifically apply to the transaction value of identical merchandise or similar merchandise. These factors concern the exportation date, the level and quantity of sales, the meaning, and the order of precedence of identical merchandise and of similar merchandise.

(a) *Exportation date.*—The identical merchandise, or similar merchandise, for which a transaction value is being determined must have been sold for export to the United States and exported at or about the same time as the merchandise being appraised.

(b) *Sales level/quantity.*—The transaction value of identical merchandise (or similar merchandise) must be based on sales of identical merchandise (or similar merchandise) at the same commercial level and, in substantially the same quantity, as the sales of the merchandise being appraised. If no such sale exists, then sales at either a different commercial level or in different quantities, or both, can be used, but must be adjusted to take account of any such

difference. Any adjustment must be based on sufficient information, that is, information establishing the reasonableness and accuracy of the adjustment.

(c) *Definition.*—(1) The term *"identical merchandise"* means merchandise that is: identical in all respects to the merchandise being appraised; produced in the same country as the merchandise being appraised; and produced by the same person as the merchandise being appraised.

If merchandise meeting all three criteria cannot be found, then identical merchandise is merchandise satisfying the first two criteria but produced by a different person than the merchandise being appraised. Merchandise can be identical to the merchandise being appraised and still show minor differences in appearance. However, identical merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

(2) The term *"similar merchandise"* means merchandise that is produced in the same country and by the same person as the merchandise being appraised; like the merchandise being appraised in characteristics and component materials; and commercially interchangeable with the merchandise being appraised.

If merchandise meeting the foregoing criteria cannot be found, then similar merchandise is merchandise having the same country of production, like characteristics and component materials, and commercial interchangeability but produced by a different person.

In determining whether goods are similar, some of the factors to be considered are the quality of the goods, their reputation, and the existence of a trademark. It is noted, however, that similar merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

(d) *Order of precedence.*—Sometimes more than one transaction value will be present, that is, for identical merchandise produced by the same person, for identical merchandise produced by another person, for similar merchandise produced by the same person, and for similar merchandise produced by another person. If this occurs, one value must take precedence.

As stated previously, accepted sales at the same level and quantity take precedence over sales at different levels and/or quantities. The order of precedence can be summarized as:

(1) Identical merchandise produced by the same person;
(2) Identical merchandise produced by another person;
(3) Similar merchandise produced by the same person; and
(4) Similar merchandise produced by another person.

It is possible that two or more transaction values for identical merchandise (or similar merchandise) will be determined. In such a case, the lowest value will be used as the appraised value of the imported merchandise.

*Deductive value.*—If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement

to be used, unless the importer designated, at entry summary, computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts back to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for deductive value.

Basically deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

One of three prices constitutes the unit price in deductive value. The price used depends on when and in what condition the merchandise concerned is sold in the United States. If the merchandise is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold at or about such date.

If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

Finally, if the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised. The price used is the unit price at which the greatest aggregate quantity of the merchandise being appraised, after further processing, is sold before the 180th day after the date of such importation.

After determining the appropriate price, packing costs for the merchandise concerned must be added to the price used for deductive value, provided such costs have not otherwise been included. These costs are added, regardless of whether the importer or the buyer incurs the cost. Packing costs include the cost of all containers and coverings of whatever nature; and of packing, whether for labor or materials, used in placing the merchandise in condition, packed ready for shipment to the United States.

Certain other items are not a part of deductive value and must be deducted from the unit price. The items are:

(1) *Commissions or profit and general expenses.*—Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, applicable to sales in the United States of imported merchandise that is of the same class or kind as the merchandise concerned; and regardless of the country of exportation.

(2) *Transportation/insurance costs.*—The usual and associated costs of transporting and insuring the merchandise concerned from the country of exportation to the place of importation in the United States; and from the place of importation to the place of delivery in the United States, provided these costs

are not included as a general expense under the preceding paragraph.

(3) *Customs duties/federal taxes.*—The customs duties and other federal taxes payable on the merchandise concerned because of its importation, plus any federal excise tax on, or measured by the value of, such merchandise for which sellers in the United States are ordinarily liable; and

(4) *Value of further processing.*—The value added by the processing of the merchandise after importation, provided sufficient information exists concerning the cost of processing. The price determined for deductive value is reduced by the value of further processing, only if the third unit price is used as deductive value (i.e., the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation, but is sold before the 180th day after the date of importation).

*Computed value.*—The last basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select at entry summary to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

(1) materials, fabrication, and other processing used in producing the imported merchandise;

(2) profit and general expenses;

(3) any assist, if not included in (a) and (b); and

(4) packing costs.

The cost or value of the materials, fabrication, and other processing of any kind used in producing the imported merchandise is based on information provided by or on behalf of the producer and on the commercial accounts of the producer, if the accounts are consistent with generally accepted accounting principles applied in the country of production of the goods.

The producer's profit and general expenses are used, provided they are consistent with the usual profit and general expenses reflected by producers in the country of exportation in sales of merchandise of the same class or kind as the imported merchandise.

If the value of an assist used in producing the merchandise is not included as part of the producer's materials, fabrication, other processing or general expenses, then the prorated value of the assist will be included in computed value. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States is included in computed value only to the extent that such value has been charged to the producer.

Finally, the cost of all containers and coverings of whatever nature and of packing, whether for labor or material, used in placing merchandise in condition, packed ready for shipment to the United States is included in computed value.

As can be seen, computed value relies to a certain extent on information that has to be obtained outside the United States, that is, from the producer of the merchandise. If a foreign producer refuses to or is legally constrained from providing the computed value information, or if the importer cannot provide such informa-

tion within a reasonable period of time, then computed value cannot be determined.

*Other.*—If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States will be used.

## Customs User Fees

*Background*

Prior to the 99th Congress, the U.S. Customs Service did not have the legal authority to collect fees for processing commercial merchandise, conveyances, and passengers entering the United States. Only limited authority existed to charge fees for services which were of special benefit to a particular individual such as preclearance of passengers and private aircraft. Special fees were also authorized on operators of bonded warehouses, foreign trade zones, and the entry of vessels into ports. Also, Customs was authorized to receive reimbursement from carriers for overtime for services provided during non-business hours and from local authorities for services provided to certain small airports.

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)[45] established a schedule of flat-rate fees for processing conveyances and passengers entering the United States. The Act imposed fees for Customs' costs on a per arrival basis on commercial vessels, trucks, railroad cars, private aircraft and boats, and passengers arriving on commercial vessels or aircraft from countries other than Mexico, Canada, U.S. insular possessions, and other adjacent islands. The statute also imposed fees on the processing of dutiable mail entries prepared by a customs officer, and the issuance of customs broker permits.

Modifications to these fees, in the Tax Reform Act of 1986,[46] included the placement of an annual cap on the arrival of commercial vessels, the establishment of a lower vessel fee for certain barges and bulk carriers, and an increase in the fee for rail cars carrying passengers or freight from $5 to $7.50, coupled with the elimination of the fee on empty railroad cars.

The Omnibus Budget Reconciliation Act of 1986 (OBRA)[47] expanded customs user fee authority to cover Customs' costs of processing commercial merchandise entries—the so-called Merchandise Processing Fee (MPF). The Act imposed an ad valorem fee based on the customs value of all formal entries of merchandise imported for consumption, including warehouse withdrawals for consumption.

As amended by the Omnibus Budget Reconciliation Act of 1987[48] and the Technical and Miscellaneous Revenue Act of 1988,[49] the U.S. portion of the value of articles classifiable under items 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule of

[45] Public Law 99–272, approved April 7, 1986.
[46] Public Law 99–514, approved October 22, 1986.
[47] Public Law 99–509, approved October 21, 1986.
[48] Public Law 100–203, section 9501, December 22, 1987.
[49] Public Law 100–647, section 9001, November 10, 1988.

the United States (HTS) or to products of the least developed developing countries (LDDC's), products of eligible countries under the Caribbean Basin Initiative (CBI), and products of U.S. insular possessions were exempted from the MPF. Further, pursuant to section 203 of the United States-Canada Free-Trade Agreement Implementation Act of 1988,[50] the merchandise user fees were set to be phased out with respect to articles of Canadian origin in accordance with article 403 of the bilateral agreement.

Receipts from user fees are deposited in a dedicated "Customs User Fee Account" within the general fund of the Treasury, with one subaccount of the receipts from the merchandise processing fee and a second subaccount of the receipts from the conveyance and passenger fees. Subject to authorization and appropriations, all funds in the Account are available to pay costs incurred by the Customs Service in conducting commercial operations and are treated as receipts offsetting expenditures of salaries and expenses for these purposes, except for that portion of the fees required for the direct reimbursement of appropriations for costs incurred by the Customs Service in providing inspectional overtime and preclearance services. Inspectional overtime and preclearance services are reimbursed subject to a permanent indefinite appropriation, and are not subject to OMB apportionment.

For fiscal year 1990, the merchandise processing fee was set at 0.17 percent ad valorem. The legislative authority to impose customs user fees was set to expire on September 30, 1990.

In February 1988 the General Agreement on Tariffs and Trade (GATT) Council adopted a panel finding that the ad valorem structure of the merchandise processing fee is inconsistent with U.S. GATT obligations to the extent the fee exceeds the approximate cost of customs processing for the individual entry, and includes costs for Customs Service activities that are not services to the particular importer (e.g., costs of processing imports exempt from the fee).

*Revised fee structure*

The Customs and Trade Act of 1990,[51] as amended by the Omnibus Budget Reconciliation Act of 1990,[52] completely revised and reauthorized customs user fees through fiscal year 1995. The new fee structure was intended to bring the United States into conformity with U.S. obligations under the GATT. The conference report (H. Rept. 101–650) sets forth the underlying rationale and congressional intent behind the user fee revision:

> The new fee schedule is structured to respond to this ruling and to bring the United States into conformity with its GATT obligations. As required by the relevant provisions of articles II and VIII of the GATT, the new fee schedule limits the fees charged to the approximate cost of the services rendered. It also limits the fee to customs operations related to merchandise processing and to the processing of imports covered by the fee. Fee revenues also are

[50] Public Law 100–449, approved September 28, 1988.
[51] Public Law 101–382, title I, subtitle C, approved August 20, 1990.
[52] Public Law 101–508, section 10001, approved November 5, 1990.

established so as to approximate the cost of the commercial customs services. As a result, the new fee schedule represents the type of fee permitted under GATT article VIII. It does not represent an indirect protection to domestic products nor does it represent a taxation of imports for domestic purposes.

The MPF for the first time differentiated between entries or releases of merchandise that are entered formally and those that are entered informally. Section 111 of the Customs and Trade Act of 1990 authorized a capped ad valorem fee for each formal entry and a three-tiered flat rate fee for each entry of merchandise entered informally. The amount of the user fee would depend upon whether the fee is filed manually or electronically. A special reimbursement rule for air courier facilities and other reimbursable facilities was also established.

For formal entries, a fee of 0.17 percent ad valorem was applied, subject to a maximum of $400 and a minimum of $21, except that an additional $3 was assessed on each entry if filed manually.

For informal entries (under $1,250), the following flat rate fee schedule was applied:

$2—for automated, non-customs-prepared informal entries;
$5—for manual, non-customs-prepared informal entries;
$8—for customs-prepared informal entries.

In lieu of the above, air courier facilities and other reimbursable facilities were subject to a reimbursement for Customs' processing costs to be collected at a rate of twice the assessment currently applied at courier hubs. Also, the industry's current 80 percent offset was eliminated.

The Commissioner of Customs was authorized to use any surplus from the schedule of flat-rate fees (the "COBRA fees") to hire full- and part-time personnel, buy equipment, or satisfy other direct expenses necessary to provide services directly to the payers of the fee, subject to OMB apportionment authority. A $30 million reserve of the surplus was required to maintain staffing levels equal to those existing in the prior year in the event customs collections were reduced. Other provisions included new user fee enforcement authority, treatment of railroad cars, and agriculture products processed and packed in foreign trade zones.

The 1990 Budget Reconciliation Act extended customs user fee authority through September 30, 1995. In addition, the Secretary of the Treasury was provided new authority to adjust the 0.17 percent ad valorem merchandise processing fee due to changes in trade flows and other conditions, subject to a maximum adjustment of 0.02 percent, plus or minus. The provision also specified publication, consultation, and legislative layover periods before an adjustment can be effective.

The 1990 Budget Reconciliation Act also permitted small user fee airports processing fewer than 25,000 informal entries annually to collect the entry-by-entry fee, rather than paying the new double reimbursement fee.

The 1993 Omnibus Budget Reconciliation Act extended customs user fee authority until September 30, 1998. Section 13813 of the Act also changed provisions of the COBRA fee statute as part of a major reform of the customs inspector pay system (the Customs

Overtime Pay Reform Act) to authorize the use of COBRA funds for a portion of customs officer premium pay and for customs retirement-fund contributions related to customs officer overtime pay. In addition, the COBRA account was made subject to OMB budget apportionment authority.

The North American Free Trade Agreement Implementation Act implemented U.S. obligations under the NAFTA to eliminate the Merchandise Processing Fee immediately for Canadian goods (consistent with U.S. obligations under the U.S.-Canada FTA), and by June 30, 1999 for imports of Mexican goods. The fee may not be increased with respect to Mexican goods after December 31, 1993.

The NAFTA Implementation Act provided for a temporary increase in the $5 COBRA passenger fee to $6.50 through September 30, 1997, when it would revert to $5. It also lifted the current fee exemptions for passengers arriving from Mexico, Canada, and the Caribbean for the same time period. These additional fee receipts were dedicated, subject to appropriation, to cover Customs' inspectional costs not covered by existing customs user fees. The Act also extended all customs user fees through September 30, 2003.

The Uruguay Round Agreements Act provided for an increase in the Merchandise Processing Fee rate for formal entries to 0.21 percent ad valorem, and increased the maximum and minimum fee amounts for formal entries from $400 to $485 and from $21 to $25, respectively. It also increased the rates from $5 to $6 for informal electronic entries and $8 to $9 for informal paper entries. The revised fee was designed to cover a revenue shortfall below Customs' commercial costs, as well as increases in Customs' operating expenses. The Uruguay Round Agreements Act also corrected a technical error in the Customs Overtime Pay Reform Act (COPRA) to provide for reimbursement of customs inspector premium pay to the extent it was greater than Federal Employee Pay Act (FEPA) premium pay authorized to be paid to customs inspectors prior to enactment of COPRA.

The Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) made three amendments with regard to customs user fees and merchandise processing fees. First, the Act amended section 13031(b) of the COBRA to clarify that the ad valorem MPF in foreign trade zones is to be assessed only on the foreign value of merchandise entered from a foreign trade zone. In addition, the amendment clarified that the application of the MPF to processed agricultural products will apply to all entries from foreign trade zones after November 30, 1986, for which liquidation has not been finalized. The provision was necessary to clarify that the MPF applicable solely to foreign merchandise entered from a foreign trade zone, exempting domestic value, for agricultural products, also would apply to non-agricultural products.

Second, the Act amended section 13031(b) of the COBRA with regard to limitations on the collection of customs passenger processing fees. As indicated above, the NAFTA Implementation Act increased the COBRA passenger processing fee from $5 to $6.50 and temporarily lifted the exemption on passengers arriving from Canada, Mexico, and the Caribbean during the period from January 1, 1994 through September 30, 1997. The statute was also modified

to apply the fee to so-called "cruises to nowhere," that is, cruises which leave U.S. customs territory and return, without calling on any port outside the United States. The amendment clarified that Customs should collect fees only one time in the course of a single continuous voyage for a passenger aboard a commercial vessel that calls on more than one U.S. port.

Third, the Act amended section 13031(b) of the COBRA to clarify that Customs may provide reimbursable services to air couriers operating in express consignment carrier facilities and in centralized hub facilities during daytime hours. The amendment also clarified that Customs may be reimbursed for all services related to the determination to release cargo, and not just "inspectional" services. These services are now reimbursable whether they are performed on site or not.

## Other Customs Laws

### COUNTRY-OF-ORIGIN MARKING

Section 304 of the Tariff Act of 1930, as amended,[53] provides that, with certain exceptions, every imported article of foreign origin (or its container in specified circumstances) "shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article." The purpose of this provision is to permit the "ultimate purchaser" in the United States to choose between domestic and foreign-made products, or between the products of different foreign countries.

When imported articles ordinarily reach their ultimate purchasers in packaged form, the containers or holders must, as a general rule, be marked with the country of origin of their contents, whether or not the article themselves are required to be marked.

*Exceptions.*—The statute gives the Secretary of the Treasury the authority to allow exceptions to the marking requirement under prescribed circumstances. For example, certain classes of merchandise are excepted from the country-of-origin marking requirements because they are not physically susceptible to marking or can only be marked at the cost of injury to the article.

Marking requirements may also be waived as to articles which arrive at the U.S. border unmarked, provided: the expense of marking under Customs supervision would be economically prohibitive; and the Customs Service is satisfied that the importer or shipper did not fail to mark the merchandise before shipment to the United States for the purpose of invoking this exception and thereby avoiding the marking requirements.

Another exception to the marking requirement may be granted for articles for which the ultimate purchaser necessarily knows the country of origin. An exception is also provided for articles to be processed by the importer for resale if the processing would necessarily obliterate or conceal any marking. If the processing undertaken by the importer is sufficient to convert the imported article

[53] 19 U.S.C. 1304.

into a new and different article of trade, any subsequent purchaser is not an "ultimate purchaser" of the imported article.

Other classes of excepted merchandise include products of American fisheries, products of U.S. possessions, products of U.S. origin which have been exported and returned, and articles entered for immediate transshipment and exportation from the United States. In addition, articles qualifying for duty-free treatment as being $1 or less in value, or as bona fide gifts less than $10 in value each, are relieved of the marking requirements, as are articles produced more than 20 years prior to importation.

Finally, under section 1304(a)(3)(J), classes of articles named in certain notices published by the Secretary of the Treasury in the late 1930's are not subject to the marking requirements. The articles named in such notices were those which had been imported in substantial quantities during the 5-year period ending December 31, 1936, and which had not been required to bear country-of-origin markings during that period. Such excepted articles are now found in the so-called "J-List."[54]

In addition, the Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) amended section 304 to exempt from the country-of-origin marking requirements certain imported coffees, teas, and spices. These items are specifically identified by their respective Harmonized Tariff Schedule numbers.

*Marking of certain pipe and fittings.*—An amendment to section 304 of the Tariff Act of 1930 contained in section 207 of the Trade and Tariff Act of 1984 provided that no exceptions may be made to the country-of-origin marking requirement for imported pipe, pipe fittings, compressed gas cylinders, manhole rings or frames, covers and assemblies thereof, and specifies the type of marking which is acceptable for those products.

*Marking of containers of imported mushrooms.*—Section 1907(b) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) specifies that markings on imported preserved mushrooms must indicate in English the countries in which the mushrooms were grown.

*Marking of Native-American style jewelry and arts and crafts.*—Section 1907(c) of the OTCA provided that the Secretary of the Treasury prescribe and implement regulations which require that all imported Native-American style jewelry and Native-American style arts and crafts have the English name of the country of origin indelibly and permanently marked in a conspicuous place on such products.

*Penalty for failure to mark.*—Imported goods that are not properly marked are liable for a 10 percent ad valorem duty in addition to any other duty that might be applicable. The payment of the 10 percent marking duty does not discharge the importer's obligation to comply.[55]

Imported articles or their containers that are found to be improperly marked are generally retained in Customs custody until such time as the importer, after notification, arranges for their exportation, destruction, or proper marking under Customs supervision,

[54] 19 CFR 134.33.

[55] *Globemaster, Inc.* v. *United States,* 68 Cust. Ct. C.D. 4340, 340 F. Supp. 974 (1972).

or until they are deemed abandoned to the government. If such unmarked articles are part of a shipment the balance of which has previously been released from Customs custody, the importer will be notified and ordered to redeliver the released articles to Customs for marking, exportation, or destruction under Customs supervision.

Section 304(h) of the Tariff Act (19 U.S.C. 1304) provided for a maximum fine of $5,000, or imprisonment of not more than 1 year upon conviction for any person who "with intent to conceal" alters or removes the country-of-origin marking. Section 1907(a) of the OTCA increased the maximum fine for intentional alteration or removal of country-of-origin markings to $100,000 on the first offense and $250,000 for subsequent offenses.

*Automobile labeling.*—The American Automobile Labeling Act, enacted as section 210 of the Motor Vehicle Information and Cost Savings Act,[56] requires manufacturers to affix, and dealers to maintain, labels on cars and light-duty trucks regarding the country of origin of component parts and the location of assembly. For each line of cars, the label will include the percentage (by value) of component parts which originated in the United States or Canada, and the countries and percentages from other manufacturers who contribute 15 percent or more to the component value of the vehicle. The combined United States/Canadian percentage, which is based on the longstanding special bilateral relationship in automotive trade, must be clearly identified, listing clearly both countries. No other countries are to be combined with the United States and Canadian combined percentage. For each individual vehicle, the label will also include the city, state (where appropriate), and country where the vehicle was assembled; the country of origin of the engine; and the country of origin of the transmission. For the purpose of identifying the country of assembly and the country of origin of the engine and transmission, the United States will be identified separately. All vehicles manufactured on or after October 1, 1994, for sale in the United States must be labeled.

*North American Free Trade Agreement.*—Sections 207 and 208 of the North American Free Trade Agreement Implementation Act implemented U.S. obligations under NAFTA articles 311, annex 311, and article 510 regarding country-of-origin marking for NAFTA-origin goods, and the review and appeal of customs marking decisions. Section 207 amends section 304 of the Tariff Act of 1930, as amended, to provide certain limited exemptions for the country-of-origin marking requirements for goods of NAFTA origin. It exempted goods where the importer "reasonably knows" that they are NAFTA-origin goods, and specifically exempted original works of art, ceramic bricks, semiconductor devices, and integrated circuits. Sections 207(a) and 208 amended sections 304 and 514 of the Tariff Act to provide NAFTA exporters and producers with rights to challenge and protest adverse NAFTA marking decisions by the Customs Service.

[56] As added by Public Law 102–388, section 355 approved October 6, 1992.

## NAFTA Rules of Origin

*Originating goods.*—Section 202 of the North American Free Trade Agreement Implementation Act enacts articles 401 through 415 of the NAFTA regarding rules of origin. The NAFTA rules ensure that NAFTA preferential tariff treatment is granted only to the products of the United States, Mexico, and Canada. Goods are considered to originate in a NAFTA party if: (1) they are wholly obtained or produced in the territory of one or more NAFTA parties; (2) each of the non-originating materials used in the good undergoes a change in tariff classification as a result of production that occurs entirely within one or more of the parties; (3) the good is produced entirely in one or more of the parties exclusively from NAFTA-origin materials; or (4) with certain exceptions, the good is produced entirely in one or more of the NAFTA parties but one or more of the non-originating parts does not undergo a change in tariff classification; and the regional value content of the goods meets certain thresholds (at least 60 percent of the value of the goods or 50 percent of their net cost.)

*Regional value-content.*—Section 202(b) of the North American Free Trade Agreement Implementation Act sets forth methodologies for calculating regional value-content on the basis of either "transaction value" or "net cost of the good." Regional value using the transaction value method is computed by taking the difference between the transaction value of the good and the value of non-originating materials used in the production of the good, divided by the transaction value of the good. Regional value using the net-cost method is computed by dividing the difference between the net cost of the good and the value of non-originating materials used in the production of the good by the net cost of the good. A producer of a good may use one of three ways to allocate applicable costs when using the net-cost method. Under certain circumstances delineated in section 202(b), the net-cost method is required to be used.

*Automotive goods.*—Section 202(c) of the North American Free Trade Agreement Implementation Act sets forth the regional value-content requirement for motor vehicles. For passenger motor vehicles, light trucks, and their engines and transmissions, the regional value-content is increased in stages from 50 percent for the first 4 years of NAFTA to 56 percent for the second 4 years and to 62.5 percent thereafter. Other motor vehicles and other automotive parts are subject to a 50 percent regional content requirement for the first 4 years, 55 percent for the second 4 years, and 60 percent thereafter. A special rule applies to investors who newly construct or refit a plant to produce a new vehicle. Section 202(c) provides that, for passenger vehicles and light trucks and their automotive parts, the value of non-originating materials must be "traced" back through the production process for purposes of calculating the regional value-content. An auto producer may average its calculation of regional value-content using a number of different methodologies.

*Certificate of Origin.*—Section 205 of the North American Free Trade Agreement Implementation Act amends section 508 of the Tariff Act to require a NAFTA Certificate of Origin for goods for which preferential tariff treatment is claimed, and imposes record-

keeping requirements to substantiate the Certificates subject to recordkeeping penalties.

## DRAWBACK

Under section 313(a) of the Tariff Act of 1930 (19 U.S.C. 1313(a)), "drawback" is payable upon the exportation of an article manufactured or produced in the United States with the use of duty-paid imported merchandise. To receive benefit of drawback, the completed article must have been exported within 5 years from the date of importation of the pertinent duty-paid merchandise. The amount of refund is equal to 99 percent of the duties attributable to the foreign, duty-paid content of the exported article. The procedural and other requirements governing drawbacks are set forth in 19 CFR part 22.

The purpose of section 313(a) is to permit American-made products to compete more effectively in world markets. It enables domestic manufacturers and producers to select the most advantageous sources for their raw materials and component requirements without regard to duties, thereby permitting savings in their production costs. It also encourages domestic production and, as a result, the utilization of American labor and capital.

An important feature of section 313(a) and a number of other drawback provisions is the allowance of drawback on a substitution basis. Pursuant to section 313(b), an exported article incorporating components entirely of domestic origin can nevertheless qualify for drawback, to the extent that duty has been paid on the importation of components of the same kind and quality as those used in the manufacture or production of the exported article.

Section 202 of the Trade and Tariff Act of 1984 expanded the application of current drawback provisions in three important respects. First, it allows drawback if the same person requesting drawback, subsequent to importation and within 3 years of importation of the merchandise, exports from the United States or destroys under Customs supervision fungible merchandise (whether imported or domestic) which is commercially identical to the merchandise imported.

Second, it allows drawback for all packaging materials imported for packaging or repackaging imported merchandise.

Finally, the Act provides that any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise for drawback purposes if no certificate of delivery is issued for such imported merchandise.

In addition to section 313(a), there are a variety of other specific drawback provisions allowing for the refund of duties and/or internal revenue taxes under specified circumstances for the exportation of products such as flavoring extracts, toiletries, distilled spirits, salts, and cured meats. Further, under section 313(c), drawback is allowable when merchandise is rejected by the importer because it fails to conform to the sample upon which the purchase order was made, or because it fails to conform to the importer's specifications, or because the merchandise was shipped without the consignee's consent. When such rejected merchandise is exported under Cus-

toms supervision, 99 percent of the duties paid will be refunded upon compliance with the pertinent regulations.

The Customs Modernization Act (section 632 of the North American Free Trade Agreement Implementation Act) made a series of changes to address questions which have arisen in the implementation and administration of the drawback law. Section 632 made changes including: allowing manufacturing drawback for unused articles that are destroyed rather than exported, extending the period for drawback claims on rejected merchandise to 3 years; with respect to same condition drawback, changing the standard for allowing substitution of merchandise for the imported merchandise from "fungible" to "commercially interchangeable"; authorizing the electronic filing of drawback claims and setting a period of 3 years from the date of exportation or destruction in which to file a claim; and simplifying accounting requirements for petroleum. Section 622 established penalty provisions for the submission of false drawback claims and created a "Drawback Compliance Program."

*NAFTA drawback.*—Section 203 of the North American Free Trade Agreement Implementation Act implemented limitations on duty drawback included under NAFTA article 303. "NAFTA drawback" refers to the formula used to compute the amount of drawback that will be allowed for dutiable goods traded between the NAFTA parties. The formula limits drawback to the lesser of: (1) the total amount of customs duties paid or owed on the non-NAFTA components initially imported; and (2) the total amount of customs duties paid to another party on the goods subsequently exported. It generally applies to all goods imported into the United States, with certain exceptions. The provision applies for exports to Canada on January 1, 1996, and for exports to Mexico on January 1, 2001. It has the practical effect of essentially eliminating drawback for NAFTA-origin goods as NAFTA tariff reductions become effective. While no limitations were imposed on same condition drawback, same condition substitution drawback was eliminated upon the entry into force of the Agreement, with certain exceptions. In no case may drawback be paid with respect to countervailing or antidumping duties on goods entering the United States. Furthermore, section 210 of the Act generally prohibits drawback for color television picture tubes.

*Special rule for extending time for filing drawback claims.*—The Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) amended section 313(r) of the Tariff Act of 1930, as amended, to permit a temporary extension of 1 year for filing drawback claims in cases where the President has declared a major disaster on or after January 1, 1994, and the claimant files a request for such extension with the Customs Service within 1 year from the date of enactment.

## COPYRIGHTS AND TRADEMARK ENFORCEMENT

*Copyrights.*—Section 602(a) of the Copyright Revision Act of 1976[57] provides that the importation into the United States of copies of a work acquired outside the United States without authorization of the copyright owner is an infringement of the copyright and

[57] Public Law 94–553, section 101, approved October 19, 1976, 17 U.S.C. 602(a).

are subject to seizure and forfeiture. Forfeited articles are generally destroyed; however, the articles may be returned to the country of export whenever Customs is satisfied that there was no intentional violation. Copyright owners seeking import protection from the U.S. Customs Service must register their claim to copyright with the U.S. Copyright Office and record their registration with Customs in accordance with applicable regulations.[58]

*Trademarks and trade names.*—Articles bearing counterfeit trademarks, or marks which copy or simulate a registered trademark registration of a U.S. or foreign corporation are prohibited importation, provided a copy of the U.S. trademark registration is filed with the Commissioner of Customs and recorded in the manner provided by regulations.[59] The U.S. Customs Service also affords similar protection against unauthorized shipments bearing trade names which are recorded with Customs pursuant to regulations.[60] It is also unlawful to import articles bearing genuine trademarks owned by a U.S. citizen or corporation without permission of the U.S. trademark owner, if the foreign and domestic trademark owners are not parent and subsidiary companies or otherwise under common ownership and control, provided the trademark has been recorded with Customs and the U.S. trademark owner has not authorized the distribution of trademarked articles abroad.

The Anticounterfeiting Consumer Protection Act of 1996 (Public Law 104–153) strengthened the protection afforded trademark owners against the importation of articles bearing a counterfeit trademark. A "counterfeit trademark" is defined as a spurious trademark which is identical to, or substantially indistinguishable from, a registered trademark. First, the Act redefined counterfeiting as a form of racketeering. Second, it extended both the copyright and trademark laws, and the seizure and forfeiture laws, to computer programs, computer documentation, and packaging. Third, the Act amended the law such that, upon seizure of counterfeit merchandise, the Customs Service must notify the owner of the trademark, and, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Customs Service has the consent of the trademark owner, the forfeited goods may be: (1) given to any federal, state, or local government agency which has established a need for the article; (2) given to a charitable institution; or (3) sold at public auction, if more than 90 days have passed since the date of forfeiture, and no eligible organization has established a need for the article.

The Anticounterfeiting Consumer Protection Act of 1996 also amended section 431 of the Tariff Act of 1930 to require public disclosure of aircraft manifests in addition to vessel manifests. Last, the Act amended section 484 of the Tariff Act of 1930 to require the Customs Service to prescribe new regulations governing the content of entry documentation so as to aid in the determination of whether imported merchandise bears a counterfeit trademark.

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[58] 19 CFR 133, subpart D.
[59] 19 CFR 133.1–133.7.
[60] 19 CFR part 133, subpart B.

## PENALTIES

Section 592 of the Tariff Act of 1930, as amended,[61] is the basic and most widely used customs penalty provision. It prescribes monetary penalties against any person who imports, attempts to import, or aids or procures the importation of merchandise by means of false or fraudulent documents, statements, omissions or practices, concerning any material fact. The statute may be applied even though there is no loss of revenue involved.

Section 592 infractions are divided into three categories of culpability, each giving rise to a different maximum penalty, as follows:

(1) *Fraud.*—This category involves an act of commission or omission intentionally done for the purpose of defrauding the United States of revenue, or otherwise violating section 592. The maximum civil penalty for a fraudulent violation is the domestic value of the merchandise in the entry or entries concerned.

(2) *Gross negligence.*—This category involves an act of commission or omission with actual knowledge of, or wanton disregard for, the relevant facts and a disregard of section 592 obligations, whereby the United States is or may be deprived of revenue, or where section 592 is otherwise violated. The maximum civil penalty for gross negligence is the lesser of the domestic value of the merchandise or four times the loss of revenue (actual or potential). If the infraction does not affect the revenue, the maximum penalty is 40 percent of the dutiable value of the goods.

(3) *Negligence.*—This category involves a failure to exercise due care in ascertaining the material facts or in ascertaining the obligations under section 592. The maximum civil penalty for negligence is the lesser of the domestic value of the merchandise or twice the loss of revenue (actual or potential). However, where there is no loss-of-revenue issue, the penalty cannot exceed 20 percent of the dutiable value.

In addition to the civil penalties described above, a criminal fraud statute provides for sanctions to those presenting false information to customs officers. Title 18, United States Code, section 542, provides a maximum of 2 years imprisonment, or a $5,000 fine, or both, for each violation involving an importation or attempted importation.

The Secretary of the Treasury is authorized to seize merchandise if there is resasonable cause to believe that a person has violated these provisions and the alleged violator is insolvent; outside the jurisdiction of the United States; is otherwise essential to protect the revenue; or to prevent the importation of prohibited merchandise into the United States.

For proceedings commenced by the United States in the Court of International Trade for monetary penalties, all issues shall be tried *de novo.* The statute specifies the standard of proof required to establish a violation. In fraud cases, the United States has the burden to prove the violation by clear and convincing evidence; in gross negligence cases, the government has the burden to establish

[61] 19 U.S.C. 1592.

all the elements of the alleged violation; and for negligence cases, the government has the burden to establish the act or omission and the defendant has the burden of proof that the act or omission did not occur as a result of negligence.

The Customs Modernization Act (section 621 of the North American Free Trade Agreement Implementation Act) amended section 592 to apply existing penalties for false information to information transmitted electronically; allow Customs to recover unpaid taxes and fees resulting from 592 violations; clarify that the mere nonintentional repetition of a clerical error does not constitute a pattern of negligent conduct; and define the commencement of a formal investigation for the purposes of prior disclosure of alleged violations. It also introduced the requirement that importers use "reasonable care" in making entry and providing the initial classification and appraisement; establishing a "shared responsibility" between Customs and importers; and allowing Customs to rely on the accuracy of the information submitted and streamline entry procedures (section 637 of the North American Free Trade Agreement Implementation Act). To the extent that an importer fails to use reasonable care, Customs may impose a penalty under section 592.

Section 205 of the North American Free Trade Agreement Implementation Act amended section 592 to apply identical penalty provisions to importers making false declarations and certificates of NAFTA origin.

The Anticounterfeiting Consumer Protection Act of 1996 (Public Law 104–153) made several amendments to the Tariff Act of 1930, as amended. First, the Act extended the application of customs civil penalties to include merchandise bearing a counterfeit trademark. Second, the Act amended section 526 of the Tariff Act of 1930 to require the consent of the trademark owner prior to any action by the Secretary of the Treasury regarding the disposition of seized merchandise. Third, the Act linked the relevant civil penalties to the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, in addition to any other civil or criminal penalties. Last, the Act amended section 431(c)(1) of the Tariff Act of 1930 to require the advanced public disclosure of aircraft manifests to assist Customs in electronically screening passengers for inspection upon arrival.

*Recordkeeping.*—The Customs Modernization Act (section 615 of the North American Free Trade Agreement Implementation Act) provided new penalties for the failure to comply with a lawful demand for records required for the entry of merchandise, and established a "Recordkeeping Compliance Program." For willful failure to comply, the penalty is the lesser of up to $100,000, or 75 percent of the value of the merchandise, and for negligence, the lesser of up to $10,000 or 40 percent of the value. The new penalties were authorized with the understanding that Customs would routinely waive the production of records at entry, while retaining the ability to audit those records at a later time.

## COMMERCIAL OPERATIONS

*Advisory Committee.*—Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) established in the Department of Treasury the "Advisory Committee on Commercial

Operations of the United States Customs Service." The Assistant Secretary of Treasury for Enforcement is the Committee Chairman, which is composed of 20 members.

In making appointments, the Secretary is to select individuals or firms "affected by the commercial operations" of the Customs Service. A majority of the members may not belong to the same political party. The Advisory Committee is required to provide advice to the Secretary on all Customs commercial operation matters and to report annually to the House Ways and Means and Senate Finance Committees.

*Management improvements.*—The Customs and Trade Act of 1990 made numerous changes to improve Customs commercial operations. Section 103 contained a biennial authorization of appropriations for the U.S. Customs Service, including a statutory funding floor for commercial operations and a ceiling on non-commercial (enforcement) operations.

Section 121 made major amendments to the Customs Forfeiture Fund statute (section 613A of the Tariff Act of 1930) and in the administrative forfeiture proceedings authority (section 607 of the Tariff Act of 1930).

The Act also included several provisions recommended by the House Ways and Means Subcommittee on Oversight.[62] Section 123 required an annual national trade and customs law violation estimate and enforcement strategy report. Section 124 required an Administration report on possible expansion of Customs' foreign preclearance operations and legislative proposals for recovery for imported merchandise damaged during customs examination. Finally, the Act required changes to Customs' cost accounting systems and new labor distribution surveys.

In 1992, the annual Treasury appropriations legislation for fiscal year 1993 (Public Law 102–393) created a unified Treasury Asset Forfeiture Fund to be administered by the Treasury Secretary. It succeeded the Customs Forfeiture Fund (section 613A of the Tariff Act). The Committee on Ways and Means maintains legislative jurisdiction over the Customs portion of the Treasury Fund.

A major reform to the customs inspector pay system was included in the Omnibus Budget Reconciliation Act of 1993. Section 5 of the Act of February 13, 1911 (the "1911" Act) was amended to address widespread abuse and mismanagement of the existing inspector overtime pay system (WMCP:102–17). It provided more reasonable overtime rates, ensuring that hours paid bear a direct relationship to hours worked, and provided safeguards against abusive practices. It also authorized foreign language bonuses and additional retirement benefits linked to a portion of overtime hours worked.

*Notification requirements.*—Section 9501(c) of the Omnibus Budget Reconciliation Act prohibited the establishment of any new Centralized Examination Station (CES) unless Customs provides written notice to both the House Ways and Means and Senate Finance Committees not less than 90 days prior to the proposed establishment.

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[62] "Report on Abuses and Mismanagement in the U.S. Customs Service Commercial Operations"; February 8, 1990; WMCP: 101–22.

The Omnibus Budget Reconciliation Act of 1987 required the Commissioner of Customs to notify the House Ways and Means and Senate Finance Committees at least 180 days prior to taking any action which would: (a) result in any significant reduction in force of employees by means of attrition; (b) result in any reduction in hours of operation or services rendered at any customs office; (c) eliminate or relocate any customs office; (d) eliminate any port, or significantly reduce the number of employees assigned to any customs office or any port of entry.

*Customs modernization.*—The Customs Modernization Act (title VI of the North American Free Trade Agreement Implementation Act) represented the most extensive set of changes to the customs laws since the Customs Procedural Reform Act of 1978. The major provisions of the Act removed archaic statutory provisions requiring paper documentation, and provided authority for full electronic processing of all customs-related transactions under the National Customs Automation Program (NCAP) (section 631). In return for waiving paperwork requirements, importers were required to maintain and produce information after the fact. Section 631 further sets forth the NCAP goals of ensuring uniform importer treatment, facilitating business activity, while improving compliance with the customs laws. It authorized new automation initiatives for remote-entry filing and periodic entry and duty payment, and required adequate planning, testing, and evaluation of all new automated systems before implementation.

The Act provided for accreditation of independent laboratories and public access to all Customs rulings and decisions. It also provided additional projections for importers by reforming Customs' seizure authority under section 596(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)); established a new statute of limitations on duty violations, provided procedural safeguards for regulatory audits; allowed judicial review of detentions; clarified the conditions under which duty drawback claims may be made; and authorized payment for damaged merchandise for non-commercial shipments.

*Reorganization.*—Pursuant to section 301 of the Customs Procedural Reform and Implementation Act of 1978 (19 U.S.C. 2075), on September 30, 1994, the Commissioner of Customs notified the House Ways and Means and Senate Finance Committees of his intention to implement a major reorganization of Customs commercial operations, including concentrating services at existing port facilities, reducing Headquarters staff, eliminating regional and district offices, and establishing Customs Management and Strategic Trade Centers.

*Antiterrorism.*—The Comprehensive Antiterrorism Act of 1995 (Public Law 104–132), designed to prevent and punish acts of terrorism, makes it unlawful to import plastic explosives which do not contain detection devices. The Act amends the Tariff Act of 1930 to facilitate Customs interdiction of these plastic explosives under its seizure and forfeiture authority.

## Foreign Trade Zones

The Foreign Trade Zones Act of 1934,[63] as amended, authorizes the establishment of foreign trade zones. A foreign trade zone (FTZ) is a special enclosed area within or adjacent to ports of entry, usually located at industrial parks or in terminal warehouse facilities. Although operated under the supervision and enforcement of the Customs Service, they are considered outside the customs territory of the United States. With certain exceptions, any foreign or domestic merchandise may be brought into a foreign trade zone for storage, sale, exhibition, break-of-bulk, repacking, distribution, mixing with foreign or domestic merchandise, assembly, manufacturing, or other processing. Foreign merchandise imported into an FTZ is not subject to duty, formal entry procedures or quotas unless and until it is subsequently imported into U.S. customs territory.

The framework that governs the establishment and operation of FTZs has three principal components. First, the Foreign Trade Zones Act of 1934 (the Act) authorizes the establishment of FTZs and, as amended in 1950, allows manufacturing in FTZs.[64] Second, regulations, promulgated by both the Customs Service[65] and the Department of Commerce,[66] expand on the Act. A 1952 amendment to the regulations provided for the establishment of "subzones" in addition to general purpose zones. Third, the decision in *Armco Steel Corp.* v. *Stans* in 1970 validated the use of zone manufacturing to avoid customs duties and interpreted several key provisions of the Act.[67]

The original purpose of the Foreign Trade Zones Act of 1934 was to expedite and encourage foreign commerce. Initially, FTZs were little more than transshipment or consignment centers for the storage, repackaging, or light processing of foreign goods pending reexportation. The 1934 Act prohibited the manufacture and exhibition of goods in FTZs. In 1950, however, Congress removed this prohibition and added manufacturing to the list of activities permitted, and authorized exhibition in zones.

The amendment to the FTZ regulations in 1952 that provided for the establishment of subzones is important to manufacturing and assembly operations in zones. The essential distinction between the two types of zones is that individual subzones are generally used by only one firm, whereas there is no limitation on the number of firms that can operate in a general-purpose zone. Subzones were established to assist companies which were unable to relocate to or take advantage of an existing general-purpose zone.[68] Under the regulations, only a grantee of a previously approved general zone may apply to establish a subzone.

Authority for establishing these facilities is granted to qualified corporations, or political subdivisions, who must submit applications to the Department of Commerce's Foreign Trade Zones Board, comprised of the Secretary of Commerce (Chair), and the Secretary

[63] Act of June 18, 1934, ch. 590, 48 Stat. 998, 19 U.S.C. 81a–81u.
[64] Boggs amendment of 1959, ch. 296, 64 Stat. 246, 19 U.S.C. 81c.
[65] 19 CFR 146.0–48 (1980).
[66] 15 CFR 400.100–1406 (1980).
[67] 431 F.2d 779 (2d Cir. 1970), aff'g 303 F. Supp. 262 (S.D.N.Y. 1969).
[68] 15 CFR 400.304 (1983).

of the Treasury.[69] Public Law 104–201, authorizing appropriations for fiscal year 1997 for the military activities of the Department of Defense, amended the Foreign Trade Zones Act to remove the Secretary of Army from membership on the Board. The Board's regulations set forth the basic requirements for applying and qualifying for an FTZ. The statute provides that every officially designated port of entry is entitled to at least one FTZ. Public hearings are often held by the Board staff in the locale involved. While most applications are non-controversial, occasionally domestic industries or labor that are sensitive to imports will oppose a subzone application. The sharp growth of manufacturing in subzones, particularly by the automobile industry, has led to increased criticism of the practice by U.S. parts producers, who are concerned that the practice may reduce their effective tariff protection.

Section 3, which contains the basic substantive provisions of the Act, allows merchandise to be imported into FTZs without being subject to U.S. customs laws. The section regulates the tariff treatment of FTZ merchandise according to its status as foreign or domestic, and as privileged or non-privileged.

One may apply for privileged status for foreign merchandise in an FTZ, provided the merchandise has not yet been manipulated or manufactured so as to effect a change in its tariff classification. Foreign merchandise that is not privileged, recovered waste, and merchandise that was originally domestic but can no longer be identified as such, are deemed to be non-privileged foreign merchandise. Domestic merchandise that would otherwise have been eligible for privileged status but for which no application was made is considered non-privileged merchandise.

The status of merchandise becomes significant when it enters U.S. customs territory. Customs appraises and classifies privileged foreign merchandise to determine the taxes and duties owed according to the condition of the merchandise when it *enters* an FTZ. The importer pays the previously determined taxes and duties when bringing the merchandise into U.S. customs territory regardless of any manufacturing or manipulation of the goods with other foreign or domestic privileged merchandise.

In contrast, merchandise that is composed entirely of, or derived entirely from, non-privileged merchandise, either foreign or domestic, or of a combination of privileged and non-privileged merchandise, is appraised and classified according to its condition when constructively *transferred out* of an FTZ and into U.S. customs territory. Thus, the duty and taxes payable on non-privileged or combined merchandise are those applicable to its classification and value when it enters U.S. customs territory and not when it enters the zone. This distinction is an important potential advantage of zone-based operations.

The United States-Canada Free-Trade Agreement Implementation Act[70] amended section 3(a) of the Foreign Zones Act to provide that, with the exception of "drawback eligible goods," goods withdrawn from a foreign trade zone will be treated as if they are withdrawn for consumption in the United States, thus subject to appli-

[69] 19 U.S.C. 81a(b) (1976). The jurisdiction and authority of the Board are set forth in 15 CFR 400.200–203 (1980).

[70] Public Law 100–449, approved September 28, 1988.

cable customs duties. The North American Free Trade Agreement Implementation Act[71] further amended section 3(a) to provide that "goods subject to NAFTA drawback" and withdrawn from a foreign trade zone will be treated as if they are withdrawn for consumption in the United States, and are thus subject to the applicable customs duties. The customs duties may be reduced or waived in an amount that is the lesser of the customs duties paid to the other NAFTA country upon import of the manufactured goods. The amendment also provides for the same treatment should Canada cease to be a NAFTA country and the suspension of the United States-Canada Free-Trade Agreement is terminated.

In addition, an amendment to section 3 with respect to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone was enacted in section 9002 of the Technical and Miscellaneous Revenue Act of 1988.[72]

Final revised regulations—the first changes to those regulations since 1980—were issued by the FTZ Board on October 8, 1991 (15 CFR Part 400) clarifying criteria for the establishment and review of FTZ (including subzone) operations. Among other provisions, the revised regulations authorize the review of zone and subzone operations to determine whether those operations provide a net economic benefit to the United States.

*Deferral of duty on certain production equipment.*—The Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) amended section 3 of the Foreign Trade Zones Act to permit the deferral of payment of duty on certain production equipment admitted into FTZs. The provision allows for duty on imported production equipment and components installed in a U.S. FTZ to be deferred until the equipment is ready to be placed into use for production. By allowing a manufacturer to assemble, install, and test the equipment before duties would be levied, this change is meant to encourage production in FTZs.

[71] Public Law 100–182, approved December 8, 1993.
[72] Public Law 100–647, approved November 10, 1988.

## Chapter 2: TRADE REMEDY LAWS

### The Antidumping and Countervailing Duty Laws

Two important trade remedy laws are the antidumping (AD) and countervailing duty (CVD) laws. Although these laws are aimed at different forms of unfair trade, they have many procedural and substantive similarities.

#### COUNTERVAILING DUTY (CVD) LAW: SUBSIDY DETERMINATION

The purpose of the CVD law is to offset any unfair competitive advantage that foreign manufacturers or exporters might enjoy over U.S. producers as a result of foreign countervailable subsidies. Countervailing duties equal to the net amount of the countervailable subsidies are imposed upon importation of the subsidized goods into the United States.

Subtitle A of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 and amended by the Trade and Tariff Act of 1984, the Omnibus Trade and Competitiveness Act of 1988, and the Uruguay Round Agreements Act of 1994,[1] provides that a countervailing duty shall be imposed, in addition to any other duty, equal to the amount of net countervailable subsidy, if two conditions are met. First, the DOC must determine that a countervailable subsidy is being provided, directly or indirectly, "with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) into the United States" and must determine the amount of the net countervailable subsidy. Second, the ITC must determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation." The law applies to imports from World Trade Organization (WTO) member countries, which have assumed obligations equivalent to those of the Agreement on Subsidies and Countervailing Measures, commonly referred to as the Subsidies Agreement, or countries with whom the United States has a treaty requiring unconditional most-favored-nation treatment with respect to articles imported into the United States. A countervailing duty may not be imposed on imports from these countries unless it is established that a countervailable benefit has been imposed and a determination has been made that such subsidized imports injure or threaten to injure domestic producers of that merchandise (i.e., the injury test). However, imports from

[1] 19 U.S.C. 1671.

countries which do not fall into one of these three categories are generally not afforded an injury test in CVD cases.

*Historical background: prior to GATT rules*

The first U.S. statute dealing with foreign unfair trade practices was a CVD law passed in 1897. The provisions of the 1897 statute remained substantially the same until 1979, when the U.S. CVD law was changed to conform with the agreement reached in the Tokyo Round of multilateral trade negotiations.

The law prior to 1979 required the Secretary of the Treasury to assess countervailing duties on imported dutiable merchandise benefiting from the payment or bestowal of a "bounty or grant." The 1897 law authorized countervailing duties against any bounty or grant on the export of foreign articles. In 1922, Congress amended the provision to cover bounties or grants on the manufacture or production of merchandise as well as on its export. The amount of the countervailing duty was to equal the net amount of the "bounty or grant." Prior to the amendments made by the Trade Act of 1974, the CVD law applied only to dutiable merchandise and afforded no injury test.

The Trade Act of 1974 made two important changes to the CVD law, although the substantive requirements of the CVD law remained virtually the same. First, it extended the application of the CVD law for the first time to duty-free imports, subject to a finding of injury as required by the international obligations of the United States (i.e., duty-free imports from GATT members).

Second, the Trade Act of 1974 made extensive changes in many procedural aspects of the law, which had the effect of limiting executive branch discretion in administering the CVD statute. The responsibilities for CVD investigations were also split, with the Department of Treasury being responsible for subsidy determinations and the U.S. International Trade Commission (ITC) being responsible for injury determinations. In 1979, under President Carter's Reorganization Plan No. 3, the responsibility for administering the subsidy portions of the CVD statute was transferred from the Department of the Treasury to the Department of Commerce (DOC).[2]

*Tokyo Round Subsidies Code*

During the Tokyo Round of trade negotiations in the 1970's, a multilateral agreement governing the use of subsidies and countervailing measures was concluded and signed by the United States. In order to enforce obligations with regard to the use of subsidies, the Agreement provided for improved international procedure for notification, consultation and dispute settlement and, where a breach of an obligation concerning the use of subsidies is found to exist, or a right to relief exists countermeasures are contemplated. In addition to the availability of either remedial measures or countermeasures through the dispute settlement process, countries could also take traditional countervailing duty action to offset subsidies upon a showing of material injury to a domestic industry by reason of subsidized imports. The agreement set out criteria for material injury determinations.

[2] Exec. Order No. 12188, January 4, 1980, 44 Fed. Reg. 69273.

The key provisions of the Agreement were as follows: (1) prohibition of export subsidies on non-primary products as well as primary mineral products; (2) description of export subsidies which superseded the requirement that an export subsidy must result in export prices lower than prices for domestic sales, and inclusion of an updated illustrative list of subsidy practices; (3) recognition of the harmful trade effects of domestic subsidies and therefore, the permissibility of relief (including countermeasures) where such subsidies injure domestic producers and nullify or impair benefits of concessions under the GATT (including tariff bindings); or cause serious prejudice to the other signatories; (4) commitment by signatories to "take into account" conditions of world trade and production (e.g., prices, capacity, etc.) in fashioning their subsidy practices; (5) improved discipline on use of export subsidies for agriculture; (6) provisions governing the use and phase-out of export subsidies by developing countries; (7) tight dispute settlement process; (8) greater transparency regarding subsidy practices including provisions for GATT notification of practices of other countries; (9) an injury and causation test designed to afford relief where subsidized imports (whether an export or domestic subsidy is involved) impact on U.S. producers either through volume or through effect on prices; and (10) greater transparency in the administration of CVD laws and regulations.

Congress approved the GATT Subsidies Code under section 2(a) of the Trade Agreements Act of 1979. Section 101 of the 1979 Act added a new title VII to the Tariff Act of 1930, containing the new provisions of the CVD law to conform to U.S. obligations under the Subsidies Code. One of the most fundamental changes made by the 1979 Act was the requirement of an injury test in all CVD cases involving imports from "countries under the Agreement"—countries which either are signatories to the Subsidies Code or have assumed substantially equivalent obligations to those under the Code. For countries that were not "countries under the Agreement," a special section of the CVD statute applied. Specifically, section 303 of the Tariff Act of 1930, as amended, permitted CVD duties to be imposed without an injury test for such countries. In addition, section 303 applied a different definition of subsidy. Other changes made by the 1979 Act included the grant of provisional relief for the first time, reduction of the time periods for investigation, and greater opportunities for participation by interested parties.

*Uruguay Round Subsidies Agreement*

The Uruguay Round Subsidies Agreement goes beyond the Tokyo Round Code by: (1) providing definitions of key terms such as "subsidy" and "serious prejudice" for the first time in any GATT agreement; (2) prohibiting export subsidies and subsidies based on the use of domestic instead of imported goods; (3) creating a special presumption of serious prejudice for egregious subsidies; (4) defining and significantly strengthening the procedures for showing when serious prejudice exists in foreign markets; (5) creating a "green light" category of government assistance that will be non-actionable and non-countervailable; (6) requiring most developing countries to phase out export subsidies and import substitution subsidies; and (7) applying the WTO dispute settlement mecha-

nism, which will end the present ability of the subsidizing government to block adoption of unfavorable panel reports.

In 1994, Congress implemented the Agreement on Subsidies and Countervailing Measures of the Uruguay Round Multilateral Trade Negotiations (Subsidies Agreement) under title II of the Uruguay Round Trade Agreements Act. Part 2 of subtitle B under title II contains the repeal of section 303 of the Tariff Act of 1930 and the new provisions of the CVD law to conform to U.S. obligations under the Subsidies Agreement.

The Act provides for the application of an injury test to all members of the WTO. The definition of a subsidy applicable to non-WTO members was incorporated in section 701 of the Tariff Act of 1930. Accordingly, section 303 was repealed because it was no longer necessary. The Uruguay Round Agreements Act provides a special procedure for making injury determinations for those CVD orders, previously issued under section 303, which apply to goods from a country not a signatory to the Code but now a member of the WTO.

*Highlights of the Uruguay Round Subsidies Agreement and CVD Statute*

*Definition of a subsidy.*—Section 251 of the Uruguay Round Agreements Act provides that a subsidy is determined to exist if there is a financial contribution by a government or any public body, or any form of income or price support, which confers a benefit. Examples of financial contribution include a direct transfer of funds (e.g., grants, loans, equity infusions), a potential direct transfer (e.g., loan guarantees), the foregoing of revenue otherwise due (e.g., tax credits), the provision of goods or services, other than general infrastructure, or the purchase of goods. This may also include cases where a government entrusts or directs a private body to carry out these functions. The Uruguay Round Agreements Act also provides guidelines for determining when there is a "benefit to the recipient" in the case of an equity infusion, a loan, a loan guarantee, or provision of goods or services.

*Specificity.*—In determining whether a countervailable subsidy exists, the statute provides that a subsidy will be deemed to be "specific" if it is provided in law or in fact to a specific enterprise or industry, or group of enterprises or industries. Export subsidies (i.e., those contingent upon export performance), import substitution subsidies (i.e., those contingent on the use of domestic over imported goods), and certain domestic subsidies if provided to a specific enterprise or industry, or group of enterprises or industries are included. A subsidy limited to certain enterprises within a designated geographical region is considered specific.

*Prohibited "red light" subsidies.*—The Agreement identifies two types of subsidies that are prohibited under all circumstances: (1) subsidies based on export performance and (2) subsidies based on the use of domestic rather than imported goods. Article III includes those covered in the illustrative list of export subsidies provided in annex I to the Agreement such as more favorable transport and freight terms for exports, special tax deductions based on export, and export credit guarantees or insurance programs providing rates that are inadequate to cover long-term operating costs. The

Uruguay Round Agreements Act establishes procedures for investigating prohibited subsidies; if Commerce has reason to believe that foreign goods are benefiting from a prohibited subsidy, USTR will then determine whether to initiate a section 301 investigation.

*Non-actionable "green light" subsidies.*—The Agreement identifies three types of non-countervailable or "green light" subsidies: (1) certain research subsidies (excluding those provided to the aircraft industry); (2) subsidies to disadvantaged regions; and (3) subsidies for adaptation of existing facilities to new environmental requirements. The provisions on non-actionable subsidies apply for 5 years, unless extended or modified. The Uruguay Round Agreements Act provides expressly that the "green light" provisions on research and pre-competitive development activity do not apply to civil aircraft products.

*Enforcement of U.S. rights.*—Sections 281 and 282 of the Uruguay Round Agreements Act set forth a mechanism for enforcing U.S. rights under the Uruguay Round Subsidies Agreement, reviewing the operation of provisions in the Agreement relating to green light subsidies, and ensuring prompt and effective implementation of successful WTO dispute settlement proceedings.

Section 282 of the Uruguay Round Agreements Act[3] provides for an ongoing review of the Subsidies Agreement and establishes objectives for that review, including the creation of a mechanism that will provide for an ongoing review, within the framework of the Subsidies Agreement, of the green light subsidies. Footnote 25 of the Subsidies Agreement requires that the Subsidies Committee review the operation of the green light category of research subsidies within 18 months from the date of entry into force: January 1, 1995. Under section 282, the Administration is required to include all green light subsidies in its review. Section 282(c) provides that the green light subsidies and the subsidies deemed to cause serious prejudice provisions expire 66 months after the entry into force of the WTO unless extended by Congress. USTR is directed to consult with the appropriate congressional committees and private sector, and then submit legislation to implement the agreed extension. A bill to provide such an extension would be considered under "fast track" procedures.

*Rules for developing countries.*—The Uruguay Round Agreements Act provides different treatment for developing country subsidies because the Subsidies Agreement provides an 8- to 10-year window for developing countries with annual GNP per capita at or above $1,000 to phase out all export subsidies. For least developed countries and countries with GNP per capita below $1,000, the phase-out period for export subsidies for competitive products is 8 years. Developing countries are allowed a 5-year phase-out period, and the least-developed countries an 8-year period, to eliminate prohibited import substitution subsidies.

*Subsidy determinations*

As noted above, section 701 of the Tariff Act of 1930, as amended,[4] provides for the imposition of additional duties whenever a

[3] Public Law 103–456, 19 U.S.C. 3572.
[4] 19 U.S.C. 1671.

countervailable subsidy is bestowed by a foreign country upon the manufacture or production for export of any article which is subsequently imported into the United States. Reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise. The countervailing duty will apply whether the merchandise is imported directly or from third countries, and whether or not in the same condition as when exported.

Again, as noted above, section 701(c) applies to a country which is not a "Subsidies Agreement country." Under section 701(c), a country which is not a "Subsidies Agreement country" is not entitled to an injury test. In addition, certain provisions pertaining to suspension agreements, special rules for regional industries, critical circumstances, and the 5-year review of countervailing duty orders do not apply to such a country.

Countervailing duties are imposed in the amount of the net countervailable subsidy as determined by the DOC. To determine the amount of net countervailable subsidy on which the CVD will be based, the DOC may subtract from gross countervailable subsidy the amount of:

(1) any application fee, deposit, or similar payment paid to qualify for or receive the subsidy;

(2) any loss in the countervailable subsidy value resulting from deferred receipt mandated by government order; and

(3) export taxes, duties, or other charges levied on the exports to the United States specifically intended to offset the countervailable subsidy.

*Upstream subsidies*

The Trade and Tariff Act of 1984 modified the application of the CVD law to "upstream subsidies"—subsidies bestowed on inputs which are then incorporated into the manufacture of a final product which is exported to the United States. Section 268 of Uruguay Round Agreements Act further modified the law by establishing criteria for determining the existence of an upstream subsidy. Additional criteria were necessary given the additions of the statutory definition of subsidy and the new category of import substitution subsidies.

Section 771(A) of the Tariff Act of 1930, as amended, which provides for upstream subsidies, is unrelated to the basic definition of a subsidy. The potential for an upstream subsidy exists only when a sector-specific benefit meeting all the other criteria of being a countervailable subsidy is provided to the input producer. A determination that the subsidy is also bestowing a "competitive benefit" on the merchandise is also required. The provision is also limited to countervailable subsidies paid or bestowed by the country in which the final product is manufactured.

With regard to the "competitive benefit" criterion, the DOC must decide that a competitive benefit has been bestowed when the price for the input used in manufacture or production of the merchandise subject to investigation is lower than the price the manufacturer or producer would otherwise pay for the input from another seller in an arm's length transaction. Whenever the DOC has reasonable grounds to believe or suspect an upstream subsidy is being paid or

bestowed, the DOC must investigate whether it is in fact and, if so, include the amount of any competitive benefit, not to exceed the amount of upstream subsidy, in the amount of any CVD imposed on the merchandise under investigation.

*Agricultural subsidies*

Section 771(5B) provides a separate, special rule for the calculation of countervailable subsidies on certain processed agricultural products.

ANTIDUMPING (AD) LAW: LESS-THAN-FAIR-VALUE DETERMINATION

Dumping generally refers to a form of international price discrimination, whereby goods are sold in one export market (such as the United States) at prices lower than the prices at which comparable goods are sold in the home market of the exporter, or in its other export markets.

Three provisions of U.S. law address different types of dumping practices. The Antidumping Act of 1916 provides for criminal and civil penalties for the sale of imported articles at a price substantially less than the actual market value or wholesale price, with the intent of destroying or injuring an industry in the United States. Title VII of the Tariff Act of 1930, as amended, provides for the assessment and collection of AD duties by the U.S. government after an administrative determination that foreign merchandise is being sold in the U.S. market at less than fair value and that such imports are materially injuring the U.S. industry. Finally, section 1317 of the Omnibus Trade and Competitiveness Act of 1988 establishes procedures for the U.S. Trade Representative to request a foreign government to take action against third-country dumping that is injuring a U.S. industry, and section 232 of the Uruguay Round Agreements Act permits a third country to request that an order be issued against dumped imports from another country that are materially injuring an industry in a third country.

*Historical background*[5]

In 1916 the Congress enacted the Antidumping Act of 1916, providing a civil cause of action in federal court for private damages as well as for criminal penalties against parties who dumped foreign merchandise in the United States.[6] The requirements under this statute, however, particularly the need to show evidence of intent, are difficult to meet, and the need for a different type of AD law was subsequently considered by Congress. In 1921 the Antidumping Act of 1921 was passed, which provided the statutory basis, until 1979, for an administrative investigation by the Department of the Treasury of alleged dumping practices and for imposition of AD duties.[7] In 1954, the administration of the AD law was split, and the function of determining injury was transferred from the Treasury Department to the U.S. Tariff Commission (now the International Trade Commission). The function of determining

[5] For another useful discussion of the history of the development of U.S. antidumping laws, see Congressional Budget Office, *How the GATT affects U.S. Antidumping and Countervailing-Duty Policy*, Sept. 1994.

[6] Act of September 8, 1916, ch. 463, sec. 801, 39 Stat. 798, 15 U.S.C. 72.

[7] Act of May 27, 1921, ch. 14, 42 Stat. 11, 19 U.S.C. 160 (now repealed).

sales at less than fair value (LTFV) was left with the Treasury Department until 1979.

During the post-World War II negotiations to establish an International Trade Organization, the United States proposed a draft article on dumping, based on the Antidumping Act of 1921. This draft became the basis for article VI of the General Agreement on Tariffs and Trade (GATT), which is the international framework governing national antidumping laws.

During the 1960's, antidumping actions and their potential for abuse, rather than the dumping practice itself, became a source of great concern to many nations. As a result, during the Kennedy Round of multilateral trade negotiations, the GATT Antidumping Code of 1967 was established. The 1967 Code had three main functions: (1) to clarify and elaborate on the broad concepts of article VI of the GATT; (2) to supplement article VI by establishing appropriate procedural requirements for AD investigations; and (3) to bring all GATT signatory countries into conformity with article VI. The GATT Antidumping Code came into force on July 1, 1968, and provided for the establishment of a GATT Committee on Antidumping Practices, whose function was to review annually the operation of national antidumping laws.

During the Tokyo Round of multilateral trade negotiations in the 1970's, the GATT Antidumping Code was amended to conform to the newly negotiated Agreement Relating to Subsidies and Countervailing Measures, also negotiated at that time and involving changes in article VI of the GATT. The GATT Agreement on Implementation of article VI of the GATT, Relating to Antidumping Measures, came into force on January 1, 1980.[8]

The Congress approved the revised GATT Antidumping Code under section 2(a) of the Trade Agreements Act of 1979.[9] Title I of the 1979 Act repealed the Antidumping Act of 1921 and added a new title VII to the Tariff Act of 1930 implementing the provisions of the Agreement in a new U.S. antidumping law. In addition to the substantive and procedural changes made by the 1979 Act, the responsibility for making dumping determinations was transferred from the Department of the Treasury to the Department of Commerce (DOC) in 1979.[10] The AD law was further amended by title VI of the Trade and Tariff Act of 1984,[11] and title I, subtitle C, part 2 of the Omnibus Trade and Competitiveness Act of 1988.

Finally, during the Uruguay Round negotiations, provisions related to antidumping were further amended through the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement). Article VI of the original GATT remained unchanged in the 1994 GATT Agreement.

Effective January 1, 1995, the Congress implemented the Antidumping Agreement under title II of the Uruguay Round Agree-

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[8] Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade, MTN/NTM/W/232, reprinted in House Doc. No. 96–153, pt. I at 311.

[9] Public Law 96–39, approved July 26, 1979.

[10] Reorganization Plan No. 3 of 1979, 44 Fed. Reg. 69,273 (Dec. 3, 1979); and Exec. Order No. 12188, January 2, 1980, 45 Fed. Reg. 989.

[11] Public Law 98–573, approved October 30, 1984. Technical corrections to the 1984 amendments were included in section 1886 of the Tax Reform Act of 1986, Public Law 99–514, approved October 22, 1986.

ments Act. The Act made considerable substantive and procedural changes to the U.S. AD statute.

*Basic provisions*

Section 731 of the Tariff Act of 1930, as amended,[12] provides that an antidumping duty shall be imposed, in addition to any other duty, if two conditions are met. First, the Department of Commerce (DOC) must determine that "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." The determination of whether LTFV sales exist, and what is the margin of dumping, is based on a comparison of "normal value" with the "export price" of each import sale made during the relevant time period under investigation. Second, the U.S. International Trade Commission (ITC) must determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." If the DOC determines that less-than-fair-value (LTFV) sales exist and the ITC determines that material injury exists, an AD order is issued imposing antidumping duties equal to the amount by which normal value (i.e., the price in the foreign market) exceeds the export price (i.e., U.S. price) for the merchandise (the dumping margin).

*Basis of comparison: normal value*

Normal value is determined by one of three methods, in order of preference: home market sales, third-country sales, or constructed value. If a foreign like product is sold in the market of the exporting country for home consumption, then normal value is to be based on such sales. If home market sales do not exist, or are so few as to form an inadequate basis for comparison, then the price at which the foreign like product is sold for exportation to countries other than the United States becomes the basis for normal value. If neither home market sales nor third-country sales form an adequate basis for comparison, then normal value is the constructed value of the imported merchandise. Constructed value is determined by a formula set forth in the statute, which is the sum of costs of production, plus the actual amount of profit and for selling, general and administrative expenses. If actual data is not available, then a surrogate for profit and such expenses may be used, as specified in the statute.

Normal value based on home market or third-country sales is a single price, in U.S. dollars, which represents the weighted average of prices in the home market or third-country market during the period under investigation. Sales made at less than cost of production may be disregarded in the determination of normal value under certain circumstances. Adjustments are to be made for differences in merchandise, quantities sold, circumstances of sale, and differences in level of trade to provide for comparability of normal value with export price. Section 223(a)(7) of the Uruguay Round Agreements Act and the accompanying Statement of Administrative Action changed the requirements for making level of trade ad-

[12] 19 U.S.C. 1673.

justments to provide that the DOC is to make a level of trade adjustment (i.e., deduct the price difference between the two levels of trade) if sales are made at different levels of trade and the appropriate adjustment can be established. The level of trade adjustment was intended to provide the normal value counterpart to the related party profit deduction in constructed export price sales (described below) so that the effect is to compare a U.S. sale to a sale in the home market at the same point in the commercial transaction. Finally, averaging or sampling techniques may be used in the determination of normal value whenever a significant volume of sales is involved or a significant number of price adjustments is required.

If the exporting country is a non-market economy, the normal value is constructed by valuing the non-market economy producer's "factors of production" in a market economy country which is a significant producer of comparable merchandise and which is at a level of economic development comparable to the non-market economy, and adding amounts for general expenses, profits, and packing. The "factors of production" include labor, raw materials, energy and other utilities, and representative capital costs.

In determining whether a country is a non-market economy, the DOC will consider: the convertibility of the country's currency, whether wages are determined through free bargaining between labor and management, whether foreign investment is permitted, the extent of government ownership, and the extent of government control over the allocation of resources and the pricing and output decisions of enterprises. The DOC's determination of whether a country is a non-market economy is not subject to judicial review.

*Export price*

The margin of dumping, and the amount of antidumping duty to be imposed, is determined by comparing the normal value with the export price of each entry into the United States of foreign merchandise subject to the investigation. Export price in general refers to either "export price" or the "constructed export price" of the merchandise, whichever is appropriate. "Export price" is the price at which merchandise is purchased or agreed to be purchased prior to date of importation to the United States. It is typically used where the purchaser is unrelated to the foreign manufacturer and is based on the price agreed to before importation into the United States. However, it may be used if the purchaser and foreign manufacturer are related but the purchaser is merely the processor of sales-related documentation and does not set the price to the first unrelated customer. "Constructed export price" is the price at which merchandise is sold or agreed to be sold in the United States before or after importation, by or for the account of the producer or exporter to the first unrelated purchaser. Typically, it is used if the purchaser and exporter are related.

Export price is adjusted to derive an ex-factory price, including the subtraction of certain delivery expenses and U.S. import duties. Additional subtractions are made from constructed export price, including selling commissions, indirect selling expenses, and expenses and profit for further manufacturing in the United States. In addition, the Uruguay Round Agreements Act provides for the

deduction of an amount for related party profit, if any, earned in a sale through a related distributor to an end-user in the United States.

*Third country dumping*

Section 1318 of the Omnibus Trade and Competitiveness Act of 1988 was enacted in response to concern over the injurious effects of foreign dumping in third country markets. Section 1318 establishes procedures for domestic industries to petition the U.S. Trade Representative (USTR) to pursue U.S. rights under article 12 of the GATT Antidumping Code. A domestic industry that produces a product like or directly competitive with merchandise produced by a foreign country may submit a petition to USTR if it has reason to believe that such merchandise is being dumped in a third country market and such dumping is injuring the U.S. industry.

If USTR determines there is a reasonable basis for the allegations in the petition, USTR shall submit to the appropriate authority of the foreign government an application requesting that antidumping action be taken on behalf of the United States. Article 12 of the GATT Antidumping Code requires that such an application "be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned." (paragraph 2, article 12). Accordingly, at the request of the U.S. Trade Representative, the appropriate officers of the Commerce Department and the ITC are to assist USTR in preparing any such application.

After submitting an application to the foreign government, USTR must seek consultations with its representatives regarding the requested action. If the foreign government refuses to take any antidumping action, USTR must consult with the domestic industry on whether action under any other U.S. law is appropriate.

The Uruguay Round Antidumping Agreement added a provision providing authority to issue an order upon the request of a third country, under certain circumstances. The Uruguay Round Agreements Act provides that the government of a WTO member may file with USTR a petition requesting that an investigation be conducted to determine if imports from another country are being dumped in the United States, causing material injury to an industry in the petitioning country. USTR, after consultation with the DOC and the ITC, and after obtaining the approval of the WTO Council for Trade in Goods, is to determine whether to initiate an investigation. If the DOC determines that imports are dumped and the ITC determines that an industry in the petitioning country is materially injured by such imports, the DOC is to issue an AD order.

## AD AND CVD LAWS: MATERIAL INJURY DETERMINATION

Prior to issuance of an AD or CVD order, the ITC must determine that the domestic industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarded, by reason of dumped or subsidized imports. The standard of injury under the AD and CVD laws is

"material injury," defined by section 771(7) of the Tariff Act of 1930 as harm which is not inconsequential, immaterial, or unimportant.

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury (i.e., that dumping caused the injury, and not other factors). The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of like merchandise, and the effects that imports have on U.S. producers of like products, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity. Also relevant are the effects on employment, inventories, wages, the ability to raise capital, and negative effects on the development and production activities of the U.S. industry. Finally, in AD investigations, the ITC is to consider the magnitude of the dumping margin.

Section 222(b)(2) of the Uruguay Round Agreements Act (19 U.S.C. 1677(7)(C)(iv)) states that, in determining market share and the factors affecting financial performance, the ITC is to focus primarily on the merchant market for the domestic like product if domestic producers internally transfer significant production of the domestic like product for the production of a downstream article (i.e., captive production not for sale on the merchant market). The Statement of Administrative Action accompanying the implementing legislation makes clear that captively produced imports are not to be included in the import penetration ratio for the merchant market if they do not compete with merchant market production.[13]

Section 771(7) of the Tariff Act of 1930, as amended, requires the ITC to cumulatively assess the volume and effect of like imports from two or more countries subject to investigation if the imports compete with each other and with like products of the domestic industry in the U.S. market, as long as the relevant petitions were filed on the same day or investigations were initiated on the same day (for cases which were self-initiated). However, the ITC is to immediately terminate an investigation with respect to a country (and, hence, may not cumulate imports from that country) if imports from that country are "negligible." Section 222(d) of the Uruguay Round Agreements Act amended the negligibility standard so that imports from a country are to be considered negligible if they account for less than 3 percent of the volume of all imports of such merchandise and if imports from all countries accounting for less than 3 percent do not exceed 7 percent of imports. Finally, the ITC has discretion not to cumulate imports when the imports subject to investigation are products of Israel.

## Issues Common to AD and CVD Investigations

### *Initiation of investigation*

AD and CVD investigations may be self-initiated by the DOC or may be initiated as a result of a petition filed by an interested party. Petitions may be filed by any of the following, on behalf of the affected industry: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized

[13] The Uruguay Round Agreements Act Statement of Administrative Action at 853.

union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing; or (5) a coalition or trade association representative of processors, or processor and growers, in cases involving processed agricultural products. The DOC is required to provide technical assistance to small businesses to enable them to prepare and file petitions.

Petitions are to be filed simultaneously with both the DOC and ITC. Within 20 days after the filing of a petition, the DOC must decide whether or not the petition is legally sufficient to commence an investigation. If so, an investigation is initiated with respect to imports of a particular product from a particular country.

Because of new standing provisions in the Uruguay Round Agreements, section 212 of the Uruguay Round Agreements Act requires Commerce to determine, as part of its initiation determination, whether the petition has been filed by or on behalf of the industry. A petitioner has standing if: (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. The Statement of Administrative Action accompanying the Act specifies that if the management of a firm expresses a position in direct opposition to the views of the workers in that firm, Commerce will treat the production of that firm as representing neither support for nor opposition to the petition.[14] The DOC is to poll the industry if the petition does not meet the second test set forth above. In such circumstances, the DOC is permitted 40 days in which to determine whether it will initiate an investigation. Standing of the industry may not be challenged to the agency after an investigation is initiated but may be challenged later in court.

Section 609 of the Trade and Tariff Act of 1984 establishes a procedure in AD investigations by which the DOC may monitor imports from additional supplier countries for up to 1 year in order to determine whether persistent dumping exists with respect to that product and self-initiation of additional dumping cases is warranted.

*Preliminary ITC injury determination*

The ITC must determine whether there is a "reasonable indication" of material injury, based on the information available to it at the time. The petitioner bears the burden of proof with respect to this issue. If the ITC preliminary determination is negative, the investigation is terminated. If it is positive, the investigation continues. The ITC is to make this determination within 45 days of the date of filing of the petition or self-initiation, or within 25 days after the date on which the ITC receives notice of initiation if the DOC has extended the period for initiation in order to poll the industry to determine standing.

[14] Uruguay Round Agreements Act Statement of Administrative Action at 862.

*Preliminary DOC determination*

If the ITC makes an affirmative preliminary injury determination, then the DOC must determine whether dumping or subsidization is occurring.

In antidumping cases, the DOC must determine whether there is a "reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value," within 140 days after initiation. The preliminary determination is based on the information available to the DOC at the time. If affirmative, the preliminary determination must include an estimated average amount by which the normal value exceeds the export price. An expedited preliminary determination within 90 days of initiation of the investigation may be made based on information received during the first 60 days if such information is sufficient and the parties provide a written waiver of verification and an agreement to have an expedited preliminary determination. A preliminary determination may also be expedited for cases involving short life cycle merchandise, if the foreign producer has been subject to prior affirmative dumping determinations on similar products. On the other hand, the preliminary determination may be postponed until 190 days after initiation by the DOC, at the petitioner's request or in cases which the DOC determines are extraordinarily complicated.

In subsidy cases, the DOC must determine whether there is a "reasonable basis to believe or suspect that a countervailable subsidy is being provided," within 65 days after initiation of the investigation. In cases involving upstream subsidies, the time period may be extended to 250 days. If affirmative, the preliminary determination must include an estimated amount of the net countervailable subsidy. An expedited preliminary determination may be made based on information received during the first 50 days if such information is sufficient and the parties provide a written waiver of verification and agree to an expedited preliminary determination. On the other hand, the preliminary determination may be postponed until 130 days after initiation at the petitioner's request or in cases which the DOC determines are extraordinarily complicated.

The effect of an affirmative preliminary determination is twofold: (1) The DOC must order the suspension of liquidation of all entries of foreign merchandise subject to the determination from the date of publication of the preliminary determination. The DOC must also order the posting of a cash deposit, bond, or other appropriate security for each subsequent entry of the merchandise equal to the estimated margin of dumping or the amount of the net countervailable subsidy; and (2) the ITC must begin its final injury investigation, and the DOC must make all information available to the ITC which is relevant to an injury determination. If the preliminary determination is negative, no suspension of liquidation occurs, and the DOC investigation simply continues into the final stage.

In AD investigations in which the petitioner alleges critical circumstances, the DOC must determine, on the basis of information available at the time, whether (1) there is a history of dumping and material injury in the United States or elsewhere of the subject

merchandise, or the importer knew or should have known that the merchandise was being sold at less than fair value and that there was likely to be material injury by reason of such sales; and (2) there have been massive imports of the merchandise over a relatively short period.

In CVD investigations involving "countries under the Agreement" in which the petitioner alleges critical circumstances, the DOC must determine, on the basis of information available at the time, whether (1) the alleged countervailable subsidy is inconsistent with the GATT Subsidies Agreement; and (2) there have been massive imports of the merchandise over a relatively short period.

In both AD and CVD investigations, this critical circumstances determination may be made beginning prior to a preliminary determination of subsidies or sales at less than fair value. If the DOC determines critical circumstances exist, then any suspension of liquidation ordered is to retroactively apply to unliquidated entries of merchandise entered up to 90 days prior to the date suspension of liquidation was ordered.

*Final DOC determination*

In AD investigations, the DOC must issue its final LTFV determination within 75 days after the date of its preliminary determination, unless a timely request for extension is granted, in which case the final determination must be made within 135 days. In CVD investigations, the DOC must issue a final subsidy determination within 75 days after the date of its preliminary determination, unless the investigation involves upstream subsidies, in which case special extended time limits apply. If there are simultaneous investigations under the AD and CVD laws involving imports of the same merchandise, the final CVD determination may be postponed until the date of the final determination in the AD investigation at the request of a petitioner.

In both LTFV and subsidy investigations, the investigation is terminated if the final determination is negative, including any suspension of liquidation which may be in effect, and all estimated duties are refunded and all appropriate bonds or other security are released. If the final determination is affirmative, the DOC orders the suspension of liquidation and posting of a cash deposit, bond, or other security (if such actions have not already been taken as a result of the preliminary determination), and awaits notice of the ITC final injury determination.

*Final ITC injury determination*

Within 120 days of a DOC affirmative preliminary determination or 45 days of a DOC affirmative final determination, whichever is longer, the ITC must make a final determination of material injury. If the DOC preliminary determination is negative, and the DOC final determination is affirmative, the ITC has until 75 days after the final affirmative determination to make its injury determination.

*Termination or suspension of investigations*

Either the DOC or ITC may terminate an AD or CVD investigation upon withdrawal of the petition by petitioner, or by the DOC

if the investigation was self-initiated. The DOC may not, however, terminate an investigation on the basis of a quantitative restriction agreement limiting U.S. imports of the merchandise subject to investigation unless the DOC is satisfied that termination on the basis of such agreement is in the public interest.

The DOC may suspend a CVD investigation on the basis of one of three types of agreements entered into with the foreign government or with exporters who account for substantially all of the imports under investigation. The three types of agreements are: (1) an agreement to eliminate the subsidy completely or to offset completely the amount of the net countervailable subsidy within 6 months after suspension of the investigation; (2) an agreement to cease exports of the subsidized merchandise to the United States within 6 months of suspension of the investigation; and (3) an agreement to eliminate completely the injurious effect of subsidized exports to the United States (which, unlike under the AD law, may be based on quantitative restrictions).

The DOC may suspend an AD investigation on the basis of one of three types of agreements entered into with exporters who account for substantially all of the imports under investigation: (1) an agreement to cease exports of the merchandise to the United States within 6 months of suspension of the investigation; (2) an agreement to revise prices to eliminate completely any sales at less than fair value; and (3) an agreement to revise prices to eliminate completely the injurious effect of exports of such merchandise to the United States. Unlike CVD cases, AD investigations cannot generally be suspended on the basis of quantitative restriction agreements. The one exception is where the AD investigation involves imports from a non-market economy country.

The DOC may not, however, accept any suspension agreement in either an AD or CVD investigation unless it is satisfied that suspension of the investigation is in the public interest, and effective monitoring of the agreement is practicable. If the DOC determines not to accept a suspension agreement, it is to provide to the exporters who would have been subject to the agreement both the reasons for not accepting the agreement and an opportunity to submit comments, where practicable.

Prior to actual suspension of an investigation, the DOC must provide notice of its intent to suspend and an opportunity for comment by interested parties. When the DOC decides to suspend the investigation, it must publish notice of the suspension, and issue an affirmative preliminary LTFV or subsidy determination (unless previously issued). The ITC also suspends its investigation. Any suspension of liquidation ordered as a result of the affirmative preliminary LTFV determination, however, is to be terminated, and all deposits of estimated duties or bonds posted are to be refunded or released.

If, within 20 days after notice of suspension is published, the DOC receives a request for continuation of the investigation from a domestic interested party or from exporters accounting for a significant proportion of exports of the merchandise, then both the DOC and ITC must continue their investigations.

The DOC has responsibility for overseeing compliance with any suspension agreement. Intentional violations of suspension agreements are subject to civil penalties.

*AD or CVD order*

An AD or CVD order may be issued only if both the DOC and ITC issue affirmative final determinations, in both title VII AD and CVD investigations and in section 303 CVD investigations requiring an injury test.

A DOC final LTFV determination must include its determinations of normal value and export price, which are the basis for assessment of AD duties and for deposit of estimated AD duties on future entries. Within 7 days of notice of an affirmative final ITC determination, the DOC must issue an AD duty order which (1) directs the Customs Service to assess AD duties equal to the amount by which normal value exceeds the export price, i.e., the dumping margin; (2) describes the merchandise to which the AD duty applies; and (3) requires the deposit of estimated AD duties pending liquidation of entries, at the same time as estimated normal customs duties are deposited. The DOC must publish notice of its final determination, which shall be the basis for assessment of AD duties and for deposit of estimated AD duties on future entries.

For CVD investigations, the DOC must issue a CVD duty order within 7 days of notice of an affirmative final ITC determination, which (1) directs the Customs Service to assess countervailing duties equal to the amount of the net countervailable subsidy; (2) describes the merchandise to which the CVD applies; and (3) requires the deposit of estimated CVD's pending liquidation of entries, at the same time as estimated normal customs duties are deposited. The DOC must publish notice of its determination of net countervailable subsidy which shall be the basis for assessment of CVD duties and for deposit of estimated CVD duties on future entries.

*Differences between estimated and final duties*

If a cash deposit or bond collected as security for estimated AD or CVD duties pursuant to an affirmative preliminary or final LTFV or CVD determination is greater than the amount of duty assessed pursuant to an AD or CVD duty order, then the difference between the deposit and the amount of final duty will be refunded for entries *prior* to notice of the final injury determination. Sections 707 and 737 of the Tariff Act of 1930, as amended, provide that if the cash deposit or bond is lower than the final duty under the order, then the difference is disregarded. No interest accrues in either case.[15]

If estimated AD or CVD duties deposited for entries *after* notice of the final injury determination are greater than the amount of final AD or CVD duties determined under an AD or CVD order, then the difference will be refunded, together with interest on the amount of overpayment. If estimated duties are less than the

[15] With respect to AD determinations, section 40 of the Trade Law Technical Corrections and Miscellaneous Amendments Act of 1996 clarifies that the cap on the amount of the AD duty applies not only to cash deposits but to bonds as well, making it consistent with the cap applied in CVD determinations.

amount of final duties, then the difference will be collected together with interest on the amount of such underpayment.

*Administrative review*

The DOC is required, upon request, to conduct an annual review of outstanding AD and CVD orders and suspension agreements. For all entries of merchandise subject to an AD review, the DOC must determine the normal value, export price, and the amount of dumping margin. For all entries of merchandise subject to a CVD review, the DOC must review and determine the amount of any net countervailable subsidy. These determinations will provide the basis for assessment of AD and CVD duties on all entries subject to the review, and for deposits of estimated duties on entries subsequent to the period of review.

The results of its annual review must be published together with a notice of any AD or CVD duty to be assessed, estimated duty to be deposited, or investigation to be resumed. Under the Uruguay Round Agreements Act, time limits were added to the administrative review process so that final determinations are due in 1 year (with extensions up to an additional 6 months available).

*Changed circumstances review*

Under the statute, a review of a final determination or of a suspension agreement is to be conducted by the DOC or ITC whenever it receives information or a request showing changed circumstances sufficient to warrant such review. Without good cause shown, however, no final determination or suspension agreement can be reviewed within 24 months of its notice. The party seeking revocation of an order has the burden of persuasion as to whether there are changed circumstances sufficient to warrant revocation.

*Sunset review*

The Uruguay Round Agreements provide for the termination, or sunset, of AD and CVD orders and suspension agreements after 5 years unless the authorities determine that such expiry would be likely to lead to the continuation or recurrence of dumping, subsidization or injury. Accordingly, section 220 of the Uruguay Round Agreements Act provides that orders may be revoked and suspension agreements terminated after 5 years if the terms are met. The DOC will publish a notice of initiation of a sunset review not later than 30 days before the fifth anniversary of the order. A party interested in maintaining the order must respond to the notice by providing information to the DOC and ITC concerning the likely effects of revocation. The DOC is to conclude its investigation within 240 days of initiation, and the ITC within 360 days of initiation. These deadlines may be extended if the investigation is extraordinarily complicated.

In AD cases, the DOC is to determine whether revocation of an order or termination of a suspension agreement would be likely to lead to continuation or recurrence of dumping. In making this determination, the DOC is to consider the weighted average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the order or accept-

ance of the suspension agreement. The DOC may consider other enumerated factors, upon good cause shown. In addition, the DOC is to provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation terminated.

In CVD cases, the DOC is to determine whether revocation of an order or termination of a suspension agreement would be likely to lead to continuation or recurrence of a countervailable subsidy. In making this determination, the DOC is to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to be of effect. The DOC may consider other enumerated factors, upon good cause shown. In addition, the DOC is to provide to the ITC the amount of the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation terminated.

In both AD and CVD cases, the ITC is to determine whether revocation would be likely to lead to the likelihood of continuation or recurrence of material injury within a reasonably foreseeable period of time. In making this determination, the ITC is to consider the likely volume, price effect, and impact of subject imports on the industry if the order is revoked or the suspension agreement terminated. The ITC is to take into account its prior injury determinations, whether any improvement in the state of the industry is related to the order or the suspension agreement, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement terminated.

In AD sunset reviews, the ITC may also consider the magnitude of the dumping margin. In CVD sunset reviews, the ITC may also consider the magnitude of the net countervailable subsidy. The nature of the countervailable subsidy as well as whether the subsidy is covered by article 3 (export subsidies or subsidies contingent on the use of domestic over imported goods) or article 6.1 (subsidies causing serious prejudice) of the Subsidies Agreement must be considered.

The ITC may cumulatively assess the volume and effect of imports of the subject merchandise from all countries subject to sunset reviews if such imports are likely to compete with each other and with domestic like products in the U.S. market. However, the ITC is not to cumulate imports a country if those imports are not likely to have a discernible adverse impact on the domestic industry.

In addition, the new provision specifies that 2 years after the issuance of an order in which the subject merchandise is sold in the United States by an importer related to the exporter, and where the DOC determines that there is a reasonable basis to believe or suspect that duty absorption is occurring, the DOC is to examine in AD reviews whether duties have been absorbed by a foreign producer or exporter subject to the order. The ITC is to take such findings into account in its sunset injury review. The Statement of Administrative Action accompanying the bill provides, however, that the provision is not to apply as a duty as cost provision, in which AD duties are deducted from export price if the related importer

is being reimbursed for duties by the manufacturer, effectively doubling AD duties.[16]

Orders that are already in effect as of the January 1, 1995 date of implementation of the Uruguay Round Agreements Act are to be deemed issued on that date. Commerce is to begin its review of such transition orders within 18 months prior to their fifth year anniversary (July 1, 1998).

*Expedited reviews with security in lieu of deposits*

In AD cases only, the DOC may permit, for not more than 90 days after publication of an order, the posting of a bond or other security in lieu of the deposit of estimated AD duties if certain conditions exist. The DOC must be satisfied that it will be able to determine, within such 90-day period, the normal value and the export price for all merchandise entered on or after an affirmative LTFV determination (either preliminary or final, whichever is the first affirmative determination) and before publication of an affirmative final injury determination. Also, in order for the DOC to undertake this expedited review, the preliminary determination in the investigation must not have been extended because the case was "extraordinarily complicated," the final determination must not have been extended, the DOC must receive information indicating that the revised margin would be significantly less than the dumping margin specified in the AD order, and there must be adequate sales to the United States since the preliminary (or final) determination to form a basis for comparison. The determination of such new dumping margin will then provide the basis for assessment of AD duties on the entries for which the posting of bond or other security has been permitted, and will also provide the basis for deposits of estimated AD duties on future entries.

*Anticircumvention authority*

In 1988, specific authority was added to U.S. law to authorize the DOC to take action to prevent or address attempts to circumvent an outstanding AD or CVD order. The authority addresses four particular types of circumvention: assembly of merchandise in the United States, assembly of merchandise in a third country, minor alterations of merchandise, and later-developed merchandise. Under certain circumstances and after considering certain specified factors, the DOC may extend the scope of the AD or CVD order to include parts and components (in cases involving U.S. assembly), third country merchandise (in cases involving third country assembly), altered merchandise, or later-developed merchandise.

As part of the Uruguay Round negotiations on antidumping, the United States sought the inclusion of an anticircumvention provision in the Antidumping Agreement. The negotiators, however, were unable to agree on a text concerning anticircumvention and referred the matter to the Committee on Antidumping Practices for resolution. Accordingly, the Agreement is silent concerning anticircumvention authority.

The Uruguay Round Agreements Act modified the anticircumvention provision of the 1988 Act to focus on the nature of

[16] Uruguay Round Agreements Act Statement of Administrative Action at 885.

the assembly operation in the United States or third country as well as on whether the parts and components from the country subject to the order are a "significant portion" of the total value of the merchandise assembled in the United States or third country.

*Best information available*

In order to promote transparency, the Uruguay Round signatories agreed to detailed guidelines concerning the use of "best information available" (BIA). In seeking to implement those guidelines, the Uruguay Round Agreements Act preserves the ability of the agencies to rely on adverse inferences upon a finding that the party has failed to cooperate by not acting to the best of its ability to comply with a request. At the same time, however, the new law also contains limitations on the use of BIA, many of which are designed to assist small companies in providing information. For example, the agency is to consider the ability of an interested party to provide the information in the requested form and manner, and may modify the requirements upon a reasoned and timely explanation by that party. In addition, if the agency determines that a response does not comply with the request, the agency must, to the extent practicable, provide an opportunity to remedy the deficiency.

The Agreements provide that the authorities are not justified in disregarding less than ideal information if the party acted to the best of its ability. Section 231 of the Uruguay Round Agreements Act provides that the agencies are not to decline to consider information that is timely submitted, verifiable, and not so incomplete that it cannot serve as a reliable basis for the determination, if the submitting party acted to the best of its ability to meet the requirements, and if the information can be used without undue difficulties.

The Act further provides that if an agency relies on secondary information rather than on information submitted by a respondent, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal.

*Judicial review*

An interested party dissatisfied with a final AD or CVD determination or review may file an action in the U.S. Court of International Trade for judicial review. To obtain judicial review of the administrative action, a summons and complaint must be filed concurrently within 30 days of publication of the final determination. As set forth in section 516A of the Tariff Act of 1930, as amended, the standard of review used by the Court is whether the determination is supported by "substantial evidence on the record" or "otherwise not in accordance with law." Appeal of negative preliminary determinations is based on whether the determination is "arbitrary, capricious, an abuse of discretion, or [is] otherwise not in accordance with law."

Judicial review of interlocutory decisions, previously permitted, was eliminated by section 623 of the Trade and Tariff Act of 1984. Decisions of the Court of International Trade are subject to appeal to the U.S. Court of Appeals for the Federal Circuit.

As a result of provisions in the North American Free Trade Agreement (NAFTA) and its implementing legislation, final deter-

minations in AD or CVD proceedings involving products of Canada and Mexico are reviewed by a NAFTA panel instead of by the U.S. Court of International Trade, if either the United States, Canadian or Mexican government so requests. The panel will apply U.S. law and U.S. standards of judicial review to decide whether U.S. law was applied correctly by the DOC and the ITC.

*WTO panel review*

As part of the Uruguay Round Agreements, the parties agreed to a strengthened dispute resolution process under the World Trade Organization (WTO), in which parties are permitted to bring their disputes to a review body for resolution. The Uruguay Round Agreements Act contains provisions relating to the adoption of panel reports in AD and CVD cases.

Section 129 of the Uruguay Round Agreements Act provides that if a dispute settlement panel or appellate body finds that an action by the ITC is not in conformity with U.S. obligations, USTR may request that the ITC issue an advisory report on whether the statute permits it to take steps that would render its determination not inconsistent with those findings. If the ITC issues an affirmative report, USTR may request that it issue a determination not inconsistent with the findings of the panel or appellate body. If, by virtue of that determination, an AD or CVD order is no longer supported by an affirmative determination, USTR, after consultation with Congress, may direct the ITC to revoke the order. However, the President may, again after consultation with Congress, reduce, modify, or terminate the agency action.

If a dispute settlement panel or appellate body finds that an action by the DOC is not in conformity with U.S. obligations, USTR may request that the DOC issue a determination that would render its determination not inconsistent with those findings, after consultation with Congress. USTR may further request that the DOC implement that determination.

Any ITC and DOC action implemented as a result of dispute settlement is to apply to liquidated entries of the subject merchandise entered on or after the date on which USTR directs the ITC to revoke an order or the DOC to implement a determination.

## Enforcement of U.S. Rights Under Trade Agreements and Response to Certain Foreign Practices: Sections 301–310 of the Trade Act of 1974, as amended

Chapter 1 of title III (sections 301–310) of the Trade Act of 1974, as amended,[17] provides the authority and procedures to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign practices. The predecessor statute, section 252 of the Trade Expansion Act of 1962,[18] was repealed and section 301 established in its place under the Trade Act of 1974. Section 301 was amended under title IX of the Trade Agreements Act of 1979[19] in two principal respects: (1) to include specific authority to enforce U.S. rights and to respond to actions by foreign countries

[17] Public Law 93–618, approved January 3, 1975, 19 U.S.C. 2411.
[18] Public Law 87–794, section 252, approved October 11, 1962.
[19] Public Law 96–39, title IX, approved July 26, 1979.

inconsistent with or otherwise denying U.S. benefits under trade agreements; and (2) to place specific time limits on the procedures for investigating and taking action on petitions. Some further amendments were enacted under sections 304 and 307(b) of the Trade and Tariff Act of 1984[20] to clarify certain authorities and practices covered by section 301, and to authorize certain actions with respect to foreign export performance requirements.

The current statute reflects major modifications made by sections 1301–1303 of the Omnibus Trade and Competitiveness Act of 1988[21] to what is commonly called "section 301," as well as enactment of additional authorities commonly known as "Super 301" to deal with priority practices and priority countries and "Special 301" to deal with priority intellectual property right practices. The principal amendments in 1988 to strengthen the basic section 301 authority were: (1) to require the U.S. Trade Representative (USTR) to make unfair trade practice determinations in all cases, and to transfer authority to determine and implement section 301 action from the President to the USTR, subject to the specific direction, if any, of the President; (2) to make section 301 action mandatory in cases of trade agreement violations or other "unjustifiable" practices, except in certain circumstances; (3) to include additional types of practices as specifically actionable under section 301; (4) to tighten and specify time limits on all investigations and actions; and (5) to require monitoring and enforcement of foreign settlement agreements and to provide for modification and termination of section 301 actions.

Further modifications were made by the Uruguay Round Agreements Act[22] to sections 301–310 and 182 of the Trade Act of 1974 to conform to the time limits under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding) and to clarify and strengthen the scope and application of these domestic authorities.

### INTERNATIONAL CONSULTATIONS AND DISPUTE SETTLEMENT

Article XII and XIII of the General Agreement on Tariffs and Trade (GATT), as elaborated upon by the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo Round of multilateral trade negotiations (MTN),[23] provided the general consultation and dispute settlement procedures applicable to GATT rights and obligations. In addition, the GATT agreements concluded in the MTN on specific non-tariff barriers each contained procedures for consultation and resolution of disputes among signatories concerning practices covered by each agreement.

As part of the Uruguay Round, the parties agreed to the Understanding on Rules and Procedures Governing the Settlement of Disputes which establishes a single, integrated Dispute Settlement Body dealing with disputes arising under any of the WTO agreements. One of the most marked changes in this new dispute resolution mechanism is that all of the key decisions in the dispute settlement process, including the establishment of panels, adoption of

[20] Public Law 98–573, approved October 30, 1984.
[21] Public Law 100–418, approved August 23, 1988.
[22] Public Law 103–465, approved December 8, 1993.
[23] MTN/FR/W/20/Rev. 2, reprinted in House Doc. No. 96–153, pt. I at 619.

panel and Appellate Body reports, and the authorization to retaliate will be automatic unless there is a unanimous vote against the action. Accordingly, parties may no longer block panel reports adverse to them. In addition, timetables are established for each phase of the dispute resolution process. Moreover, an Appellate Body is established to examine issues of law covered in a panel report and legal interpretations developed by the panel. Retaliation, in the form of suspended concessions or obligations, is to be limited to the sector that is at issue in the proceeding, unless it is not practicable or effective. Issues related to the level of retaliation may be submitted to binding arbitration.

ENFORCEMENT AUTHORITY AND PROCEDURES (SECTION 301)

Sections 301–309 of the Trade Act of 1974, as amended, provide the domestic counterpart to the WTO consultation and dispute settlement procedures. They contain the authority under U.S. domestic law to take retaliatory action, including import restrictions if necessary, to enforce U.S. rights against violations of trade agreements by foreign countries and unjustifiable, unreasonable, or discriminatory foreign trade practices which burden or restrict U.S. commerce. Section 301 authority applies to practices and policies of countries whether or not the measures are covered by, or the countries are members of, GATT/WTO or other trade agreements. The USTR administers the statutory procedures through an interagency committee.

*Basis and form of authority*

Under section 301, if the U.S. Trade Representative determines that a foreign act, policy, or practice *violates or is inconsistent with a trade agreement, or is unjustifiable and burdens or restricts U.S. commerce,* then action by the USTR to enforce the trade agreement rights or to obtain the elimination of the act, policy, or practice is *mandatory,* subject to the specific direction, if any, of the President. The USTR is not required to act, however, if (1) a WTO/GATT panel has reported, or a dispute settlement ruling under a trade agreement finds, that U.S. trade agreement rights have not been denied or violated; (2) the USTR finds that the foreign country is taking satisfactory measures to grant U.S. trade agreement rights, has agreed to eliminate or phase out the practice or to an imminent solution to the burden or restriction on U.S. commerce, or has agreed to provide satisfactory compensatory trade benefits; or (3) the USTR finds, in extraordinary cases, that action would have an adverse impact on the U.S. economy substantially out of proportion to the benefits of action, or finds that action would cause serious harm to the U.S. national security. Any action taken must affect goods or services of the foreign country in an amount equivalent in value to the burden or restriction being imposed by that country on U.S. commerce.

If the USTR determines that the act, policy, or practice is *unreasonable or discriminatory and burdens or restricts U.S. commerce* and action by the United States is appropriate, then the USTR has *discretionary* authority to take all appropriate and feasible action, subject to the specific direction, if any, of the President, to obtain the elimination of the act, policy, or practice.

With respect to the form of action, the USTR is authorized to (1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to carry out a trade agreement with the foreign country involved; (2) impose duties or other import restrictions on the goods of, and notwithstanding any other provision of law, fees or restrictions on the services of, the foreign country for such time as the USTR deems appropriate; (3) withdraw or suspend perferential duty treatment under the Generalized System of Preferences, the Carribean Basin Initiative, or the Andean Trade Preferences Act; or (4) enter into binding agreements that commit the foreign country to (a) eliminate or phase out the act, policy, or practice, (b) eliminate any burden or restriction on U.S. commerce resulting from the act, policy, or practice, or (c) provide the United States with compensatory trade benefits that are satisfactory to the USTR. The USTR may also take all other appropriate and feasible action within the power of the President that the President may direct the USTR to take.

With respect to services, the USTR may also restrict the terms and conditions or deny the issuance of any access authorization (e.g., license, permit, order) to the U.S. market issued under federal law, notwithstanding any other law governing the authorization. Such action can apply only prospectively to authorizations granted or applications pending on or after the date a section 301 petition is filed or the USTR initiates an investigation. Before imposing fees or other restrictions on services subject to federal or state regulation, the USTR must consult as appropriate with the federal or state agency concerned.

Under section 301, action may be taken on a non-discriminatory basis or solely against the products or services of the country involved and with respect to any goods or sector regardless of whether they were involved in the particular act, policy, or practice. The statute does not require that action taken under section 301 be consistent with U.S. obligations under international agreements, but the dispute-settlement provisions of such agreement could be utilized.

If the USTR determines that action is to be in the form of import restrictions, it must give preference to tariffs over other forms of import restrictions and consider substituting on an incremental basis an equivalent duty for any other form of import restriction imposed. Any action with respect to export targeting must reflect, to the extent possible, the full benefit level of the targeting over the period during which the action taken has an effect.

*Coverage of authority*

The term "unjustifiable" refers to acts, policies, or practices which violate or are inconsistent with U.S. international legal rights, such as denial of national or most-favored-nation treatment, right of establishment, or protection of intellectual property rights.

The term "unreasonable" refers to acts, policies, or practices which are not necessarily in violation of or inconsistent with U.S. international legal rights, but are otherwise unfair and inequitable. In determining whether an act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms must be taken into account, to the extent appropriate.

Unreasonable measures include, but are not limited to, acts, policies, or practices which (1) deny fair and equitable (a) opportunities for the establishment of an enterprise, (b) provision of adequate and effective intellectual property right protection, 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 (TRIPs), (c) non-discriminatory market access opportunities for U.S. persons that rely upon intellectual property protection, or (d) market opportunities, including foreign government toleration of systematic anticompetitive activities by or among enterprises in the foreign country that have the effect of restricting, on a basis inconsistent with commercial considerations, access of U.S. goods or services to a foreign market; (2) constitute export targeting; or (3) constitute a persistent pattern of conduct denying internationally-recognized worker rights, unless the USTR determines the foreign country has taken or is taking actions that demonstrate a significant and tangible overall advancement in providing those rights and standards throughout the country or such acts, policies, or practices are not inconsistent with the level of economic development of the country.

The term "export targeting" refers to any government plan or scheme consisting of a combination of coordinated actions bestowed on a specific enterprise, industry, or group thereof, which has the effect of assisting that entity to become more competitive in the export of a class or kind of merchandise.

The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment.

The term "commerce" includes, but is not limited to, services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by U.S. persons with implications for trade in goods or services.

*Petitions and investigations*

Any interested person may file a petition under section 302 with the USTR requesting that action be taken under section 301 and setting forth the allegations in support of the request. The USTR reviews the allegations and must determine within 45 days after receipt of the petition whether to initiate an investigation. The USTR may also self-initiate an investigation after consulting with appropriate private sector advisory committees. Public notice of determinations is required, and in the case of decisions to initiate, publication of a summary of the petition and an opportunity for the presentation of views, including a public hearing if timely requested by the petitioner or any interested person.

In determining whether to initiate an investigation of any act, policy, or practice specifically enumerated as actionable under section 301, the USTR has the discretion to determine whether action under section 301 would be effective in addressing that act, policy, or practice.

Section 303 requires the use of international procedures for resolving the issues to proceed in parallel with the domestic investigation. The USTR must, on the same day as the determination

is made, initiate an investigation and request consultations with the foreign country concerned regarding the issues involved. The USTR may delay the request for up to 90 days in order to verify or improve the petition to ensure an adequate basis for consultation.

If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in the agreement, then the USTR must promptly request formal dispute settlement under the agreement before the earlier of the close of that consultation period or 150 days after the consultations began. The USTR must seek information and advice from the petitioner, if any, and from appropriate private sector advisory committees in preparing presentations for consultations and dispute settlement proceedings.

*USTR unfairness and action determinations and implementation*

Section 304 sets forth specific time limits within which the USTR must make determinations of whether an act, policy, or practice meets the unfairness criteria of section 301 and, if affirmative, what action, if any, should be taken. These determinations are based on the investigation under section 302 and, if a trade agreement is involved, on the international consultations and, if applicable, on the results of the dispute settlement proceedings under the agreement.

The USTR must make these *determinations*:

(1) within 18 months after the date the investigation is initiated or 30 days after the date the dispute settlement procedure is concluded, whichever is earlier, in all cases involving a trade agreement;

(2) within 12 months after the date the investigation is initiated in cases not involving trade agreements; or

(3) within 6 months after the date the investigation is initiated in cases involving intellectual property rights priority countries if the USTR does not consider that a trade agreement, including TRIPs, is involved, or within 9 months if the USTR determines such cases (1) involve complex or complicated issues that require additional time, (2) the foreign country is making substantial progress on legislative or administrative measures that will provide adequate and effective protection, or (3) the foreign country is undertaking enforcement measures to provide adequate and effective protection.

The applicable deadline is postponed by up to 90 days if consultations with the foreign country involved were so delayed.

Before making the determinations, the USTR must provide an opportunity for the presentation of views, including a public hearing if requested by an interested person, and obtain advice from the appropriate private sector advisory committees. If expeditious action is required, the USTR must comply with these requirements after making the determinations. The USTR may also request the views of the International Trade Commission on the probable impact on the U.S. economy of taking the action. Any determinations must be published in the Federal Register.

Section 305 requires the USTR to *implement* any section 301 actions within 30 days after the date of the determination to take ac-

tion. The USTR may delay implementation by not more than 180 days if (1) the petitioner or, in the case of a self-initiated investigation, a majority of the domestic industry, requests a delay; or (2) the USTR determines that substantial progress is being made, or that a delay is necessary or desirable to obtain U.S. rights or a satisfactory solution. In cases involving intellectual property rights priority countries (see discussion below), implementation of actions may be delayed by not more than 90 days beyond the 30 days and only if extraordinary circumstances apply.

If the USTR determines to take no action in a case involving an affirmative determination of export targeting, the USTR must take alternative action in the form of establishing an advisory panel to recommend measures to promote the competitiveness of the affected domestic industry. The panel must submit a report on its recommendations to the USTR and the Congress within 6 months. On the basis of this report and subject to the specific direction, if any, of the President, the USTR may take administrative actions authorized under any other law and propose legislation to implement any other actions that would restore or improve the international competitiveness of the domestic industry. USTR must submit a report to the Congress within 30 days after the panel report is submitted on the actions taken and proposals made.

*Monitoring of foreign compliance; modification and termination of actions*

Section 306 requires the USTR to monitor the implementation of each measure undertaken or settlement agreement entered into by a foreign country under section 301. If the USTR considers that a foreign country is not satisfactorily implementing a measure or agreement, the USTR must determine what further action will be taken under section 301. Such foreign non-compliance is treated as a violation of a trade agreement subject to mandatory section 301 action, subject to the same time limits and procedures for implementation as other action determinations. If the USTR considers that the foreign country has failed to implement a recommendation made pursuant to dispute settlement proceedings under the WTO, the USTR must make this determination no later than 30 days after the expiration of the reasonable period of time provided for such implementation in the Dispute Settlement Understanding. Before making the determination on further action, the USTR must consult with the petitioner, if any, and with representatives of the domestic industry concerned, and provide interested persons an opportunity to present views.

Section 307 authorizes the USTR to modify or terminate a section 301 action, subject to the specific direction, if any, of the President, if (1) any of the exceptions to mandatory section 301 action in the case of trade agreement violations or unjustifiable acts, policies, or practices applies; (2) the burden or restriction on U.S. commerce of the unfair practice has increased or decreased; or (3) discretionary section 301 action is no longer appropriate. Before modifying or terminating any section 301 action, the USTR must consult with the petitioner, if any, and with representatives of the domestic industry concerned, and provide an opportunity for other interested persons to present views.

Any section 301 action terminates automatically if it has been in effect for 4 years and neither the petitioner nor any representative of the domestic industry which benefits from the action has submitted to the USTR in the final 60 days of that 4-year period a written request for continuation. The USTR must give the petitioner and representatives of the domestic industry at least 60 days advance notice by mail of termination. If a request for continuation is submitted, the USTR must conduct a review of the effectiveness of section 301 or other actions in achieving the objectives and the effects of actions on the U.S. economy, including consumers.

*Information requests; reporting requirements*

Under section 308, the USTR is to make available information (other than confidential) upon receipt of a written request by any person concerning (1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights to the extent such information is available in the federal government; (2) U.S. rights under any trade agreement and the remedies which may be available under that agreement and U.S. laws; and (3) past and present domestic and international proceedings or actions with respect to the policy or practice. If the information is not available, within 30 days after receipt of the request, the USTR must request the information from the foreign government or decline to request the information and inform the person in writing of the reasons.

The USTR must submit a semiannual report to the Congress describing petitions filed and determinations made, developments in and the status of investigations and proceedings, actions taken or the reasons for no action under section 301, and the commercial effects of section 301 actions taken. The USTR must also keep the petitioner regularly informed of all determinations and developments regarding section 301 investigations.

## IDENTIFICATION OF INTELLECTUAL PROPERTY RIGHTS PRIORITY COUNTRIES (SPECIAL 301)

Section 182 of the Trade Act of 1974, added by section 1303 of the Omnibus Trade and Competitiveness Act of 1988, requires the USTR to identify, within 30 days after submission of the annual National Trade Estimates (foreign trade barriers) report to the Congress required by section 181 the 1974 Act (i.e., by April 30) those foreign countries that (1) deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. persons that rely upon intellectual property protection; and (2) those countries under paragraph (1) determined by the USTR to be "priority foreign countries." The USTR is to identify as priority countries only those that have the most onerous or egregious acts, policies, or practices with the greatest adverse impact on the relevant U.S. products, and that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective intellectual property rights protection. In identifying foreign countries, the USTR is to take into account the history of intellectual property laws and practices of the foreign country as well as efforts of the United States, and the response of the foreign country, to achieve

adequate and effective protection and enforcement of intellectual property rights. A country may be identified notwithstanding the fact that it may be in compliance with the specific obligations of the TRIPs Agreement. The USTR at any time may revoke or make an identification of a priority country, but must include in the semiannual section 301 report to the Congress a detailed explanation of the reasons for a revocation.

In addition, as a matter of administrative practice, the USTR has established a "priority watch list" of countries whose acts, policies, and practices meet some, but not all, of the criteria for priority foreign country identification. The problems of these countries warrant active work for resolution and close monitoring to determine whether further Special 301 action is needed. Also, the USTR maintains a "watch list" of countries that warrant special attention because they maintain intellectual property practices or barriers to market access that are of particular concern. Finally, the USTR has added a "Special Mention" category.

Section 302(b) requires the USTR to initiate a section 301 investigation within 30 days after identification of a priority country with respect to any act, policy, or practice of that country that was the basis of the identification, unless the USTR determines initiation of an investigation would be detrimental to U.S. economic interests and reports the reasons in detail to the Congress. The procedural and other requirements of section 301 authority generally apply to these cases, except that investigations must be concluded and determinations made on whether the measures are actionable and an appropriate response within a tighter time limit of 6 months, which may be extended to 9 months if certain statutory criteria are met.

*History of Special 301*

On May 26, 1989, after the first annual Special 301 review, the USTR announced that because of significant progress made in various negotiations, no priority countries had been identified under Special 301. Rather, under administrative authority, 25 countries were singled out whose practices deserved special attention, of which 17 countries were placed on a newly created watch list and 8 countries were placed on a new priority watch list to be reviewed again no later than November 1, 1989.

On November 1, 1989, the USTR announced that progress had been made in negotiations to obtain improved intellectual property rights protection and enforcement with each of the eight countries on the priority watch list. Korea, Taiwan, and Saudi Arabia were moved to the watch list because of their significant progress. The other five countries (Brazil, India, Mexico, People's Republic of China (PRC), and Thailand) remained on the priority watch list. No country was designated as a "priority foreign country" making it subject to section 301 investigation.

In January 1990, Mexico was removed from all Special 301 lists after outlining a program for improved intellectual property protection and enforcement. On April 27, 1990, the USTR noted that because significant progress had been made in negotiations with countries previously identified under Special 301, no country would be designated as a "priority foreign country" in 1990. At that time,

Portugal also was removed from all lists, due to improved protection of intellectual property rights in that country.

On April 26, 1991, the USTR announced the identification of the PRC, India, and Thailand as "priority foreign countries." All three countries had been on the priority watch list since the first annual review in 1989 with no significant progress made. Section 301 investigations of the China and India protection deficiencies began on May 26; Thailand's practices were already the subject of two section 301 investigations. Brazil was retained and the European Community (EC) and Australia were added to the priority watch list; 23 countries were retained or placed on the watch list, and Malaysia was removed. On November 26, the USTR announced that negotiations with the PRC had not succeeded; a draft list of Chinese products that might be subject to retaliatory tariffs was published for public comment the following day. On December 16, the USTR announced that January 16, 1992 would be the firm deadline for concluding any further negotiations with China and determining the specific response to inadequate protection. On November 26, the deadline for the India investigation was extended because of progress made and the complex issues involved.

On January 16, 1992, the USTR announced that the United States and China had signed a Memorandum of Understanding that committed China to provide improved protection for U.S. intellectual property rights and ended the Special 301 investigation. On April 29, the USTR announced the addition of Taiwan and the retention of India and Thailand as "priority foreign countries." Six countries—Egypt, Hungary, Korea, the Philippines, Poland, and Turkey—were placed on the priority watch list; Australia, Brazil, and the EC were retained on that list. Twenty-two countries were placed or retained on the watch list. Duty-free treatment on imports of certain eligible products from India under the Generalized System of Preferences program was suspended on April 29. On October 9, USTR reaffirmed the determination in the section 301 investigation of Thailand's patent protection made on March 13, but again deferred action in order to negotiate with the new Thai government. The section 301 case on Thai copyright practices was terminated in December 1991; implementation of measures by the Thai government to eliminate the unreasonable practices is being monitored. Thailand has been denied full benefits under the GSP program since 1989.

On April 30, 1993, the USTR announced the retention of Brazil, India, and Thailand as "priority foreign countries" and placed 10 countries on the priority watch list and 17 countries on the watch list. The USTR also announced new steps to resolve outstanding intellectual property rights problems with priority watch list countries by initiating "immediate action plans" for Hungary and Taiwan to be completed by July 31, 1993; conducting "out-of-cycle" reviews during 1993 (including deadlines and benchmarks for evaluating performance) for Korea, Argentina, Egypt, Poland, and Turkey; and intensifying consultations with Australia, the EC, and Saudi Arabia. "Out-of-cycle" reviews would also be conducted with 5 of the 17 watch list countries: Cyprus, Italy, Pakistan, Spain, and Venezuela. Canada, Germany, and Paraguay were removed from

the watch list. On May 6, the USTR announced that a special review would be conducted on July 31 of Thailand's progress.

On August 2, 1993, the USTR announced the results of reviews conducted in July: a comprehensive agreement with Hungary that would result in its removal from the priority watch list; reexamination within 30 days of Thailand's status based on further progress achieved and comprehensive review in early 1994 of further Thai efforts; and that Taiwan's status would be reviewed based on progress in completing elements of the "immediate action plan." On September 9, the USTR announced that, as a result of the July review, Thailand's identification as a "priority foreign country" would be revoked, Thailand would be placed on the priority watch list, and another review of its progress would be conducted in early 1994. On November 30, the USTR announced that the PRC would be moved from the watch list to the priority watch list because of its failure to enforce intellectual property rights laws and regulations.

On April 30, 1994, the USTR announced that Argentina, China, and India would be designated as "priority foreign countries" if satisfactory progress was not reached by June 30. Six countries were placed on the priority watch list: the EU, Japan, Korea, Saudi Arabia, Thailand, and Turkey. Eighteen countries were placed on the watch list, with "out-of-cycle" reviews to be conducted of Egypt, El Salvador, Greece, and the United Arab Emirates. An additional "special mention" category was also announced of nine countries where there is need for greater effort or further improvement or intellectual property problems are beginning to become serious: Brazil, Canada, Germany, Honduras, Israel, Panama, Paraguay, Russia, and Singapore. The USTR also announced that significant progress had been made with a number of countries. On June 30, the USTR announced the designation of China as a "priority foreign country" and the immediate initiation of a section 301 investigation. Argentina and India were placed on the priority watch list, with India also to be subject to an "out-of-cycle" review in January 1995. On August 12, 1994, the USTR initiated a review to consider whether Thailand should be restored to full beneficiary developing country status under the GSP program because of progress on intellectual property rights protection.

On February 7, 1995, the USTR concluded its section 301 investigation of China and determined that certain acts, policies, and practices of the Chinese government with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR determined further that trade action was appropriate in the form of increasing duties to 100 percent ad valorem for certain products, effective February 26, 1995. However, on February 26, 1995, based on an agreement with China, the USTR determined not to impose sanctions, terminated the investigation, and revoked China's identification as a priority foreign country.

On April 29, 1995, the USTR announced no priority foreign country designations. However, USTR stated that the number of out-of-cycle reviews would be increased so that progress may be reviewed during the course of the year, rather than only at the end of April

when the annual review occurs. The USTR placed Brazil, Greece, Japan, Saudi Arabia, and Turkey on the priority watch list and stated that they would be subject to review during the course of the year. Other countries on the priority watch list included the EU, India, and Korea. The USTR placed 24 countries on the watch list and stated that it would conduct out-of-cycle reviews with 4 of these countries: Argentina, the United Arab Emirates, Indonesia, and South Africa. The USTR also noted growing concerns about intellectual property problems in five countries and highlighted developments and expectations for progress in six countries.

On January 19, 1996, the USTR announced the results of Special 301 out-of-cycle reviews. Specifically, Turkey and Japan would remain on the watch list, and the investigation concerning Indonesia would be continued because more information was expected concerning Indonesia's enforcement activities.

On April 30, 1996, the USTR announced that it would initiate four WTO dispute settlement actions against Portugal, Turkey, India, and Pakistan for failure to fulfill certain WTO obligations related to intellectual property rights. In addition, the USTR identified 35 trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons that rely upon intellectual property protection, as well as 19 trading partners that would be monitored. Specifically, the USTR designated China as a priority foreign country because of its failure to implement the 1995 intellectual property agreement. Eight countries were placed on the priority watch list: Argentina, Greece, the European Union, India, Indonesia, Japan, Korea, and Turkey. The USTR announced placement of 26 countries on the watch list, with out-of-cycle reviews to be conducted with respect to El Salvador, Italy, Paraguay, the Philippines, Russia, Saudi Arabia, and Thailand.

On June 17, 1996, the USTR announced that, based on measures that China had taken and would take in the future to implement key elements of the 1995 Agreement, it would not impose sanctions and would revoke China's status as a priority foreign country. On October 21, 1996, the USTR announced the termination of the WTO consultations with Portugal based on measures that Portugal agreed to take to implement its WTO obligations.

On October 2, 1996, the USTR announced the results of certain out-of-cycle reviews. Specifically, the USTR placed Bulgaria and Bolivia on the watch list, maintained Paraguay on the watch list, deferred the decision on Greece, and determined that South Africa would remain unlisted.

Finally, on December 20, 1996, the USTR announced out-of-cycle review decisions. It retained Greece, Russia, and Saudi Arabia on the priority watch list, maintained reviews for Argentina and the Philippines, and determined that Hong Kong would not be placed on the watch list but that U.S. government monitoring would continue.

### IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES (SUPER 301)

Section 310 of the Trade Act of 1974, as amended by section 1302 of the Omnibus Trade and Competitiveness Act of 1988, required the USTR, within 30 days after the National Trade Estimates (for-

eign trade barriers) report to the Congress in 1989 and 1990, to identify U.S. trade liberalization priorities.

This identification included priority practices as well as priority foreign countries and estimates of the amount by which U.S. exports would be increased if the barrier did not exist. USTR was required to initiate section 301 investigations on all priority practices identified for each of the priority countries within 21 days after submitting the report to the House Ways and Means and Senate Finance Committees. In its consultations with the foreign country, USTR was required to seek to negotiate an agreement which provided for the elimination of, or compensation for, the priority practices within 3 years after the initiation of the investigation. This authority, however, expired in 1990.

On March 3, 1994, President Clinton issued Executive Order 12901 requiring the USTR, within 6 months of the submission of the National Trade Estimates report for 1994 and 1995, to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which would likely have the most significant potential to increase U.S. exports. On September 27, 1995, President Clinton issued Executive Order 12973, which extended the terms of Executive Order 12901 to 1996 and 1997. The order requires the USTR to submit to the House Ways and Means and Senate Finance Committees and to publish in the Federal Register a report on the priority foreign country practices identified. The report may also include a description of practices that may in the future warrant identification as priority foreign country practices, as well as a statement about other practices that were not identified because they are already being addressed by provisions of U.S. trade law, existing bilateral trade agreements, or in trade negotiations, and progress is being made toward their elimination.

Under the terms of the executive order, the USTR must initiate section 301 investigations within 21 days of the submission of the report with respect to all priority foreign country practices identified. The normal section 301 authorities, procedures, time limits, and other requirements generally apply to these investigations. In consultations requested with the foreign country under section 303, the USTR must seek to negotiate an agreement providing for the elimination of the practices as quickly as possible or, if that is not feasible, compensatory trade benefits. The USTR will monitor any agreements pursuant to section 306. The semiannual report under section 309 will include the status of any investigation and, where appropriate, the extent to which it has led to increased U.S. export opportunities.

Section 314(f) of the Uruguay Round Agreements Act codified the terms of the executive order for the year 1995 as an amendment to section 310 of the 1974 Act.

*History of Super 301*

On May 26, 1989, the USTR submitted the 1989 report to the two committees on trade liberalization priorities, identifying six "priority" practices from three "priority countries." They were:

(1) *Japan*.—Ban on government procurement of foreign satellites; exclusionary government procurement of supercomputers; restrictions on imports of wood products.

(2) *Brazil*.—Import bans and other licensing restrictions.

(3) *India*.—Trade-related investment measures; insurance market barriers.

Section 301 investigations were initiated on each of the six priority practices on June 16, 1989. The Administration also launched a separate initiative with Japan in July 1989 to address the causes of the slow adjustment of the United States and Japanese trade imbalances (the Structural Impediments Initiative (SII)).

In its 1990 report to the committees on April 27, 1990, the USTR identified India again as a "priority country" with the same two practices identified again as "priority practices" because the issues remained unresolved. The report stated that satisfactory solutions had been reached with Japan on its three priority practices and that the priority practice of Brazil was expected to be resolved. Letters were exchanged between the USTR and Japanese Ambassador regarding unilateral actions by the Japanese government to improve access for U.S. firms to its satellite market and to specify detailed new procurement procedures; to improve access for U.S. firms to its supercomputer procurement market through open, competitive, and transparent purchasing procedures; and to improve market access for U.S. wood products. The report identified the successful completion of the Uruguay Round of GATT multilateral trade negotiations as the top trade liberalization priority.

On June 14, 1990, the USTR determined that India's priority practices were unreasonable and burden or restrict U.S. commerce, but that retaliation would be inappropriate given the ongoing Uruguay Round negotiations on services and investment. If necessary, a post-Uruguay Round review would determine whether section 301 action was warranted.

On June 28, 1990, the U.S.-Japan Working Group on the Structural Impediments Initiative issued an SII Joint Report, following up on an interim report issued in April. This final report contained commitments by both governments on steps to address various structural impediments to the adjustment of trade and current account imbalances, with followup through regular high-level meetings, progress review, and annual reports.

On May 1, 1992, and on April 30, 1993, the USTR reported on its monitoring of Japan's implementation of its commitments regarding the three practices and on progress made in the liberalization of Brazil's import regime. The report also reaffirmed the decision in 1990 to review, if necessary, India's investment and insurance practices following conclusion of the GATT Uruguay Round to determine whether section 301 action was warranted.

The USTR announced in the 1993 report that a special review would be undertaken, pursuant to section 306, of Japanese actions under the U.S.-Japan Supercomputer Agreement because of U.S. government concern that Japan might not be adhering to the terms of that Agreement. Based upon this review and the conduct and outcome of procurements scheduled in coming months, the USTR would determine whether Japan was in compliance with the Agreement. If the USTR determined Japan was not in compliance, the USTR would initiate trade action against Japan under section 301.

On April 30, 1994, the USTR announced that the special review of Japanese actions under the 1990 Supercomputer Agreement

would continue as a result of several major areas of concern. Monitoring would continue of the operation of the new procedures for Japanese procurement of satellites and of implementation of the Wood Products Agreement. Improvements in India's investment and insurance regimes would be pursued in bilateral discussions.

Pursuant to Executive Order 12901 of March 3, 1994, the USTR reported on October 3, 1994 that it had decided not to identify any priority foreign country practices. Japan's market access for wood and paper was described as perhaps warranting identification in the future, and various foreign practices were determined not to be appropriate for identification because they were already being otherwise addressed.

On September 28, 1995, the USTR reported that it again had decided not to identify any priority foreign practices. However, the USTR found that certain practices may in the future warrant identification as priority foreign country practices: Japan market access for paper and paper products, Japan market access for wood products, and China market access for agricultural products. In addition, the USTR listed certain practices as not appropriate for identification because they were being otherwise addressed.

On October 1, 1996, the USTR announced that it again had decided not to identify any priority foreign country practices. However, it initiated new actions in the WTO concerning Indonesia's national auto policy, Brazil's auto program, Australia's export subsidies, and Argentina's import duties. It also announced the adoption of a strategic enforcement strategy in the automotive trade sector. The USTR also listed several other bilateral priorities that may warrant identification as priority foreign country practices in the future: Japan market access for insurance, Japan telecommunications, Japan market access for paper and paper products, China market access for agricultural products, Korea telecommunications, Germany electrical equipment, EU Ecolabeling Directive, EU design-restrictive standards, and Saudi Arabia International Conformity Certification Program.

## FOREIGN DIRECT INVESTMENT

Section 307(b) of the Trade and Tariff Act of 1984 requires the U.S. Trade Representative to seek the reduction and elimination of foreign export performance requirements through consultations and negotiations with the country concerned if the USTR determines, with interagency advice, that U.S. action is appropriate to respond to such requirements that adversely affect U.S. economic interests. In addition, the USTR may impose duties or other import restrictions on the products or services of the country involved, including exclusion from entry into the United States of products subject to these requirements. The USTR may provide compensation for such action subject to the provisions of section 123 of the Trade Act of 1974 if necessary or appropriate to meet U.S. international obligations.

Section 307(b) authority does not apply to any foreign direct investment, or to any written commitment relating to foreign direct investment that is binding, made directly or indirectly by any U.S. person prior to October 30, 1984 (date of enactment of the 1984 Act).

FOREIGN ANTICOMPETITIVE PRACTICES

Section 311 of the Uruguay Round Agreements Act provides for including an identification of foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of U.S. goods or services, as part of the National Trade Estimate report to be submitted each year. The USTR is to consult with the Attorney General in preparing this section of the report.

## Unfair Practices in Import Trade

SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED

Section 337 of the Tariff Act of 1930[24] declares unlawful unfair methods of competition and unfair acts in the importation or sale of articles (other than articles relating to certain intellectual property rights), the threat or effect of which is to (1) destroy or substantially injure an industry in the United States; (2) prevent the establishment of such an industry; or (3) restrain or monopolize trade and commerce in the United States. Section 337 also declares unlawful the importation or sale of articles that (1) infringe a valid and enforceable U.S. patent or registered copyright; or are made, produced, processed, or mined under a process covered by a valid and enforceable U.S. patent; (2) infringe a valid and enforceable U.S.-registered trademark; or (3) infringe a registered mask work of a semiconductor chip product. For this separate class of intellectual property rights, the importation or sale of infringing articles is unlawful only if an industry in the United States producing the articles protected by the patent, copyright, trademark, or mask work exists or is in the process of being established. It is not necessary to establish that the industry is injured by reason of such imports, as is the case with non-intellectual property right violations. A U.S. industry is considered to exist if there is (1) significant investment in plant and equipment; (2) significant employment of labor or capital; or (3) substantial investment in the exploitation of the patent, copyright, trademark, or mask work, including engineering, research and development, or licensing.

The U.S. International Trade Commission (ITC) is responsible for investigating alleged violations of section 337. Upon finding a violation, the ITC may issue an exclusion order and/or a cease and desist order, subject to presidential disapproval.

Section 337 is unique among the trade remedy laws in that it is the only one subject to the provisions of the Administrative Procedure Act (APA).[25] All ITC investigations and determinations under section 337 must be conducted on the record after publication of notice and opportunity for hearing in conformity with the APA.[26]

The language of section 337 closely parallels that of section 5 of the Federal Trade Commission Act,[27] and therefore the scope of section 337 has been compared to that of the antitrust and unfair competition statutes. The ITC has significant discretion in determining what practices are "unfair" under section 337. In practice,

[24] Public Law 71–361, section 337, approved June 17, 1930, 19 U.S.C. 1337.
[25] Act of June 11, 1946, ch. 324, sections 1–12, 5 U.S.C. 551 et seq.
[26] 19 U.S.C. 1337(c).
[27] Public Law 63–203, approved September 26, 1914, 38 Stat. 717, 15 U.S.C. 45.

however, the overwhelming majority of cases dealt with under section 337 has been in the area of patent infringement. Among the few non-patent cases have been cases involving group boycotts, price fixing, predatory pricing, false labeling, false advertising, and trademark infringement.

Whenever, in the course of a section 337 investigation, the ITC has reason to believe that the matter before it involves dumping or subsidization of imports within the purview of the antidumping or countervailing duty laws, it must notify the administering authority of those laws for appropriate action.[28] If the alleged violation of section 337 is based solely on such dumping or subsidization practices, the ITC must terminate (or not initiate) the section 337 investigation. If it is based in part on such practices, and in part on other alleged practices, then the ITC may continue (or initiate) an investigation under section 337. This provision is designed to avoid duplication and conflicts in the administration of the unfair trade practice laws.

The Audio Home Recording Act of 1992[29] added alleged copyright infringements with respect to which action is prohibited by the new 17 U.S.C. 1008, to the practices for which the ITC must terminate or not institute an investigation under section 337. Section 1008 prohibits action under title 17 alleging copyright infringement based on the manufacture, importation, or distribution of a digital audio technology (DAT) recorder and related items.

*General Agreement on Tariffs and Trade (GATT) panel determination*

In response to a complaint by the European Community about the application of section 337, the GATT Council agreed on October 7, 1987 to establish a panel to review the U.S. law. On November 23, 1988, the panel found that section 337 is inconsistent with the national treatment provision article III:4 of the GATT because it afforded less favorable treatment to imported products alleged to infringe U.S. patents than that given in federal district court to challenged domestically manufactured goods. Specifically, the panel pointed to the complainants' choice of two fora in which to challenge imported products, without a corresponding choice available to challenge products of U.S. origin; the potential disadvantage to producers or importers of challenged products of foreign origin resulting from the tight time-limits that apply to producers of challenged products of U.S. origin; and the possibility that producers or importers of challenged products of foreign origin may have to defend their products both before the ITC and in federal district court while no corresponding exposure exists with respect to U.S.-made goods. The panel recommended that the GATT contracting parties request the United States to bring its procedures for patent infringement cases involving imports into conformity with the GATT.

The panel report was adopted at a GATT Council meeting on November 9, 1989. The United States amended section 337 to address the panel report in the Uruguay Round Agreements Act.

[28] 19 U.S.C. 1337(b)(3).
[29] Public Law 102–563, approved October 28, 1992.

*Procedure*

The ITC is required to investigate any alleged violation of section 337 on complaint under oath or upon its own initiative. The Uruguay Round Agreements Act amended the provision so that there are no longer any deadlines for the investigation. Instead, the ITC must, within 45 days of initiation, set a target date and conclude its investigation at the earliest practicable time. Before this amendment, the ITC was required to meet strict deadlines for conducting investigations.

In the course of each investigation, the ITC is required to consult with and seek advice and information from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and other appropriate departments and agencies.

In deciding whether an article has infringed a valid U.S. patent, the ITC applies the same statutory and decisional domestic patent law as would a district court. U.S. patent holders may file parallel actions in federal district court and the Commission. Respondents sued in both fora under the same underlying cause of action may obtain a stay of district court proceedings until the ITC determination becomes final.

The Uruguay Round Agreements Act added a provision permitting respondents to raise counterclaims in section 337 investigations. Such claims, however, would be immediately removed to district court and cannot be litigated at the ITC.

Although damages are not an available remedy at the ITC as they are in district court, the ITC is empowered to issue limited exclusion orders, general exclusion orders, and cease and desist orders, which provide relief at the border. Specifically, if a violation of section 337 is found, the ITC must direct that the foreign articles be excluded from entry into the United States, unless it determines that such articles should not be excluded in consideration of the effect of exclusion on:

(1) the public health and welfare;

(2) competitive conditions in the U.S. economy;

(3) the production of like or directly competitive articles in the United States; and

(4) U.S. consumers.

The Uruguay Round Agreements Act added a provision establishing that the ITC is not permitted to issue a general exclusion order (i.e., an exclusion order that affects all shipments of the merchandise under investigation, as opposed to an order that affects merchandise from only those persons determined to be violating section 337) unless such a general order is necessary to prevent circumvention of specific orders, and there is a pattern of violation and identifying those persons responsible for the infringement is difficult.

In appropriate circumstances, the ITC may issue temporary exclusion orders during the course of an investigation if it determines that there is reason to believe that there is a violation of section 337. In the event of a temporary exclusion order, entry is to be permitted only under bond. If petitioned by a complainant for issuance of a temporary exclusion order, the ITC must determine whether or not to issue such an order within 90 days after initiation of an investigation, with a possible extension of 60 days in more com-

plicated cases. In such circumstances, the ITC may require the complainant to post a bond as a prerequisite for issuing an order. If the ITC later determines that the respondent has not violated these provisions, the bond may be forfeited to the respondent.

In addition to or in lieu of issuing an exclusion order, the ITC may issue an appropriate cease and desist order to be served on the violating party or parties, unless it finds that such order should not be issued in consideration of the effect of such order on the same public interest factors listed above.

The ITC may at any time, upon such notice and in such manner as it deems proper, modify or revoke any cease and desist order, and issue an exclusion order in its place. If a temporary cease and desist order is issued, the ITC may require the complainant to post a bond, which may be forfeited to the respondent if the ITC later determines that the respondent has not violated these provisions.

Any person who violates a cease and desist order issued under this section shall be subject to a civil penalty of up to the greater of $100,000 per day or twice the domestic value of the articles entered or sold on such day in violation of the order.

In the event that a person has been served with notice of proceedings and fails to appear to answer the complaint in cases where the complainant seeks relief limited solely to that person, the ITC must presume the facts alleged by the complainant to be true. If requested by the complainant, the ITC must issue an exclusion order and/or a cease and desist order against the person in default, unless it finds that such order should not be issued for the same public interest reasons listed above. Similarly, if no person appears to contest the investigation and violation is established, the ITC may issue a general exclusion order.

The ITC may order seizure and forfeiture of goods subject to an exclusion order if an attempt has been made to import the goods and the owner or importer has been notified that a further attempt to import the goods would lead to seizure and forfeiture.

*Presidential and judicial review*

Following an ITC determination of a violation of section 337, the President may, within 60 days after receiving notification, disapprove the ITC determination for "policy reasons." The statute does not specify what types of policy reasons may provide the basis for disapproval. Upon presidential disapproval, actions taken by the ITC cease to have effect. If the President does not disapprove the ITC determination, or if he approves it, then the ITC determination becomes final. Any person adversely affected by a final ITC determination under section 337 may appeal the determination to the U.S. Court of Appeals for the Federal Circuit.

## Import Relief (Safeguard) Authorities

### SECTIONS 201–204 OF THE TRADE ACT OF 1974, AS AMENDED

*Background*

Chapter 1 of title II (sections 201–204) of the Trade Act of 1974,[30] as amended by section 1401 of the Omnibus Trade and

[30] 19 U.S.C. 2251–2254.

Competitiveness Act of 1988,[31] and sections 301–304 of the Uruguay Round Agreements Act,[32] sets forth the authority and procedures for the President to take action, including import relief, to facilitate efforts by a domestic industry which has been seriously injured by imports to make a positive adjustment to import competition.

From the outset of the trade agreements program in 1934, U.S. policy of seeking liberalization of trade barriers has been accompanied by recognition that difficult economic adjustment problems could result for particular sectors of the economy and, if serious injury results from increased competition by not necessarily unfairly traded imports, then domestic industries should be provided a period of relief to allow them to adjust to new conditions of trade. Beginning with bilateral trade agreements in the early 1940's, U.S. trade agreements, and eventually U.S. domestic law, have provided for a so-called "escape clause" or "safeguard" mechanism for import relief. This mechanism, while amended over the years, has provided authority for the President to withdraw or modify concessions and impose duties or other restrictions for a limited period of time on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article, following an investigation and determination by the U.S. International Trade Commission (ITC) (formerly the U.S. Tariff Commission).

Under his basic trade agreements authority in section 350 of the Tariff Act of 1930, the President issued three executive orders setting forth procedures and criteria for escape-clause relief, which governed from 1947 to 1951. Section 7 of the Trade Agreement Extension Act of 1951 contained the first statutory procedure and criteria for escape-clause action, which governed from 1951 until replaced by sections 301, 351 and 352 of the Trade Expansion Act of 1962. The 1962 provisions, which also introduced the concept of trade adjustment assistance (see separate section), were repealed and replaced by sections 201–203 of the Trade Act of 1974. In 1988, the 1974 provisions were rewritten to place a greater emphasis on the responsibility of domestic industry to use the relief period to undertake positive adjustment.

Primarily at U.S. insistence, an escape clause (safeguard) provision modeled after language in the 1947 executive order was included in article XIX of the original General Agreement on Tariffs and Trade (GATT 1947). As a result of the GATT Uruguay Round of Multilateral Trade Negotiations, which resulted in the Agreement Establishing the World Trade Organization, GATT 1947 will be replaced by GATT 1994. Article XIX was not changed in GATT 1994.[33] In the course of the negotiations, GATT members nego-

[31] Public Law 100–418, approved August 23, 1988. The 1988 amendments significantly rearranged chapter 1 of title II of the Trade Act of 1974 and added a new section 204. Prior to these amendments, the subject matter contained in sections 201–204 was found in sections 201–203 of the Trade Act.

[32] Public Law 103–465, approved December 8, 1994. Minor amendments were also made by sections 315 and 317 of the North American Free Trade Agreement Implementation Act, Public Law 103–182, approved December 8, 1993.

[33] The language of GATT article XIX is as follows: "If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product imported into the territory of that contracting party in such

Continued

tiated a new Agreement on Safeguards, which provides rules for the application of article XIX of GATT 1994. The rules provide for, among other things, greater transparency in procedures and limitations on the duration of relief measures. However, in a departure from GATT 1947 article XIX, which authorized retaliation by members adversely affected by the measure when appropriate compensation was not forthcoming, the Agreement provides that a member country may not exercise its right to take retaliatory action during the first 3 years that a safeguard measure is in effect, provided that the safeguard measure resulted from an absolute increase in imports and otherwise conforms to the Agreement.

*Petitions and investigations*

An entity representative of an industry (including a trade association, firm, union or group of workers) may file a petition under section 202 of the Trade Act of 1974 with the ITC. The petition must include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition. Alternatively, the President, U.S. Trade Representative, or the House Committee on Ways and Means or Senate Committee on Finance may request an investigation.

Upon petition, request, or on its own motion, the ITC conducts an investigation "to determine whether an article 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 an article like or directly competitive with the imported article." Substantial cause is defined as "a cause which is important and not less than any other cause."

In making its determination, the Commission must take into account all relevant economic factors, including certain factors specified in the statute,[34] and must consider the condition of the domestic industry over the course of the relevant business cycle. The Commission may determine to treat as the domestic industry: (1) only the portion or subdivision producing the like or directly competitive article of a producer of more than one article; and (2) only production concentrated in a major geographic area under certain circumstances. The Commission is required, to the extent information is available, in the case of a domestic producer which also im-

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increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

[34] These factors include: with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry; with respect to threat of serious injury, a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity or employment (or increasing underemployment) in the domestic industry concerned; the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, the extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic producers. The presence or absence of any factor is not necessarily dispositive.

ports, to treat as part of the domestic industry only the domestic production of such producer.

A public hearing is required during the course of the investigation. Whenever during the investigation the Commission has reason to believe increased imports are attributable in part to unfair trade practices, then it must promptly notify the agency administering the appropriate remedial law.

Normally the ITC must make its injury determination within 120 days of receipt of the petition or request. However, if the ITC determines that the investigation is extraordinarily complicated, it may take up to 30 additional days to make an injury determination. If the petition alleges that critical circumstances exist, the ITC must first determine, within 60 days of receipt of a petition containing such an allegation, whether critical circumstances exist. The ITC begins the injury phase of its investigation only after it has made its determination with respect to critical circumstances. If the ITC makes an affirmative injury finding, then it must recommend the action that would address the injury and be the most effective in facilitating efforts by the domestic industry to make a positive adjustment; such recommended action must be either a tariff, tariff-rate quota, quantitative restriction, adjustment measures, or a combination thereof.

The ITC's remedy recommendation and report must be submitted to the President within 180 days of the petition (within 240 days if critical circumstances are alleged). The report must also be made available to the public, and a summary of the report must be published in the Federal Register.

*Adjustment plans and commitments*

Under title II, as amended, petitioners are encouraged to submit, at any time prior to the ITC injury determination, a plan to promote positive adjustment to import competition. The law provides that positive adjustment occurs when (1) the domestic industry is able to compete successfully with imports after actions taken under section 204 terminate, or the domestic industry experiences an orderly transfer of resources to other productive pursuits; and (2) dislocated workers in the industry experience an orderly transition to productive pursuits.

The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated.

Before submitting an adjustment plan, the petitioner and other members of the domestic industry that wish to participate may consult with the U.S. Trade Representative and other federal government officials for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan.

In addition, during the ITC investigation, the ITC is required to seek information (on a confidential basis to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition. Any party may individually submit to the ITC commitments regarding actions such party intends to take to facilitate positive adjustment to import competition.

*Provisional relief*

Under section 202(d) of the Trade Act, the President may provide provisional relief in the case of imports of a perishable agricultural product, provided that the imported product has been the subject of ITC monitoring for at least 90 days prior to the filing of the petition with the ITC and the ITC has made an affirmative preliminary determination. The ITC has 21 days from the date on which the petition is filed to make its determination and report any finding with respect to provisional relief, and the President has 7 days after receiving an ITC report containing an affirmative determination to determine what, if any, action to take.

The Uruguay Round Agreements Act revised, both substantively and procedurally, the critical circumstances provision in section 202. Under the revised provisions, if critical circumstances are alleged in the petition, the ITC must, within 60 days of receipt of a petition containing such an allegation, determine whether critical circumstances exist and, if so, recommend an appropriate remedy to the President. The ITC would find critical circumstances to exist when it determines, on the basis of available information, that there is "clear evidence" that increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and "delay in taking action . . . would cause damage to that industry that would be difficult to repair." After receiving a report containing an affirmative ITC determination, the President has 30 days in which to determine what, if any, action to take.

Provisional relief is to take the form of an increase in, or imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury. Such actions generally remain in effect pending completion of the full ITC investigation and transmission of the ITC's report. However, no provisional relief action may remain in effect for more than 200 days.

*Presidential action*

Within 60 days of receiving an affirmative ITC determination and report, the President shall take all appropriate and feasible action within his power which he determines will facilitate efforts by the domestic industry to make a positive adjustment and will provide greater economic and social benefits than costs. Any import relief provided may not exceed the amount necessary to prevent or remedy the serious injury.

In determining what action is appropriate, the President is required to consider a number of factors, including the adjustment plan (if any), individual commitments, probable effectiveness of action to promote positive adjustment, other factors related to the national economic interest, and the national security interest.

The actions authorized to be taken by the President include an increase in or imposition of a duty, imposition of a tariff-rate quota system, a modification or imposition of a quantitative restriction, implementation of one or more adjustment measures (including trade adjustment assistance), negotiation of agreements with foreign countries limiting the export from foreign countries and the import into the United States of an article, and any other action within his power.

The President may take action under this title for an initial period of up to 4 years, and may extend such action, at a level not to exceed that previously in effect, one or more times. However, the total period of relief, including any extensions, may not exceed 8 years. As provided in section 311 of the North American Free Trade Agreement Implementation Act,[35] a relief action is not to apply to imports of an article when imported from Canada or Mexico unless imports of such article from such country account for a substantial share of imports of such article and contribute importantly to the serious injury or threat thereof.

The Trade Policy Committee, chaired by the U.S. Trade Representative, is required to make a recommendation to the President as to what action the President should take. On the day the President takes action under this title, he must submit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action recommended by the ITC, the President shall state in detail the reasons for the difference. If the President decides that there is no appropriate and feasible action to take with respect to a domestic industry, the President is required to transmit to Congress on the day of such decision a document that sets forth in detail the reasons for the decision.

Congress may adopt a joint resolution of disapproval within 90 legislative days under the expedited procedures of section 152 of the Trade Act if the President takes action which is different from that recommended by the ITC or if the President declines to take any action. Under these procedures, resolutions are referred to the House Committee on Ways and Means and the Senate Committee on Finance, which are subject to a motion to discharge if the resolution has not been reported within 30 legislative days. No amendments to the motion or to the resolution are in order. Within 30 days after enactment of such a resolution, the President must proclaim the relief recommended by the Commission.

*Monitoring, modification, and termination of action*

If presidential action is taken, the ITC is required to monitor developments in the industry, including efforts by the domestic industry to adjust and, if the initial period or an extension of the action exceeds 3 years, submit a report on the results of such monitoring at the midpoint of the initial period or extension, as appropriate. The Commission is required to hold a public hearing in the course of preparing each such report.

After receiving an ITC report on the results of such monitoring, the President may reduce, modify, or terminate action if either (1) the domestic industry requests it on the basis that it has made a positive adjustment, or (2) the President determines that changed circumstances warrant such reduction, modification, or termination. Upon request of the President, the ITC must advise the President as to the probable economic effects on the domestic industry of any proposed reduction, modification, or termination of action.

[35] Public Law 103–182, approved December 8, 1993, 19 U.S.C. 3371.

Prior to the termination of relief, the ITC is required, at the request of the President or upon petition of the concerned industry, to conduct an investigation to determine whether the relief action continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition. The ITC must hold a public hearing in the course of each such investigation and transmit its report to the President no later than 60 days before termination of the relief action, unless the President specifies a different date.

After any action taken under this title has terminated, the ITC must evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, and submit a report to the President and to the Congress within 180 days of the termination of the action.

*Subsequent relief actions*

If relief was provided, no new relief action may be taken with respect to the same subject matter for a period of time equal to the period of import relief granted, or for 2 years, whichever is greater.

However, in the case of an action that is in effect for 180 days or less, the President may take a new action with respect to the same subject matter if at least 1 year has elapsed since the previous action went into effect and an action has not been taken more than twice in the 5-year period preceding the effective date of the new action.

## SECTION 406 OF THE TRADE ACT OF 1974: MARKET DISRUPTION BY IMPORTS FROM COMMUNIST COUNTRIES

Section 406 of the Trade Act of 1974[36] was established to provide a remedy against market disruption caused by imports from Communist countries. The provision applies to imports from any Communist country, irrespective of whether it has received or currently receives non-discriminatory most-favored-nation treatment. Enactment of section 406 resulted from concern that traditional remedies for unfair trade practices, such as the antidumping and countervailing duty laws, may be insufficient to deal with a sudden and rapid influx of substantial imports that can result from Communist country control of their pricing levels and distribution process.

The provisions of section 406 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, are in many ways similar to those under sections 201–203 of the Trade Act, except that section 406 provides a lower standard of injury causation and a faster relief procedure, and the investigation focuses on imports from a specific country.

Under section 406(a), the U.S. International Trade Commission (ITC) conducts investigations to determine whether imports of an article produced in a Communist country (any country dominated or controlled by communism) are causing market disruption with respect to a domestically produced article. Market disruption exists whenever imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly so

[36] Public Law 93–618, approved January 3, 1975, and amended by section 1411 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418), 19 U.S.C. 2436.

as to be a significant cause of material injury, or threat thereof, to such domestic industry. Imports are increasing rapidly if there has been a significant increase in imports, either actual or relative to domestic production, during a recent period of time. In making a determination of market disruption, the ITC is required to consider, among other factors, the volume of imports, the effect of imports on prices, the impact of imports on domestic producers, and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

The ITC conducts such investigations at the request of the President or the U.S. Trade Representative, upon resolution of either the House Committee on Ways and Means or the Senate Committee on Finance, on its own motion, or upon the filing of a petition by an entity (including a trade association, firm, union, or a group of workers) which is representative of an industry. The Commission must complete its investigation within 3 months including a public hearing.

If the ITC finds that market disruption exists, it must also recommend to the President relief in the form of rates of duty or quantitative restrictions that will prevent or remedy such market disruption. The President then has 60 days to advise Congress as to what, if any, relief he will proclaim. Any import relief must be proclaimed within 15 days after the determination to provide it, except that the President has an additional 60 days to negotiate an orderly marketing agreement if he decides to provide relief in that form. Relief applies only to imports from the subject Communist country. Relief is limited to a maximum 5-year period subject to one renewal of up to 3 years.

Section 406(c) authorizes the President, prior to an ITC determination, to take temporary emergency action with respect to imports from a Communist country whenever he finds that there are reasonable grounds to believe there is market disruption. When taking such action, the President must also request the Commission to conduct an investigation under section 406(a). Any emergency relief ceases to apply on the day the Commission makes a negative finding or on the effective date of action by the President following an affirmative ITC finding.

### SECTION 1102 OF THE TRADE AGREEMENTS ACT OF 1979: PUBLIC AUCTION OF IMPORT LICENSES

Section 1102 of the Trade Agreements Act of 1979 authorizes the President to sell import licenses by public auction, under such terms and conditions as the President deems appropriate. Any regulations prescribed under this authority must, to the extent practicable and consistent with efficient and fair administration, ensure against inequitable sharing of imports by a relatively small number of the larger importers.

Import licenses which are potentially subject to this auction authority are identified in section 1102 by the law authorizing the import restriction. For example, import licenses used to administer a quantitative restriction under the escape clause (section 203 of the Trade Act of 1974), the market disruption clause (section 406 of the Trade Act of 1974) or section 301 of the Trade Act of 1974 may be sold by public auction. Any quantitative import restriction imposed

under the International Emergency Economic Powers Act or the Trading With the Enemy Act may also be administered by an auctioned import license. Certain agricultural import quotas, however (such as certain meat quotas, cheese quotas, and dairy quotas) are exempt from the auction authority and therefore may not be administered by means of auctioned licenses.

## Trade Adjustment Assistance

### CHAPTERS 2, 3, AND 5 OF TITLE II OF THE TRADE ACT OF 1974, AS AMENDED

The trade adjustment assistance (TAA) programs were first established under the Trade Expansion Act of 1962 for the purpose of assisting in the special adjustment problems of workers and firms dislocated as a result of a federal policy of reducing barriers to foreign trade. As a result of limited eligibility and usage of the programs, criteria and benefits were expanded under title II of the Trade Act of 1974 (Public Law 93–618). The Omnibus Budget Reconciliation Act of 1981 (OBRA) (Public Law 97–35), reformed the program for workers as proposed by the Administration. The amendments, particularly in program eligibility and benefits, were intended to reduce program cost significantly and to shift the focus of TAA from income compensation for temporary layoffs to return-to-work through training and other adjustment measures for the long-term or permanently unemployed. The OBRA also made relatively minor modifications in the firm program. Both programs were extended at that time for 1 year, to terminate on September 30, 1983.

Public Law 98–120, a bill to amend the International Coffee Agreement Act of 1980, approved on October 12, 1983, extended the worker and firm TAA programs for 2 years, until September 30, 1985. Sections 2671–2673 of the Deficit Reduction Act of 1984 (Public Law 98–369) amended the program for workers to increase the availability of worker training allowances and the level of job search and relocation benefits, and amended the program for firms to increase the availability of industrywide technical assistance.

The worker and firm TAA programs were further extended under temporary legislation in the 99th Congress until December 19, 1985. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Public Law 99–272), approved April 7, 1986, reauthorized the TAA programs for workers and firms for 6 years retroactively from December 19, 1985, until September 30, 1991, with amendments.

Sections 1421–1430 of the Omnibus Trade and Competitiveness Act of 1988 (OTCA) (Public Law 100–418), enacted on August 23, 1988, made significant amendments in the worker TAA program, particularly concerning the eligibility criteria for cash benefits, funding, and administration. A training requirement as a condition for income support to encourage and enable workers to obtain early reemployment became effective as of November 21, 1988. This replaced a 1986 amendment that instituted a job-search requirement as a condition for receiving cash benefits. The amendments also expanded TAA eligibility coverage of workers and firms, contingent upon the imposition of an import fee to fund program costs. The

OTCA extended TAA program authorization for an additional 2 years until September 30, 1993.

Section 136 of the Customs and Trade Act of 1990, (Public Law 101–382), approved on August 20, 1990, extended the completion and reporting period for the supplemental wage allowance demonstration projects for workers required by the 1988 amendments. No other amendments affecting the TAA programs were enacted in the 101st Congress. Section 106 of Public Law 102–318, to extend the emergency unemployment compensation program, provided for weeks of active military duty in a reserve status (including service during Operation Desert Storm) to qualify toward the minimum number of weeks of prior employment required for TAA eligibility.

Section 13803 of the Omnibus Budget Reconciliation Act (OBRA 1993) of 1993, Public Law 103–66, approved August 10, 1993, reauthorized the TAA programs for workers and firms for an additional 5 years through fiscal year 1998, with assistance to terminate on September 30, 1998. Section 13803 of the OBRA 1993 also reduced the level of the "cap" on training entitlement funding from $80 million to $70 million for fiscal year 1997 only.

Sections 501–506 of the North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 103–182, approved December 8, 1993, set forth the "NAFTA Worker Security Act," establishing the NAFTA transitional adjustment assistance program for workers as a new subchapter D (section 250) under chapter 2 of title II of the Trade Act of 1974. That special program went into effect on January 1, 1994, and will terminate on the earlier of September 30, 1998 or the date a comparable comprehensive dislocated worker program becomes effective.

No changes were made to any of the TAA programs during the 104th Congress.

## TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR WORKERS

Trade adjustment assistance for workers under sections 221 through 250 of the Trade Act of 1974, as amended, consists of trade readjustment allowances (TRA), employment services, training and additional TRA allowances while in training, and job search and relocation allowances for certified and otherwise qualified workers. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through state agencies under cooperative agreements between each state and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The state agencies act as federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

### *Certification requirements*

A two-step process is involved in the determination of whether an individual worker will receive trade adjustment assistance: (1) certification by the Secretary of Labor of a petitioning group of workers in a particular firm as eligible to apply; and (2) approval by the state agency administering the program of the application for benefits of an individual worker covered by a certification.

The process begins by a group of three or more workers, their union, or authorized representative filing a petition with the ETA for certification of group eligibility. To certify a petitioning group of workers as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

(1) a significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;

(2) sales and/or production of the firm or subdivision have decreased absolutely; and

(3) increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

The OTCA amendments expanded the potential eligibility coverage to include workers in any firm or subdivision of a firm that engages in exploration or drilling for oil or natural gas.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed. A certification of eligibility to apply for TAA covers workers who meet the requirements and whose last total or partial separation from the firm or subdivision before applying for benefits occurred within 1 year prior to the filing of the petition.

State agencies must give written notice by mail to each worker to apply for TAA where it is believed the worker is covered by a certification of eligibility and also must publish notice of each certification in newspapers of general circulation in areas where certified workers reside. State agencies must also advise each adversely affected worker, at the time that worker applies for UI, of TAA program benefits as well as the procedures, deadlines, and qualifying requirements for applying. State agencies must advise each such worker to apply for training before or at the same time the worker applies for TRA benefits, and promptly interview each certified worker and review suitable training opportunities available.

*Qualifying requirements for trade readjustment allowances*

In order to receive entitlement to payment of a trade readjustment allowance for any week of unemployment, an individual must be an adversely affected worker covered by a certification, file an application with the State agency, and meet the following qualifying requirements:

(1) The worker's first qualifying separation from adversely affected employment occurred within the period of the certification applicable to that worker, i.e, on or after the "impact date" in the certification (the date on which total or partial layoffs in the firm or subdivision thereof began or threatened to begin, but never more than 1 year prior to the date of the petition), within 2 years after the date the Secretary of Labor issued the certification covering the worker, and before the termination date (if any) of the certification.

(2) The worker was employed during the 52-week period preceding the week of the first qualifying separation at least 26 weeks at wages of $30 or more per week in adversely affected

employment with a single firm or subdivision of a firm. A week of unemployment includes the week in which layoff occurs and up to 7 weeks of employer-authorized vacation, sickness, injury, maternity, or military leave, or service as a full-time union representative. Weeks of disability covered by workmen's compensation and, as amended in 1992, weeks of active duty in a military reserve status may also count toward the 26-week minimum.

(3) The worker was entitled to unemployment insurance (UI), has exhausted all rights to any UI entitlement, including any extended benefits (EB) or federal supplemental compensation (FSC) (if in existence), and does not have an unexpected waiting period for any UI.

(4) The worker must not be disqualified with respect to the particular week of unemployment for EB by reason of the work acceptance and job search requirements under section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. All TRA claimants in all states are subject to the provisions of the EB "suitable work" test under that Act (i.e., must accept any offer of suitable work, actively engage in seeking work, and register for work) after the end of their regular UI benefit period as a precondition for receiving any weeks of TRA payments. The EB work test does not apply to workers enrolled or participating in a TAA-approved training program; the test does apply to workers for whom TAA-approved training is certified as not feasible or appropriate.

(5) The worker must be enrolled in, or have completed following separation from adversely affected employment within the certification period, a training program approved by the Secretary of Labor in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate" (e.g., training is not available that meets the criteria for approval, funding is not available to pay the full training costs, there is a reasonable prospect that the worker will be reemployed by the firm from which he was separated). No cash benefits may be paid to a worker who, without justifiable cause, has failed to begin participation or has ceased participation in an approved training program until the worker begins or resumes participation, or to a worker whose waiver of participation in training is revoked in writing by the Secretary.

This training requirement to encourage and enable workers to obtain early reemployment became effective under the OTCA amendments as of November 21, 1988; this 1988 amendment replaced a 1986 amendment that instituted a job search requirement as a condition for receiving cash benefits.

*Cash benefit levels and duration*

A worker is entitled to TRA payments for weeks of unemployment beginning the later of (a) the first week beginning more than 60 days after the filing date of the petition that resulted in the certification under which the worker is covered (i.e., weeks following

the statutory deadline for certification), or (b) the first week after the worker's first total qualifying separation.

The TRA cash benefit amount payable to a worker for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of unemployment insurance payable to that worker preceding that worker's first exhaustion of UI following the worker's first total qualifying separation under the certification, reduced by any federal training allowance and disqualifying income deductible under UI law.

The maximum amount of basic TRA benefits payable to a worker for the period covered by any certification is 52 times the TRA payable for a week of total unemployment minus the total amount of UI benefits to which the worker was entitled in the benefit period in which the first qualifying separation occurred (e.g., a worker receiving 39 weeks of UI regular and extended benefits could receive a maximum 13 weeks of basic TRA benefits). UI and TRA payments combined are limited to a maximum 52 weeks in all cases involving extended compensation benefits (i.e., a worker who received 52 or more weeks of unemployment benefits would not be entitled to basic TRA). TRA benefits are not payable to workers participating in on-the-job training.

The eligibility period for collecting basic TRA is the 104-week period that immediately follows the week in which a total qualifying separation occurs. If the worker has a subsequent total qualifying separation under the same certification, the eligibility period for basic TRA moves from the prior eligibility period to 104 weeks after the week in which the subsequent total qualifying separation occurs.

A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later. Additional benefits may be paid only during the 26-week period that follows the last week of entitlement to basic TRA, or that begins with the first week of training if the training begins after the exhaustion of basic TRA.

A worker participating in approved training continues to receive basic and additional TRA payments during breaks in such training if the break does not exceed 14 days, if the worker was participating in the training before the beginning of the break, resumes participation in the training after the break ends, and the break is provided for in the training schedule. Weeks when TRA is not payable because of this break provision count against the eligibility periods for both basic and additional TRA.

*Training and other employment services, job research and relocation allowances*

Training and other employment services and job search and relocation allowances are available through state agencies to certified workers whether or not they have exhausted UI benefits and become eligible for TRA payments.

*Employment services* consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other federal law.

*Training,* preferably on-the-job, shall be approved for a worker if the following six conditions are met:

(1) there is no suitable employment available;

(2) the worker would benefit from appropriate training;

(3) there is a reasonable expectation of employment following training completion;

(4) approved training is reasonably available from government agencies or private sources;

(5) the worker is qualified to undertake and complete such training; and

(6) such training is suitable for the worker and available at a reasonable cost.

If training is approved, the worker is entitled to payment of the costs for the Secretary directly or through a voucher system, unless they have been paid or are reimbursable under another federal law. On-the-job training costs are payable only if such training is not at the expense of currently employed workers. The 1988 amendments added remedial education as a separate and distinct approvable training program.

The OTCA amendments converted training from an entitlement to the extent appropriated funds were available, to an entitlement without regard to the availability of funds to pay the training costs. As of the OTCA amendments, approved training is an entitlement in any case where the six criteria for approval are reasonably met, up to a $80 million statutory ceiling on annual fiscal year training costs (including job search and relocation allowances and subsistence payments) payable from TAA funds. Up to this limit workers are entitled to have the costs of approved training paid on their behalf. If the Secretary foresees that the $80 million ceiling would be exceeded in any fiscal year, the Secretary will decide how remaining TAA funds shall be apportioned among the states for the balance of that year.

As a result of the OTCA amendments, costs of approved TAA training may be paid solely from TAA funds, solely from other federal or state programs or private funds, or from a mix of TAA and public or private funds, except if the worker in the case of a nongovernmental program would be required to reimburse any portion of the costs from TAA funds. Duplicate payment of training costs is prohibited, and workers are not entitled to payment of training costs from TAA funds to the extent these costs are paid or shared from other sources. Training may still be approved if the fiscal year TAA funding entitlement limit is reached, provided the training costs are paid from outside sources.

Supplemental assistance is available to defray reasonable transportation and subsistence expenses for separate maintenance when training is not within the worker's commuting distance, equal to the lesser of actual per diem expenses or 50 percent of the prevailing federal per diem rate for subsistence and prevailing mileage rates under federal regulations for travel expenses.

*Job search allowances* are available to certified workers who cannot obtain suitable employment within their commuting area, are

totally laid off, and who apply within 1 year after certification or last total layoff, whichever is later, or within 6 months after concluding training. The allowance for reimbursement is equal to 90 percent of necessary job search expenses, based on the same increased supplemental assistance rates described above, up to a maximum amount of $800. The Secretary of Labor is required to reimburse workers for necessary expenses incurred to participate in an approved job search program.

*Relocation allowances* are available to certified workers totally laid off at time of relocation who have been able to obtain an offer of or actual suitable employment only outside their commuting area, who apply within 14 months after certification or last total layoff, whichever is later, or within 6 months after concluding training, and whose relocation takes place within 6 months after application of completion of training. As amended in 1981 and 1984, the allowance is equal to 90 percent of reasonable and necessary expenses for transporting the worker, family, and household effects, based on the same increased supplemental assistance rates described above, plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

*Funding*

Federal funds, as an appropriated entitlement from general revenues under the Federal Unemployment Benefit Account (FUBA) in the Department of Labor, cover the portion of the worker's total entitlement represented by the continuation of UI benefit levels in the form of TRA payments, as well as payments for training and job search and relocation allowances, and state-related administrative expenses. Funds made available under grants to states defray expenses of any employment services and other administrative expenses. For fiscal year 1997, $276.1 million has been appropriated for trade readjustment allowances and related administrative expenses. Funding for training, job search and relocation allowances, and related expenses is an annual appropriated entitlement under the Training and Employment Services account of the Department of Labor.

The states are reimbursed from Treasury general revenues for benefit payments and other costs incurred under the program. A penalty under section 239 of the Trade Act of 1974 provides for reduction by 15 percent of the credits for state unemployment taxes which employers are allowed against their liability for federal unemployment tax if a state has not entered into or has not fulfilled its commitments under a cooperative agreement.

## NAFTA Worker Security Act

Subchapter D of chapter 2 (section 250) of title II of the Trade Act of 1974 establishes a NAFTA transitional adjustment assistance program for workers who may be adversely impacted by the NAFTA. Import-impacted workers may also petition for assistance under TAA, but cannot obtain benefits under both programs. Assistance under subchapter D shall terminate after the earlier of September 30, 1998, or the date on which legislation establishing a program providing all dislocated workers with comprehensive as-

sistance substantially similar to the assistance provided under subchapter D becomes effective.

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either:

(1) Sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) There has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

A group of workers or their union or other duly authorized representative may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the governor of the state in which the worker's firm or subdivision is located. Upon receipt of the petition, the governor must notify the Secretary of Labor. Within 10 days thereafter, the governor must make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the governor will ensure that rapid response and basic readjustment services authorized under other federal law are made available to the workers.

Within 30 days after receiving the petition, the Secretary must determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary will issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance. Upon denial of certification, the Secretary will review the petition to determine if the workers meet the requirements of the TAA program for certification.

Certified workers under the NAFTA program receive employment services, training, trade readjustment allowances, and job search and relocation allowances in the same manner and to the same extent as workers covered under a TAA certification, with the following exceptions: (1) the total amount of payments for training costs for any fiscal year do not exceed $30 million; (2) with respect to TRA benefits, the authority of the Secretary of Labor to waive the training requirement does not apply with respect to payments under subchapter D; and (3) to receive TRA benefits, the worker must be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial UI benefit period or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances, the Secretary may extend the time for enrollment for not more than 30 days.

The NAFTA program took effect on January 1, 1994, the date the NAFTA entered into force for the United States. No worker can be

certified as eligible to receive assistance under subchapter D whose last total or partial separation occurred before January 1, except for those workers whose last layoff occurred after December 8 (the date of enactment of the NAFTA Implementation Act) and before January 1 who would otherwise be eligible to receive assistance under subchapter D.

For fiscal year 1997, $48.4 million has been appropriated for NAFTA trade adjustment assistance.

### TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR FIRMS

Sections 251 through 264 of the Trade Act of 1974, as amended, contain the procedures, eligibility requirements, benefits and their terms and conditions, and administrative provisions of the trade adjustment assistance program for firms adversely impacted by increased import competition. The program is administered by the Economic Development Administration within the Department of Commerce. Amendments in 1986 under the COBRA eliminated financial assistance (direct loan or loan guarantee) benefits, increased government participation in technical assistance, and expanded the criteria for firm certification.

Program benefits consist exclusively of technical assistance for petitioning firms which qualify under a two-step procedure: (1) certification by the Secretary of Commerce that the petitioning firm is eligible to apply, and (2) approval by the Secretary of Commerce of the application by a certified firm for benefits, including the firm's proposal for economic adjustment.

To certify a firm as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

(1) a significant number or proportion of the workers in the firm have been or are threatened to be totally or partially laid off;

(2) sales and/or production of the firm have decreased absolutely, or sales and/or production that accounted for at least 25 percent of total production or sales of the firm during the 12 months preceding the most recent 12-month period for which data are available have decreased absolutely; and

(3) increased imports of articles like or directly competitive with articles produced by the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

The 1988 amendments expanded potential eligibility coverage of the program to include firms that engage in exploration or drilling for oil or natural gas. Unlike the worker program, this extension applies only prospectively after August 23, 1988.

A certified firm may file an application with the Secretary of Commerce for trade adjustment assistance benefits at any time within 2 years after the date of the certification of eligibility. The application must include a proposal by the firm for its economic adjustment. The Secretary may furnish technical assistance to the firm in preparing its petition for certification and/or in developing a viable economic adjustment proposal.

The Secretary approves the firm's application for assistance only if he determines that its adjustment proposal (a) is reasonably calculated to make a material contribution to the economic adjust-

ment of the firm; (b) gives adequate consideration to the interests of the workers in the firm; and (c) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

*Benefits*

Technical assistance may be given to implement the firm's economic adjustment proposal in addition to, or in lieu of, precertification assistance or assistance in developing the proposal. It may be furnished through existing government agencies or through private individuals, firms, and institutions (including private consulting services), or by grants to intermediary organizations, including regional Trade Adjustment Assistance Centers. As amended by the COBRA, the federal government may bear the full cost of technical assistance to a firm in preparing its petition for certification. However, the federal share cannot exceed 75 percent of the cost of assistance furnished through private individuals, firms, or institutions for developing or implementing an economic adjustment proposal. Grants may be made to intermediate organizations to defray up to 100 percent of their administrative expenses in providing technical assistance.

The Secretary of Commerce also may provide technical assistance of up to $10 million annually per industry to establish industry-wide programs for new product or process development, export development, or other uses consistent with adjustment assistance objectives. The assistance may be furnished through existing agencies, private individuals, firms, universities, and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other non-profit organizations of industries in which a substantial number of firms or workers have been certified.

*Funding*

Funds to cover all costs of the program are subject to annual appropriations to the EDA of the Department of Commerce from general revenues. For fiscal year 1997, $8.5 million was appropriated for the program.

# Chapter 3: OTHER LAWS REGULATING IMPORTS

## Authorities To Restrict Imports of Agricultural and Textile Products

### SECTION 204 OF THE AGRICULTURAL ACT OF 1956, AS AMENDED

Section 204 of the Agricultural Act of 1956, as amended,[1] authorizes the President to negotiate agreements with foreign governments to limit their exports of agricultural or textile products to the United States. The President is authorized to issue regulations governing the entry of products subject to international agreements concluded under this section. Furthermore, if a multilateral agreement is concluded among countries accounting for a significant part of world trade in the articles concerned, the President may also issue regulations governing entry of those same articles from countries which are not parties to the multilateral agreement, or countries to which the United States does not apply the Agreement.

The authority provided under section 204 has been used to negotiate bilateral agreements restricting the exportation of certain meats to the United States,[2] as well as to implement an agreement with the European Communities (EC) restricting U.S. importation of certain cheeses from the EC.[3] Section 204 also provided the legal basis for the GATT Arrangement Regarding International Trade in Textiles, commonly referred to as the Multifiber Arrangement (MFA),[4] for U.S. bilateral agreements with 42[5] textile-exporting nations, and currently provides the basis for U.S. implementation of the Uruguay Round Agreement on Textiles and Clothing (ATC), which replaces the now expired MFA.

#### MULTIFIBER ARRANGEMENT (MFA)

The Multifiber Arrangement was a multilateral agreement negotiated under the auspices of the General Agreement on Tariffs and Trade. The MFA provided a general framework and guiding principles for the negotiation of bilateral agreements between textile importing and exporting countries, or for unilateral action by an importing country if an agreement cannot be reached. In effect since 1974, the MFA was established to deal with problems of market disruption in textile trade, while permitting developing countries to share in expanded export opportunities.

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[1] Public Law 84–540, ch. 327, approved May 28, 1956, 70 Stat. 200, as amended by Public Law 87–488, approved June 19, 1962, 76 Stat. 104, 7 U.S.C. 1854 and Public Law 103–465, approved Dec. 8, 1994.

[2] Exec. Order No. 11539, June 30, 1970, 35 Fed. Reg. 10733, as amended by Exec. Order No. 12188, Jan. 2, 1980, 45 Fed. Reg. 989.

[3] Exec. Order No. 11851, April 10, 1975, 40 Fed. Reg. 16645.

[4] Arrangement Regarding International Trade in Textiles, T.I.A.S. 7840 (1973) (expired 1994).

[5] In force as of December 31, 1994.

*Background*

The first voluntary agreement to limit exports of cotton textiles to the United States was negotiated with Japan in 1957. Through the 1950's cotton textile imports, especially from Japan, continued to increase and generate pressure for import restraints. In 1956, the Congress passed the Agricultural Act of 1956 which, among other things, provided negotiating authority for agreements restricting imports of textile products. Pursuant to this authority, the United States negotiated a 5-year voluntary restraint agreement on cotton textile exports from Japan, announced in January 1957.

As textile and apparel imports from low-wage developing countries began to rise, pressure mounted for a more comprehensive approach to the import problem. On May 2, 1961, President Kennedy announced a Seven Point Textile Program, one point of which called for an international conference of textile importing and exporting countries to develop an international agreement governing textile trade. On July 17, 1961, a textile conference was convened under the auspices of the GATT. The discussions culminated in the promulgation of the Short-Term Arrangement on Cotton Textile Trade (STA) on July 21, 1961.[6] The STA covered the year October 1, 1961, to September 30, 1962, and established a GATT Cotton Textiles Committee to negotiate a long-range cotton textile agreement.

From October 1961 through February 1962, the STA signatories met in Geneva and negotiated a Long-Term Arrangement for Cotton Textile Trade (LTA), to last for 5 years beginning October 1, 1962.[7] The LTA provided for negotiation of bilateral agreements between cotton textile importing and exporting countries, and for imposition of quantitative restraints on particular categories of cotton textile products from particular countries when there was evidence of market disruption. In June of 1962, section 204 of the Agricultural Act of 1956 was amended to give the President authority to control imports from countries which did not sign the LTA.[8]

In the fall of 1965 the LTA was reviewed, and criticism within the U.S. textile industry mounted with respect to the LTA's failure to cover man-made fiber textiles. In 1967, however, the LTA was extended for 3 additional years with no additional fiber coverage. In 1970, the LTA was again extended for 3 more years.

Meanwhile, multifiber agreements limiting imports not only of cotton but also of wool and man-made fiber textiles were negotiated by the Nixon administration on a bilateral basis. On October 15, 1971, bilateral multifiber agreements were announced with Japan, Hong Kong, South Korea, and Taiwan. A multilateral agreement, incorporating the provisions of the bilaterals with Hong Kong, South Korea, and Taiwan, was also signed to allow the United States the authority, under section 204 of the Agricultural Act of 1956 as amended in 1962, to impose quantitative restrictions unilaterally on non-signatory countries.

The following year, in June 1972, efforts to negotiate a multifiber agreement on a broader multilateral basis led to the establishment

[6] T.I.A.S. 4884 (1961) (expired 1962).
[7] T.I.A.S. 5240 (1962) (expired 1973).
[8] Public Law 87–488, approved June 19, 1962, 76 Stat. 104.

of a GATT working party to conduct a comprehensive study of conditions of world trade in textiles. The working group submitted its study to the GATT Council early in 1973. In the fall of that year, multilateral negotiations for a multifiber agreement began after passage of a 3-month extension of the LTA. The first Multifiber Arrangement (MFA I) was concluded on December 20, 1973, and came into force January 1, 1974, supplanting the LTA.

*MFA provisions*

The MFA was modeled after the LTA and provided for bilateral agreements between textile importing and exporting nations under which industrial countries have negotiated quotas on imports of textiles and clothing primarily from developing countries (article 4), and for unilateral actions following a finding of market disruption (article 3).[9] Quantitative restrictions were based on past volumes of trade, with the right, within certain limits, to transfer the quota amounts between products and between years. The MFA also provided generally for a minimum annual growth rate of 6 percent.[10] Quotas already in place had to be conformed to the MFA or abolished within a year. The products covered by MFA I, II, and III included all manufactured products whose chief value is represented by cotton, wool, man-made fibers or a blend thereof. Also included were products whose chief weight is represented by cotton, wool, man-made fibers or a blend thereof. MFA IV expanded product coverage to include products made of vegetable fibers such as linen and ramie, and silk blends as well.

Overall management of the MFA was undertaken by the GATT Textiles Committee, which is made up of representatives of countries participating in the MFA and is chaired by the GATT Director General. A Textile Surveillance Body (TSB) was established to supervise the detailed implementation of the MFA.

MFA I was in effect for 4 years, until the end of 1977. During MFA renewal negotiations in July 1977 the EC succeeded in putting in the renewal protocol a provision allowing jointly agreed "reasonable departures" from the MFA requirements in negotiating bilateral agreements. The MFA was then renewed for 4 more years.[11]

MFA II was in effect through December 1981. On December 22, 1981, a protocol was initialed extending the MFA for an additional 4½ years, and providing a further interpretation of MFA requirements in light of 1981 conditions.[12] MFA III expired on July 31, 1986. MFA IV went into effect on August 1, 1986 for a 5-year period. MFA IV was extended on July 31, 1991 for 17 months from August 1, 1991 until December 31, 1992, with the expectation that

[9] Market disruption exists when domestic producers are suffering "serious damage" or the threat thereof. Factors to be considered in determining whether the domestic producers are seriously damaged include: turnover, market share, profit, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity, and investments. Such damage must be caused by a sharp, substantial increase of particular products from particular sources which are offered at prices substantially below those prevailing in the importing country.

[10] The annual growth rate applies to overall levels of imports from a particular supplier country. Higher or lower growth rates can apply to particular products, as long as the overall growth rate with respect to that supplier country is 6 percent.

[11] T.I.A.S. 8939 (1977).

[12] T.I.A.S. 10323 (1981).

the results of the GATT Uruguay Round of Multilateral Trade Negotiations would come into force immediately thereafter. On December 10, 1992, the MFA was extended for a fifth time, until December 31, 1993, and then for a final time until December 31, 1994.

URUGUAY ROUND AGREEMENT ON TEXTILES AND CLOTHING

One aim of the Uruguay Round was to integrate the textiles and clothing sector into the GATT. The resulting Agreement on Textiles and Clothing (ATC) establishes a 10-year phase-out of the quotas established under the MFA. Although the MFA expired on December 31, 1994, the bilateral agreements negotiated between individual importing and supplier governments remain in force. If the signatories to those bilateral arrangements are members of the World Trade Organization (WTO), the quota levels established under those agreements are now governed by the ATC. This means that the quotas must be adjusted in accordance with ATC rules.

As a general matter, the ATC was designed to generate increased opportunities for trade in the textiles and apparel sector. It liberalizes the current trading rules in two ways: by increasing and then removing quotas in three phases over a 10-year transition period and by requiring all participants to provide improved access to their markets.

Thus, on January 1, 1995, each importing signatory to the WTO, including the United States, Canada, and the members of the European Union, was required to "integrate" into normal GATT rules (including GATT 1947's article XIX and the Uruguay Round's Agreement on Safeguards) textile and apparel products accounting for at least 16 percent of the trade covered by the ATC, using 1990 as the base year. Integration means that any existing quotas on integrated products under MFA rules automatically becomes void and no new quotas may be imposed upon such products unless there has been a determination of serious injury under GATT article XIX, the safeguards provision.

On January 1, 1998, the importing nations are required to integrate another 17 percent of trade, and on January 1, 2002, an additional 18 percent. Beginning in 2005, all textile and apparel trade will fall under normal GATT/WTO rules. Under the terms of the ATC, the Agreement cannot be extended beyond 10 years.

The U.S. Committee for the Implementation of Textile Agreements (CITA) currently is the inter-agency group responsible for administering the U.S. quota program and implementation of ATC. CITA is composed of representatives from the Departments of Commerce, State, Labor, and Treasury, and the Office of the U.S. Trade Representative. The Commerce Department official is chair of the committee and heads the Office of Textiles and Apparel (OTEXA) in the Department of Commerce which implements the terms of the agreements and decisions made by CITA. A primary function of CITA is to monitor imports and to determine when calls for consultations are to be made. The CITA announced in October 1994 which products it would integrate on January 1, 1995.

Under the Uruguay Round Agreements Act (URAA), CITA must have decided by April 30, 1995 which products will be included in each of the next two integration "tranches," with the most sensitive

products to be integrated last. Once announced, no changes may be made in the integration schedule, unless required by law or in order to carry out U.S. international obligations, or to correct technical errors or reclassifications.

The ATC requires that existing growth rates—the amounts by which quota levels are to rise each year—be gradually increased. According to the ATC, the increase in growth rates is to be applied in three stages, with each stage's growth to be applied on top of existing rates. Thus, during stage one, the first 3 years of the ATC, the level of annual growth for each individual quota is to be increased by 16 percent. During stage two, the annual growth rate is to increase another 25 percent, and during stage three, which covers the last 3 years of the phase-out process, the "growth on growth" rate is 27 percent. These increases are intended to replace the renegotiation of bilateral textile agreements.

There is one potential exception to the ATC's growth-on-growth provision. A country may seek to preclude a supplier country from obtaining such benefits if the supplier provides inadequate market access for textile products. Any WTO member may bring a market access complaint before the WTO's Textile Monitoring Board (which replaces the MFA's TSB), which then may authorize the importing nation not to increase growth rates for the relevant supplier at the next stage of the transition.

*Rules of origin*

The URAA also directs the U.S. Treasury Department to change by July 1, 1996, the rules of origin for textile and apparel products. Rules of origin determine which country's quotas should be charged for particular imports when manufacturing of the goods occurs in more than one country. The U.S. domestic industry had sought the rules change on the ground that suppliers were purposely splitting their manufacturing operations among various countries as a means of avoiding quota restrictions.

For apparel products, the rules change means that the place of assembly will generally determine the origin of a product. Under current Customs Service regulations, the origin of apparel depends upon the complexity of the assembly operation. For garments requiring only simple assembly, such as the sewing together of four or five pieces, the country in which those pieces were cut is usually considered the country of origin. For more tailored garments, the country of assembly has been the country of origin under the current rule. According to the new rule, textile products manufactured in several countries will be deemed to originate where the "most important" assembly process occurred, regardless of where the product was cut. Under both the current rule and the new rule, the origin of knitted garments is the country in which the knit-to-shape pieces were formed.

For non-apparel products, the country in which the fabric was woven or knit generally will be the country of origin under the new rule. Prior to the URAA changes, the country in which the fabric is printed and dyed and subject to additional "finishing operations" or in which it is cut and then sewn was often the country of origin for quota purposes.

Products covered by the United States-Israel Free Trade Area Agreement will be exempt from the rules change.

BILATERAL TEXTILE AGREEMENTS

Under authority of section 204 of the Agricultural Act of 1956, as amended, and in conformity with the MFA, the President negotiated bilateral agreements restricting textile exports from supplier countries. There were 42 such bilateral agreements in force as of December 31, 1994, 27 of which were with members of the World Trade Organization. Provisions of bilateral agreements in effect with WTO members were carried over and remain in effect under the new ATC. Quota levels established under these agreements provide the base levels for the annual growth provisions of the ATC. The 15 bilateral textile agreements with non-WTO-members which were in effect on December 31, 1994 continue in force independent of the ATC, including a bilateral agreement with China.

Bilateral textile agreements apply to textile products, fiber and fabric, and apparel. Each agreement contains flexible, specific, and/or aggregate limits with respect to the type and volume of textile products that the supplier country can export to the United States. Limits are set in terms of square meter equivalents (SME's). They allow, under certain conditions, for carryover (from the prior year to current year within the same product category), carryforward (from the subsequent year to the current year within the same product category), and swing (from one product category to another product category within the same year) of unused portions of quotas. These provisions may be applied only with respect to specific import limits set forth in the bilateral agreement. Each agreement also provides for adjustment of import levels in accordance with specified growth rates. Some of the bilaterals provide for an export control system to be administered by the exporting country to assure compliance with the terms of the Agreement.[13]

The ATC alters somewhat the process by which new quotas may be established during the 10-year phase-out process, compared with the system that existed under the MFA. Under the ATC's "transitional safeguard" mechanism, if CITA determines that imports of a particular product are causing "serious damage" or the "actual threat thereof," it will be able to establish quotas on unrestrained suppliers of that product.

Under the MFA, before CITA could request consultations with a particular country (or "issue a call") for the purpose of negotiating a quota, it had to determine that imports of a certain category of products from that country were causing—or threatening to cause—"market disruption." Thus, under the MFA, the injury determination was both product and country specific. Under the ATC, the injury must only be product specific, and once an injury determination is made, a country can seek a quota with any supplier whose exports of that product are "increasing sharply and substantially." If consultations fail to produce an agreement on restrictive levels, and a country is able to demonstrate that such imports are causing or threatening serious damage, the country may take unilateral action to establish a quota at a level based upon trade dur-

[13] Exec. Order 11651, 3 CFR 676 (1971–75 Comp.).

ing a recent 12-month period. Such quotas will be permitted to remain in place for up to 3 years (although the quota must be increased annually), unless the product is integrated into normal GATT rules before then. All calls will be subject to review by the WTO's Textiles Monitoring Board.

## TEXTILES AND APPAREL TRADE UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

NAFTA created a number of special rules affecting trade in textiles among the United States, Canada and Mexico. The NAFTA textiles rules of origin determine which goods are "originating" and therefore eligible for preferential treatment, i.e., reduced or duty-free entry. Products of Canada or Mexico that do not meet the NAFTA origin rules, or one of the several exceptions to those rules, are not precluded from entering the United States. However, they may be subject to normal (non-preferential) duties or, for Mexican goods, to quota requirements.

A "yarn-forward" rule of origin applies to most textile products, although there are a number of exceptions. Yarn-forward means that the finished textile or apparel product must be made from fabric formed in North America from yarn spun in North America.

NAFTA also includes "tariff preference levels" (TPLs) that permit a limited number of Canadian and Mexican textile and apparel products to enter the United States each year at the preferential NAFTA tariff rate even though the products do not meet the "yarn forward" origin rules, and therefore are not "originating" goods. These are essentially annual tariff rate quotas. Once imports reach the TPL limit, most-favored-nation (MFN) duties will be applied to any additional non-originating products entered during the rest of the year.

Most quotas on Mexican-made textile and apparel products were eliminated upon implementation of the NAFTA, but a few quotas remain. The remaining quotas apply only to products that do not meet the preferential NAFTA origin rules, but are considered to be products of Mexico for other purposes. The remaining U.S. quotas on Mexican goods are scheduled to be removed by the year 2004.

## SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT OF 1933

Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture (USDA) domestic commodity program. This authority is designed to prevent imports from interfering with USDA efforts to stabilize domestic agricultural commodity prices. However, in the Uruguay Round Agreement on Agriculture, the United States agreed to convert all quotas and fees on imports from any country to which the United States applies the WTO Agreement to tariff-rate quotas. Section 22 authority is available now only for imports from countries to which the United States does not apply the WTO Agreement.

*Basic provisions*

Under section 22, the Secretary of Agriculture advises the President when the Secretary has reason to believe that—

(1) imports of an article are rendering, or tending to render ineffective, or materially interfering with, any domestic, agricultural-commodity price-support program, or other agricultural program; or

(2) imports of an article are reducing substantially the amount of any product processed in the United States from any agricultural commodity or product covered by such programs.

If the President agrees that there is reason for the Secretary's belief, the President must order an ITC investigation and report. Using this report as his basis, the President must determine whether the statutory conditions warranting imposition of a section 22 quota or fee exist.

If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees (which may not exceed 50 percent ad valorem) or import quotas (which may not exceed 50 percent of the quantity imported during a representative period) sufficient to prevent imports of the product concerned from harming or interfering with the relevant agricultural program.

*Application*

Between 1935 and 1985, section 22 was used to impose import restrictions on 12 different commodities or food product groups: (1) wheat and wheat flour; (2) rye, rye flour, and rye meal; (3) barley, hulled or unhulled, including rolled, ground, and barley malt; (4) oats, hulled or unhulled, and unhulled ground oats; (5) cotton, certain cotton wastes, and cotton products; (6) certain dairy products; (7) shelled almonds; (8) shelled filberts; (9) peanuts and peanut oil; (10) tung nuts and tung oil; (11) flaxseed and linseed oil; and (12) sugars, syrups, and sugar-containing products. Section 22 fees and quotas have since been terminated for most of these commodities. As of late 1994, import quotas were in place to protect certain cotton, specific dairy products, peanuts, and certain sugar-containing products, such as sweetened cocoa, pancake flours, and ice-tea mixes. Import fees were in place on refined sugar.

## AGRICULTURE TRADE UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

*Background*

NAFTA is the first free trade agreement entered into by the United States that employs the concept of "tariffication" of agricultural quantitative restrictions. Under this method, a country replaces each of its non-tariff barriers with a "tariff-equivalent," which is a tariff set at a level that will provide protection for a product equivalent to the non-tariff barrier that the tariff replaces. In the case of several agricultural goods listed in the tariff schedules of each NAFTA country, the NAFTA countries converted quantitative restrictions to tariffs or tariff-rate quotas.

Pursuant to the NAFTA, U.S. section 22 quotas and fees were converted to tariff-rate quotas, under which "qualifying" Mexican

dairy products, cotton, sugar-containing products, and peanuts will enter the United States duty free up to a certain quantity of imports (the "in quota" quantity.) A "qualifying good" is an agricultural good that meets, based on its Mexican content alone, the NAFTA rules of origin contained in section 202 of the NAFTA Implementation Act.

To a large extent, the NAFTA agriculture agreement amounts to three bilateral agreements rather than a trilateral accord. For agriculture goods traded between United States and Canada, the NAFTA incorporates the agricultural market access provisions of chapter 7 of the United States-Canada Free-Trade Agreement (CFTA). The NAFTA sets out separate agricultural market access agreements between Mexico and the United States and between Mexico and Canada. In addition the NAFTA includes several obligations governing agriculture trade common to all three countries.

*Basic provisions*

Section 321(b) of the North American Free Trade Agreement Implementation Act authorizes the President, pursuant to the NAFTA, to exempt any "qualifying good" from any quantitative limitation or fee imposed under section 22 of the Agricultural Adjustment Act for as long as Mexico is a NAFTA country.

As discussed above, the United States agreed to convert its import quotas to tariff rate quotas under section 22 of the Agricultural Adjustment Act for imports from Mexico of dairy products, cotton, sugar-containing products and peanuts. Article 302(4) of the NAFTA Act permits the allocation of the in-quota quantity under these tariff rate quotas, provided that such measures do not have trade restrictive effects on imports in addition to those caused by the imposition of the tariff-rate quotas. Section 321(c) of the NAFTA Act directs the President to take such action as may be necessary to ensure that imports of goods subject to tariff rate quotas do not disrupt the orderly marketing of commodities in the United States.

Section 321(f) of the Act is a free-standing provision that establishes an end-use certificate requirement for imports of wheat or barley imported into the United States from any foreign country or instrumentality that requires end-use certificates on wheat or barley produced in the United States.

Section 308 of the NAFTA Act amends the CFTA Act, which implemented the tariff "snapback" provided for in article 702 of the CFTA, to provide that the President may impose a temporary duty on imports of a listed Canadian fresh fruit or vegetable if a certain import price and other conditions exist.

Section 309 establishes a price-based snapback for imports of frozen concentrated orange juice into the United States from Mexico. The tariff on imports of Mexican frozen concentrated orange juice in excess of the threshold quantity will "snapback" or revert to the lesser of the prevailing most-favored-nation rate or the rate of duty on that product in effect as of July 1, 1991, if futures prices for frozen concentrated orange juice in the United States fall below a historical average price for 5 consecutive days. This tariff snapback is automatically triggered and removed upon a determination by the Secretary of Agriculture.

## AGRICULTURE TRADE UNDER THE URUGUAY ROUND AGREEMENTS ACT

*Background*

The Uruguay Round Agreement on Agriculture strengthens multilateral rules for trade in agricultural products and requires WTO members to reduce export subsidies, trade distorting domestic support programs and import protection. The Agreement establishes rules and reduction commitments over 6 years for developed countries and 10 years for developing countries on export subsidies, domestic subsidies, and market access. The Agreement is intended to be the beginning of a reform process for world trade in agriculture and provides for the initiation of a second round of negotiations concerning agriculture trade beginning in the year 2000.

Export subsidies must be reduced from 36 percent (budget outlays) and 21 percent (volume) from a 1986–1990 base period for specific products and categories. Trade distorting domestic subsidies must be bound and reduced by 20 percent from a 1986–1990 base period. non-tariff import barriers are subject to comprehensive tariffication, and minimum or current market access commitments. The United States thus agreed to convert quotas and fees authorized under section 22 of the Agricultural Adjustment Act to tariff-rate equivalents in the form of tariff-rate quotas. In the Uruguay Round, all U.S. agriculture tariffs were bound and subject to specific reduction commitments.

The operation of these rules is linked to particular commitments by each WTO member contained in that WTO member's schedule annexed to the Marrakesh Protocol to the GATT 1994. Each WTO member's schedule sets forth the WTO members' commitments regarding the access it will provide to its market for imports of agriculture products and the maximum amount of domestic support and export subsidies it will provide to agricultural products. Under article 3 of the Agreement, the domestic support and export subsidy commitments in each WTO member's schedule are an integral part of GATT 1994.

Article 2 and annex 1 of the Agreement define agricultural products covered as those products classified in chapters 1–24 of the Harmonized Tariff Schedule (HTS) (excluding fish and fish products) and under 13 headings or subheadings in other chapters of the HTS, including cotton, wool, hides and fur skins.

The United States is obligated to implement its commitments over a 6-year period beginning in 1995. The rights and obligations in the Agriculture Agreement supplement those in GATT 1994, including the Agreements on Subsidies and Countervailing Measures and Application of Sanitary and Phytosanitary Measures.

*Basic provisions*

Section 401(a)(1) of the Uruguay Round Trade Agreements Act amends section 22 of the Agricultural Adjustment Act of 1933, such that no quota or fee shall be imposed under this section with respect to any import that is the product of a country or separate customs territory to which the United States applies the WTO Agreements. Accordingly, when products of WTO members only are involved, there would be no need to conduct a section 22 investiga-

tion. Section 22 authority is retained with respect to imports from countries and separate customs territories to which the United States does not apply the WTO agreements. These amendments were effective upon entry into force of the WTO Agreement, January 1, 1995.

The conversion of U.S. quantitative import restrictions to tariff-rate quotas and staged tariff reductions was implemented by Presidential Proclamation No. 6763 issued on December 13, 1994. Effective on January 1, 1995, this proclamation amended the HTS of the United States under general authority provided to the President in the Uruguay Round Agreements Act. The President proclaimed tariff-rate quotas for the following products subject to tariffication by the United States: dairy products, sugar, sugar-containing products, peanuts, cotton and beef. In general tariff-rate quotas will replace previously applicable restrictions as of January 1, 1995. In some cases, however, the United States will begin implementing its increased access commitments after the entry into force of the WTO Agreement, if the quota year for these products begins at a different time of year.

Section 404(a) of the Uruguay Round Agreements Act authorizes the President to take such action as may be necessary to implement the tariff-rate quotas set out in the U.S. agricultural tariff concessions in schedule XX of the Agreement and to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States. Section 404(b) authorizes the President, upon the advice of the Secretary of Agriculture, to temporarily increase the in-quota quantity of an agricultural import that is subject to a tariff-rate quota when the President determines and proclaims that that the supply of the same, directly competitive, or substitutable agricultural product will be inadequate because of natural disaster, disease or a major national market disruption to meet domestic demand at reasonable prices.

In administering the tariff-rate quota, the President is authorized to allocate, among supplying countries or customs areas, the in-quota quantity of a tariff-rate quota for any agricultural product, and to modify any allocation as he deems appropriate.

Section 404(e) of the Uruguay Round Agreements Act amends the Caribbean Basin Economic Recovery Act (CBERA), the Andean Trade Preference Act (ATPA), the Generalized System of Preferences (GSP) statute, and General Note 3(a) to the HTS (relating to insular possessions) to specify that any duty preference afforded these laws will be available only for the in-quota amount of a tariff-rate quota. Over-quota imports from CBERA, ATPA, or GSP countries, or U.S. insular possessions will in all cases be subject to the higher rate of duty. Section 405(b) requires the President, if he determines that it is appropriate, to invoke either a volume-based or price-based special safeguard for agricultural goods and to determine, consistent with article 5, the amount of the additional duty to be imposed, the period during which such duty will be imposed, and any other terms and conditions applicable to the duty.

## MEAT IMPORT ACT OF 1979

The Meat Import Act of 1979, as amended, required the President to impose quotas on imports of beef, veal, mutton, and goat

meat when the aggregate quantity of such imports on an annual basis was expected to exceed a prescribed trigger level. As a matter of practice, the import-limiting effect of the Meat Import Act was achieved, prior to the conclusion of the Uruguay Round, through the negotiation of voluntary restraint agreements with major supplier countries of the covered products. Section 403 of the Uruguay Round Act repealed the Meat Import Act of 1979 in order to conform to U.S. commitments under the Agreement on Agriculture not to maintain this type of quantitative import restriction. The Uruguay Round Act substitutes a tariff-rate quota on meat imports for the previous import restrictions.

### RECIPROCAL MEAT INSPECTION REQUIREMENT

Section 4604 of the Omnibus Trade and Competitiveness Act of 1988[14] amends section 20 of the Federal Meat Inspection Act (21 U.S.C. 620) to authorize strict enforcement of all standards which are applicable to meat articles in domestic commerce, for meat articles imported into the United States. If the Secretary of Agriculture determines that a foreign country applies meat inspection standards that are not related to public health concerns about end-product quality which are substantiated by reliable analytical methods, the Secretary must consult with the U.S. Trade Representative and they shall make a recommendation to the President as to what action should be taken. The President may require that a meat article produced in a plant in such foreign country may not be permitted entry into the United States unless the Secretary determines that the meat article has met the standards applicable to meat articles in commerce within the United States. The annual report required generally under section 20 of the Federal Meat Inspection Act shall include the name of each foreign country that applies standards for the importation of meat articles from the United States that are not based on public health concerns.

Enactment of this provision resulted from congressional concern over the European Community's (EC) hormone ban, which since 1989 has effectively banned all meat exports from the United States to the EC that were treated with hormones, despite scientific evidence establishing the safety of U.S. production methods. At the time of enactment, bilateral consultations with the EC were underway, and Congress wanted to strengthen the Administration's authority to respond to the EC action. The authority added by section 4604 was intended to be used either in addition to, or instead of, other authorities (such as section 301 of the Trade Act of 1974).

### SUGAR TARIFF-RATE QUOTAS UNDER HARMONIZED TARIFF SCHEDULE AUTHORITIES

Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture, in consultation with other agencies, to establish, for each fiscal year, the quantity of sugars and syrups that may be entered at the lower tariff rates under two tariff-rate quotas (TRQ's). The TRQ's cover sugars and syrups described in HTS subheadings

[14] Public Law 100–418, approved August 23, 1988, 102 Stat. 1107, 1408, amending section 20 of Public Law 90–201, 21 U.S.C. 620.

1701.11, 1701.12, 1701.91, 1701.99, 1702.90, and 2106.90. This authority was proclaimed to implement the results of the Uruguay Round of multilateral trade negotiations as reflected in the provisions of schedule XX (United States), annexed to the Agreement Establishing the World Trade Organization.[15]

*Background*

The United States has always been a net importer of sugar, at times importing more than half of the nation's sugar consumption. However, sugar imports have been restricted almost continuously since 1934 in order to maintain and foster the domestic sugarcane and sugar beet industries. From the enactment of the Jones Costigan Sugar Act of 1934[16] through the expiration of the Sugar Act of 1948 on December 31, 1974,[17] sugar imports were restricted by a statutory quota. Historically, this system of import protection has maintained a U.S. price for sugar well above the world price.

Shortly before the expiration of the Sugar Act of 1948, an absolute import quota was proclaimed by President Ford, although the quota quantity was so large as to be non-restrictive.[18] The quota derived from a note that had been negotiated in the Annecy (1949) and Torquay (1951) Rounds of multilateral trade negotiations and was proclaimed as a headnote to the Tariff Schedule of the United States (TSUS) following the conclusion of the Kennedy Round (1963–1967). On May 5, 1982, President Reagan modified this headnote quota to: (1) make it restrictive; (2) allocate the quota among supplying countries in accordance with their shares of the U.S. market during the period from 1975 through 1981; and (3) authorize the Secretary of Agriculture to establish and modify the quota amount in subsequent periods.[19]

By 1988, the quota had been reduced to the lowest ratio of imports to domestic production in the nation's history. The government of Australia challenged the legality of the sugar import quota under the provisions of the General Agreement on Tariffs and Trade (GATT), and in 1989, a GATT dispute settlement panel found the quota illegal. In 1990, President Bush issued Proclamation No. 6179[20] to convert the absolute import quota into a tariff-rate quota, thereby bringing it into conformity with the GATT TRQ panel decision. During the Uruguay Round of multilateral trade negotiations, the quota was reconverted into two TRQ's, one for imports of raw cane sugar and the other for imports of refined sugar, including syrups. The United States agreed to bind its minimum total sugar/syrups TRQ at 1,139,195 metric tons (MT). In addition, the United States agreed to reduce the second tier (over quota) tariff rates by 15 percent over 6 years.[21]

Under the tariff-rate quota system, the Secretary of Agriculture establishes the quota quantity that can be entered at the lower tier of tariff rates, and the USTR allocates this quantity among the 40

[15] Pres. Proc. No. 6763, Dec. 23, 1994, 60 Fed. Reg. 1007.
[16] Pub. L. No. 73–213, ch. 263, approved May 9, 1934, 48 Stat. 670.
[17] Pub. L. No. 80–388, ch. 519, approved August 8, 1947, 61 Stat. 922. See also the Sugar Act of 1937, Pub. L. No. 75–414, ch. 898, approved September 1, 1937, 50 Stat. 903.
[18] Pres. Proc. No. 4334, November 16, 1974, 39 Fed. Reg. 40739.
[19] Pres. Proc. No. 4941, May 5, 1982, 47 Fed. Reg. 19661.
[20] Pres. Proc. No. 6179, September 13, 1990, 55 Fed. Reg. 38293.
[21] See Pres. Proc. No. 6763, December 23, 1994.

eligible sugar exporting countries. The quantities allocated to beneficiary countries under the GSP, the CBI and the ATPA receive duty-free treatment. Certificates of Quota Eligibility (CQE) are issued to the exporting countries and must be executed and returned with the shipment of sugar in order to receive quota treatment.[22] Imports of raw cane sugar are permitted in addition to the quota quantity on condition that such sugar is to be refined and used in the production of certain polyhydric alcohols or to be re-exported in refined form or in sugar-containing products.[23]

The quantity of sugar which may be imported duty free from Mexico is governed by paragraphs 13–22 of section A of annex 703.2 of the North American Free Trade Agreement (NAFTA). Since 1982, Mexico has been included within a basket category known as the "other specified countries and areas" and has been allocated a minimum quota amount, currently set at 7,258 MT raw value. The NAFTA guarantees the greater of this access or Mexico's net surplus production, but no greater than 25,000 MT during the first 6 years or 250,000 MT during the remaining 8 years of the NAFTA implementation period. During each of the first 14 years of the NAFTA, Mexico and the United States will jointly determine whether either has been or is projected to be a net surplus producer.[24] All sugar imports from Mexico will enter duty free after the 14-year transition period.

## IMPORT PROHIBITIONS ON CERTAIN AGRICULTURAL COMMODITIES UNDER MARKETING ORDERS

### SECTION 8e OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

Section 8e of the Agricultural Adjustment Act, as amended,[25] prohibits the importation of certain specified commodities which do not meet relevant grade, size, quality or maturity requirements imposed under the marketing order in effect for such commodity. The specified commodities include tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, and apples.

Any prohibition under this authority may not be made effective until after the Secretary of Agriculture gives reasonable notice (of not less than 3 days) and receives the concurrence of the U.S. Trade Representative. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provision of this section.

Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commmodity, he must establish with respect to the imported commodity such grade, size, quality, and maturity restrictions by varieties, types, or other classification

[22] See 15 C.F.R. part 2011.
[23] See additional U.S. note 6 to chapter 17 of the HTS and 7 C.F.R. part 1530.
[24] For purposes of the NAFTA formulas, high fructose corn syrup (HFCS) is included in determining the consumption of sugar.
[25] 7 U.S.C. 608e–1.

as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order.

Section 4603 of the Omnibus Trade and Competitiveness Act of 1988 amended section 8e to provide additional authority for the Secretary to establish an additional period of time (not to exceed 35 days) for restrictions to apply to imported commodities, if the Secretary determines that such additional period of time is necessary to effectuate the purposes of the Act and to prevent the circumvention of the requirement of a seasonal marketing order. In making this determination, the Secretary must consider: (1) the extent to which imports during the previous year were marketed during the period of the marketing order and such imports did not meet the requirements of the marketing order; (2) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order; and (3) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

Section 1308 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 farm bill") amended section 8e to require the Secretary to consult with the USTR prior to any import prohibition or regulation being made effective. The USTR must advise the Secretary within 60 days of being notified, to ensure that the proposed grade size, quality, or maturity provisions are not inconsistent with U.S. international obligations. If the Secretary receives the concurrence of the USTR, the proposed prohibition or regulation may proceed. Legislation enacted at the end of the 102d Congress (H.R. 6128) included an amendment to section 8(c) of the Agricultural Adjustment Act of 1937 to require the Secretary to complete all informal rulemaking actions within 45 days of receiving recommendations on such marketing orders from administrative committees.

## Authorities to Restrict Imports Under Certain Environmental Laws

### MARINE MAMMAL PROTECTION ACT OF 1972, AS AMENDED

The Marine Mammal Protection Act (MMPA), enacted in 1972,[26] places a ban on the importation of marine mammals and marine mammal products, except in limited circumstances, such as for scientific research. The MMPA also directs the Secretary of the Treasury to ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of U.S. standards. In carrying out the ban, the Secretary, in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, must require that the government of the exporting nation provide certain documentary evidence relating to that country's marine mammal conservation programs. The Secretary must also require the government of any

[26] Public Law 92–522, approved October 21, 1972, 16 U.S.C. 1361 et seq.

intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned under the Act.

In 1984, the MMPA was amended to require that each nation wishing to export tuna to the United States document that it has adopted a dolphin conservation program "comparable" to that of the United States, and that the average rate of mortality of its purse seine fleet is comparable to that of the U.S. fleet. If these requirements are not met, an embargo on the import of yellowfin tuna and tuna products from that nation will be invoked. In 1988, the MMPA was further amended with respect to these "comparability" provisions by requiring that the regulatory programs of other nations in the eastern tropical Pacific tuna fishery be at least as restrictive as those of the United States. The 1988 amendments also require that the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States certify and provide reasonable proof that it has acted to prohbibit the importation of tuna and tuna products from embargoed nations.

In August 1990, Mexico's yellowfin tuna was embargoed under the comparability provision. Mexico challenged the U.S. embargo under procedures of the General Agreement on Tariffs and Trade (GATT) and in September 1991, a GATT panel found in favor of Mexico. Venezuelan exports of yellowfin tuna to the United States also were embargoed and Venezuela began a GATT case against the United States in May 1992. A third GATT challenge was brought by the European Community (EC) in June 1992, after a federal district court ruled that the MMPA also required a secondary embargo of tuna products from some 20 intermediary nations, including those of the EC, that had failed to certify and offer reasonable proof that they had acted to prohibit the importation of tuna from the primary embargoed nations. On May 20, 1994, a GATT dispute settlement panel issued a report finding that U.S. tuna embargoes were inconsistent with GATT rules.

### INTERNATIONAL DOLPHIN CONSERVATION ACT OF 1992

The International Dolphin Conservation Act of 1992[27] establishes an international moratorium on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals, and sets forth certain import sanctions for countries agreeing to abide by this moratorium and then subsequently failing to do so. The Act's provisions are incorporated into the Marine Mammal Protection Act (MMPA) as a new title III.

The Act reflects a legislative proposal by the Bush Administration, introduced as H.R. 5419 on June 17, 1992, to strengthen international cooperation in the protection of dolphins and other marine mammals and to resolve the GATT trade disputes by making it possible for the United States to lift the bans in place on im-

[27] Public Law 102–523, approved October 26, 1992.

ports of tuna and tuna products from Mexico, Venezuela, and some 20 other countries.

Section 302 of the new title III authorizes the Secretary of State to enter into international agreements which establish a global moratorium of at least 5 years' duration on the practice of intentionally encircling dolphins with purse seine nets during tuna fishing operations. Such moratorium is to take effect on March 1, 1994. A procedure is established by which the United States could withdraw from a 5-year moratorium prior to December 31, 1999.

Section 305 establishes that the existing embargo provisions of section 101 of the MMPA will not apply to nations that enter into commitments with the United States to: (1) implement a moratorium on encircling dolphins with purse seine nets effective March 1, 1994; (2) require observers on all their purse seine vessels larger than 400 short tons; and (3) reduce their dolphin mortalities up until the effective date of the moratorium. The Secretaries of State and Commerce must periodically determine whether countries that have committed to the moratorium are implementing their commitments. The section also establishes a series of import bans on nations that fail to comply with their commitments. Fifteen days after a country has been certified as having failed to implement its commitments, its yellowfin tuna and yellowfin tuna products will be banned from entry into the United States. Sixty days after a country has been certified as having failed to implement its commitments, the President shall direct the Secretary of the Treasury to ban the importation from that country of those categories of fish and fish products which had an aggregate customs valuation of 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the previous calendar year.

### ENDANGERED SPECIES ACT OF 1973, AS AMENDED

The Endangered Species Act[28] authorizes the Secretary of the Interior to create lists of species or subspecies which are considered endangered or threatened, and to prohibit the importation or interstate sale of these species or subspecies.

### SECTION 8 OF THE FISHERMEN'S PROTECTIVE ACT OF 1967, AS AMENDED ("PELLY AMENDMENT")

Under section 8 of the Fishermen's Protective Act of 1967, as amended (the so-called "Pelly Amendment"),[29] the President, based on certain findings by the Secretary of Commerce or the Secretary of the Interior, has the discretionary authority to impose import sanctions on any products from any country which conducts fishery practices or engages in trade which diminishes the effectiveness of international programs for fishery conservation or international programs for endangered or threatened species.

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[28] Public Law 93–205, approved December 28, 1973, 16 U.S.C. 1531 et seq.
[29] Public Law 93–205, approved December 28, 1973, 22 U.S.C. 1978.

## HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

The High Seas Driftnet Fisheries Enforcement Act was enacted in 1992[30] to assist in the international enforcement of U.N. Resolution Number 46–215, which prohibits large-scale driftnet fishing on the high seas after December 31, 1992. The Act sets forth certain import sanctions applicable to countries whose nationals or vessels engage in driftnet fishing on the high seas on or after December 31, 1992, and lays out the procedures to be followed in applying those import sanctions.

Specifically, the Act requires the Secretary of Commerce not later than December 31, 1992, and periodically thereafter, to identify each country the nationals or vessels of which conduct large-scale driftnet fishing beyond the exclusive economic zone of any country and to notify the President and that country of the identification. The President must enter into consultations within 30 days with any country so identified to obtain its agreement to effect the immediate termination of the large-scale driftnet fishing. If these consultations have not been satisfactorily concluded within 90 days, the President shall direct the Secretary of the Treasury to prohibit the importation of shellfish, fish and fish products, and sport fishing equipment from the country in question. If such country has not terminated its large-scale driftnet fishing within 6 months after its identification or has retaliated against the United States for any initial import sanctions taken against it, such country shall be subject to additional import sanctions, at the President's discretion, under the Fishermen's Protective Act of 1967, as amended.

## WILD BIRD CONSERVATION ACT OF 1992

The Wild Bird Conservation Act of 1992[31] establishes various bans on the importation of exotic birds. For those birds listed on any of the three appendices on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the nature of the ban depends on how threatened is the particular species of bird. There is an immediate import ban for birds that have been identified under CITES as being under immediate threat. For all other birds listed by CITES, an import ban goes into effect 1 year after the date of enactment of the Act. During this 1 year, the Secretary of the Interior is authorized to suspend the importation of such species on an emergency basis under certain conditions. None of the import bans will apply to species of birds that are included on an approved list of species to be maintained by the Secretary. To be included on such an approved list, the species must either be regularly bred in captivity in a qualified facility or be protected under a conservation program in the country of origin that meets specifically enumerated criteria.

For exotic birds not listed under the CITES agreement, the Secretary is authorized to impose an import ban or quota on such species if he finds such action is necessary for the conservation of the species.

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[30] Public Law 102–582, approved November 2, 1992.
[31] Public Law 102–440, approved October 23, 1992.

The Act also authorizes the Secretary to allow, through the issuance of import permits, the importation of any exotic bird upon determination that such importation is not detrimental to the species' survival and that the bird is being imported for certain enumerated purposes, such as scientific research or cooperative breeding programs.

### ATLANTIC TUNAS CONVENTION ACT OF 1995

In 1966, the International Convention for the Conservation of Atlantic Tunas (ICCAT) was established, and the U.S. Senate ratified ICCAT in 1967. The Atlantic Tunas Convention Act (ATCA), which authorizes U.S. involvement in ICCAT, was enacted in 1975. ATCA authorizes the Secretary of Commerce to administer and enforce ICCAT and ATCA, including the promulgation of regulations to establish open and closed seasons, fish size requirements and catch limitations, incidental catch restrictions, and observer coverage. In addition, the Secretary is authorized to prohibit the entry into the United States of any fish subject to regulations recommended by ICCAT and taken in a manner which would diminish the effectiveness of ICCAT's conservation efforts.

The Atlantic Tunas Convention Act of 1995 made certain changes to the ATCA concerning the identification and notification of countries violating the terms of ICCAT recommendation. Specifically, the legislation made no change to the ATCA authority to restrict imports of fish if fished in a manner that tends to diminish the effectiveness of a recommendation by the ICCAT, instead of imposing additional, and in some cases mandatory, standards. The Act added provisions requiring Commerce to identify, notify, and publish a list of countries whose fishing vessels are fishing or have fished during the previous year in the Convention area in a manner inconsistent with the objectives of an ICCAT recommendation. In addition, it provided that the President may enter into consultations with identified nations. The purpose of the Act was to lead to the development of an international consensus concerning multilateral management of Atlantic tunas, instead of expanding the circumstances under which unilateral sanctions are authorized.

## National Security Import Restrictions

### SECTION 232 OF THE TRADE EXPANSION ACT OF 1962

Section 232 of the Trade Expansion Act of 1962, as amended,[32] authorizes the President to impose restrictions on imports which threaten to impair the national security. This authority has been used by the President to impose quotas and fees on imports of petroleum and petroleum products from time to time and to embargo imports of refined petroleum products from Libya. Public Law 96–223 (imposing a windfall profit tax on domestic crude oil) amended section 232 to authorize the Congress to disapprove by joint resolution an action of the President to adjust oil imports. On June 9,

[32] Public Law 87–794, approved October 11, 1962, 19 U.S.C. 1862, amended by section 127 of the Trade Act of 1974, Public Law 93–618, approved January 3, 1975, by section 402 of the Crude Oil Windfall Profit Tax Act of 1980, Public Law 96–223, approved April 2, 1980, and further amended by section 1501 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, approved August 23, 1988.

1995, the President found, pursuant to section 232, that oil imports threaten to impair the national security but determined not to take action to adjust imports of petroleum because the costs of such an adjustment to the economy outweighed the benefits.[33]

Section 232 as amended requires the Secretary of Commerce to conduct immediately an investigation to determine the effects on national security of imports of an article, upon the request of any U.S. government department or agency, application of an interested party, or upon his own motion. The Secretary must report the findings of his investigation and his recommendations for action or inaction to the President within 270 days after beginning the investigation. If the Secretary finds the article "is being imported * * * in such quantities or under such circumstances as to threaten to impair the national security," he must so advise the President. The President must decide within 90 days after receiving the Secretary's report whether to take action. If the President decides to take action, he must implement such action within 15 days, and take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so imports will not threaten to impair the national security. The President must submit a written statement to the Congress within 30 days explaining action taken and the reasons therefor.

Upon initiation of an investigation, the Secretary of Commerce must immediately notify the Secretary of Defense, and consult with him on methodological and policy questions. Upon request of the Secretary of Commerce, the Secretary of Defense must provide an assessment of the defense requirements of any article subject to investigation.

The Secretary of Commerce must hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to the investigation if it is appropriate and after reasonable notice. The Secretary must also seek information and advice from, and consult with, other appropriate agencies. Among the factors which the Secretary and the President must consider are domestic production needs for projected national defense requirements; domestic industry capacity to meet these requirements; existing and anticipated availability of resources, supplies, and services essential to the national defense; the growth requirements of such industries, supplies, services; imports in terms of their quantities, availability, character, and use as they affect such industries and U.S. capacity to meet national security requirements; the impact of foreign competition on the economic welfare of domestic industries; and any substantial unemployment, revenue declines, loss of skills or investment, or other serious effects resulting from displacement of any domestic products by excessive imports.

## SECTION 233 OF THE TRADE EXPANSION ACT OF 1962

Section 233 of the Trade Expansion Act of 1962[34] was added by section 121 of the Export Administration Amendments of 1985 (Public Law 99–64) as a means of enforcing national security ex-

[33] 60 Fed. Reg. 30,514 (June 9, 1995).
[34] 19 U.S.C. 1864.

port controls imposed under that Act. The provision was amended by section 2447 of the Omnibus Trade and Competitiveness Act of 1988, to conform to sanctions authority added to the Export Administration Act.

Under section 233 as amended, any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979, or any regulation, order, or license issued under that section, may be subject to controls imposed by the President on imports of goods or technology into the United States.

The provision has never been used.

## Balance of Payments Authority

### SECTION 122 OF THE TRADE ACT OF 1974

Section 122 of the Trade Act of 1974[35] authorizes the President to increase or reduce restrictions on imports into the United States to deal with balance of payments problems.

Tighter restrictions in the form of an import surcharge (not to exceed 15 percent ad valorem), import quota, or a combination of the two may be imposed for up to 150 days (unless extended by act of Congress) whenever fundamental international payments problems make such restrictions necessary to deal with large and serious U.S. balance of payments deficits, to prevent an imminent and significant depreciation of the dollar, or to cooperate with other countries in correcting an international balance of payments disequilibrium.

Existing imports restrictions may be eased for a period of up to 150 days (unless extended by act of Congress) through a reduction in the rate of duty on any article (not to exceed 5 percent ad valorem), an increase in the value or quantity of imports subject to any type of import restriction, or a suspension of any import restriction. Such restrictions may be eased whenever fundamental international payments problems require special measures to deal with large and serious balance of payments surpluses or to prevent significant appreciation of the dollar. Trade liberalizing measures must be broad and uniform as to articles covered. The President may not, however, liberalize imports of those products for which increased imports will cause or contribute to material injury to domestic firms or workers, impairment of national security, or otherwise be contrary to the national interest.

Certain conditions also are placed on the President's use of import restrictions for balance of payments purposes. Quotas may be imposed only if international agreements to which the United States is a party permit them as a balance of payments measure and only to the extent that the imbalance cannot be dealt with through an import surcharge. If the President determines that import restrictions are contrary to the national interest, he may refrain from imposing them but must inform and consult with Congress.

Section 122(d) requires that import restrictions be applied on a non-discriminatory basis; it also requires that quotas aim to distribute foreign trade with the United States in a manner that re-

[35] Public Law 93–618, approved January 3, 1975, 19 U.S.C. 2132.

flects existing trade patterns. If the President finds, however, that the purposes of the provision would best be served by action against one or more countries with large and persistent balance of payment surpluses, he may exempt all other countries from such action. This section also expresses the sense of Congress that the President seek modifications in international agreements to allow the use of surcharges instead of quotas for balance of payments adjustment purposes. If such international reforms are achieved, the President's authority to exempt all but one or two surplus countries from import restrictions must be applied in a manner consistent with the new international rules.

Section 122(e) provides that import restrictions be of broad and uniform application as to produce coverage, unless U.S. economic needs dictate otherwise. Exceptions under this section are limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials and similar factors, or if uniform restrictions will be unnecessary or ineffective (i.e., if products already are subject to import restrictions, are in transit, or are subject to binding contracts). The section prohibits the use of balance of payments authority or the exceptions authority to protect domestic industries from import competition. Any quantitative restriction imposed may not be more restrictive than the level of imports entered during the most recent representative period, and must take into account any increase in domestic consumption since the most recent representative period.

The President is authorized to modify, suspend, or terminate any proclamation issued under the section, either during the initial 150-day period or during any subsequent extension by act of Congress.

Section 122 authority has never been invoked.

*Background*

Anticipating that oil-consuming nations would face large balance of payments deficits in an era of rapidly increasing oil prices, and believing that neither a reduction in the price of oil nor the necessary international monetary cooperation were certain to take place, Congress considered it necessary to authorize the President to impose surcharges or other import restrictions for balance of payments purposes, even though Congress assumed that under existing circumstances such authority was not likely to be used.[36] The use of surcharges for balance of payments purposes had gained de facto acceptance among industrialized GATT member countries during the two decades preceding the 1974 Trade Act, but explicit GATT rules had never been adopted.

When it passed the Trade Act of 1974, Congress urged the President to seek changes in international agreements allowing the use of surcharges as well as (and in preference to) quotas for balance-of-payments adjustment purposes and providing rules for their use.[37] The Tokyo Round of GATT multilateral trade negotiations in 1979 adopted, as part of the so-called Framework Agreement, the Declaration on Trade Measures Taken for Balance-of-Payments

[36] Senate Report 93–1298 at 87–88.
[37] Senate Report 93–1298 at 88.

Purposes,[38] which elaborated on the rules for the use of import restrictions for balance-of-payments adjustments. While this Declaration noted the wide use, for balance-of-payments adjustments, of import restrictions other than quotas (which alone are addressed in the GATT) and implicitly sanctioned it, it still did not fundamentally alter GATT rules in this area by explicitly allowing such other restrictions.

The balance-of-payments issue was revisited in the Omnibus Trade and Competitiveness Act of 1988, which stated as one of the principal negotiating objectives of the United States the development of "rules to address large and persistent global current account imbalances of countries."[39]

The Understanding on the Balance-of-Payments Provisions of the General Agreements on Tariffs and Trade 1994 specifically provides for (and gives preference to) "price-based measures" for balance-of-payments adjustments, including import surcharges and deposit requirements, and limits the imposition of new quantitative restrictions. The Understanding also provides that preference should be given to those measures which have the least disruptive effect on trade, and that restrictive import measures taken for balance-of-payments purposes may only be applied to control the general level of imports, may not exceed what is necessary to address the balance-of-payments situation, and must be applied in a transparent manner. Finally, the Understanding sets forth consultation procedures for the use of all restrictive import measures taken for balance-of-payments purposes. Article XII of the General Agreement on Trade in Services permits members to adopt or maintain restrictions on trade in services in the event of serious balance-of-payments and external financial difficulties.

## Product Standards

U.S. policy regarding the application of standards and certification procedures to imported products is based on the Uruguay Round Agreement on Technical Barriers to Trade and its U.S. implementing legislation as part of the Uruguay Round Agreements Act,[40] chapter 9 of the North American Free Trade Agreement and its U.S. implementing legislation as part of the North American Free Trade Agreement Implementation Act,[41] and the Agreement on Technical Barriers to Trade under the General Agreement on Tariffs and Trade (GATT) and its U.S. implementing legislation under title IV of the Trade Agreement Act of 1979.[42]

Differences in product standards, listing and approval procedures, and certification systems often can impede trade and can be manipulated to discriminate against imports. Imports may be tested to determine whether they conform with domestic standards under conditions more onerous than those applicable to domestic products. Certification systems, which indicate whether products conform to standards, may limit access for imports or may discriminate by denying the right of a certification mark on imported prod-

[38] MTN/FR/W/20/Rev. 2, reprinted in House Doc. 96–153, pt. I, at 626.
[39] Public Law 100–418, section 122(d)(4), section 1101(b)(5); 19 U.S.C. 2901(b)(5).
[40] Public Law 103–465, approved December 8, 1994.
[41] Public Law 103–182, approved December 8, 1993.
[42] Public Law 96–39, approved July 26, 1979, 19 U.S.C. 2531–2573.

ucts. Prior to the 1979 Agreement, however, there was virtually no multilateral cooperation or supervision to promote international harmonization and to discourage nationalistic discriminatory practices.

### AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade,[43] commonly referred to as the Standards Code, was one of the agreements on non-tariff measures concluded during the 1973–1979 Tokyo Round of GATT multilateral trade negotiations. The Code went into force on January 1, 1980. The Code does not attempt to create standards for individual products, or to set up specific testing and certification systems. Rather, it establishes, for the first time, international rules among governments regulating the procedures by which standards and certification systems are prepared, adopted and applied, and by which products are tested for conformity with standards. The Code was a major U.S. negotiating objective during the Tokyo Round, particularly given the formation of a European regional electrical certification system closed to outside suppliers.

The Standards Code seeks to eliminate national product standardization and testing practices and certification procedures as barriers to trade among the signatory countries and to encourage the use of open procedures in the adoption of standards. At the same time, it does not limit the ability of countries to reasonably protect the health, safety, security, environment, or consumer interests of their citizens. Generally, U.S. standards-setting processes have followed these basic norms, whereas other countries' standards-related activities have generally been closed to participation from foreign countries; these signatories are obliged to change their practices in order to comply with Code principles.

The Code's provisions are applicable to all products, both agricultural and industrial. They are not applicable to standards involving services, technical specifications included in government procurement contracts, or standards established by individual companies for their own use. The Code addresses governmental and non-governmental standards, both voluntary and mandatory, developed by central governments, state and local governments, and private sector organizations. Only central governments, however, are directly bound by Code obligations, whereas regional, state, local, and private organizations are subject to a second level of obligation whereby signatories "shall take such reasonable measures as may be available to them" to ensure compliance.

The Code is prospective, applying to new and revised standards-related activities. If a signatory country believes, however, that an existing regulation developed and put into effect before the Code came into force conflicts with the basic tenets of the Code, then that signatory may use the Code's dispute settlement mechanism to help resolve the problem.

The Standards Code contains the following key provisions obligating signatories to follow several general principles pertaining to standards-related activities:

[43] MTN/NTM/W/192 Rev. 5, reprinted in House Doc. No. 96–153, pt. I, at 211.

(1) The most important and fundamental principle obligates signatory governments not to develop, intentionally or unintentionally, product standards, technical regulations, or certification systems which create unnecessary obstacles to foreign trade. The Code recognizes nations' sovereign right to formulate standards and certification systems to protect life, health and environment, but such regulations should be as least disruptive as possible to international trade.

(2) The second fundamental principle is that national or regional certification systems are to grant access to foreign or non-member signatory suppliers under conditions no less favorable than those granted to domestic or member country suppliers, a major change in most signatory policies. Signatories can no longer refuse to give their national certification marks to imported products, provided that the imported products fully meet the technical requirements of the certification system. Also regional certification bodies must be open to suppliers from all Code signatories.

(3) Signatories must provide foreign imported products the same treatment as domestic goods with respect to standards, technical regulations, and testing and certification procedures, i.e., an extension of the national treatment provision of GATT which prohibits discrimination against imported products.

(4) When developing new or revising existing product standards or technical regulations, governments are to use existing or proposed international standards as the basis where it is appropriate. Other signatories may request an explanation if a government fails to follow this principle.

(5) Whenever appropriate, signatories are encouraged to specify technical regulations and standards in terms of performance rather than design or descriptive characteristics.

If a foreign product must be tested to determine whether it meets domestic standards before it can be imported, the Code provides a number of criteria that signatories are to follow to ensure non-discriminatory treatment. For example, foreign goods should not have to undergo costlier or more complex testing than domestic products in comparable situations. In addition, signatories are obligated to use the same methods and administrative procedures on imported as well as domestic goods. The Code does not obligate signatories to recognize test results or certification marks from another country. It does, however, encourage signatories to accept, whenever possible, test results, certifications or marks of conformity from foreign bodies, or self-certification from foreign producers even when the test methods differ from their own, provided that the importing country is satisfied that the exporting country's products meet the required standards.

Another important element of the Standards Code is the obligation of signatories to open up the process of developing or applying standards and certification procedures to each other. Governments must make available proposed mandatory or voluntary standards and certification procedures for comment during the drafting stage by other signatories before they become final regulations. Each signatory government must establish an inquiry point to respond to all reasonable questions from other signatories concerning their

central, local, and state government standards and certification procedures.

Finally, the Code establishes a Committee of Signatories which meets periodically to oversee implementation and administration of the Agreement, as well as to discuss any new issues or problems which arise. The Committee may set up panels of experts or working parties as required to conduct Committee business or handle disputes.

URUGUAY ROUND AGREEMENT ON TECHNICAL BARRIERS TO TRADE

As part of the Uruguay Round, the signatories built on experience gained under the 1979 Standards Code in the Agreement on Technical Barriers to Trade (TBT Agreement). Much of the new Agreement restates, clarifies, or expands the 1979 Code.

The inclusion of the new Agreement as one of the WTO agreements means that all WTO members will be automatically bound by the Agreement, whereas a number of countries had chosen not to join the Standards Code. In addition, the Agreement will be enforceable through the WTO Dispute Settlement Understanding, unlike the 1979 Code, which contained a separate procedure limiting response to Code violations to withdrawing concessions under the Code.

The new Agreement seeks to eliminate barriers in the form of national product standardization and testing practices and conformity assessment procedures. At the same time, it permits signatories to protect the health, safety, security, environment, or consumer interests of their citizens. Like the 1979 Code, the Agreement obligates signatories to take reasonable measures to secure compliance by local government and non-governmental bodies.

With respect to technical regulations, the Agreement establishes rules covering the preparation, adoption, and application of technical regulations. The Agreement specifies that technical regulations are not to be more trade-restrictive than necessary to fulfill a legitimate objective. A complaining member must identify a specific alternative measure that is reasonably available. In addition, each government is required to review periodically its technical regulations in light of the Agreement's requirements. Each government is to use relevant international standards as a basis for technical regulations, except where they would be an ineffective or inappropriate means to fulfill the government's legitimate objectives. The Agreement recognizes the concept of equivalency between countries' technical regulations. It carries forward the procedural requirements of the Code to assure transparency. Finally, it reflects an expansion beyond the Code with respect to the issuance of technical regulations by local and non-governmental bodies. WTO members must provide notice of technical regulations issued by local bodies at the next level below central governments, and must take active measures in support of observance by local government and non-governmental bodies.

With respect to standards, central government bodies are required to comply with the terms of the Code of Good Practice for the Preparation, Adoption and Application of Standards. Other standardizing bodies are not bound by the Code of Good Practice,

but each central government must take reasonable measures to ensure their compliance.

The new Agreement updates and expands disciplines regarding conformity assessment procedures. Whereas the 1979 Code applied only to testing, the new Agreement applies to all aspects of conformity assessment, including laboratory accreditation and quality system registration. Central governments are required to take reasonable measures to apply these same disciplines to local governments and non-governmental bodies.

The Agreement on the Application of Sanitary and Phytosanitary Measures (S&P Agreement) establishes a number of general requirements and procedures to ensure that a sanitary or phytosanitary measure is in fact to protect human, animal, and plant life and health from risks of plant- or animal-borne pests or diseases, or additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs. While the TBT Agreement relies on a non-discrimination test, the S&P Agreement relies on whether a measure has a basis in science and is based on a risk assessment. Discrimination is allowed as long as it is not arbitrary or unjustifiable.

### THE NORTH AMERICAN FREE TRADE AGREEMENT

Chapter 9 of the NAFTA establishes rules on standards-related measures among the United States, Mexico, and Canada. The provisions are based on the text of the then-draft Uruguay Round Agreement on Technical Barriers to Trade and the United States-Canada Free-Trade Agreement. The rules apply only to standards-related measures that may directly or indirectly affect trade in goods or services between the NAFTA countries and to measures taken by NAFTA countries concerning those standards-related measures. In addition, chapter 7 of the NAFTA covers sanitary and phytosanitary measures.

### TITLE IV OF THE TRADE AGREEMENTS ACT OF 1979, AS AMENDED

Congress approved the Agreement on Technical Barriers to Trade under section 2 of the Trade Agreements Act of 1979. Title IV of that Act implements the obligations of the Standards Code in U.S. law.[44] Since U.S. practices were already in conformity with the Code, title IV did not amend, repeal, or replace any existing law. It does ensure that adequate structures exist within the federal government to inform the U.S. private sector about the standards-related activities of other nations, facilitate the ability of the United States to comment on foreign standards-making and certifications, and process domestic complaints on foreign practices. Title IV was then amended to reflect U.S. obligations under the Uruguay Round Agreement on Technical Barriers to Trade and the NAFTA.

Section 402 of the 1979 Act requires all federal agencies to abide by the above-described principles and provisions of the Agreement. In addition, section 403 states the "sense of Congress" that no State agency and no private person should engage in any stand-

[44] 19 U.S.C. 2531–2573.

ards-related activity, i.e., development or implementation of product standards or certification system, that creates unnecessary obstacles to foreign trade, and requires the President to "take such reasonable measures as may be available" to promote their observance of Agreement obligations.

The U.S. Trade Representative (USTR) is designated to coordinate U.S. trade policies related to standards, and discussions and negotiations with foreign countries on standards issues, and to oversee implementation of the Agreement. The Departments of Agriculture and Commerce are required to work with the USTR on agricultural and non-agricultural issues respectively and to establish technical offices to fulfill a number of functions, particularly supplying notices to interested parties of proposed foreign government standards and receiving and transmitting private sector comments. The Department of Commerce maintains the National Center for Standards and Certification within the National Bureau of Standards as the national inquiry point required under the Code.

Title IV contains provisions concerning administrative and judicial proceedings regarding standards-related activities. No private rights of action are created by title IV; private parties can petition the U.S. government to invoke provisions of the Agreement against practices of other signatories.

Subtitle E sets forth governing standards and measures under the NAFTA. Subtitle F contains provisions concerning U.S. participation in international standardsetting activities.

## Government Procurement

U.S. policy on government purchases of foreign goods and services is based on the Buy American Act of 1933,[45] the multilateral Agreement on Government Procurement under the 1994 WTO and General Agreement on Tariffs and Trade (GATT), and its implementing legislation under title III of the Trade Agreements Act of 1979,[46] as amended by the Uruguay Round Agreements Act. The "Buy American Act of 1988" (title VII of the Omnibus Trade and Competitiveness Act of 1988)[47] established standards and procedures to prohibit procurement from foreign countries whose governments discriminate against U.S. products or services in awarding contracts. In addition, separate provisions in appropriation acts and other legislation apply more restrictive Buy American-type provisions on particular types of purchases.

Governments are among the world's largest purchasers of nonstrategic goods. Most of this vast market has traditionally been closed to foreign producers by means of formal and informal administrative systems of national discrimination in favor of domestic producers. Although U.S. preferences for domestic suppliers are clearly set out by law and regulation, other countries usually have achieved their discrimination by highly invisible administrative practices and procedures.

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[45] Act of March 3, 1933, ch. 212, title III, 47 Stat. 1520, 41 U.S.C. 10a–10d.
[46] Public Law 96–39, title III, approved July 26, 1979, 19 U.S.C. 2511–2518.
[47] Public Law 100–418, title VII, approved August 23, 1988, 41 U.S.C. 10a note.

## BUY AMERICAN ACT

The Buy American Act of 1933, as implemented by Executive Orders 10582 and 11051, requires the U.S. government to purchase domestic goods and services unless the head of the agency or department involved determines the prices of the domestic supplies are "unreasonable" or their purchase would be inconsistent with the U.S. public interest. Executive Order 10582, issued in 1954, states that if the domestic price of a good or service is 6 percent or more above the foreign price, then it is to be considered unreasonable and the foreign product may be purchased. The order also permits agencies to use a differential above 6 percent if it would serve the national interest. The Department of Defense has been using a 50 percent differential since 1962 for its procurement, except this differential is waived on military purchases under reciprocal Memoranda of Understanding (MOUs) with NATO countries. The order also indicated that a differential could be applied in cases where a domestic bid generated employment in a labor surplus area as designated by the Secretary of Labor. No specific percentage was stated, but generally a 12 percent differential has been allowed for bids which benefit economically distressed areas. These price differentials may be waived under section 301(a) of the Trade Agreements Act of 1979 for articles covered by the GATT Agreement on Government Procurement from signatory countries.

U.S.-made products are defined by law as those manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. By regulations, "substantially all" has been defined to mean that more than 50 percent of the component costs of a product has been incurred in the United States.

## 1979 GATT AGREEMENT ON GOVERNMENT PROCUREMENT

The first Agreement on Government Procurement, also known as the Government Procurement Code,[48] was concluded as one of the agreements on non-tariff measures during the 1975–1979 Tokyo Round of GATT multilateral trade negotiations. The Code went into effect on January 1, 1981 and remained in force until the 1994 WTO Agreement on Government Procurement went into effect on January 1, 1996.

Because not all objectives were achieved in the original Code and revisions might be necessary in light of actual experience, the signatories agreed to renegotiations beginning at the end of 1984 to broaden the coverage and improve the operation of the Code. The GATT Committee on Government Procurement completed the first phase of these renegotiations in November 1986 with agreement (1) on a Protocol of Amendments to improve the functioning of the Code, effective January 1, 1988; (2) to continue negotiations on increasing the number of entities (government agencies) and procurements covered by the Code, particularly in the sectors of telecommunications, heavy electrical and transportation equipment; and (3) to continue to work towards the coverage of service contracts under the Code. The second phase of Code renegotiations

[48] MTN/NTM/W/211/Rev. 2, reprinted in House Doc. No. 96–153, pt. I, at 69.

began in February 1987 and continued in the context of the Uruguay Round of GATT multilateral trade negotiations.

The 1979 Code is designed to discourage discrimination against foreign suppliers at all stages of the procurement process, from the determination of the characteristic of the product to be purchased to tendering procedures, to contract performance. The Code prescribes specific rules on the drafting of the specifications for goods to be purchased, advertising of prospective purchases, time allocated for the submission of the bids, qualification of suppliers, opening and evaluation of bids, awards of contracts, and on hearing and reviewing protests.

Signatories must publish their procurement laws and regulations and make them consistent with the Code rules. Purchasing entities have discretion in their choice of purchasing procedures, provided they extend equitable treatment to all suppliers and allow the maximum degree of competition possible.

Each government agency covered by the Code is required to publish a notice of each proposed purchase in an appropriate publication available to the public, and to provide all suppliers with enough information to permit them to submit responsive tenders. Losing bidders must be informed of all awards and be provided upon request with pertinent information concerning the reasons they were not selected and the name and relative advantages of the winning bidder. Signatories must also provide data on their procurements on an annual basis.

The adoption or use of technical specifications which act to create unnecessary obstacles to international trade is prohibited. The Code mandates the use, where appropriate, of technical specifications based on performance rather than design, and of specifications based on recognized national or international standards.

While the Code does not prohibit the granting of an offset or the requirement that technology be licensed as a condition of award, signatories recognize that offsets and requirements for licensing of technology should be limited and used in a non-discriminatory way.

The Code is largely self-policing. Rules and procedures are structured to help provide solutions to problems between potential suppliers and procuring agencies. As a next step, the Code provides for bilateral consultations between the procuring government and the government of the aggrieved supplier. As a last resort, the Code dispute settlement mechanism under the Committee of Signatories provides for conciliation or establishment of a fact-finding panel.

*Coverage of the agreement*

The Code applies solely to those agencies listed by each signatory in an annex on contracts valued above a specific minimum contract value expressed in terms of Special Drawing Rights (SDR). The original Code established a threshold value of 150,000 SDR; the 1988 Protocol of Amendments to the Code lowered the minimum contract value to SDR 130,000.

The benefits of the Code apply to purchases of goods originating in the territory of signatory countries. As a result of the 1988 amendments, leasing contracts are also subject to the Code. It does not apply to government services except those incidental to the purchase of goods, construction contracts, purchases by Ministries

of Agriculture for farm support programs or human feeding programs such as the U.S. school lunch program. Procurements by state and local governments, including those with federal funds such as under the Surface Transportation Act, are not subject to the Code.

For the United States, the Code does not apply to the Department of Transportation, the Department of Energy, the Tennessee Valley Authority, the Corps of Engineers of the Department of Defense, the Bureau of Reclamation of the Department of the Interior, and the Automated Data and Telecommunications Service of the General Services Administration (GSA). In addition, government chartered corporations which are not bound by the Buy American Act, such as the U.S. Postal Service, COMSAT, AMTRAK, and CONRAIL, are not covered.

United States Code coverage also does not apply to set-aside programs reserving purchases for small and minority businesses, prison and blind-made goods, or to the requirements contained in Department of Defense and GSA Appropriations Acts that certain products (i.e., textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and major ship components) be purchased only from domestic sources.

On April 13, 1993, the United States and European Union reached an agreement in Marrakesh under the GATT Government Procurement Code to nearly double to $200 billion the bidding opportunities available on a bilateral basis.

### 1994 WTO Agreement on Government Procurement

The 1994 Government Procurement Agreement negotiated in the Uruguay Round makes important improvements in the Tokyo Round Code, which required central government agencies in member countries to observe non-discriminatory, fair, and transparent procedures in the purchase of certain goods. The new Agreement covers the procurement of both goods and services, including construction services, and applies to purchases by subcentral governments and government-owned enterprises, as well as central governments.

In addition to improvements in coverage, the Agreement also requires members to follow significantly improved procurement procedures. It prohibits the use of offsets unless a country specifically negotiates an exception to the Agreement in its schedule. The Agreement requires the establishment of a domestic bid challenge system and introduces added flexibility to accommodate advances in procurement techniques.

The Agreement allows each signatory to negotiate coverage on a reciprocal, bilateral basis with the other signatories. The United States concluded comprehensive coverage packages with several countries. The United States will apply the new Agreement to specified U.S. subcentral governments and government-owned entities only for those countries that opened their government procurement markets in sectors of high priority to the United States, although it may expand coverage with other signatories in the future.

The Agreement applies to purchases by government entities above certain special drawing right (SDR) thresholds:

Central government purchases

Goods and services: 130,000 SDRs ($182,000)

Construction services: 5 million SDRs ($7 million)

Subcentral government purchases

Goods and services, U.S. and Canada: 355,000 SDRs ($500,000)

Goods and services, other: 200,000 SDRs ($280,000)

Construction services, Japan and Korea: 15 million SDRs ($21 million)

Construction services, other: 5 million SDRs ($7 million)

Government-owned enterprise purchases

Goods and services, U.S. federally-funded utilities: $250,000

Goods and services, other: 400,000 SDRs ($560,000)

Construction services, Japan and Korea: 15 million SDRs ($21 million)

Construction services, other: 5 million SDRs ($7 million)

During the negotiations, each signatory negotiated the exclusion of certain procurement from the obligations imposed by the new Agreement. In the case of the United States, these exclusions carry forward those in the U.S. schedule to the 1979 Code. In addition, certain states excluded specified procurement, and set-asides on behalf of small and minority businesses are also excluded. The 1994 Agreement will apply to all U.S. executive branch agencies with certain exceptions, including the Federal Aviation Administration.

Signatories to the 1996 Code include the following members of the 1979 Code—Austria, Canada, the member states of the European Union, Finland, Israel, Japan, Norway, Sweden, Switzerland, and the United States—plus one new member, the Republic of Korea. The 1996 Code entered into force on January 1, 1996 for all members, except that Korea delayed implementation for 1 year. The United States terminated its participation in the 1979 Code on the entry into force of the 1996 Code.

### THE NORTH AMERICAN FREE TRADE AGREEMENT

The NAFTA signatories agreed to eliminate buy national restrictions on the majority of non-defense related purchases by their federal governments of goods and services provided by firms in North America. The Agreement marked the first time that Mexico had committed to eliminate discriminatory government procurement practices.

The Agreement applies only to purchases above a specified threshold:

(1) Purchases of goods over $25,000 by U.S. federal agencies from Canadian suppliers and vice versa;

(2) For other federal government procurement in the three countries, purchases of goods and services over $50,000 and purchases of construction services over $6.5 million; and

(3) For federal government-owned enterprises, purchases of goods and services over $250,000 and purchases of construction services over $8 million.

The Agreement does not apply to certain kinds of purchases by the U.S. government including purchases under small or minority business set-aside programs, certain national security, agriculture,

and Agency for International Development procurements, and procurements by state and local governments.

TITLE III OF THE TRADE AGREEMENTS ACT OF 1979, AS AMENDED

Congress approved the first Agreement on Government Procurement under section 2 of the Trade Agreements Act of 1979 and amended that statute in the Uruguay Round and NAFTA implementing bills to reflect U.S. obligations under those agreements. Title III of that Act implements the obligations of the Code in U.S. law with respect to purchases by covered government entities.[49]

Executive Order 12260, issued on December 31, 1980, requires all U.S. government agencies covered by the Code to observe its provisions. Section 301 of the 1979 Act authorizes the President to waive the application of discriminatory government procurement law, such as the Buy American Act, and labor surplus set-asides that are not for a small business. The waiver authority applies only to purchases covered by the Code and only to foreign countries designated by the President that meet one of four statutory conditions basically requiring the country to provide appropriate reciprocal, competitive government procurement opportunities to U.S. products and suppliers, unless the country is a least developed country.

Buy American Act preferences still apply to contracts below the SDR threshold, purchases by non-covered entities, and procurement from countries not eligible for a waiver regardless of contract size. Special Buy American-type restrictions under other laws (e.g., small business set asides, required domestic sourcing of particular goods) are also not affected.

Section 302 of the 1979 Act, as amended, is designed to encourage other countries to participate in the Code and provide appropriate reciprocal competitive opportunities. For this purpose, the President is required, after the date on which any waiver first takes effect, to prohibit the procurement of products otherwise covered by the Code from non-designated countries. The President may, however, (1) waive the prohibition on procurement of products by a foreign country or instrumentality that has not yet become a party to the Agreement but has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement and to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; (2) authorize agency heads to waive prohibitions on a case-by-case basis when in the national interest; and (3) authorize the Secretary of Defense to waive the prohibition for products of any country which enters into a reciprocal procurement agreement with the Department of Defense. All such waivers are subject to interagency review and general policy guidance.

Section 303 authorizes the President to waive as of January 1, 1980 the application of the Buy American Act for purchases by any government entity of civil aircraft and related articles irrespective of value from countries party to the GATT Agreement on Trade in Civil Aircraft.

Section 304 sets forth negotiating objectives in conjunction with the renegotiation of the Code within 3 years to improve its oper-

[49] 19 U.S.C. 2511–2518.

ation and broaden the coverage. The President is directed to seek more open and equitable foreign market access and the harmonization, reduction, or elimination of devices distorting government procurement trade. The President must also seek equivalent competitive opportunities in developed countries for U.S. exports in appropriate product sectors as the United States affords their products, such as in the heavy electrical, telecommunications, and transport equipment sectors. The President must report to the committees of jurisdiction during the renegotiations if he determines they are not progressing satisfactorily and are not likely to result within 12 months in expanded agreement coverage of principal developed country purchasers in appropriate product sectors. The President is also directed to indicate appropriate actions to seek sector reciprocity with such countries in government procurement, and may recommend legislation to prohibit procurement by entities not covered by the Code from such countries.

Title III of the 1979 Act, as amended, also contains a number of reporting requirements to the Congress on various aspects of the Code and its economic impact and implementation.

## TITLE VII OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988, AS AMENDED

### *Background*

Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Buy American Act of 1988")[50] as amended by the Uruguay Round Agreements Act, amended both the Buy American Act of 1933 and title III of the Trade Agreements Act of 1979 to address discrimination by foreign governments in the procurement of U.S. products or services. Title VII prohibits U.S. government procurement of products and services from certain parties, including (1) signatories "not in good standing" to the Agreement; (2) signatories in good standing that discriminate against U.S. firms in their government procurement of products or services not covered by the Agreement; and (3) non-signatories to the Agreement whose governments discriminate against U.S. products or services in their procurement.

In the case of countries that discriminate on procurement not covered by the Agreement, prohibitions are to be imposed when a foreign government maintains a significant and persistent pattern or practice of discrimination against procurement of U.S. products or services that results in identifiable harm to U.S. business. In cases of signatories to the Agreement, federal agencies would be prohibited from procuring only non-Agreement covered products from these countries unless that country has also been designated as a country "not in good standing."

Least developed countries are exempt from the procurement prohibition, as are products and services procured and used by the federal government outside the United States and its territories. A prohibition may also be waived, on a contract-by-contract or class of contracts basis, when in the public interest or to avoid the creation of a monopoly situation. The President or head of a federal agency may also authorize the award of a contract or class of con-

[50] 41 U.S.C. 10a note.

tracts, notwithstanding a prohibition, if insufficient competition exists to assure the procurement of products or services of requisite quality at competitive prices. Normally the Congress must be notified at least 30 days before the prohibition is waived on a contract or class of contract.

The President must submit to appropriate congressional committees, by April 30 each year, a report on the extent to which countries discriminate against U.S. products or services in making government procurements. The report must identify (1) signatories to the Agreement that are not in compliance with its requirements; (2) signatories to the Agreement whose products and services are acquired in significant amounts by the U.S. government, who are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products and services not covered by the Agreement which results in identifiable harm to U.S. businesses; (3) non-signatories to the Agreement whose products or services are acquired in significant amounts by the U.S. government and who maintain in their government procurement a significant and persistent pattern or practice of discrimination which results in identifiable harm to U.S. businesses; (4) non-signatories to the Agreement, which fail to apply transparent and competitive procedures equivalent to those in the Agreement, and whose products and services are required in significant amounts by the U.S. government; and (5) non-signatories to the Agreement which fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement, and whose products and services are required in significant amounts by the U.S. government. The law requires the President to take into account a number of specific factors in identifying countries and to describe the practices and their impact in the annual report.

By the date the annual report is submitted, the U.S. Trade Representative (USTR) must request consultations with any identified country, unless that country was also identified in the preceding annual report. If the country is a signatory identified as not in compliance with the Agreement and does not comply within 60 days after the annual report is issued, the USTR must request formal dispute settlement proceedings under the Agreement, unless they are already underway pursuant to a previous identification. If dispute settlement is not concluded within 18 months or has concluded and the country has not taken action required as a result of the procedures to the satisfaction of the President, the country is considered "not in good standing" and the President is required to revoke the waiver of Buy American restrictions granted under the Trade Agreements Act of 1979, as amended. The President will not limit procurement from the foreign country if, before the end of 18 months following initiation of dispute settlement, the country has complied with the Agreement, has taken action recommended as a result of the procedures to the satisfaction of the President, or the procedures result in a determination requiring no action by the country. The President may also terminate the sanctions and reinstate a waiver at any time under such circumstances.

Within 60 days after the annual report is issued, the President must impose the procurement prohibition on any country identified

as discriminating on procurements not covered by the Agreement and which has not eliminated its discriminatory procurement practices. The President may terminate the sanctions at such time as he determines the country has eliminated the discrimination.

With respect to either category of countries, if the President determines that imposing or continuing the sanctions would harm the U.S. public interest, the President may modify or restrict the application of the sanctions to the extent necessary to impose appropriate limitations that are equivalent in their effect to the discrimination against U.S. products or services in government procurement by that country. The President also cannot impose sanctions if it would (1) limit U.S. government procurement to, or create a preference for, products or services of a single supplier; or (2) create a situation where there could be or are an insufficient number of actual or potential bidders to assure U.S. government procurement of goods or services of requisite quality at competitive prices.

By April 30 of each year, the President must submit to the Congress a general report on actions taken under title VII, including an evaluation of the adequacy and effectiveness of such actions as a means toward eliminating foreign discriminatory government procurement practices against U.S. businesses and, if appropriate, legislative recommendations for enhancing the usefulness of title VII or any other measures to eliminate or respond to foreign discriminatory foreign procurement practices.

Title VII statutory authority ceased to be effective on April 30, 1996.

*History of actions under title VII*

In its first report on April 27, 1990, the U.S. Trade Representative determined that no country currently met the statutory criteria under title VII. Seven procurement markets of particular significance to U.S. suppliers were identified for close review over the following year before the 1991 report: the European Community (EC), the Federal Republic of Germany, France, Italy, Greece, Japan, and Australia.

In its second annual report on April 26, 1991, the USTR identified Norway as meeting the statutory requirements for identification as a country in violation of its obligations under the GATT Government Procurement Agreement when it awarded a sole source contract for an electronic toll booth collection system for the city of Trondheim. The report also announced that while some progress was made with the EC on non-Code-covered government procurement in the telecommunications equipment and heavy electrical equipment sectors, an early review would be conducted of the practices of the EC, Germany, France, and Italy in these areas in January 1992 if U.S. concerns had not been addressed. Procurement practices of Greece, Australia, and Japan were also identified for further monitoring.

In its February 21, 1992 report on the "early review," the USTR found that the EC met the requirements for identification under title VII with respect to discriminatory procurement practices of government-owned telecommunications and electrical utilities in certain of its member states. Specifically, the report cited the EC's September 1990 "Utilities Directive," scheduled to go into effect by

January 1, 1993, establishing procurement rules for all EC telecommunications and heavy electrical utilities requiring them to favor EC goods and services over those of the United States and other foreign countries, subject to waiver if a negotiated market access agreement, such as a new GATT Government Procurement Code, were reached with other countries. The report stated the President's intention to implement appropriate sanctions by January 1993 if ongoing negotiations with the EC were not successful in resolving U.S. concerns, subject to EC implementation of the discriminatory provisions of its Utilities Directive. On April 22, at the conclusion of the consultation period provided under title VII, the President reaffirmed the identification of the EC, but announced that the statutory sanctions would be modified.

The third annual report on April 29, 1993 continued the identification of Norway for the same practice and stated that dispute settlement proceedings were expected to conclude in the near future. The report also reaffirmed the President's intention with respect to the EC and cited certain procurement markets in Australia, Japan, and China for further monitoring.

The fourth annual report on April 30, 1993, identified Japan for discrimination in procurement of construction, architectural and engineering services. The report continued the identification of the EC pending EC Council of Ministers approval of an agreement on heavy electrical equipment and because the EC did not agree to waive the Utilities Directive for telecommunications equipment. Since no agreement had been reached on telecommunications discrimination, the United States would proceed to impose title VII sanctions. Actions of other countries which have agreements with the EC that may require implementation of the discriminatory provisions of the EC Utilities Directive would also be monitored. Procurement practices falling short of statutory requirements for identification were noted of continuing concern in Australia, China, and Japan. On May 28, 1993, the United States imposed sanctions. Effective March 10, 1994, USTR terminated those sanctions with respect to the Federal Republic of Germany on the basis of assurances that it would not apply the discriminatory provisions of the Utilities Directive to procurement of U.S. goods by its telecommunications utilities.

On January 19, 1994, USTR announced the termination of sanctions, scheduled to go into effect on January 20, on the basis of an announcement by Japan of an action plan to reform its public sector construction market.

On April 30, 1994, USTR annunced that sanctions imposed against the European Union (EU) on May 28, 1993 for discrimination in the telecommunications sector would remain in force since the United States and EU could not reach agreement as part of the overall U.S.-EU agreement reached on April 13 under the GATT Government Procurement Code.

As a result of some progress towards resuming negotiations on telecommunications and medical technology government procurement, Japan was not identified in the fifth annual report, subject to review within 60 days on the basis of Japanese actions in the interim. The report also described concerns with procurement prac-

tices of Australia, China, and Brazil, and in the Japanese supercomputer and computer sectors.

On June 30, 1994, the USTR announced the postponement until not later than July 31 of the decision on whether to identify Japan for its discriminatory procurement practices in the telecommunications and medical technology sectors because of intensive negotiations underway on these priority sectors identified under the July 1993 U.S.-Japan Framework Agreement. On July 31, the USTR announced the identification of Japan and commencement of the title VII 60-day consultation and negotiation period as a result of Japan's failure to address sufficiently discrimination in the two sectors. On October 4, 1994, the USTR determined that sanctions scheduled to go into effect on Japanese goods and services should be terminated as the result of an agreement between the United States and Japan.

On April 29, 1995, the USTR announced no new identifications with respect to title VII but highlighted several areas as deserving special attention. First, the USTR pointed to the issue of corruption in foreign procurement and lack of transparency in procurement procedures. Second, the USTR intends to monitor German implementation of the 1993 U.S.-EU Memorandum of Understanding (MOU) on Government Procurement. Third, the United States will monitor Japanese compliance with the agreements on telecommunications and medical technology to assure tangible progress. Moreover, the USTR announced that the report will include information on the procurement practices of Australia, Brazil, and China, in addition to Japanese procurement practices in the supercomputers and computers sectors. Finally, the USTR noted that the sanctions first applied in 1993 against the EU for discrimination in the telecommunications sector continue and are being extended to the three new member states—Austria, Finland, and Sweden.

On April 30, 1996, the USTR identified Germany for discrimination in the heavy electrical equipment sector and its failure to adequately implement its obligations under the U.S.-EU MOU on Government Procurement. Effective January 1, 1996, the U.S.-EU commitments under the 1993 MOU were incorporated into the World Trade Organization Government Procurement Agreement (WTO GPA) and the MOU expired. The Administration expressed concern that the inadequacies of Germany's implementation of the MOU might carry over into its implementation of the WTO GPA. At the end of a 90-day consultation period, the USTR announced on October 1, 1996, that Germany had agreed to take steps that would effectively ensure open competition in the German heavy electrical equipment market. Title VII action was not terminated but the imposition of sanctions was further delayed pending passage of a satisfactory legislative reform package expected within one year.

USTR also noted in the 1996 report that the Administration received no comments on specific cases or practices of bribery and corruption for the second year since amendments under the 1994 Uruguay Round Agreement Act added bribery and corruption as a category for identification. Noting that many U.S. firms do not come forward publicly with cases of bribery and corruption influencing contract awards for fear of commercial backlash in future

contracts, the Administration stated its intention to continue working toward the establishment of multilateral mechanisms for eliminating bribery and corruption in government procurement. Finally, the report describes the Administration's concerns with the procurement practices of Australia, Brazil and China, as well as its concern with Japan's procurement practices in the areas of public works building, supercomputers and computers.

# Chapter 4: LAWS REGULATING EXPORT ACTIVITIES

## Export Controls

### BACKGROUND

Through statute, Congress has authorized the President to control the export of various commodities. The three most significant programs for controlling different types of exports deal with nuclear materials and technology, defense articles and services, and non-military dual-use goods and technology. Under each program, licenses of various types are required before an export can be undertaken. The Nuclear Regulatory Commission is responsible for the licensing of nuclear materials and technology under the Atomic Energy Act. The Department of State is responsible for the licensing of exports of defense articles and services and maintains the Munitions Control List under the Arms Export Control Act.

Export licensing requirements for most commercial goods and technical data are authorized by the Export Administration Act under the jurisdiction of the Bureau of Export Administration in the Department of Commerce. The three basic purposes of export controls are to protect the national security, to further U.S. foreign policy interests, and to protect commodities in short supply. The Secretary of Defense is authorized to review certain applications for national security purposes while the Secretary of State reviews specified license applications for foreign policy purposes.

The export of goods or technical data subject to the commodity control list (CCL) must be authorized by licenses (either individual validated licenses or bulk licenses authorizing multiple shipments) which are granted on the basis of such factors as intended end-use and the probability and likely effect of diversion to military use. Exports and reexports from a foreign country of U.S.-origin commodities and technical data or of foreign products containing U.S.-origin components or technology are also regulated. The CCL contains over 200 categories of goods and technologies applied to 7 country groups, with the most stringent controls (near total embargoes) on exports to Cuba and North Korea.

The foreign policy export control authority was used by President Carter to embargo the export of grain to the Soviet Union after the 1979 Soviet invasion of Afghanistan. President Reagan used it again in 1981 until late 1983, following the imposition of martial law in Poland, to embargo sales by U.S. firms and their foreign subsidiaries of oil and gas transmission and refining commodities and technology for use by the Soviet Union on its natural gas pipeline to Western Europe. Crime control and detection instruments and equipment are subject to control for foreign policy reasons to countries which may engage in persistent gross violations of human rights. Certain other goods and technology are controlled to

five countries (Libya, Iran, Syria, South Yemen, and Cuba) due to their repeated support of international terrorism.

Sanctions against international terrorism were enacted as amendments to the Export Administration Act of 1979 under the Anti-Terrorism and Arms Export Amendments Act of 1989[1] and the National Defense Authorization Act for Fiscal Year 1991.[2]

The short supply control authority was used to help control raw materials prices during the Korean conflict. In 1973 President Nixon prohibited soybean exports as a response to rapidly increasing prices. The export of crude oil carried on the Trans-Alaska Pipeline is prohibited. Exports of crude oil and refined and unprocessed western red cedar harvested from federal or state lands are subject to validated licensing requirements.

The U.S. government has employed export controls continuously since 1940. The first controls were imposed to avoid or mitigate the scarcity of various critical commodities during World War II and to assure their equitable distribution within the U.S. economy and to U.S. allies. Export controls were expected to terminate after shortages created by World War II were substantially eliminated. However, the cold war led to enactment of the Export Control Act of 1949, designed to control all U.S. exports to Communist countries.

The Export Control Act of 1949 provided for the control of items in short supply, for controls to further U.S. foreign policy goals, and for the examination of exports to Communist countries which might have military application. The 1949 Act, amended and extended as appropriate, remained in effect for 20 years. The 1949 Act was then replaced by the Export Administration Act of 1969, which was in turn replaced by the Export Administration Act of 1979.

The 1969 Act maintained the basic export control system set up by the Export Control Act, but called for a removal of controls on goods and technologies that were freely available from foreign sources and that were only marginally of military value. The 1969 Act was amended in 1972, 1974, and 1977.

A significant expansion of controls was brought about in 1977 when Congress amended the 1969 Act to authorize the control of goods and technology exported by any person subject to the jurisdiction of the United States, thus permitting the Department of Commerce to exercise control over foreign-origin goods and technical data reexported by U.S.-owned or U.S.-controlled companies abroad. Anti-boycott policies (originally established by Congress in 1965) were also substantially strengthened in 1977.

## EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979[3] as reauthorized and amended in 1985 and 1988 replaced the 1969 Act as amended, which expired on September 30, 1979. The 1979 Act provides the broad and primary authority for controlling the export from the United States to potential adversary nations of civilian goods and

[1] Public Law 101–222, section 4, approved December 12, 1989.
[2] Public Law 101–510, section 1702, approved November 5, 1990.
[3] Public Law 96–72, as amended by P.L. 96–533, P.L. 97–145, P.L. 98–108, P.L. 98–207, P.L. 98–222, P.L. 99–64, P.L. 99–399, P.L. 99–441, P.L. 99–633, P.L. 100–180, P.L. 100–418, P.L. 100–449, P.L. 101–222, and P.L. 101–510, 50 U.S.C. App. 2401.

technology which could contribute significantly to the military capability of controlled countries (consisting of Communist countries, as defined in section 620(f) of the Foreign Assistance Act of 1961) if diverted to military application (national security controls under section 5). Like the previous law, the 1979 Act also authorized the President to impose export controls for foreign policy reasons or to fulfill international obligations (foreign policy controls under section 6) and to protect the domestic economy from an excessive drain of scarce materials and to reduce the inflationary impact of foreign demand (short supply controls under section 7). The Act also continues the 1977 anti-boycott program (section 8) which prohibits U.S. persons from taking action with the intent to comply with, further, or support any foreign country boycott against any country friendly to the United States (primarily Arab states against Israel).

In its 1979 review of the Export Administration Act of 1969, the Congress made substantial changes in the statute. Separate and distinct procedures and criteria were established for imposing national security and foreign policy controls. Precise time deadlines were set for the processing of export license applications. Development of a "militarily critical technologies list" (MCTL) was mandated, both as a means of reviewing the adequacy and focus of the existing commodity control list of categories of goods and technologies subject to Commerce export controls, and as a possible means of arriving at a more limited control list containing only the most militarily significant technologies. Foreign availability of goods controlled by the United States was, for the first time, made a factor in decisions to license such items for export.

The Act also formally authorized U.S. participation in the informal multilateral export control body known as COCOM (Coordinating Committee on Multilateral Export Controls) in which the NATO countries (with the exception of Iceland) and Japan also participate. Since 1950, COCOM has attempted to coordinate the export control policies of the Western allies with respect to Communist countries. Representatives of the participating governments meet periodically to set guidelines for controls on exports to Communist countries. The 1979 Act directed the President to negotiate with other COCOM governments in an effort to reach agreement on reducing the scope of export controls, holding periodic high-level meetings on COCOM policy, publishing the list of items controlled by COCOM, and introducing more effective procedures for enforcing COCOM export controls.

The 1979 Act authorized the administration of export controls until September 30, 1983. The Act was extended temporarily three times during the 98th Congress, through October 15, 1983, subsequently through February 28, 1984, and finally until March 30, 1984,[4] while the Congress considered proposals for major changes in the law. During the lapses in authority in 1983 and after the 1979 Act terminated on March 30, 1984, and House-Senate differences could not be resolved prior to congressional adjournment on October 12, 1985, the President administered export controls

[4] Public Law 98–108, approved October 1, 1983; Public Law 98–207, approved December 5, 1983; Public Law 98–222, approved February 29, 1984.

under the authority of the International Emergency Economic Powers Act and Executive Order 12470 of March 30, 1984, as an interim method of control until new authority could be passed by Congress. The Export Administration Amendments Act of 1985[5] which reauthorized the 1979 Act for 4 years until September 30, 1989, with comprehensive amendments, was enacted on July 12, 1985.

## EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985

The 1985 Act left intact the basic structure of U.S. national security, foreign policy, and short-supply export controls. The main goals of the 1985 Act were to improve U.S. export competitiveness and to promote national security interests through stricter controls and better enforcement.

Increased U.S. competitiveness was to be achieved by easing the total licensing burden on U.S. businesses. Export licensing requirements were eliminated in the case of certain relatively low-technology items, and the Secretary of Commerce was directed to review and revise the commodity control list at least once a year. The approval process for license applications was to be streamlined as well. The 1985 amendments also addressed the issue of foreign availability by specifying a process to provide for the review and decontrol of goods found to be widely available and unable to be brought under control.

The promotion of national security interests was to be achieved by providing stricter controls for the export of critical items and strengthening the enforcement of U.S. export controls. The 1985 Act required the United States to undertake negotiations with COCOM countries to achieve greater coordination and compliance with multilateral controls, fewer exceptions to the control list, and strengthened and uniform enforcement. It created new criminal offenses against illegal diversions and added to the broad range of sanctions against violators of U.S. export controls.

The Act also restrained the President's authority to impose new foreign policy export controls, particularly to embargo agricultural exports. Additional requirements for consultations with industry and Congress prior to the imposition of foreign policy controls and greater attention to specified criteria, including the foreign availability of competing products, are to be considered prior to decisons to extend, expand, or impose export controls.

The 1985 Act also imposed limitations on, but did not entirely eliminate, the discretion of the President to impose foreign policy controls on exports subject to existing contracts. The Act prohibits controls on exports of goods or technology under existing contracts except where the President determines and certifies to the Congress that a breach of the peace poses a serious and direct threat to U.S. strategic interests and the prohibition or curtailment of such contracts would be instrumental in remedying the situation posing the direct threat.

The Act set forth stiffer penalties for violators and granted new powers for enforcement to the Department of Commerce and the U.S. Customs Service and clarified the respective roles of these

[5] Public Law 99–64.

agencies. Commerce retained the primary responsibility for licensing and domestic enforcement whereas Customs was given primary responsibility for enforcement at all U.S. ports of exit and entry as well as all enforcement responsibility overseas. The legislation itself was silent on the controversial issue of the role and authority of the Department of Defense in reviewing export license applications for U.S. shipments to Western nations.

The Act created a new Under Secretary of Export Administration and two Assistant Secretaries in the Department of Commerce and a new National Security Council Office in the Department of Defense. Congress also directed that an Office of Foreign Availability be established in the Department of Commerce.

### OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Congressional dissatisfaction with the implementation of the Export Administration Amendments Act of 1985 led to the introduction of new legislation during both the 99th and 100th Congresses. The Omnibus Trade and Competitiveness Act of 1988[6] contains major revisions of the Export Administration Act of 1979. Like the 1985 amendments, the 1988 Act emphasized the reduction of export disincentives and the strengthening of export enforcement. A clarification of the dispute resolution process was also a part of the Act. The authorization date for the Export Administration Act was extended by 1 year to September 30, 1990.

The 1988 Act provided for the reduction of export disincentives through a streamlining of licensing requirements, control list reduction, and improved procedures for making foreign availability determinations. The 1988 Act also provides for the use of distribution licenses for multiple exports to the People's Republic of China.

The 1988 Act provides for stronger enforcement of U.S. and multilateral export controls.

In the case of persons convicted of violations of the Export Administration Act of 1979 or the International Emergency Economic Powers Act,[7] the Department of Commerce is authorized to bar such persons from applying for or using export licenses. Such authority is also extended to parties related through affiliation, ownership, control, or position of responsibility to any person convicted of violations.

In response to the sale by Toshiba Machine Company of Japan and Kongsberg Trading Company of Norway of advanced milling machinery to the Soviet Union, the Congress passed the Multilateral Export Control Enhancement Amendments Act.[8] Section 2443 of that Act requires the President to impose, for a period of 3 years, a ban on U.S. government contracting with and procurement from the two cited companies and their parent companies. That section also required the President to prohibit the importation of all products produced by Toshiba Machine Company and Kongsberg Trading Company for a period of 3 years. The sanctions required by sec-

[6] Public Law 100–418, title II, subtitle D, approved August 23, 1988.
[7] Public Law 95–223, approved December 28, 1977.
[8] Public Law 100–418, sections 2441–2447, approved August 23, 1988.

tion 2443 were imposed by President Reagan on December 27, 1988[9] and remained in effect until December 28, 1991.

The Export Administration Act of 1979 expired on September 30, 1990. The 101st Congress passed legislation (H.R. 4653) to reauthorize the Act, but the President exercised a pocket-veto in November 1990. During the 102d Congress, the House and Senate passed bills and produced a conference report reauthorizing the Export Administration Act of 1979. The conference report failed to be considered before the 102d Congress adjourned sine die. Since September 30, 1990, the President has exercised the authorities provided in the International Emergency Economic Powers Act to continue in effect the existing system of export controls.

During the 103d Congress, the Export Administration Act was extended twice. On March 27, 1994, Public Law 103–10, the Export Administration Fiscal Year 1994 Authorization bill, extended the Act through June 30, 1994.[10] Public Law 103–277 provided for an additional extension until August 20, 1994 as discussions between the Administration and the Congress continued on revisions to the Act.[11] Because the Congress did not take final action on a revised Export Administration Act before the close of the session, the President once again used the International Emergency Economic Powers Act authorities to continue the existing export control system. On August 19, 1994, President Clinton issued an executive order continuing the export control regulations provided under the Act.[12] The President announced a continuation of the emergency on August 15, 1995 (60 Fed. Reg. 42,767) and again on August 14, 1996 (61 Fed. Reg. 42,527).

## Export Promotion of Goods and Services

### EXPORT ENHANCEMENT ACT OF 1988

The Export Enhancement Act, enacted under title XXIII of the Omnibus Trade and Competitiveness Act of 1988,[13] includes provisions which establish in statute the United States and Foreign Commercial Service in the International Trade Administration of the Department of Commerce. The basic purpose of the Service is to promote the export of U.S. goods and services, particularly by small- and medium-sized businesses, and to promote and protect U.S. business interests abroad. Section 2306 requires the Service to make a special effort to encourage U.S. exports of goods and services to Japan, South Korea, and Taiwan.

Section 2303 authorizes the Secretary of Commerce to establish a market development cooperator program in the International Trade Administration to develop, maintain, and expand foreign markets for U.S. non-agricultural goods and services. The program is implemented through contracts with non-profit industry organizations, trade associations, state departments of trade and their regional associations, and private industry firms or groups of firms

[9] Executive Order 12661, dated December 27, 1988; "Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters."

[10] Public Law 103–10, approved March 27, 1994.

[11] Public Law 103–277, approved July 5, 1994.

[12] Executive Order 12924, dated August 19, 1994; "Continuation of Export Control Regulations."

[13] Public Law 100–418, approved August 23, 1988, 15 U.S.C. 4721 et seq.

(all referred to as "cooperators"). The Secretary was also directed to establish, as part of the program, a partnership program with cooperators under which cooperators may detail individuals to the Service for 1 to 2 years. This program is modeled after a similar program established by the Foreign Agricultural Service in the late 1950's to develop overseas commercial market opportunities for American agricultural exports.

In order to facilitate exporting by U.S. businesses, section 2304 requires the Secretary to provide assistance for trade shows in the United States which bring together representatives of U.S. businesses seeking to export goods or services, particularly participation by small businesses, and representatives of foreign companies or governments seeking to buy such U.S. goods or services. Sections 2312 and 2313 added to the Act made by title II of the Export Enhancement Act of 1992[14] expanded export promotion efforts. Section 2312 establishes in statute the Trade Promotion Coordinating Committee (TPCC) and directs it to coordinate the export promotion and export financing activities of the federal government and to develop a governmentwide strategic plan for carrying out federal export promotion and financing programs, including establishment of priorities. The Chair of the TPCC must submit an annual report to the Congress on the strategic plan developed. Section 2313 states the U.S. policy to foster the export of U.S. environmental technologies, goods, and services, and establishes the Environmental Trade Promotion Working Group within the TPCC for this purpose.

The Jobs Through Export Expansion Act of 1994 amended section 2313 to provide for the establishment of an environmental technologies trade advisory committee, including representatives of the private sector and the states, to advise the TPCC working group. The amendment also requires the working group to develop export plans for five priority countries and the placement of environmental technology specialists in each of the priority countries.[15]

## FAIR TRADE IN AUTO PARTS ACT OF 1988

The Fair Trade in Auto Parts Act of 1988, sections 2121–2125 of the Omnibus Trade and Competitiveness Act of 1988,[16] requires the Secretary of Commerce to establish an initiative to increase the sale of U.S.-made auto parts and accessories to Japanese markets, including to U.S. subsidiaries of Japanese firms. The Secretary also is required to establish a Special Advisory Committee to advise and assist the Secretary in carrying out the initiative to increase U.S. auto parts sales in Japanese markets. The authorities granted under sections 2121–2125 expire on December 31, 1998.

In response to low sales of U.S. auto parts and accessories to Japanese auto firms based both in Japan and in the United States, Congress adopted the Fair Trade in Auto Parts Act of 1988. This action followed negotiations in 1986–87 between the U.S. and Japanese governments aimed at improving U.S. access to the Japanese auto parts markets. The provision was intended to provide for a

[14] Public Law 102–429, approved October 21, 1992.
[15] Public Law 103–392, approved October 22, 1994, 15 U.S.C. 4701 note.
[16] Public Law 100–418, approved August 23, 1988, 15 U.S.C. 4701.

longer-term effort to increase data collection, information exchange, and generally improved U.S. market access in the Japanese auto parts sector.[17]

## Agricultural Export Sales and Promotion

To help finance sales of U.S. farm commodities abroad, the U.S. Department of Agriculture (USDA) administers several sales and credit programs. These include the concessional sales program under the authority of the Agricultural Trade Development and Assistance Act of 1954, as amended, commonly known as Public Law 480,[18] and the commercial programs of the Commodity Credit Corporation (CCC).

### PUBLIC LAW 480

Public Law 480 was reauthorized through the end of 2002 by the Federal Agriculture Improvement and Reform Act of 1996.[19] Title I of Public Law 480 authorizes sales of U.S. agricultural commodities to developing countries or private entities for dollars on credit terms or for local currencies. Credit is provided at concessional interest rates for repayment periods up to 30 years. The Secretary of Agriculture may allow a grace period of up to 5 years before repayment must begin. Title II authorizes donations of U.S. agricultural commodities for emergency humanitarian relief and for development projects. Title II is implemented primarily through U.S. private voluntary organizations or cooperatives and the United Nations world food program. Title III authorizes donations to governments of least developed countries for direct feeding programs, emergency food reserves, and recipient government sales which are used to finance economic development activities. As a result of reforms made by Public Law 104–127, USDA is responsible for administering title I, while the U.S. Agency for International Development (USAID) is responsible for administering titles II and III.

### EXPORT CREDIT GUARANTEE AND EXPORT PROMOTION PROGRAMS

USDA, using the resources of the Commodity Credit Corporation (CCC), offers both commercial credit and export promotion programs designed to maintain and expand overseas markets for U.S. farm products.

In operating two export credit guarantee programs, the CCC guarantees U.S. banks against defaults on payments due from foreign banks on the agricultural export sales they finance. Guarantees are made against political risks such as warfare, expropriation, exchange controls, and other foreign government actions, and against economic risks such as a foreign bank failure or a country's debt repayment problems. The U.S. banks deal directly with foreign purchasers to set loan repayment terms and interest rates, but must meet certain requirements to qualify for CCC guarantees.

The GSM–102 program guarantees credits for up to 3 years for commercial export sales of U.S. agricultural commodities from pri-

[17] Market Oriented Sector Specific Talks on Transportation Machinery, initiated on August 26, 1986 and concluded on August 18, 1987.
[18] Public Law 83–480, approved July 10, 1954, 7 U.S.C. 1701–1736d.
[19] Public Law 104–127, approved April 4, 1996.

vately owned stocks. The GSM–103 program guarantees credits for longer periods of 3 to 10 years. The Federal Agriculture Improvement and Reform Act of 1996 (the "farm bill") authorized the CCC to make available for each fiscal year 1996 through 2002, $5.5 billion in credit guarantees. The Secretary of Agriculture is given flexibility to allocate these funds between short-term (up to 3 years) and intermediate-term (3 to 10 years) guarantees. In addition, the farm bill authorizes another $1 billion of export credit guarantees or direct credits for fiscal years 1996 through 2002 for countries that are classified as "emerging markets." Emerging markets are countries taking steps toward a market-oriented economy and have potential to become viable commercial markets for U.S. agricultural exports.[20]

Title III of the Agricultural Trade Act of 1978, as amended by the Uruguay Round Trade Agreements Act of 1994[21] and the 1996 farm bill,[22] authorizes the export enhancement program (EEP).

The EEP was first established by the Congress in the Food Security Act of 1985[23] (the 1985 farm bill) to counter foreign exporters' use of subsidies as a means of increasing their agricultural exports. The Uruguay Round Agreements Act revised the definition of the EEP "to encourage the commercial sale of U.S. agricultural commodities in world markets at competitive prices." The Uruguay Round Agreements Act also provided that EEP would be "carried out in a market sensitive manner" and "not limited to responses to unfair trade practices."[24] Under EEP, the CCC makes cash bonuses available to private U.S. exporters on a bid basis to compensate them for making competitively-priced sales in overseas markets. The 1996 farm bill reauthorized EEP for fiscal years 1996 through 2002 and set annual maximum spending levels: $350 million in fiscal year 1996; $250 million in fiscal year 1997; $500 million in fiscal year 1998; $550 million in fiscal year 1999; $579 million in fiscal year 2000; and $478 million annually in fiscal years 2001 and 2002.

The CCC also administers the market access program (MAP) in order to "encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program." The MAP was established under the 1996 farm bill as the successor to the market promotion program (MPP) authorized by the 1990 farm bill. MPP had replaced the targeted export assistance program (TEA) of the Food Security Act of 1985. Unlike the TEA, priority is no longer accorded to exports which encounter unfair trade practices or barriers in foreign markets.

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[20] Public Law 104–127, approved April 4, 1996.
[21] Public Law 103–465, approved December 8, 1994, 19 U.S.C. 3501 note.
[22] Public Law 104–127, approved April 4, 1996.
[23] Public Law 99–198, approved December 23, 1985.
[24] Public Law 103–465, approved December 8, 1994, 7 U.S.C. 5601 note.

# Chapter 5: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

## International Emergency Economic Powers Act

In 1977, Congress passed the International Emergency Economic Powers Act (IEEPA).[1] The Act grants the President authority to regulate a comprehensive range of financial and commercial transactions in which foreign parties are involved but allows the President to exercise this authority only in order "to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency . . . with respect to such threat."

*Background*

Public Law 95–223, of which IEEPA constitutes title II, redefined the President's authorities to regulate international economic transactions in times of national emergency as well as war, until then provided by section 5(b) of the Trading With the Enemy Act (TWEA) (50 App. U.S.C. 5(b)), by eliminating TWEA's applicability to national emergencies[2] and instead providing such authorities in a separate statute of somewhat narrower scope and subject to congressional review.

The authorities granted to the President under IEEPA broadly parallel those contained in section 5(b) of the TWEA but are somewhat fewer and more circumscribed. While under the TWEA the existence of any declared national emergency, whether or not connected with the circumstances requiring emergency action, was used as the basis for such action, the IEEPA allows emergency measures against an external threat only if a national emergency has been declared with respect to the same threat. Furthermore, certain authorities contained in the TWEA and still applicable in times of war are not included in the IEEPA, such as the powers to vest foreign property, to regulate purely domestic transactions, to regulate gold or bullion, or to seize records. Nevertheless, the President's authorities under the IEEPA still remain extensive. The President may "by means of instructions, licenses, or otherwise . . . investigate, regulate, prevent, or prohibit" virtually any foreign economic transaction, from import or export of goods and currency to transfer of exchange or credit. The only international transactions exempted from this authority are personal communications not involving a transfer of anything of value, charitable

[1] Public Law 95–223, title II, approved December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701–1706.

[2] Title I of Public Law 95–223 also provides for the continuation in force, through annual presidential extensions, of certain measures implemented on the basis of national emergencies declared under the TWEA. For further detail, see section on the Trading With the Enemy Act.

donations of necessities of life to relieve human suffering (except in certain circumstances), transactions in publications or various other informational materials not otherwise controlled by export control law or prohibited by espionage law, or personal transactions ordinarily incident to travel.

IEEPA requires the President to consult with Congress, whenever possible before declaring a national emergency, and while it remains in force. Once a national emergency goes into effect, the President must submit to Congress a detailed report explaining and justifying his actions and listing the countries against which such actions are to be taken, and why.

*Application*

Since its enactment, the authority conferred by the IEEPA has been exercised on several occasions and for different purposes: to impose a variety of economic sanctions on foreign countries, and to continue in force the authority of the Export Administration Act, during several periods when statutory authority has lapsed.

In response to the seizure of the American Embassy and hostages in Teheran, President Carter, using the IEEPA authority, on November 14, 1979, declared a national emergency and ordered the blocking of all property of the government of Iran and of the Central Bank of Iran within the jurisdiction of the United States.[3] The measure and its later amendments were implemented through Iranian Assets Control Regulations (31 CFR 535). Sanctions against Iran were broadened on April 7, 1980,[4] and April 17, 1980,[5] to constitute eventually an embargo on all commercial, financial, and transportation transactions with Iran, with minimal exceptions. The trade embargo was revoked by President Carter on January 19, 1981, after the release of the Teheran hostages, but the national emergency has remained in effect and has been extended every year since.[6]

President Clinton invoked his authority under IEEPA and other statutes on March 15, 1995 to prohibit the entry of any U.S. person or any entity controlled by a U.S. person into a contract involving the financing or overall supervision and management of the development of the petroleum resources located in Iran.[7] The President imposed additional sanctions on May 8, 1995. Specifically, in an executive order, the President prohibited trade in goods and services of Iranian origin, the export of goods, technology or services to Iran, and providing financing for those transactions, including the provision or use of other financial services with respect to such transactions. The reexportation to Iran from third countries of goods or technology which had before been controlled for export to Iran is also prohibited. Transactions such as brokering and other dealing by U.S. persons in Iranian goods and services is prohibited, as well as new investments by U.S. persons in Iran or in property

[3] Executive Order 12170, November 14, 1979, 44 Fed. Reg. 65,729.
[4] Executive Order 12205, April 7, 1980, 45 Fed. Reg. 24,099.
[5] Executive Order 12211, April 27, 1980, 45 Fed. Reg. 26,685.
[6] Following Iranian attacks on U.S. flag ships in the Iran-Iraq war, an embargo was reimposed on October 29, 1987 (Executive Order 12613, 52 Fed. Reg. 41,940), on imports of goods and services from Iran under the authority of section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9) and implemented through Iranian Transactions Regulations (31 CFR part 560). The embargo is still in force.
[7] Executive Order 12957, March 15, 1995, 60 Fed. Reg. 14,615.

owned or controlled by the government of Iran. Finally, U.S. companies are prohibited from approving or facilitating their subsidiaries' performance of transactions that they themselves are prohibited from performing.[8]

On May 1, 1985, President Reagan, under his IEEPA powers, declared a national emergency because of the "Nicaraguan government's aggressive activities in Central America" and prohibited all imports of Nicaraguan goods and services, all exports to Nicaragua (other than those destined for the organized democratic resistance) and transactions related thereto, and all activities of Nicaraguan ships and aircraft at U.S. sea- and airports.[9] The declaration of emergency and the imposed sanctions were terminated on March 13, 1990.[10]

IEEPA was also used by President Reagan to declare a national emergency with respect to South Africa because of its "policy and practice of apartheid" and impose, using also several other authorities, effective on October 11, 1985, an embargo on certain trade (including specifically the importation of krugerrands) and financial transactions with the government of South Africa.[11] The embargo, implemented through South African Transactions Regulations (31 CFR 545), was later greatly expanded, and additional economic sanctions were imposed by the Comprehensive Anti-Apartheid Act of 1986,[12] upon the enactment of which the President allowed the declaration of the South African emergency to expire.[13]

Under the South African Democratic Transition Support Act of 1993, Congress repealed certain sections of the Comprehensive Anti-Apartheid Act and provided for the total repeal of the Act upon certification by the President that an interim government, elected on a non-racial basis through free and fair elections, had taken office in South Africa.[14] President Clinton sent such certification to Congress on June 8, 1994.[15]

President Reagan similarly used the IEEPA authority, among several others, to impose economic sanctions on Libya because of Libyan-supported terrorist attacks on the Rome and Vienna airports. On January 7, 1986, he declared a national emergency and prohibited all trade (with minimal exceptions) and transportation transactions with Libya, extension of credit to the Libyan government, and personal travel to or within Libya.[16] On the following day, he ordered the blocking of all property and interests of the Libyan government and its instrumentalities in the United States.[17] These measures are implemented by Libyan Sanctions Regulations (31 CFR 550). The emergency with respect to Libya

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[8] Executive Order 12959, May 6, 1995, 60 Fed. Reg. 24,757. See also discussion on the Iran and Libya Sanctions Act of 1996.

[9] Executive Order 12513, May 1, 1985, 50 Fed. Reg. 18,629. The embargo is implemented by Nicaraguan Trade Control Regulations (31 CFR part 540).

[10] Executive Order 12707, March 13, 1990, 55 Fed. Reg. 9,707.

[11] Executive Order 12532, September 9, 1985, 50 Fed. Reg. 36,861; Executive Order 12535, October 1, 1985, 50 Fed. Reg. 40,325.

[12] Public Law 99–440, approved October 2, 1986, 100 Stat. 1086, 22 U.S.C. 5001 et seq.

[13] Weekly Compilation of Presidential Documents, v. 23, no. 36, September 14, 1987, p. 997.

[14] Public Law 103–149, approved November 23, 1993, 22 U.S.C. 5001 note.

[15] Message to the Congress on Elections in South Africa, 30 Weekly Compilation of Documents 1258 (June 8, 1994).

[16] Executive Order 12543, January 7, 1986, 51 Fed. Reg. 875.

[17] Executive Order 12544, January 8, 1986, 51 Fed. Reg. 1,235.

and the sanctions have been continued in force through annual extensions.[18]

Again, on April 8, 1988, under the IEEPA authority, President Reagan declared a national emergency with respect to Panama and ordered the imposition of economic sanctions on that country[19] because of "the actions of Manuel Antonio Noriega and Manuel Solis Palma, to challenge the duly constituted authorities of the government of Panama." The order involved the blocking of all property and interests of the government of Panama, including all its agencies and instrumentalities and controlled entities, that are or may come within the United States. The blocking applies specifically to payments of transfers of any kind or financial transactions for the benefit of the Noriega-Solis regime from the United States or by any physical or legal U.S. person located in Panama. The order, implemented through Panamanian Transactions Regulations (31 CFR 565), was revoked on April 5, 1990.[20]

On August 2, 1990, in response to the Iraqi invasion of Kuwait, President Bush, under section 204(b) of the IEEPA, declared a national emergency, blocked Iraqi and Kuwaiti government property and prohibited all transactions with Iraq, except exports and imports of informational materials and donations to relieve human suffering.[21] Additional restrictions, including a prohibition of all transactions with Kuwait, were imposed a week later. Regulations implementing the restrictions were promulgated with respect to Kuwait on November 30, 1990, and with respect to Iraq on January 18, 1991.[22] While Kuwaiti sanctions were revoked after the liberation of Kuwait,[23] the Iraqi national emergency and Iraqi sanctions remain in force.

President Bush also used his authority under the IEEPA and other acts to declare a national emergency on November 16, 1990 with respect to the threat posed to the national security and foreign policy of the United States by the proliferation of chemical and biological weapons.[24] Under this declaration, the President ordered that trade sanctions be imposed against foreign persons determined by the Secretary of State as having used or made substantial preparations to use chemical or biological weapons in violation of international law. This order was implemented under the Export Administration Regulations on Proliferation Controls.[25] The national emergency was expanded by President Clinton to include the proliferation of nuclear weapons on November 14, 1994.[26]

President Bush used his authority under IEEPA and other acts on October 4, 1991 to declare a national emergency with respect to the illegal seizure of power from the democratically elected government of Haiti.[27] Under this declaration, all property and interests of the de facto regime in Haiti were blocked. The order was ex-

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[18] See also the discussion concerning the Iran and Libya Sanctions Act of 1996.
[19] Executive Order 12635, April 8, 1988, 53 Fed. Reg. 12,134.
[20] Executive Order 12710, April 5, 1990, 55 Fed. Reg. 13,099.
[21] Executive Order 12722 and 12723, August 2, 1990, 55 Fed. Reg. 31,803 and 31,805.
[22] Kuwaiti Assets Control Regulations, 55 Fed. Reg. 49,856, 31 CFR 570; Iraqi Sanctions Regulations, 56 Fed. Reg. 2,112, 31 CFR 575.
[23] Executive Order 12771, July 25, 1991, 56 Fed. Reg. 35,993.
[24] Executive Order 12735, November 16, 1990, 55 Fed. Reg. 48,587.
[25] 15 CFR part 778.
[26] Executive Order 12938, November 14, 1994, 59 Fed. Reg. 59,099.
[27] Executive Order 12775, October 4, 1991, 56 Fed. Reg. 50,641.

panded by the President on October 28, 1991 to prohibit trade and other transactions with Haiti.[28] These measures were subsequently implemented by the Haitian Transactions Regulations.[29] After the signing of the Governors Island Agreement on July 3, 1993, U.S. trade restrictions against Haiti were suspended, and new financial and other transactions with the government of Haiti were authorized consistent with U.N. Security Council Resolution 861. The rule, however, did not unblock property of the government of Haiti that was blocked before August 30, 1993. Due to the failure of the de facto regime in Haiti to fulfill its obligations under the Governors Island Agreement, the restrictions against trade, as well as financial and other transactions, with Haiti were reimposed on October 19, 1993.[30] In response to the restoration of the democratically elected government of Haiti, President Clinton terminated the national emergency on October 14, 1994.[31]

In response to the involvement of Serbia and Montenegro with groups attempting to seize territory in Croatia and Bosnia-Hercegovina, President Bush declared a national emergency under the IEEPA and other authorities on May 30, 1992, blocking all property and interests of the governments of Serbia and Montenegro in the United States.[32] Additional orders were later issued by the President to prohibit trade and other transactions with Serbia and Montenegro.[33] The orders were implemented in the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations (31 CFR 585). The emergency with respect to Serbia and Montenegro was most recently extended by the President on May 25, 1994, and was expended in scope on October 25, 1994 to include the Bosnian Serb military and the areas of the Republic of Bosnia and Herzegovina under the control of those forces.[34]

On September 26, 1993, President Clinton declared a national emergency under the IEEPA and other acts with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA).[35] As a result of this emergency, the President's order prohibited the sale or supply of arms and related material or petroleum and petroleum products to Angola, except through designated points of entry. These restrictions, implemented by the UNITA (Angola) Sanctions Regulations, were most recently extended by the President on August 17, 1994.[36]

President Clinton also invoked his authority under the IEEPA and other acts to declare a national emergency on January 23, 1995 with respect to the disruption of the Middle East peace process by foreign terrorists.[37] In this declaration, the President prohibited all transactions with persons designated by the Secretary of

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[28] Executive Order 12779, October 28, 1991, 56 Fed. Reg. 55,975.
[29] 31 CFR part 580.
[30] Presidential Notice of September 30, 1993 (58 Fed. Reg. 51,563); Haitian Transactions Regulations, 31 CFR part 580.
[31] Executive Order 12932, October 14, 1994, 59 Fed. Reg. 52,403.
[32] Executive Order 12808, May 30, 1992, 57 Fed. Reg. 23,299.
[33] Executive Order 12810, June 5, 1992, 57 Fed. Reg. 24,347; Executive Order 12831, January 15, 1993, 58 Fed. Reg. 5,253.
[34] Presidential Notice of May 25, 1994 (59 Fed. Reg. 27,429); Executive Order 12934, October 25, 1994, 59 Fed. Reg. 54,119.
[35] Executive Order 12865, September 26, 1993, 58 Fed. Reg. 51,005.
[36] UNITA (Angola) Sanctions Regulations, 58 Fed. Reg. 64,904, 31 CFR part 590; Presidential Notice of August 17, 1994 (59 Fed. Reg. 42,749).
[37] Executive Order 12947, January 23, 1995, 60 Fed. Reg. 5,079.

State, in coordination with the Secretary of the Treasury and the Attorney General, as having committed or posing a significant risk of committing acts of violence to disrupt the Middle East peace process.

Just as with the TWEA, the IEEPA authority also has been used on three occasions to continue in force the administration of export controls when extensions of the Export Administration Act of 1979 (EAA) have not been enacted in time to continue the export control authority in force by statutory extension. Upon the expiration of the EAA on October 15, 1983, President Reagan used the IEEPA authority to declare a national emergency and to continue in force the existing regulations for the administration of export controls.[38] After the EAA was temporarily extended by law[39] retroactively to October 15, 1983, and through February 29, 1984, the President revoked its extension under the IEEPA and rescinded the declaration of economic emergency.[40] On February 29, 1984, the EAA was again extended by law[41] through March 30, 1984, when the authority for administering the export control provisions again had to be extended by the President under the IEEPA authority upon the declaration of a national economic emergency.[42] The extension and the declared emergency remained in force during the protracted, if unsuccessful, House-Senate attempts at resolving the disagreements on the reauthorization of the EAA during the 98th Congress and in the 99th Congress until July 12, 1985, when the EAA was again extended by law,[43] the executive extension of export controls was revoked and the emergency rescinded.[44] The President invoked the IEEPA authority on September 30, 1990 to maintain existing export controls upon expiration of the EAA on that date, pending enactment of further reauthorizing legislation.

Since such enactment did not take place during the 101st, 102d, 103d, or 104th Congress, the 1990 extension of the export control authority under the IEEPA has been maintained in force by means of annual continuations of the export control emergency.[45]

### Trading With the Enemy Act

The Trading With the Enemy Act[46] (TWEA) prohibits trade with any enemy or ally of an enemy during time of war. From enactment in 1917 until 1977, the scope of the authority granted to the President under this Act was expanded to provide the statutory basis for control of domestic as well as international financial transactions and was not restricted to trading with "the enemy." In response to the use of the Act's authority under section 5(b) during peacetime for domestic purposes that were often unrelated to a preexisting declared state of emergency, Congress amended the Act in 1977. In 1977 Congress removed from the TWEA the authority of

[38] Executive Order 12444, October 14, 1983, 48 Fed. Reg. 48,215.
[39] Public Law 98–207, approved December 5, 1983, 97 Stat. 1391.
[40] Executive Order 12451, December 20, 1983, 48 Fed. Reg. 56,563.
[41] Public Law 98–222, approved February 29, 1984, 98 Stat. 36.
[42] Executive Order 12470, March 30, 1984, 49 Fed. Reg. 13,099.
[43] Export Administration Act of 1979, Reauthorization; Public Law 99–64, approved July 12, 1985, 99 Stat. 120.
[44] Executive Order 12525, July 12, 1985, 50 Fed. Reg. 28,757.
[45] Most recently by Presidential Notice of August 15, 1996 (61 Fed. Reg. 42,527).
[46] Public Law 65–91, approved October 6, 1917, ch. 106, 40 Stat. 411, 50 App. U.S.C. 1–44.

the President to control economic transactions during peacetime emergencies.[47] Similar authorities, though more limited in scope and subject to the accountability and reporting requirements of the National Emergencies Act,[48] were conferred upon the President by the International Emergency Economic Powers Act, enacted in 1977 as title II of Public Law 95–223.[49] Presidential authority during wartime to regulate and control foreign transactions and property interests were retained under the Trading With the Enemy Act. In addition, the 1977 legislation authorized the continuation of various foreign policy controls implemented under the Trading With the Enemy Act, such as trade embargoes and foreign assets controls. The retention of such existing controls, however, was made subject to 1-year extensions conditioned upon a presidential determination that the extension is in the national interest.

*Background*

The Trading With the Enemy Act was passed in 1917 "to define, regulate, and punish trading with the enemy." The Act was designed to provide a set of authorities for use by the President in time of war declared by Congress. In its original 19 sections, the TWEA provided general prohibitions against trading with the enemy; authorized the President to regulate and prohibit international economic transactions by means of license or otherwise; established an office to administer U.S.-held foreign property; and set up procedures for claims to such property by non-enemy persons, among other provisions. The original 1917 Act appeared not to authorize the control of domestic transactions and limited its use to wartime exigencies.

Over the years, through use and amendment of section 5(b), the basic authorizing provision, the scope of presidential actions under the TWEA was greatly expanded. First, the Act was expanded to control domestic as well as international transactions. Second, the authorities of the Act were used to apply to presidentially declared periods of "national emergency" as well as war declared by Congress. From 1933, when Congress retroactively approved President Roosevelt's declaration of a national banking emergency by expanding the use of section 5(b) to include national emergencies, until 1977, when Congress amended section 5(b) by passage of title I of Public Law 95–223, the President was authorized in time of war or national emergency to:

(1) regulate or prohibit any transaction in foreign exchange, any banking transfer, and the importing or exporting of money or securities;

(2) prohibit the withdrawal from the United States of any property in which any foreign country or national has an interest;

(3) vest, or take title to, any such property; and

(4) use such property in the interest and for the benefit of the United States.

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[47] Public Law 95–223, title I, approved December 28, 1977.

[48] The National Emergencies Act provided a statutory role for Congress in the declaration and termination of national emergencies. Public Law 94–412, approved September 14, 1976, 90 Stat. 1255, 50 U.S.C. 1601 et seq.

[49] See discussion of International Emergency Economic Powers Act, supra.

The Trading With the Enemy Act did not provide a statement of findings and standards to guide the administration of section 5(b). There was no provision in the Act for congressional participation or review or for presidential reporting at specified periods for actions undertaken under section 5(b). There was no fixed time period for terminating a state of emergency. Nor was there any practical constraint on limiting actions taken under emergency authority to measures related to the emergency.

*Application*

By 1977 a state of national emergency had been declared by the President on four occasions and left unrescinded. In 1933 President Roosevelt declared a national emergency to close the banks temporarily and to issue emergency banking regulations. In 1950 President Truman declared a national emergency in connection with the Korean conflict. President Nixon declared a national emergency in 1970 to deal with the Post Office strike and another in 1971 based on the balance-of-payment crisis. As one measure to remedy this crisis, President Nixon at the same time imposed an import surcharge without specifically referring to section 5(b), but later did take recourse to it as an additional authority when the action was challenged in court.[50]

Based on these states of emergency, Presidents have used the powers of section 5(b) to deal with a number of varied events. In 1940 and 1941, President Roosevelt used section 5(b) to freeze the U.S.-held assets of the Axis powers and countries occupied by them to prevent their falling into the hands of the enemy powers. In August 1941, President Roosevelt, under section 5(b) authority, ordered the imposition of consumer credit controls by the Federal Reserve Board as an anti-inflationary measure. These executive uses by President Roosevelt were retroactively ratified by Congress.

The 1950 Korean emergency has been used in conjunction with section 5(b) powers for a wide range of controls among them the imposition of a total embargo on transactions with China and North Korea in December 1950 which was extended to North Vietnam in May 1964 and to Cambodia and South Vietnam in April 1975.[51] In 1968, President Johnson, citing the authority of section 5(b) and the continued existence of the 1950 emergency, imposed foreign direct investment controls on U.S. investors. These controls remained in effect until they were eliminated by legislation in 1974. During the period 1969 through 1976, Presidents have invoked the 1950 and 1971 emergencies to extend temporarily export control regulations.

Four sets of regulations controlling international transactions with specific countries, imposed under the former national emergency authority of section 5(b) and during the Korean national emergency, were promulgated pursuant to the 1-year extension au-

[50] In mid-1974, the U.S. Customs Court found the President's action unconstitutional with respect to all invoked authorities, but this decision was later reversed on appeal with respect to section 5(b). *U.S.* v. *Yoshida International,* 526, F.2d 560 (C.C.P.A. 1975). The surcharge was terminated after having been in force for somewhat over 4 months, long before the lower court's decision.

[51] In mid-1971, trade embargo on China was in practice lifted, and on January 31, 1980, the applicability of any restrictive measures imposed under section 5(b) was terminated with respect to China (45 Fed. Reg. 7,224).

thority of title I of Public Law 95–223. First, under the Foreign Assets Control Regulations, virtually all transactions between the United States and North Korea, Vietnam, and Cambodia were prohibited unless licensed by the Department of the Treasury. The regulations also blocked all assets of those countries held in the United States.

Recently, however, the embargo with respect to Cambodia and Vietnam was lifted and the property of these countries in the United States was unblocked.[52] Also, on October 21, 1994, the United States and North Korea agreed, in the context of broader negotiations, to begin reducing barriers to trade and investment. Based on these mutual commitments, a limited number of restrictions under the embargo against North Korea were lifted.[53]

Second, the Cuban Assets Control Regulations,[54] based on section 5(b) as well as on foreign assistance legislation, (see also section on Embargo on transactions with Cuba) impose a similar ban on virtually all transactions with Cuba.

Third, Transaction Control Regulations,[55] prohibiting any person within the United States[56] from engaging in any trade or trade-financing transaction involving transfer of strategic commodities from a foreign country to a Communist country (still including formerly Communist countries), are also based on section 5(b) of the Trading With the Enemy Act.

Fourth, the wartime anti-Axis Foreign Funds Control Regulations,[57] issued under the authority of section 5(b), are still in effect. The regulations continue to block the assets of Estonia, Latvia, and Lithuania pending the settlement of claims by U.S. citizens for compensation of property confiscated after the war by the Soviet governments.

## Narcotics Control Trade Act

The Drug Enforcement, Education, and Control Act of 1986[58] contains a number of measures to respond to the serious problem of illegal drug smuggling into the United States and the growing threat of foreign sourced drug production. Among these measures are revisions to many basic customs laws to deter illegal drug imports and to increase enforcement capabilities of the U.S. Customs Service against drug traffic.

Title IX of the Act amended the Trade Act of 1974 by adding title VIII, entitled the "Narcotics Control Trade Act," to create new authority for the President to take appropriate trade actions as of March 1 of each year against uncooperative major drug-producing or drug-transit countries. Section 806 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,[59] and section 4408 of

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[52] Foreign Assets Control Regulations; Unblocking of Cambodian Assets, 59 Fed. Reg. 60,558, 31 CFR part 500; Foreign Assets Control Regulations, Unblocking of Vietnamese Assets, 60 Fed. Reg. 12,885, 31 CFR part 500.

[53] Foreign Assets Control Regulations, North Korean Travel and Financial Transactions; Information and Informational Materials, 60 Fed. Reg. 8,933, 31 CFR part 500.

[54] 31 CFR part 515.

[55] 31 CFR part 505.

[56] Any "person within the United States" includes foreign subsidiaries of U.S. firms.

[57] 31 CFR part 520.

[58] Public Law 99–570, approved October 27, 1986.

[59] Public Law 100–204, approved December 22, 1987, 19 U.S.C. 2492.

the Anti-Drug Abuse Act of 1988[60] expanded the sanctions available and the critieria for determining and certifying that a country has cooperated fully with the United States. Similar criteria apply under the Foreign Assistance Act of 1961 for denying foreign aid to uncooperative countries.

For every major drug-producing or drug-transit country, the President is required to deny to any or all of its products preferential tariff treatment under the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), or any other law; to raise or impose duties of up to 50 percent ad valorem on any or all of its products; to suspend air carrier transportation to or from the United States and the country and to terminate any air service agreement with the country; to withdraw U.S. personnel and resources from participating in any arrangement with the country for customs preclearance; or to take any combination of these actions considered necessary to achieve the objectives of the Act.

Such sanctions do not apply if the President determines and certifies to the Congress, at the time the annual report required by section 481(e) of the Foreign Assistance Act of 1961 or section 489A after September 30, 1994 is submitted, that during the previous year the country has cooperated fully with the United States or has taken adequate steps on its own: (1) in satisfying goals agreed to in a bilateral or multilateral narcotics agreement with the United States; (2) in preventing illegal drugs from being sold illegally to U.S. government personnel or their dependents or from being transported into the United States; (3) in preventing and punishing the laundering of drug-related profits or monies; and (4) in preventing and punishing bribery and other public corruption which facilitate production, processing, or shipment of illegal drugs.

A country that would not otherwise qualify for certification may be exempted from sanctions if the President determines and certifies to the Congress that the vital national interests of the United States require that sanctions not be applied. A country designated as a major drug-producing or drug-transit country in the previous year may not be determined to be cooperating fully unless it has in place a bilateral or multilateral narcotics agreement.

The Congress may disapprove the President's determination and require the application of sanctions through enactment of a joint resolution within 45 legislative days. Actions remain in effect until the President submits a certification of cooperation and Congress does not enact a joint resolution of disapproval within 45 legislative days.

In addition, section 803 prohibits the President from allocating any quota for imports of sugar to any country which has a government involved in illegal drug trade or which is failing to cooperate with the United States in narcotics enforcement activities.

The Urgent Assistance for Democracy in Panama Act of 1990[61] deemed the conditions under the Narcotics Control Trade Act to have been satisfied by Panama, because of U.S. vital national interests and because the Endara government had indicated its willing-

[60] Public Law 100–690, approved November 18, 1988.
[61] Public Law 101–243, approved February 14, 1990, section 103.

ness and was taking steps to cooperate fully with the United States to control narcotics production, trafficking, and money laundering. Consequently, GSP and CBI trade benefits removed under the Noriega regime by presidential proclamation on March 23, 1988 were restored to the new government of Panama.

### The International Security and Development Cooperation Act of 1985

Section 505 of the International Security and Development Act of 1985[62] gives the President discretionary authority to restrict or ban imports from any country which the United States determines "supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations." The section requires advance consultations with Congress before invoking the authority and a semi-annual report to Congress with respect to actions taken since the last report and any changes which may have occurred since the last report. Section 504 of the Act gives the President specific authority to prohibit all imports to the United States from Libya or the export to Libya of any goods or technologies subject to U.S. jurisdiction.

### The Iran and Libya Sanctions Act of 1996

U.S. imports of goods and services of Iran have been prohibited since 1987. In May 1993 President Clinton articulated a policy of "dual containment" of Iran and Iraq. Administration officials said that Iran needed to be isolated because of its: (1) support for international terrorism; (2) efforts to undermine the Arab-Israeli peace process; (3) attempts to subvert other governments in the Middle East; (4) programs to develop weapons of mass destruction; and (5) poor human rights record. On March 15, 1995, the President declared a national emergency to respond to Iran's actions and policies and issued an executive order prohibiting U.S. persons from entering contracts to finance or manage Iran's petroleum resources.

On April 30, 1995, after an internal policy review found that continued trade with Iran was undermining U.S. efforts to isolate Iran, President Clinton announced that he would impose significant new economic sanctions on Iran. Executive Order 12959, issued May 8, prohibits trade in goods, services, or technology with Iran, re-export to Iran of U.S. goods or technology from third countries controlled for export, as well as any financing, loans, or related services for trade with Iran. New investment is also prohibited in Iran. The prohibitions also apply to foreign branches of U.S. companies. However, the ban provides for the licensing of crude oil swap arrangements with Iran in the Caspian Sea and Central Asia, and does not prohibit the importation to the United States of Iranian oil that is refined outside Iran.

Out of a concern that the trade ban did not succeed in shifting international attitudes toward Iran, the President signed the Iran and Libya Sanctions Act[63] on August 5, 1996, which mandates sanctions against foreign investment in the petroleum sectors of Iran and Libya as well as exports of weapons, oil equipment, and

[62] Public Law 99–83, approved August 8, 1985, 22 U.S.C. 2349 aa–8, aa–9.
[63] Public Law 104–172, approved August 5, 1996, 50 U.S.C. 1701.

aviation equipment to Libya in violation of U.N. Resolutions 748 and 883. Congressional findings in this legislation state that the efforts of the government of Iran to acquire weapons of mass destruction and the means to deliver them, as well as its support for international terrorism, endanger the interests of the United States. In the case of Libya, Congress found that Libya's failure to comply with U.N. Resolutions 731, 748, and 883, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security of the United States.

Under the Iran and Libya Sanctions Act, the President must impose, on any foreign person (individual, firm or government enterprise) that invests more than $40 million in any one year in the petroleum resources of Iran or Libya, or violates the U.N. prohibited transactions with Libya, at least two of the following six sanctions: (1) denial of Export-Import Bank loans for U.S. exports to the sanctioned entity; (2) denial of specific U.S. licenses for exports to the sanctioned entity (assuming the exports require a license to be exported); (3) denial of U.S. bank loans of over $10 million in one year to the sanctioned entity; (4) disallowing a sanctioned entity, if it is a financial institution, to serve as a primary dealer in U.S. government bonds or as a repository of U.S. government funds; (5) import sanctions taken by the President in accordance with the International Emergency Economic Powers Act (IEEPA); and (6) prohibition on U.S. government procurement from or contracting with the sanctioned person.

The law provides for the waiving of sanctions for firms of countries that join a multilateral sanctions regime against Iran and lowers the threshold of permissible investment from $40 million to $20 million for firms of countries that do not join such a regime. The Act "sunsets" in 5 years.

### Embargo on Transactions With Cuba

While almost totally restrictive controls had been placed on U.S. exports to Cuba even earlier[64] under the general authority of the Export Control Act of 1949, specific authority for a total trade embargo on Cuba was contained in section 620(a) of the Foreign Assistance Act of 1961.[65] Based on this authority "to establish and maintain a total embargo upon all trade between the United States and Cuba," President Kennedy proclaimed the embargo and directed the Secretaries of the Treasury (for imports) and of Commerce (for exports) to implement it. Both Secretaries were also given the authority to modify the embargo in the national interest.[66]

The export embargo already being in force, the added ban on imports from Cuba was implemented through Cuban Import Regulations,[67] to which were subsequently added, in general terms, all transactions falling within the authority of the Trading With the Enemy Act (TWEA), based on the specific addition of TWEA to the

[64] 25 Fed. Reg. 1006, October 20, 1960.
[65] Public Law 87–195, approved September 4, 1961, 22 U.S.C. 2370(a)(1).
[66] Proclamation 6447, 27 Fed. Reg. 1,085, February 7, 1962.
[67] 31 CFR 515, 27 Fed. Reg. 1,116, February 7, 1962.

statutory authority for the regulations.[68] Under this broader authority, Cuban Assets Control Regulations applicable to imports from Cuba as well as, in great detail, to non-trade transactions with Cuba were promulgated.[69] After several changes, these regulations still remain in force. The embargo on transactions with Cuba is implemented at present for exports by the Export Administration Regulations (15 U.S.C. 768–799.2), particularly sections 770, 785.1, and 799.1, and for imports and other transactions by the Cuban Assets Control Regulations (15 CFR 515). (These regulations were later codified by the Cuban Liberty and Democratic Solidarity Act, discussed below.)

The provisions of section 620(a) of the Foreign Assistance Act of 1961 and the regulatory exercise with respect to Cuba of authorities under the TWEA, the International Emergency Economic Powers Act, and the Export Administration Act of 1979, however, were preempted by the Cuban Democracy Act of 1992 (title XVII of the National Defense Authorization Act of 1992)[70] to the extent that they have been either restated or modified by provisions of that Act. Section 1705 of the Act specifically permits donations of food to Cuban non-governmental organizations and individuals; with some exceptions and subject to specific licenses and end-use verification, exports of medicines and medical supplies and equipment; providing telecommunications services and appropriate facilities, and issuing licenses for related payments; direct mail service between the United States and Cuba; and assistance for promoting non-violent democratic change in Cuba.

On the other hand, section 1706 enacts specific restrictions: it prohibits the issuance of licenses for any transactions of American-owned firms in foreign countries with Cuba, previously permitted by the relevant regulation;[71] requires specific license for a ship to load or unload any freight in a U.S. port if it has traded, within the past 180 days, with a Cuban port; or to enter a U.S. port or obtain ship stores if it is carrying goods or passengers to or from Cuba, or Cuban goods. These restrictions do not apply to activities allowed by sections 1705 or 1707 of the Act, or to transactions in informational materials unless subject to national security or espionage controls. The President is required to set strict controls on remittances to Cubans for the purpose of financing their travel to the United States.

The law authorizes a relaxation of the embargo by permitting humanitarian aid to Cuba under foreign assistance and Food-for-Peace legislation if the President determines that the Cuban government has made and is implementing commitments to hold free elections and respect internationally recognized worker rights and basic democratic freedoms, and is not materially supporting groups in other countries seeking violent overthrow of the government. The President also is authorized to waive the restrictions of section 1706 if he determines that the Cuban government has taken steps that provide various political, human rights, and economic freedoms, and is directed to take various actions (including steps to

[68] 27 Fed. Reg. 2,765, March 24, 1962.
[69] 28 Fed. Reg. 6,974, July 9, 1963.
[70] Public Law 102–484, approved October 23, 1992; 22 U.S.C. 6001 et seq.
[71] 31 CFR 515 and 559.

end the trade embargo) to assist a freely and democratically elected Cuban government. The Act empowers the Secretary of the Treasury to enforce its provisions under the authority of the TWEA, to which provisions for civil penalties, forfeitures, and judicial review are added.

### The Cuban Liberty and Democratic Solidarity Act

In 1996, the Cuban Liberty and Democratic Solidarity Act was enacted to further strengthen U.S. sanctions against Cuba.[72] The legislation, which is commonly referred to as "Helms-Burton" or the "Libertad Act," contains a number of new sanction provisions. Title I of the Act codifies all Cuban embargo executive orders and regulations in force on March 12, 1996. No authority is granted to the President under the law to waive any of the codified embargo provisions.

In title III, the Helms-Burton legislation allows U.S. nationals, including Cuban-Americans who became US. citizens after their properties were confiscated, to sue for money damages in U.S. federal court those persons who traffic in their confiscated property. The President has the authority to delay implementation of title III provisions for a period of up to 6 months at a time if he determines that such a delay would be in the national interest and would expedite a transition to democracy in Cuba. On July 16, 1996, the President announced that he would allow title III to go into effect, but would suspend for 6 months the right of individuals to file lawsuits. In making his announcement, the President indicated that the liability of foreign companies under Helms-Burton would be established during the suspension period and that legal action could be taken against them immediately upon the lifting of the suspension. On January 3, 1997, the President renewed his suspension on the right of individuals to file lawsuits for an additional 6-month period. In this announcement, the President asserted that the international community was more united than ever behind the cause of freedom in Cuba.

Under the provisions in title IV of the Helms-Burton legislation, certain aliens involved in the confiscation or trafficking of U.S. property in Cuba are denied admission to the United States. The ban applies to corporate officers, principals, or shareholders with a controlling interest of an entity involved in this activity. It also applies to the spouses, minor children, and agents of aliens who are excluded under the provision. This provision of the Act is mandatory and is waiveable on a case-by-case basis for travel to the United States only for humanitarian medical reasons or to participate in legal actions regarding confiscated property. In May 1996, the State Department began sending advisory letters to foreign companies thought to be dealing in U.S. properties confiscated in Cuba. Three companies received letters: Sherritt International, a Canadian mining company; Grupos Domos, a Mexican telecommunications company; and STET, an Italian telecommunications company. On June 17, 1996, the guidelines for implementing title IV provisions were published in the Federal Register.[73] This notice

[72] Public Law 104–114, approved March 12, 1996.
[73] 61 Fed. Reg. 30655.

stipulated that the admission sanction would not apply to persons having business dealings solely with persons excluded under the title's provisions. In July, the State Department sent additional letters to nine major shareholders and senior executives of Sherritt International, stating that they would be excluded from the United States, effective in 45 days. The State Department later sent similar letters to six executives of Grupos Domos. In December, the State Department sent advisory letters warning of potential action to two additional companies: B.M. Group, an Israeli agricultural company; and Motores Internacionales, a Panamanian company.

In addition to these major provisions, section 103 of the Helms-Burton legislation prohibits loans, credits, or other financing by any U.S. national, U.S. agency, or permanent resident alien for financing transactions involving any property confiscated by the Cuban government, the claim to which is owned by a U.S. national. Section 106(d) of the Act requires that U.S. assistance for Russia be withheld by an amount equal to the sum of assistance and credits provided (on or after March 12, 1996) in support of the Russian intelligence facility at Lourdes, Cuba. The President, however, may waive this provision if such assistance is in the U.S. national security interest, and if he certifies that Russia is not sharing intelligence data collected at Lourdes with officials or agents of the Cuban government.

Section 104 of the Act requires the United States to vote against Cuba's admission to the international financial institutions (IFIs) until a democratic government is in power. The provision also requires the reduction of U.S. payment to any IFI if it approves a loan or other assistance to Cuba over the opposition of the United States. Finally, title II of the law contains numerous conditions for determining when a "transition" government and a "democratic" government is in power in Cuba, conditions which would qualify Cuba for various types of U.S. assistance and would lead to suspension of U.S. trade sanctions against Cuba.

## Iraq Sanctions Act of 1990

The Iraq Sanctions Act of 1990 was enacted as part of the Foreign Assistance and Related Program Appropriations Act for fiscal year 1991,[74] in response to Iraq's invasion of Kuwait on August 2, 1990. The Act makes a number of declarations concerning Iraq's invasion of Kuwait and requires the President to consult with the Congress on U.S. actions taken in response.

Section 586C enacts into law the trade embargo and other economic sanctions imposed on Iraq by presidential executive order under authority of the International Emergency Economic Powers Act and the National Emergencies Act.[75] Those sanctions entailed a near-total prohibition on transactions between the United States and Iraq, including a ban on: imports and exports; most travel and fulfillment of contracts; and credits and loans. The executive orders also froze all assets of the governments of Iraq and Kuwait. Section 586C requires the President to notify Congress at least 15 days be-

[74] Public Law 101–513, approved November 5, 1990; sections 586 through 586J.

[75] Executive Orders 12724 and 12725 (August 9, 1990), and, to the extent that they were still in effect on the date of enactment, Executive Orders 12722 and 12723 (August 2, 1990).

fore the termination of any of the above sanctions. Section 586E imposes civil and criminal penalties on persons violating the executive orders.

The Iraq Sanctions Act also imposes sanctions on Iraq beyond those imposed by executive order. Section 586G imposes a wide range of sanctions, including a ban on the following transactions: arms sales; exports of certain goods and technology, including nuclear technology and equipment; U.S. government credits and credit guarantees; and other forms of assistance. Those sanctions may be waived by the President if he makes a certification of fundamental changes in Iraqi leadership, policies, or actions, under criteria set forth in section 586H.

The Act contains provisions aimed at increasing compliance by third countries with U.N. Security Council sanctions against Iraq. Section 586D denies assistance under the Foreign Assistance Act of 1961 or the Arms Export Control Act to any country not in compliance with the U.N. sanctions, subject to certain exceptions. It also authorizes the President to ban imports into the United States from any country that has not imposed a ban on trade with Iraq, if he considers that such action would promote the effectiveness of the U.N. and U.S. sanctions against Iraq. Section 586I denies export licenses for super-computer exports to any country the President determines is assisting Iraq to improve its capabilities in rocket technology or chemical, biological, or nuclear weapons.

Finally, the Iraq Sanctions Act mandates a number of studies and reports to Congress concerning international exports to Iraq of nuclear, biological, chemical and ballistic missile technology; Iraq's offensive military capability; and third country sanctions against Iraq.

## The Hong Kong Policy Act

On July 1, 1997, China will assume sovereignty over Hong Kong according to the terms of the Sino-British Joint Declaration of 1994. The question of how Hong Kong will fare under Chinese rule is important to U.S. interests because of: (1) the large U.S. economic presence in Hong Kong and; (2) any adverse developments in Hong Kong will affect U.S.-China relations. Under the Sino-British Joint Declaration, China committed to preserving a high degree of autonomy under the so-called "one-China, two-systems" policy.

The Hong Kong Policy Act which was passed by Congress in 1992 sets forth declarations and conditions for how the United States should conduct bilateral relations with Hong Kong when it becomes a non-sovereign entity.[76] This legislation: (1) declares that support for democratization is a fundamental principle of the United States that should apply to U.S. policy toward Hong Kong after 1997; (2) declares U.S. support for the Sino-British Joint Declaration and makes a number of findings of what is provided for under this agreement; (3) requires that the United States apply the same laws toward Hong Kong after 1997 as were in force before then, but permits the President to suspend the application of any law beginning in July 1, 1997, if he determines that China is not giving Hong Kong sufficient autonomy, and; (4) requires the Secretary of

[76] Public Law 102–383, approved October 5, 1992.

State to report to Congress every 18 months on the situation in Hong Kong, including the development of its democratic institutions.

### Section 27 of the Merchant Marine Act, 1920 (Jones Act)

The Jones Act is a cabotage law that restricts the transportation of property by water between points in the United States, its possessions and territories (with very few exceptions) to vessels built and (if applicable) substantially repaired in U.S. shipyards, owned by U.S. citizens, manned by U.S. citizen crews, and registered in the United States. The first act passed by the First Congress was a cabotage measure that made it extremely expensive for foreign-flag, foreign-built vessels to operate in our coasting trades. Early cabotage laws (1789, 1790, 1817) were, it is claimed, in response to similar laws enforced by England, France, and other European countries.

During World War I, U.S. cabotage prohibitions were relaxed temporarily, but reinstated in 1920 by section 27 of the Merchant Marine Act, 1920, now usually referred to as the Jones Act. The penalty for violation is forfeiture of the cargo.

### Section 721 of the Defense Production Act of 1950, as amended ("Exon/Florio")

The proposed purchase in 1988 of an 80 percent share of Fairchild Semiconductor Corporation by Fujitsu, Ltd. sparked congressional interest concerning takeovers of American firms by foreign companies which raise national security considerations. Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 amended title VII of the Defense Production Act of 1950[77] to add provisions (commonly known as "Exon/Florio," the chief congressional sponsors) because of concerns that the federal government lacked specific authority to prevent such acquisitions.

The provisions authorize the President, after he makes certain findings, to take actions for such time as he considers appropriate to suspend or prohibit any acquisition, merger, or takeover of a person engaged in interstate commerce in the United States by or with foreign persons so that such control will not threaten to impair the national security. To activate this authority, the President has to find that there is credible evidence that leads him to believe the foreign interest exercising control might take action that threatens to impair the national security and that other laws do not provide adequate and appropriate authority to protect the national security in the matter. The President has to report the findings to the Congress with a detailed explanation.

In making any decision to exercise the authority under this provision, the President may consider such factors as: (1) domestic production needed for projected national defense requirements; (2) the capability and capacity of domestic industries to meet national defense requirements; and (3) the control of domestic industries and commercial activities by foreign citizens as it affects the capability and capacity of the United States to meet the requirements

[77] 50 U.S.C. App. 2170, as added by Public Law 100–418, section 5021, approved August 23, 1988.

of national security. The standard of review is "national security"; the provision affects only overseas investment flowing into the United States and is not intended to authorize investigations of investments that could not result in foreign control of persons engaged in interstate commerce nor to have any effects on transactions which are outside the realm of national security.

Among the actions available to the President is the ability to suspend a transaction. The President may also seek appropriate relief in the district courts of the United States in order to implement and enforce the provisions, including broad injunctive and equitable relief including, but not limited to divestment relief.

# Chapter 6: RECIPROCAL TRADE AGREEMENTS

## Reciprocal Trade Agreement Objectives and Authorities

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988[1] provided authorities for the President to enter into reciprocal bilateral and multilateral trade agreements with foreign countries to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 1102 replaced similar authorities under section 102 of the Trade Act of 1974[2] that expired on January 3, 1988. Except for the authority to proclaim modifications in U.S. tariffs under multilateral agreements, trade agreements entered into under section 1102 were subject to congressional approval of implementing legislation under special expedited, so-called "fast track" procedures. The basic purpose of the section 1102 authorities was to provide the means to achieve U.S. negotiating objectives set forth under section 1101 of the 1988 Act and to enable U.S. participation in the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) launched in September 1986. The authorities were also used for the North American Free Trade Agreement (NAFTA). The authorities expired on June 1, 1993, except that on July 2, 1993, section 1102 was amended to extend the fast track procedures to April 16, 1994 for the sole purpose of concluding the Uruguay Round negotiations.[3]

Although the fast track procedures have now expired with respect to new agreements, certain limited, residual authority remains with respect to tariffs.[4] In addition, there are special trade agreement authorities that apply in limited circumstances or to deal with specific situations: (1) trade agreements entered into under section 123 of the Trade Act of 1974,[5] as amended by the 1988 Act, to grant new concessions as compensation for import relief actions or any judicial or administrative tariff reclassification; (2) withdrawal, suspension, or modification of trade agreement obligations under section 125 of the Trade Act of 1974;[6] (3) agreements with major state trading regimes acceding to the World Trade Organization (WTO); (4) trade agreements and remedies under sections 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988[7] to obtain more open foreign market access in telecommunications trade; and (5) bilateral trade agreements with certain Communist countries providing for nondiscriminatory (most-favored-nation) treatment under certain conditions.

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[1] Public Law 100–418, approved August 23, 1988, 19 U.S.C. 2902.
[2] Public Law 93–618, approved January 3, 1975, 19 U.S.C. 2112.
[3] Public Law 103–49, approved July 2, 1993, 19 U.S.C. 2902(e).
[4] See discussion on specific trade agreement authorities which follows.
[5] Public Law 93–618, 19 U.S.C. 2133.
[6] Public Law 93–618, 19 U.S.C. 2135.
[7] Public Law 100–418, 19 U.S.C. 3101.

## TRADE NEGOTIATING OBJECTIVES

Section 1101 of the Omnibus Trade and Competitiveness Act of 1988[8] set forth overall and principal trade negotiating objectives of the United States. Any multilateral or bilateral trade agreement entered into under the authorities of the expired section 1102 of the 1988 Act was required to make progress in meeting the applicable objectives described in section 1101.

Section 1124 of the 1988 Act[9] requires the Secretary of the Treasury to take action to initiate bilateral currency negotiations on an expedited basis with a foreign party to trade agreement negotiations if the Secretary advises the President during the course of those negotiations that the country satisfies the criteria under section 3004(b) of the 1988 Act relating to exchange rate manipulation.

Sections 131, 135 and 315 of the Uruguay Round Agreements Act[10] provide U.S. objectives for seeking a WTO working party on worker rights; extended negotiations in financial services, telecommunications, and civil aircraft; and intellectual property right protection. More specifically, section 131 requires the President to seek the establishment of a WTO working party to examine the relationship of international trade and worker rights. Section 135 sets forth principal U.S. negotiating objectives for the extended negotiations in the WTO on financial services, basic telecommunications, and on trade in civil aircraft. Section 315 sets forth objectives for the Administration to pursue in the field of intellectual property, which include accelerating the implementation of the TRIPs agreement, seeking the enactment of effective intellectual property rights laws abroad, and securing fair, equitable and nondiscriminatory market access opportunities for U.S. intellectual property based industries.

The NAFTA Implementation Act includes a provision regarding congressional intent for future free trade agreements. In this regard, section 108 of the Act[11] sets forth considerations and preliminary procedures for possible future free trade area agreements and accession by foreign countries to NAFTA. Article 2204 of the NAFTA sets forth the basis for the accession of any country or group of countries. In the United States, accession would require congressional approval and implementing legislation. Section 108 stipulates that congressional approval of NAFTA with respect to Canada or Mexico does not constitute approval of its extension to other countries. Section 108 also requires the President to report to Congress on his recommendations for future trade agreement countries and sets forth general U.S. negotiating objectives for accession.

## GENERAL TARIFF AUTHORITY

Since enactment of the Reciprocal Trade Agreements Act of 1934, the Congress periodically has delegated authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal

[8] Public Law 100–418, 19 U.S.C. 2901.
[9] Public Law 100–418, 22 U.S.C. 5304 note.
[10] Public Law 103–465, approved December 8, 1994, 19 U.S.C. 3551, 3555, 3581.
[11] Public Law 103–182, approved December 8, 1993, 19 U.S.C. 3317.

trade agreements, subject to specific conditions and limitations, without requiring further congressional action. The most recent grant of such authority was contained in section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988.

Prior to its expiration, section 1102(a) granted the President authority to enter into multilateral tariff agreements with foreign countries and to proclaim reductions in U.S. rates of duty required or appropriate to carry out such agreements, subject to the following limitations:

(1) Reductions of existing U.S. duties cannot exceed 50 percent of existing rates of duty, except that duties of 5 percent ad valorem or below may be reduced to zero.

(2) Staging authority requires that duty reductions on any article cannot exceed 3 percent ad valorem per year, or one-tenth of the total reduction, whichever is greater, except that staging is not required if the U.S. International Trade Commission determines there is no U.S. production of the article.

(3) Under rounding authority, annual duty reductions may exceed the limits by the lesser of the difference between the limit and the next lower whole number or one-half of 1 percent ad valorem in order to simplify computations.

Any duty reductions negotiated in a trade agreement that exceed 50 percent of an existing duty higher than 5 percent ad valorem or any tariff increases would have to be approved by the Congress under the special fast track legislative procedures that apply to nontariff agreements.[12]

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

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

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

creased duties "as the President determines to be necessary or appropriate to maintain the general level of reciprocity and mutually advantageous concessions with respect to Canada and Mexico provided for by the Agreement."

The Uruguay Round Agreements Act also provides authority for the President to increase duties on articles from countries which are not WTO members. Section 111(c) of the Act[13] authorizes the President, after congressional consultation, to increase duties on imports from countries that are not members of the WTO, or to which the United States does not apply the WTO, if he determines that the country is not according adequate trade benefits to the United States, including substantially equivalent competitive opportunities. The maximum rate of duty that may be proclaimed is the higher of the pre-Uruguay Round most-favored-nation (MFN) rate or the MFN rate of duty that will apply under the Uruguay Round schedule XX.

## MULTILATERAL TRADE AGREEMENT AUTHORITY

Trade negotiations prior to the Tokyo Round concentrated primarily on reducing or eliminating tariffs. Relatively little effort and progress was made to reduce nontariff barriers or other trade-distorting measures such as subsidies. Section 102 of the Trade Act of 1974 resulted from considerable concern about the growing importance and proliferation of such practices to the detriment of U.S. export trade and the need to develop new or more adequate international trading rules and mechanisms for their discipline. The purpose of section 102 was: (1) to make clear the importance of reducing, eliminating, or harmonizing nontariff barriers and other trade-distorting measures through a congressional policy mandate and specific authority for the President to negotiate and enter into reciprocal nontariff barrier trade agreements as the major focus of the Tokyo Round of GATT multilateral trade negotiations; (2) to expedite and reduce the uncertainties of the legislative process for approval and implementation of such trade agreements, thereby encouraging and facilitating negotiations with foreign governments; and (3) to increase and formalize the role of the Congress during the negotiating process and in the development of implementing legislation. The authority applied to U.S. foreign direct investment as well as to trade in both goods and services.

Section 102 of the Trade Act of 1974 authorized the President to enter into reciprocal trade agreements for 5 years, until January 3, 1980, subject to congressional consultation requirements and approval of the agreements in implementing legislation considered under special expedited fast track procedures. Section 102 authority was used successfully to approve the agreements negotiated in the Tokyo Round and to make the changes in U.S. laws necessary for their domestic implementation under the Trade Agreements Act of 1979. That law extended the section 102 authority for an additional 8 years, until January 3, 1988, to enable the President to negotiate improvements or adjustments in existing agreements and to negotiate and enter into new agreements on non-tariff measures not dealt with in the Tokyo Round.

[13] Public Law 103–465, 19 U.S.C. 3521.

Section 102 authority was replaced by similar authority under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988. A trade agreement could be entered into under this authority only if it made progress in meeting the applicable objectives set forth in section 1101 of the 1988 Act.

Section 1102(b) authorized the President to enter into trade agreements with foreign countries providing for the reduction or elimination of any nontariff barriers or other distortions to trade, or for the prohibition of or limitations on the imposition of such barriers or distortions, before June 1, 1993, subject to implementation under the special fast track congressional approval procedures. The President was to provide the Congress at least 90 calendar days advance notice, i.e., no later than March 2, 1993, of his intention to enter into a trade agreement no later than May 31.

On July 2, 1993, section 1102 was amended to extend the fast track approval procedures to April 16, 1994 for the Uruguay Round negotiations, provided the President notified the Congress of his intent to enter into an agreement at least 120 days in advance (i.e., by December 15, 1993). The amendments also granted the private sector advisory committees an additional 30 days (but before January 15, 1994) to submit their reports on the proposed agreement.

### Bilateral Trade Agreement Authority

The expired section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988 authorized the President to enter into bilateral tariff and nontariff agreements with foreign countries, subject to the same congressional consultation requirements and special fast track procedures for approval of implementing legislation as apply to multilateral agreements. The authority to enter into bilateral trade agreements applied to trade agreements entered into before June 1, 1993, and was subject to the same minimum 90-day advance notice requirement as the multilateral authority.

Section 1102(c) authorized the elimination or reduction of any U.S. duty or for the elimination or reduction of nontariff barriers or other trade distorting measures. No trade benefit under the Agreement could be extended to a third country. The authority was similar to that which was used for the bilateral free trade agreements between the United States and Israel and the United States and Canada. The provision set forth three requirements for the negotiation of a bilateral agreement:

(1) The foreign country must request the negotiation of a bilateral trade agreement;

(2) The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and

(3) The President must provide written notice of the negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consult with these committees regarding the negotiation of an agreement. The negotiations may proceed unless either Committee disapproves the negotiations within 60 legislative days prior to the 90 calendar day advance notice required of entry into an agreement.

These multilateral and bilateral trade agreement authorities, which were originally due to expire as of June 1, 1991, were extended for an additional 2 years under procedures provided under

section 1103(b) of the 1988 Act. On March 1, 1991, President Bush submitted a report to the Congress requesting extension of the fast track trade agreement authorities as essential in particular for (1) completing the Uruguay Round of GATT multilateral trade negotiations, (2) proposed negotiations of NAFTA with Mexico and Canada, and (3) pursuit of free trade agreements with Latin American countries under the Enterprise for the Americas Initiative announced by the President on June 27, 1990.[14] In a subsequent letter on May 1, 1991, the President made commitments to the Congress in response to concerns raised about the proposed NAFTA negotiations. Neither House of Congress disapproved extension of the trade agreement authority for an additional 2-year period prior to the June 1, 1991 expiration date for disapproval.

### Reciprocal Competitive Opportunities

Prior to its expiration, section 1105(b) of the Omnibus Trade and Competitiveness Act of 1988[15] required the President to determine before June 1, 1993 (the final expiration date of trade agreement authority) whether any major industrial country had failed to make trade agreement concessions which provide competitive opportunities for the United States substantially equivalent to such concessions provided by the United States. If the determination was affirmative with respect to any country, the President was to recommend to the Congress legislation to terminate or deny trade agreement concessions in order to restore equivalence.

### Specific Trade Agreement Authorities

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

*Compensation agreements*

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

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[14] "The Extension of Fast Track Procedures," Message from the President of the United States, House Document 102–51, March 4, 1991.

[15] Public Law 100–418, 19 U.S.C. 2904.

*Termination and withdrawal authority*

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

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

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

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

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

*Accession of major state trading regimes to the WTO*

Section 1106 of the Omnibus Trade and Competitiveness Act of 1988,[16] as amended, requires the President to determine, before any major foreign country accedes to the WTO, whether state trading enterprises (1) account for a significant share of that country's exports or of its goods subject to import competition, and (2) whether those enterprises unduly burden or restrict or adversely affect U.S. trade or the U.S. economy or are likely to have such results. If both determinations are affirmative, the WTO cannot apply between the United States and that country until either (1) the country enters into an agreement with the United States for its state trading enterprises to operate in accordance with commercial considerations, or (2) Congress approves fast track legislation submitted by the President extending application of the WTO to the country.

[16] Public Law 100–418, 19 U.S.C. 2905.

TRADE NEGOTIATION PROCEDURAL REQUIREMENTS

Sections 131–135 of the Trade Act of 1974,[17] as amended by the Omnibus Trade and Competitiveness Act of 1988, require that certain procedures be followed in connection with any proposed trade agreement under section 123 of the 1974 Act or expired section 1102 of the 1988 Act. These prenegotiation procedures require advice from the International Trade Commission on the probable economic effect of duty modifications on U.S. industries (section 131), advice from executive branch agencies and other sources (section 132), public hearings (section 133), and advice from private sector advisory committees (section 135). In addition, executive liaison with the Congress is required through congressional designated official advisers to negotiations (section 161), transmittal of trade agreements (section 162), and annual reports on the trade agreements program and related matters (section 163). (See also discussion of Congress in chapter 7, infra.)

Section 127 of the Trade Act of 1974[18] requires the reservation from any negotiations involving reduction or elimination of duties or other import restrictions of any article while it is subject to an import relief action under section 203 of that Act or to a national security action under section 232 of the Trade Expansion Act of 1962, or if the President determines that the national security would be impaired.

## Congressional Fast Track Implementing Procedures

In contrast to traditional tariff proclamation authority, nontariff barrier agreements entered into under section 102 of the Trade Act of 1974, or the expired section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988, and bilateral trade agreements entered into under expired section 1102(c) authority under the 1988 Act could not enter into force for the United States and become binding as a matter of domestic law unless and until the President complied with specific requirements for consultation with the Congress and implementing legislation approving the Agreement and any changes in U.S. law was enacted into law.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which often involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance of formal congressional action. At the same time, the procedure ensures certain and expeditious action on the results of the negotiation and on the implementing bill with no amendments. Sections 102 of the 1974 Act, and 1102(d) and 1103 of the 1988 Act set forth the consultation and documentation requirements,[19] and 151–154 of the 1974 Act[20]

[17] Public Law 93–618, 19 U.S.C. 2151.
[18] Public Law 93–618, 19 U.S.C. 2137.
[19] Public Law 100–418, 19 U.S.C. 2903.
[20] Public Law 93–618, 19 U.S.C. 2191.

prescribed the following procedures for congressional fast track approval, as follows:

(1) Before entering into any trade agreement, the President is required to consult with the House Committee on Ways and Means, the Senate Committee on Finance, and with each other committee in the House and Senate with jurisdiction over legislation involving subject matter affected by the Agreement. The consultation includes (a) the nature of the Agreement; (b) how and to what extent the Agreement will achieve applicable purposes, policies, and objectives; and (c) all matters relating to agreement implementation.

(2) The President is required to give the Congress at least 90 calendar days (120 calendar days for the Uruguay Round Agreements) advance notice of his intention to enter into a trade agreement, and promptly publish the intention in the Federal Register. The purpose of this notice period is to provide the congressional committees of jurisdiction an opportunity to review the proposed agreement before it was signed, to determine the changes in U.S. laws that would be necessary or appropriate to implement the obligations under the Agreement, and to meet with Administration officials to develop the text of an acceptable implementing bill.

(3) After entering into the Agreement, the President is required to submit a copy of the final legal text to the Congress, together with a draft implementing bill, a statement of any administrative action proposed to implement the Agreement, and supporting information ((a) an explanation of how the bill and proposed administrative action would change or affect existing law; and (b) a statement asserting that the Agreement made progress in achieving applicable purposes, policies, and objectives; the reasons the Agreement made such progress and why and to what extent it did not achieve other purposes, policies, and objectives; how the Agreement served the interests of U.S. commerce; why the implementing bill and proposed administrative action were required or appropriate to carry out the Agreement; efforts made by the President to obtain international exchange rate equilibrium and any effect the Agreement may have regarding increased monetary stability; and the extent, if any, to which each foreign party to the Agreement maintained non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the Agreement and how the Agreement applied to or affected purchases and sales by such enterprises).

There is no statutory time limit for submission of the Agreement and draft bill after entry into the Agreement. The timetable is worked out between the congressional leadership and the Administration to accommodate the need for committees of jurisdiction to have adequate opportunity to develop an acceptable draft bill text while also ensuring expeditious formal action on the actual implementing legislation.

(4) The implementing bill is introduced by the leadership in both Houses of Congress on the same day it is submitted by the President and referred to the committees of jurisdiction. The committees have 45 legislative days in which to report the

bill; they are discharged automatically from further consideration after that period.

(5) Each House votes on the bill within 15 legislative days after the measure has been received reported or discharged from the committees. A motion in the House to proceed to consideration of the implementing bill is highly privileged and not debatable. Motions to recommit or reconsider the vote are not in order. Amendments are not in order.

No amendments to the implementing bill are in order in either the House or the Senate once the bill had been introduced; the committee and floor actions in the House and Senate consist of "up or down" votes on the bill as introduced. The total maximum period for congressional consideration from date of introduction is 60 legislative days if the bill was not a revenue measure. Since the Senate must act on a House-passed revenue bill, the maximum period for congressional consideration of a revenue implementing bill from date of introduction is 90 legislative days (15 additional days for Senate committee action on the House-passed measure and 15 additional days for Senate floor action). After the legislation is signed by the President, the Agreement goes into effect under the terms of the Agreement and the implementing bill.

Section 1103(c) of the 1988 Act instituted a "reverse fast track" procedure that terminated the application of that special procedure for the approval of trade agreements if both the Committee on Ways and Means and the Committee on Rules in the House and the Committee on Finance in the Senate reported, and both the House and Senate separately passed, resolutions of disapproval within any 60 legislative day period. The basis for the disapproval was failure or refusal of the U.S. Trade Representative (USTR) to consult with the Congress on trade negotiations and trade agreements as set forth in the consultation requirements. The fast track procedure applied to floor consideration of the resolution, which was nonamendable.

In addition, the 1974 and 1988 Acts provided for congressional advisers and consultations with committees of jurisdiction throughout the course of trade agreement negotiations (section 161 of the 1974 Act) and an advisory committee structure for private sector input during negotiations and reports on the results (section 135 of the 1974 Act). The congressional consultation requirements and fast track procedures applied to the implementing legislation for the Tokyo Round of GATT multilateral trade negotiations in 1979, the United States-Israel Free Trade Agreement and the United States-Canada Free-Trade Agreement, the North American Free Trade Agreement, and the Uruguay Round of GATT multilateral trade negotiations, including the Agreement Establishing the World Trade Organization.

Special fast track procedures under section 3(c) of the Trade Agreements Act of 1979 also applied to implementation of changes in the Tokyo Round Agreements and to the United States-Canada Free-Trade Agreement for an initial 30-month period. Section 3(c), which currently applies to implementation of changes in the United States-Israel Free Trade Agreement and the GATT Agreement on

Civil Aircraft,[21] requires the President to submit a draft bill and statement of any administrative action to the Congress whenever he determines it is necessary or appropriate to amend, repeal, or enact a statute to implement any requirement, amendment, or recommendation concerning an agreement. The President is required to consult at least 30 days in advance with the House Committee on Ways and Means and the Senate Committee on Finance and any other committees of jurisdiction on the subject matter and implementation.

While the authorities to enter into new trade agreements for congressional approval under fast track implementing procedures expired upon conclusion of the Uruguay Round negotiations, the fast track legislative procedures under sections 151–154 of the 1974 Act continue to apply to (1) resolutions approving bilateral commercial agreements extending MFN treatment to countries which are subject to the provisions of title IV of the Trade Act of 1974; (2) joint resolutions disapproving annual presidential determinations to extend authority to waive freedom of emigration requirements under title IV; (3) joint resolutions disapproving presidential reports of country compliance with freedom of emigration requirements under title IV; (4) joint resolutions disapproving presidential import relief actions under section 203 of the Trade Act of 1974 which differ from recommendations of the International Trade Commission; (5) joint resolutions withdrawing congressional approval of the WTO Agreement after 5 years and every 5 years thereafter; and (6) an implementing bill to extend non-countervailable subsidy categories under section 282 of the Uruguay Round Agreements Act after 5 years. While the procedures applicable to implementing bills and resolutions and to joint disapproval resolutions are similar, the time periods for committee and House and Senate consideration differ (shorter periods for disapproval resolutions), and the overall time periods for congressional consideration is generally subject to the terms of the statute involved.

Although statutory, the fast track legislative procedures were enacted as an exercise of the rulemaking powers of each House of Congress, and are part of each House's rules. The procedures may be changed in the same manner as any other rules.

## Uruguay Round Agreements

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

Sections 1101–1103 of the Omnibus Trade and Competitiveness Act of 1988, as extended by Public Law 103–49, set forth U.S. negotiating objectives and authority and implementing procedures nec-

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

essary for U.S. participation. As required by Public Law 103–49, the private sector advisory committees established under section 135 of the Trade Act of 1974 submitted their reports assessing the Agreements to the President, the USTR and the Congress on January 14, 1994.

On September 27, 1994, President Clinton sent a letter of transmittal to the House and Senate covering: (1) transmittal of the final texts of the Uruguay Round agreements, including the Agreement establishing the World Trade Organization; (2) the draft implementing bill and Statement of Administrative Action; and (3) supporting documents, as required by section 1103 of the 1988 Act.[22]

As provided under section 151 of the Trade Act of 1974,[23] as amended, the implementing legislation was introduced in the House on September 27 as H.R. 5110 by Majority Leader Gephardt, for himself and Minority Leader Michel by request, and jointly referred to eight committees of jurisdiction for a period ending October 3, 1994. On November 29, 1994, H.R. 5110 passed the House and was sent to the Senate for consideration, where it passed on December 1. On December 8, 1994, the bill was signed into law by the President.

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

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

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

The Understanding on Rules and Procedures Governing the Settlement of Disputes creates new procedures for settlement of disputes arising under any of the Uruguay Round agreements and provides time limits for each step in the process. The Understanding creates a more automatic process, including the right to a panel, adoption of panel reports unless there is a consensus to reject the report, appellate legal review on request, time limits for

[22] Public Law 100–418, 19 U.S.C. 2903.
[23] Public Law 93–618, 19 U.S.C. 2191.

country conformity with panel rulings and recommendations, and authorization of retaliation if such limits are not met.

During the December 1996 WTO Ministerial Meeting in Singapore, trade ministers from 28 WTO-member countries endorsed an agreement liberalizing market access in the information technology industry. This Information Technology Agreement (ITA) will eliminate tariffs on information technology products by the year 2000 on a wide range of technology products. For the ITA to take effect, participating countries must constitute at least 90 percent of global information technology trade. The ITA is scheduled to become effective on July 1, 1997. Negotiators made an effort to include only those products subject to zero-for-zero tariff negotiations in the Uruguay Round in order to fall within the grant of residual proclamation authority provided by section 111(b) of the Uruguay Round Agreements Act.

Since the WTO went into effect, there have been continuing negotiations on certain services negotiations under the auspices of the WTO: financial services, basic telecommunications services, and maritime services. On February 15, 1997, the WTO members reached an agreement on basic telecommunications services, after negotiations were not concluded by the original deadline of April 30, 1996. This agreement covers over 95 percent of world telecommunications revenue and was negotiated among 70 countries. With respect to extended negotiations on financial services, the United States, because of insufficient market-opening commitments from many of its trading partners, committed in July 1995 to protect the existing investments of foreign financial service providers in the United States but reserved the right to provide differing levels of treatment with respect to any expanded and new activities by such providers, or with respect to new entrants to the U.S. financial services market. The interim agreement will expire at the end of 1997, and negotiations were renewed in April 1997. With respect to maritime services, the United States and most other countries did not table an offer, and the negotiations were suspended on June 28, 1996, without an agreement and will not resume until the next GATS round in 2000. The United States continues to suspend its MFN obligations in this sector.

## URUGUAY ROUND AGREEMENTS ACT

The Uruguay Round Agreements Act approves the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) entered into by the President on April 15, 1994. The legislation and the Statement of Administrative Action (SAA) proposed to implement the Agreements were submitted to the Congress on September 27, 1994. The legislation includes provisions that are necessary or appropriate to implement the Uruguay Round Agreements in U.S. domestic law. Also included are provisions to offset the projected cost of the implementing legislation in order to comply with the "pay-as-you-go" requirements of the Budget Enforcement Act.

The legislation contains general provisions on: (1) approval and entry into force of the Uruguay Round Agreements, and the rela-

tionship of the Agreements to U.S. laws (section 101 of the Act[24]); (2) authorities to implement the results of tariff negotiations (section 111 of the Act[25]); (3) procedures regarding implementation of dispute settlement proceedings affecting the United States and oversight of activities of the World Trade Organization (WTO) (sections 121–130 of the Act[26]); and (4) objectives regarding extended Uruguay Round negotiations and other related provisions (sections 131, 135 and 315 of the Act[27]).

Specifically, sections 121–130 of the Act[28] contain procedural requirements for notice, consultation, and reporting to ensure access to, and advice by, congressional committees, private sector advisory committees, and the public regarding the dispute settlement mechanism under the WTO. In order to ensure that the WTO continues the practice followed by the GATT of decisionmaking by consensus, USTR must consult with Congress before any vote is taken in the WTO that would substantially affect U.S. rights or obligations under the Agreement or another multilateral trade agreement, or potentially entails a change in federal or state law. Within 30 days after the end of any year in which the WTO takes such a vote, USTR will submit a report to the appropriate congressional committees describing the decision, U.S. efforts to achieve consensus, country voting, how the decision affects the United States, and the President's response. The dispute settlement procedures set forth in the Act also include a provision requiring USTR to inform, consult, and report to Congress, private sector advisory committees, and the public during each stage of the process. Promptly after the establishment of a panel, USTR will publish a notice in the Federal Register identifying the parties to the dispute, setting forth the major issues raised and the legal basis of the complaint, identifying the specific measures cited in the request for the panel, and seeking written comments from the public on the issues raised. The USTR will take into account any advice received from Congress and the advisory committees and the written comments in preparing U.S. submissions to the panel or Appellate Body. In addition, USTR is required to submit an annual report to the Congress on the structure, budget and activities of the WTO, and details of dispute settlement actions.

The legislation contains a number of other provisions which affect the administration of U.S. trade laws. Included in the legislation are provisions amending the U.S. antidumping and countervailing duty laws in response to the Uruguay Round Antidumping and Subsidies/Countervailing Measures Agreements. The legislation implement in U.S. domestic law various provisions of the Uruguay Round Agreements relating to import safeguard measures; foreign trade barriers and unfair trade practices in import trade (section 337 of the Tariff Act of 1930); textiles and apparel trade; government procurement; and technical barriers to trade (product standards). Also included are provisions implementing the Agreement on Agriculture and the Agreement on Trade-Related Aspects

[24] Public Law 103–465, 19 U.S.C. 3511.
[25] Public Law 103–465, 19 U.S.C. 3521.
[26] Public Law 103–465, 19 U.S.C. 3531–3538.
[27] Public Law 103–465, 19 U.S.C. 3551, 3555, and 3581.
[28] Public Law 103–465, 19 U.S.C. 3531–3538.

of Intellectual Property Rights. The legislation also contains provisions extending expiring programs and amendments to certain customs laws related to the Uruguay Round Agreements, conforming amendments to various laws to reflect the implementation of the Agreements, as well as a number of revenue and other non-trade provisions to meet budgetary offset requirements. These provisions are discussed in greater detail in other chapters of this book.

## Specific Foreign Trade Barriers

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

Section 181 of the Trade Act of 1974,[29] added by section 303 of the Trade and Tariff Act of 1984 and amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act, requires an annual report on foreign trade barriers and their impact, known as the National Trade Estimates report. The USTR, through the interagency trade mechanism, must identify, analyze, and estimate the impact on U.S. commerce of foreign acts, policies, and practices which constitute significant barriers to or distortions of U.S. exports of goods or services and U.S. foreign direct investment. The report must also include information on any action taken (or reasons for no action taken) to eliminate any measure identified, as well as information with respect to section 301, negotiations or consultations with foreign governments, and foreign anticompetitive practices that adversely affect U.S. exports. The report is submitted to the appropriate committees of the House and to the Senate Committee on Finance. After submission of the report, the USTR must consult and take into account the views of these congressional committees.

Section 182 of the Trade Act of 1974,[30] as added by section 1303(b) of the 1988 Act and amended by the North American Free Trade Agreement Implementation Act and the Uruguay Round Agreements Act, requires the USTR to identify priority foreign countries that deny adequate and effective protection or fair and equitable market access for U.S. intellectual property rights, for purposes of action under section 301 (see further description under chapter 2).

### TELECOMMUNICATIONS TRADE ACT OF 1988

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

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[29] Public Law 93–618, 19 U.S.C. 2241.
[30] Public Law 93–618, 19 U.S.C. 2242.

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

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

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

*Background and current status*

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

In February 1989, the USTR (acting on behalf of the President) identified the European Community (EC) and Korea as priority foreign countries "that deny U.S. telecommunications goods and services firms" mutually advantageous market opportunites, based on information received during a 6-month consultation period with the

private sector and Congress and initiated negotiations. The initial term for those negotiations was 18 months from the date of enactment (August 1988). At the end of the 18-month period in February 1990, the USTR extended the negotiations for an additional 1-year term, based on a finding that substantial progress had been made and that further progress was likely if the negotiations were continued. In February 1991, the USTR once again used the discretion provided in the Act to extend the negotiations with the EC and Korea for an additional year, on the basis of past and expected progress in the talks.

The 1-year extension in 1991 was the last authorized under the Telecommunications Trade Act. The Act provides that if an agreement with each priority country which achieves the U.S. negotiating objectives was not reached by the end of that 1-year period, the President must take "whatever actions authorized . . . that are appropriate and most likely to achieve" the negotiating objectives. In taking such action, the President is directed first to take those actions which most directly affect trade in telecommunications products and services of the priority foreign country, unless he determines that action against other economic sectors would be more effective in achieving the negotiating objectives.

On February 21, 1992, the USTR announced that the United States and Korea had concluded the last of a series of agreements that would open access for competitive U.S. telecommunications goods and services providers in the Korean market on a fair and equitable basis. As a result, the President determined that Korea met the negotiating objectives set forth in section 1374 of the Omnibus Trade and Competitiveness Act of 1988 and no further action would be necessary. The annual review in 1993 of these agreements brought into question Korean compliance. After negotiations, Korea undertook in a clarifying letter to the United States a number of additional steps to ensure proper implementation of these agreements. On August 1, 1996, the USTR announced that changes in the Korean telecommunications market since 1992 have resulted in new barriers and identified Korea as a priority foreign country. The USTR stated that it would seek to negotiate an agreement with Korea to achieve U.S. objectives.

While progress had been made with respect to the EC, several issues remained unresolved; in particular, the objective of securing nondiscriminatory access to EC government-owned telecommunications utilities for U.S. goods and services has not been met. Since the President specified action to address this issue under title VII of the 1988 Act (see description under Government Procurement), further action under section 1374 was not considered to be appropriate, thereby concluding this proceeding.

In 1989, as part of the section 1377 review, USTR found Japan to be in violation of the Market-Oriented Sector-Specific (MOSS) Agreements in Telecommunications negotiated with Japan during the latter half of the 1980's. The MOSS Agreements consist of a series of commitments made by Japan concerning the regulation of and trade in telecommunications goods and services. As a result of the USTR finding and the ensuing initiation of retaliatory proceedings under section 1377(c), the United States and Japan reached the Third-Party Radio and Cellular Telephone Agreement in June

1989. The annual review of this agreement identified a potentially serious enforcement problem with cellular telephone provisions. U.S. meetings with Japan in the fall of 1993 failed to resolve this problem, and as a result, on February 15, 1994, the United States determined that Japan was not in compliance with the Agreement. Ensuring negotiations led to an agreement concluded on March 12, 1994 which resolved U.S. concerns. On April 11, 1994, the government of Japan forwarded to USTR a deployment plan called for under the March 12 agreement. As a result, USTR terminated its affirmative determination under section 1377 on April 12.

During the 1990 section 1377 review, the United States identified two MOSS Agreements compliance problems: provision of international value-added network services (IVANS) and foreign access to Japan's network channel terminating equipment (NCTE). Under the MOSS Agreements, the United States and Japan agreed in November 1988 on steps Japan would take to further liberalize its market for IVANS, resulting in the conclusion of an agreement on August 1, 1990. Subsequent agreements in 1991 addressed technical concerns. Negotiations on NCTE issues resulted in the July 25, 1990 agreement that committed Japan to liberalize its NCTE market. The agreement provides for the non-discriminatory treatment of foreign manufacturers in Japan and provides terms governing NCTE use with current and future services.

As part of the United States-Japan Framework for a New Economic Partnership initiated July 10, 1993, the United States and Japan identified government procurement of telecommunications products and services as a priority area for negotiation. These negotiations and subsequent agreements are discussed in greater detail in the Government Procurement chapter of this book.

### Most-Favored-Nation (Nondiscriminatory) Treatment

Nondiscriminatory treatment of trading partners has been a basic element of international trade for several centuries, although its scope and application has changed as the complexity of trade among the nations has increased. Such treatment and the principle underlying it usually are referred to as the "most-favored-nation" (MFN) treatment or principle. MFN has its origin in international commercial agreements, whereby the signatories extend to each other treatment in trade matters which is no less favorable than that accorded to a nation which is the "most favored" in this respect. The effect of such treatment is that all countries to which it applies are "the most favored" ones; hence, all are treated equally. In the context of U.S. tariff legislation, MFN treatment means that the products of a country given such treatment are subject to lower rates of duty (found in column 1 of the Harmonized Tariff Schedule (HTS) of the United States), which have resulted from various rounds of reciprocal tariff negotiations. Products from countries not eligible for MFN treatment under U.S. law are subject to higher rates of duty (found in column 2 of the HTS), which are essentially the rates of duty enacted by the Tariff Act of 1930.

Prior to 1934, the United States accorded MFN treatment to its trading partners reciprocally only within the scope of commercial agreements containing an MFN clause. Section 350 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1934, in ef-

fect required the nondiscriminatory application to all countries of tariff and trade concessions granted in bilateral agreements, whether or not those countries had agreements with the United States containing the MFN clause.

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

The unconditional and unlimited MFN policy was changed after the enactment of section 5 of the Trade Agreements Extension Act of 1951,[31] which directed the President to withdraw or suspend MFN status from the Soviet Union and all countries under the control of international communism. This action was prompted by the outbreak of the Korean War and the support that these countries were giving to North Korea and China. As implemented, this directive was applied to all then-existing Communist countries except Yugoslavia.

In December 1960, President Eisenhower revoked the suspension of MFN status with respect to Poland. President Kennedy suspended MFN status with respect to Cuba in May 1962, pursuant to a new legislative requirement contained in section 401 of the Tariff Classification Act of 1962.[32] The Tariff Classification Act also enacted the new Tariff Schedules of the United States, which for the first time, included in a general headnote a current list of countries without MFN status. Section 231 of the Trade Expansion Act of 1962,[33] as amended by section 402 of the Foreign Assistance Act of 1963, expanded the scope of the suspension of MFN status by applying it to "any country or area dominated by Communism," unless the President determined that the continued application of MFN status to Communist countries to which it was being applied at the time of the enactment of the Trade Expansion Act (i.e., to Poland and Yugoslavia) was in the national interest. The President made such a determination for both countries in March 1964.

The statutory provisions affecting the U.S. MFN policy and its practical implementation remained unchanged thereafter until enactment of the Trade Act of 1974. Subsequent amendments to U.S. MFN policy were made in the Customs and Trade Act of 1990.[34]

*MFN principle under present law*

The basic statute currently in force with respect to the MFN treatment of U.S. trading partners is section 126 of the Trade Act of 1974.[35] Section 126 contains the general requirement that any duty or other import restriction proclaimed to carry out any trade agreement applies on an MFN basis to products of all foreign countries, except as otherwise provided by law. The key provision embodying such exceptions with respect to tariff treatment is General Note 3(b) of the HTS, which contains the list of countries denied

[31] Public Law 49–50, ch. 141, approved June 16, 1951.
[32] Public Law 87–566, approved May 24, 1962.
[33] Public Law 87–794, approved October 11, 1962, 19 U.S.C. 1351.
[34] Public Law 101–382, approved August 20, 1990.
[35] Public Law 93–618, 19 U.S.C. 2136.

MFN tariff status with respect to their exports to the United States. (See list under chapter 1.) Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988[36] applies section 126(a) to trade agreements entered into under section 1102 of that Act, which includes the North American Free Trade Agreement and the Uruguay Round Agreements.

Other measures, most notably the Generalized System of Preferences, the Caribbean Basin Initiative, the Andean Initiative, the United States-Israel Free Trade Area, the United States-Canada Free-Trade Agreement, and tariff treatment of least developed developing countries, provide specifically for application of preferential duty treatment for eligible countries and products under certain circumstances. This preferential tariff status grants terms that are more favorable than those granted to other countries which otherwise receive MFN treatment from the United States. (See separate sections and chapter 1.)

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

*MFN authority for nonmarket economy countries*

The Trade Act of 1974 repealed section 231 of the Trade Expansion Act of 1962. Title IV of the Trade Act of 1974,[37] as amended, presently regulates the extension of MFN tariff treatment to nonmarket economy countries. Section 401 directs the President to continue to deny MFN treatment to any country to which it was denied on the date of the enactment of the Trade Act (i.e., all Communist countries as of January 3, 1975, except Poland and Yugoslavia). Section 402 also denies MFN treatment (as well as access to U.S. government credits, or credit or investment guarantees) to any nonmarket economy country ineligible for MFN treatment on the date of enactment of the Trade Act and which the President determines denies or seriously restricts or burdens its citizen's right to emigrate.

A country subject to the ban imposed by section 401 may gain MFN status only by fulfilling two basic conditions: (1) compliance with the requirements of the freedom of emigration provisions under section 402 of the Trade Act; and (2) conclusion of a bilateral commercial agreement with the United States under section 405 of the Trade Act providing reciprocal nondiscriminatory treatment.

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[36] Public Law 100–418, 19 U.S.C. 2904.

[37] Public Law 93–618, as amended by P.L. 96–39, P.L. 100–418, and P.L. 101–382, 19 U.S.C. 2431.

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

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

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

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

Presidential authority to extend MFN status to a country excluded under section 401 may be utilized only as long as a bilateral commercial agreement between the United States and the country involved remains in force. Sections 404 and 405 of the Trade Act of 1974 as amended authorize the President to conclude such agreements, which must contain various provisions, including safeguards against disruptive imports, intellectual property rights, trade promotion, and consultations. Agreements and implementing proclamations can take effect only if a joint resolution of approval is enacted into law under the fast track procedures of section 151 of the Trade Act. Agreements may remain in force for no more than

3 years, renewable for additional 3-year periods (without any congressional approval) if past operation has been found satisfactory.

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

*Application of MFN treatment*

Presidential authority to waive the emigration requirements for extension of MFN treatment under title IV of the Trade Act of 1974 has been extended annually since 1976. Between 1976 and 1989, the waiver authority and the authority to conclude bilateral trade agreements and grant MFN status was used only three times. MFN treatment was extended to Romania effective August 3, 1975; to Hungary effective July 7, 1978; and to the People's Republic of China effective February 1, 1980. Waivers were continued annually for all three countries and all three underlying bilateral agreements were extended, when appropriate, for additional 3-year periods by presidential determinations of their satisfactory operation. Although disapproval resolutions and alternative conditional MFN legislation were considered by the Congress, MFN treatment has continued uninterrupted for China under annual renewals of the waiver authority.

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

since 1992. The resolution was subsequently passed by the House on October 12, and the Senate on October 21. H.J. Res. 228 was approved by the President and signed into law on November 2, 1993.[38]

Romania continued receiving MFN treatment under a presidential waiver from the Jackson-Vanik freedom of emigration criteria until the President found Romania to be in full compliance with those requirements on May 19, 1995. On March 26, 1996, H.R. 3161 was introduced to provide the President with the authority to determine that title IV should no longer apply with respect to Romania and to extend unconditional MFN status to that country. Upon recommending approval of the bill, the Committee noted that Romania is a member of the World Trade Organization (WTO) and that an extension of unconditional MFN is necessary in order for the United States to avail itself of all rights under the WTO with respect to Romania. H.R. 3161 passed the House on July 17, 1996 and the Senate on July 19. The bill was signed into law by the President on August 3.[39] On November 7, the President issued a proclamation removing the application of title IV from Romania and extending unconditional MFN treatment to the products of that country.

Since 1989, presidential authority under title IV has been used frequently, in response to the collapse of Communist domination in Eastern and Central Europe. On October 25, 1989, Hungary became the first country ever found in full compliance with the title IV freedom of emigration requirements, thereby becoming eligible for open-ended MFN status, as long as the trade agreement remained in force and Hungary remained in full compliance.

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

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

Section 142 of the Customs and Trade Act of 1990 authorized the President to extend MFN treatment to the German Democratic Republic (East Germany), thus superseding the requirements of title IV, in light of the rapid progress then being made toward German reunification. However, the Congress expressed the strong view that such action should not be taken before MFN status was grant-

[38] Public Law 103–133, approved November 2, 1993.
[39] Public Law 104–171, approved August 3, 1996.

ed to Czechoslovakia under authority of title IV, since Czechoslovakia had followed all the procedures required by that title. The authority of section 142 was never used, however. The President issued a waiver for East Germany on August 15, 1990; that formerly independent country received MFN status on October 3, 1990 as part of a reunified Germany.

The Bush Administration entered into negotiations for a new bilateral trade agreement with the Soviet Union in response to the advent of "perestroika" and "glasnost" under the leadership of Soviet President Gorbachev, the subsequent collapse of communist regimes in Eastern and Central Europe, substantial increases in emigration rates, and to encourage further reforms. That agreement with its side letters was signed by Presidents Bush and Gorbachev on June 1, 1990. The President issued a waiver from the freedom of emigration requirements for the Soviet Union on December 29, 1990 and again on June 3, 1991. However, Soviet violence and economic sanctions against the independence movements in the Baltic states and Soviet republics resulted in delay of the submission of the Agreement to the Congress until August 2, 1991. Following independence of the Baltic states in September, the President resubmitted the trade agreement and presidential proclamation on October 9 and a new joint resolution was introduced omitting references to Estonia, Latvia, and Lithuania. The joint resolution approving the extension of MFN treatment to the products of the Soviet Union was passed by the Congress in November and signed into law on December 9, 1991.[40] Subsequently, bilateral trade agreements granting reciprocal MFN treatment have been signed with governments of the newly-independent republics of the former Soviet Union.[41] No further congressional action is required as long as these agreements ratified by the republics reflect only technical changes in the previously approved original agreement signed by the former Soviet Union.

Title IV of the Trade Act of 1974 applied to the Baltic states of Estonia, Latvia, and Lithuania by virtue of their forcible incorporation into the former Soviet Union. Following restoration of their independence from the Soviet Union on September 6, 1991, legislation[42] extended MFN treatment to the products of the three Baltic states, notwithstanding title IV or any other provision of law and terminated the application of title IV to these countries.

The President issued a waiver from the freedom of emigration requirements for Bulgaria on January 22, 1991, and for Mongolia on January 23, 1991; the waivers were continued for both countries on June 3, 1991. Bilateral trade agreements providing MFN treatment for products of each of these two countries were submitted to the Congress on June 25, 1991. Joint resolutions approving the extension of MFN treatment to Bulgaria and Mongolia were passed by the Congress in October and signed by the President on November 13, 1991.[43] On May 14, 1992, a bilateral trade agreement was signed with Albania and a presidential waiver was issued on May

[40] Public Law 102–197.

[41] As of this writing, bilateral trade agreements have been signed and ratified and MFN treatment granted to the 11 republics of Russia, Ukraine, Kyrgyzstan, Moldova, Armenia, Belarus, Georgia, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan.

[42] Public Law 102–182, title I, approved December 4, 1991.

[43] Public Law 102–157 and Public Law 102–158.

20. A joint resolution approving the granting of MFN treatment to the products of Albania was enacted on August 26, 1992.[44]

Bulgaria continued to receive MFN treatment under a presidential waiver from the Jackson-Vanik freedom of emigration criteria until the President found the country to be in full compliance with the statutory requirements in June 1993. On January 5, 1996, H.R. 2853 was introduced to provide the President with the authority to determine that title IV should no longer apply with respect to Bulgaria and to extend unconditional MFN status to the products of that country. In recommending approval of the bill, the Committee noted that Bulgaria was in the process of acceding to the WTO and that an extension of unconditional MFN would be necessary in order for the United States to avail itself of all rights under the WTO at the time of Bulgaria's accession. H.R. 2853 passed the House on March 5, 1996 and the Senate on June 28. The bill was signed into law by the President on July 18.[45] On September 27, the President issued a proclamation effective October 1 removing the application of title IV from Bulgaria and extending unconditional MFN treatment to the products of that country.

Poland is exempt from denial of MFN under title IV of the Trade Act, but its unconditional MFN status was suspended by presidential proclamation effective November 1, 1982, under the authority of section 125(d) of the Trade Act. On February 23, 1987, President Reagan restored MFN status to Poland by presidential proclamation as part of the last stage of removing sanctions imposed on Poland in 1982 in response to its action against Solidarity. MFN status for Afghanistan was suspended by presidential proclamation effective February 14, 1986, under the authority provided by section 118 of the Continuing Appropriations Act for fiscal year 1986.[46]

The former Yugoslavia is also not subject to the provisions of title IV. In response to the armed conflict and atrocities in the former Yugoslavia, legislation was initiated and passed late in the 102nd Congress withdrawing MFN treatment from Serbia and Montenegro; the other four newly-independent republics of Bosnia-Hercegovina, Croatia, Macedonia, and Slovenia retain MFN status. The legislation authorizes the President to restore MFN status to these two republics if he certifies to the Congress that certain conditions are fulfilled.[47]

Because of a peculiarity in the wording of the initial MFN status-suspending provision and its mandatory continuation by section 401, Cambodia's MFN status was not subject to the terms and conditions of the Jackson-Vanik amendment. Specifically, the original administrative suspension in 1951 and its enactment as part of the Trade Expansion Act of 1962 applied to "any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control." This qualified application of the suspension, based on the actual situation in each country involved, was in effect at the time of enactment of section 401, which predated the compete Communist takeover of Cambodia in May 1975. The language of the

[44] Public Law 102–363, approved August 26, 1992.
[45] Public Law 104–162, approved July 18, 1996.
[46] Public Law 99–190, approved December 19, 1985.
[47] Public Law 102–420, approved October 16, 1992.

provision was not changed until enactment of the Harmonized Tariff Schedule (HTS) in the Omnibus Trade and Competitiveness Act of 1988, which listed "Kampuchea" in General Note 3(b) among those countries whose products were denied MFN treatment. Upon the formation of the freely elected Royal Cambodian government in 1993, the United States and Cambodia negotiated an agreement on bilateral trade relations and intellectual property rights protection, calling for a reciprocal extension of MFN status. On May 16, 1995, H.R. 1642 was introduced to amend the HTS by striking "Kampuchea" to allow for an extension of unconditional MFN treatment to Cambodia upon the effective date of a Federal Register notice that a trade agreement obligating reciprocal MFN treatment had entered into force. The bill also required the President to report to Congress, no later than 18 months after the date of enactment, on trade relations between the United States and Cambodia under the bilateral agreement. H.R. 1642 passed the House on July 11, 1996 and the Senate on July 25. The bill was signed into law by the President on September 25.[48] As of October 25, the products of Cambodia were extended unconditional MFN treatment pursuant to a Federal Register notice published by the U.S. Trade Representative that a bilateral trade agreement between the United States and Cambodia was signed on October 4.

## North American Trade Relations

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988[49] authorized the President to enter into multilateral or bilateral trade agreements, before June 1, 1993 (extended until April 15, 1994, only for the GATT Uruguay Round of Multilateral Trade Negotiations) to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures, subject to congressional consultation requirements under sections 1102 and 1103 and approval of implementing legislation under special fast track procedural rules of the House and Senate under section 151 of the Trade Act of 1974. The authorities provided the means to achieve the negotiating objectives set forth under section 1101 of the 1988 Act.

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

Also on December 17, President-elect Clinton stated that he could not support the NAFTA as negotiated without additional side agreements covering the environment, workers, and import surges. On August 13, 1993, U.S. Trade Representative Michael Kantor announced completion of these supplemental agreements. He also an-

[48] Public Law 104–203, approved September 25, 1996.
[49] Public Law 100–418, approved August 23, 1988, 19 U.S.C. 2901 note.

nounced a basic agreement on a new institutional structure for funding environmental infrastructure projects in the U.S.-Mexico border region. The NAFTA side agreements were signed in a White House ceremony on September 14, 1993.

On November 4, 1993, President Clinton sent two letters of transmittal to the Congress covering: (1) the NAFTA text, together with the draft implementing bill, Statement of Administrative Action and supporting documents as required under section 1103(a) of the 1988 Act for congressional approval; and (2) the NAFTA supplemental agreements.

As provided under section 151 of the Trade Act of 1974, the implementing legislation was introduced as H.R. 3450 in the House and S. 1627 in the Senate on November 4. On November 17, the House passed H.R. 3450. On November 20, the Senate passed the bill. The bill was then signed by the President and became public law on December 8, 1993. On December 15, 1993, President Clinton issued Presidential Proclamation 6641 to implement as of January 1, 1994 the tariff modification provisions under the North American Free Trade Agreement as provided for under section 1102(a) of the 1988 Act.[50]

## NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement is the most comprehensive trade agreement ever negotiated and creates the world's largest market for goods and services.

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

## NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT OF 1993

The North American Free Trade Agreement Implementation Act of 1993[51] approved the Agreement and Statement of Administrative Action submitted to the Congress on November 4, 1993 and includes provisions which are necessary or appropriate to implement the Agreement in U.S. domestic law. U.S. law prevails over the Agreement if there is a conflict. The Agreement establishes a federal-state consultation process concerning NAFTA obligations affecting state laws. The Act establishes a federal-state consultation process to achieve conformity of state laws with the Agree-

[50] Proclamation No. 6641, 58 Fed. Reg. 68,191 (1993).
[51] Public Law 103–182, approved December 8, 1993, 19 U.S.C. 3301 note.

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

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

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

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

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

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

With respect to the supplemental agreements, the legislation authorized U.S. participation in, and appropriations for, the Commissions on Labor Cooperation, Environmental Cooperation, and Bor-

der Environment Cooperation. It also includes provisions relating to U.S. membership in the North American Development Bank.

## United States-Israel Trade Relations

Title IV of the Trade and Tariff Act of 1984[52] amended section 102(b) of the Trade Act of 1974 to authorize the President to enter into a bilateral reciprocal trade agreement with Israel specifically providing for elimination or reduction of U.S. duties on products of that country as well as nontariff barriers, subject to congressional consultations and approval of implementing legislation under the expedited procedures of sections 102 and 151–154 of the Trade Act. As amended by section 401, the requirements for advance consultations and 90-day advance notice to Congress of intent to enter into a trade agreement did not apply to a bilateral agreement with Israel. Title IV also contains basic provisions of U.S. laws required to be applied to the administration of the Agreement.

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations on a United States-Israel free trade area, which the Israeli government originally proposed in 1981. Negotiations by the U.S. Trade Representative began in mid-January 1984 on the elements of an agreement to eliminate tariffs and other trade-distorting practices between the two countries. The Agreement on the Establishment of a Free Trade Area Between the government of the United States of America and the government of Israel was signed on April 22, 1985. The President transmitted to the Congress on April 29 the text of the Agreement, a draft implementing bill, a statement of administrative action, and an explanation of the effects on existing law. The United States-Israel Free Trade Area Implementation Act of 1985[53] approved the free trade area agreement with changes in U.S. laws necessary and appropriate for its domestic implementation. The implementing bill was passed by both Houses of Congress in May and signed into law on June 11, 1985.

### Title IV of the Trade and Tariff Act of 1984

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

Section 402 required that any trade agreement entered into under section 102(b) with Israel provide for the reduction or elimination of duties only on articles that meet rule-of-origin requirements similar to those under the Caribbean Basin Initiative (CBI):

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

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

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

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

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

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

## UNITED STATES-ISRAEL FREE TRADE AREA AGREEMENT

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

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

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

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

## UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985

The United States-Israel Free Trade Area Implementation Act of 1985 approved the United States-Israel Free Trade Area Agreement and statement of administrative action submitted to the Congress on April 29, 1985 and made necessary and appropriate changes in U.S. laws for its domestic implementation.[54] U.S. statutes prevail if a provision of the Agreement is in conflict. No private rights of action or remedies are created. Expedited legislative approval procedures apply to subsequent changes in U.S. statutes to implement requirements, amendments, or recommendations under the Agreement.

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

The implementing legislation also amended title III of the Trade Agreements Act of 1979 to lower the threshold contract value to $50,000 or more on which the President may waive Buy American restrictions on eligible products or services from Israel covered by the GATT Agreement on Government Procurement. As amended by the Uruguay Round Agreements Act, the $50,000 threshold may be

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

applied to the broader central government entity coverage of goods and services under the 1994 GATT Agreement if there is a reciprocal agreement from Israel.

WEST BANK AND GAZA STRIP FREE TRADE BENEFITS

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

Accordingly, Congress passed legislation amending the United States-Israel Free Trade Area Implementation Act of 1985, adding a new section to provide the President proclamation authority to modify tariffs on products from the West Bank, Gaza Strip and qualifying industrial zones.[55] The provision applies to areas designated as industrial parks between the Gaza Strip and Israel and between the West Bank and Israel. The effect of the provision is to offer to goods from the West Bank, Gaza Strip, and qualifying industrial zones (located between Israel and Jordan or Israel and Egypt) the same tariff treatment as is offered to Israel under the United States-Israel Free Trade Agreement. The provision applies the same rule-of-origin requirements as to products from the West Bank, Gaza Strip, and qualifying industrial zones as are already applicable to products from Israel.

## United States-Canada Trade Relations

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

(1) The foreign country requested the negotiation of a bilateral trade agreement;

(2) The President gave at least 60 days advance notice of negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consulted with these committees regarding negotiation of such an agreement; and

(3) Neither Committee disapproved of the negotiation of such an agreement before the end of that 60-day period.

Agreements entered into under this authority were subject to further congressional consultation requirements and approval of implementing legislation under the expedited procedures of sections

[55] Public Law 104–234, approved October 2, 1996.

102 and 151–154 of the Trade Act. This bilateral trade agreement authority expired on January 3, 1988.

In March 1985, President Reagan and Prime Minister Mulroney directed their respective trade officials to explore ways to liberalize between the two countries. On September 26, Canadian Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." On December 10, President Reagan notified the House Committee on Ways and Means and the Senate Committee on Finance of the Administration's desire to enter into bilateral trade negotiations with Canada under the section 102 authority. On October 3, 1987, President Reagan submitted the 90-day advance notice to the Congress of his intention to enter into a trade agreement with Canada on January 2, 1988, the day before expiration of the authority, "contingent upon successful completion of the negotiations." On January 2, 1988, President Reagan and Prime Minister Mulroney signed the United States-Canada Free-Trade Agreement on behalf of their respective governments.

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

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

## UNITED STATES-CANADA FREE-TRADE AGREEMENT

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

The central provision of the Agreement is the phased out elimination of tariffs on all goods traded between the two countries within 10 years, by January 1, 1998, in three staging categories. Tariff elimination on particular products can be implemented faster than scheduled by mutual agreement. The Agreement contains rules of origin based primarily on changes in tariff classifications to determine that only products with sufficient content originating in either or both countries receive the benefits of preferential tariff treatment. Customs user fees and duty drawback programs must be phased out by 1994 for bilateral trade; duty waivers linked to performance requirements, except certain waivers affecting automotive trade, and duty remission programs for autos must be terminated by 1988.

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

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

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

The United States-Canada Free-Trade Agreement Implementation Act of 1988[56] approved the Agreement and statement of administrative action submitted to the Congress on July 25, 1988 and sets forth the relationship between obligations under the Agreement and U.S. laws. The legislation also makes changes in U.S. laws necessary or appropriate to implement obligations under the Agreement, sets forth negotiating objectives and authorities for further U.S.-Canada trade liberalization, and specifies procedures for domestic implementation of future changes in the Agreement. Technical amendments to various provisions were included in the Customs and Trade Act of 1990.[57]

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

The President is authorized to proclaim the modifications in U.S. rates of duty necessary to implement the scheduled phaseout and elimination of all tariffs on trade with Canada within 10 years. The rules of origin set forth in the Agreement to ensure application of preferential tariff treatment only to goods originating in Canada are enacted in the statute. The legislation implements U.S. obligations under the Agreement to phase out customs user fees on Canadian goods, to eliminate drawback with certain exceptions, and to

[56] Public Law 100–449, approved September 28, 1988, 19 U.S.C. 2112 note.
[57] Public Law 101–382, approved August 20, 1990.

exempt Canada from the lottery ticket embargo; provides penalties and recordkeeping requirements to enforce the rules of origin; and includes a reporting and monitoring requirement on the consistency of Canadian production-based duty remission programs with the GATT and the Agreement.

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

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

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

The NAFTA incorporates or otherwise carries forward most provisions of the United States-Canada FTA or supercedes the bilateral agreement in certain areas, such as rules of origin. The United States and Canada suspended the operation of the bilateral agreement upon entry into force of the NAFTA for the two countries for such time as the two governments remain parties to the NAFTA. As provided in section 107 of the NAFTA Implementation Act, certain provisions of the United States-Canada FTA Implementation Act are suspended; other provisions of that Act which carry out U.S. obligations under the United States-Canada FTA that are in effect under the NAFTA remain in place or are amended by the NAFTA Implementation Act.

# Chapter 7: ORGANIZATION OF TRADE POLICY FUNCTIONS

## Congress

The role of the Congress in trade derives from its powers under the Constitution to regulate foreign commerce and to lay and collect duties (see preface). Consequently, the trade agreements program and application of duties or other import restrictions are based upon and limited to specific legislation or authorities delegated by the Congress. In order to ensure proper implementation of these laws and authorities, in accordance with legislative intent, Congress has included various statutory requirements in the trade laws to limit their application, to ensure congressional oversight of their implementation, and to fulfill its responsibility for legislating any necessary or appropriate changes in U.S. laws.

More specifically, for example, periodic delegations of authority by the Congress to the President to proclaim changes in U.S. tariff treatment in the context of trade agreements has been limited in scope and periods of time, and use of the authority subject to certain prenegotiation procedures to protect domestic interests. On the other hand, Congress has granted federal agencies permanent authorities to administer certain laws and programs, such as trade remedy laws or trade adjustment assistance, under certain specific guidelines and subject to congressional oversight, including appropriations.

Specific statutory roles of the Congress became formalized under the Trade Act of 1974 [1] with the grant of authority to the President under section 102 to enter into reciprocal trade agreements affecting U.S. laws other than traditional changes in tariff treatment. In authorizing implementation through an expedited, no amendment procedure, Congress ensured its role through statutory consultation and notification procedures prior to submission of a draft implementing bill by the executive. This relationship continued under authorities granted by the Omnibus Trade and Competitiveness Act of 1988, but has now expired with respect to new agreements (see chapter 6).

Section 161 of the Trade Act of 1974 provides for appointment at the beginning of each session of Congress of five official congressional advisers by the Speaker of the House from the Committee on Ways and Means and five official advisers by the President of the Senate from the Committee on Finance, and additional advisers where appropriate for specific policy matters or negotiations, to U.S. delegations to international negotiating sessions on trade agreements. The U.S. Trade Representative (USTR) must keep each adviser and designated committee staff members informed of

[1] Public Law 93–618, approved January 3, 1975, 19 U.S.C. 2101.

U.S. objectives and the status of negotiations and of any changes which may be recommended in U.S. laws. Section 162 requires transmission of any trade agreements to the Congress.

Section 163 requires annual reports from the President and from the U.S. International Trade Commission (ITC) to keep the Congress informed regarding actions taken under the various trade laws and programs. Additional reports are required on specific aspects of various authorities (e.g., from the ITC on the domestic economic impact of the Caribbean Basin Initiative).

Finally, Congress had maintained its institutional role with the executive by requiring the USTR to advise the Congress as well as the President on trade policy developments, through requests to the ITC for studies and analyses under section 332 of the Tariff Act of 1930 of various current trade issues, and through its power to authorize and appropriate funds for the functions of major trade agencies.

## Executive Branch

### INTERAGENCY TRADE PROCESS

Trade policy is a major element of U.S. economic and foreign policy. A decision to raise or lower tariffs, to impose import quotas, or to take other trade policy actions affects both domestic and foreign interests. In light of the far-reaching effects of trade policy decisions, a large number of U.S. government agencies have a role to play in the development of policy. Various interagency coordinating mechanisms have been used for bringing together conflicting views and interests and resolving them so that there can be a consistent and balanced national trade policy.

Until the late 1950's, the Department of State was the major initiator and coordinator of international trade policy. The Secretary of State chaired the interagency Trade Agreements Committee which originally included eight agencies: the Departments of State, Agriculture, Commerce, and Treasury, the Tariff Commission, the Agricultural Adjustment Administration, the National Recovery Administration, and the Office of the Special Advisor to the President on Foreign Trade.

Congress authorized the President under section 242 of the Trade Expansion Act of 1962[2] to establish a new interagency trade organization to carry out specified trade policy functions. The Trade Agreements Committee was replaced by the Trade Policy Committee (TPC) in 1975.[3] The TPC performs the same functions authorized by section 242 of the 1962 Trade Act. Two subordinate coordinating groups, the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), were subsequently created by the authority of the Special Representative.[4]

Section 1621 of the Omnibus Trade and Competitiveness Act of 1988[5] amended section 242 of the 1962 Act to provide that this interagency organization will include the USTR as chair, the Secretaries of Commerce, State, Treasury, Agriculture, and Labor, and

[2] 19 U.S.C. 1801.
[3] 40 Fed. Reg. 18419, April 28, 1975.
[4] Exec. Order 11846, March 27, 1975, 40 Fed. Reg. 14291.
[5] Public Law 100–418, section 1621, approved August 23, 1988.

authorizes the USTR to invite other agencies to attend meetings as appropriate. The functions of the organization are: to assist and make recommendations to the President in carrying out his functions under the trade laws and to advise the USTR in carrying out its functions; to assist the President and advise the USTR on the development and implementation of U.S. international trade policy objectives; and to advise the President and the USTR on the relationship between U.S. international trade policy objectives and other major policy areas.

The TPSC is the working level interagency group, with members drawn from the office-director level of member agencies. Over 30 subcommittees and task forces support the work of the TPSC. In the absence of consensus at the TPSC level or in the case of particularly significant policy matters, issues are referred to the Assistant Secretary-level TPRG. Disagreements at the Assistant Secretary-level are referred to the TPC for Cabinet-level review. When presidential trade policy decisions are needed, the Chairman (USTR) submits the recommendations and advice of the Committee to the President.

The final tier of the interagency trade mechanism is the National Economic Council (NEC). Chaired by the President, the NEC is composed of the Vice President, the Secretaries of State, Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the USTR, the Chairman of the Council of Economic Advisors, the National Security Advisor, and the Assistants to the President for Economic Policy, Domestic Policy and Science and Technology Policy.

## OFFICE OF THE U.S. TRADE REPRESENTATIVE

Section 241 of the Trade Expansion Act of 1962 established the Office of the Special Representative for Trade Negotiations.[6] Congress' stated purpose for creating the position was to provide better balance between competing domestic and international interests in the formulation of U.S. trade policy and negotiations. The Special Trade Representative (STR), whose rank was ambassador extraordinary and plenipotentiary, was to serve as the chief U.S. representative for negotiations conducted under authority of the Act and for other trade negotiations authorized by the President.

Various executive orders issued by President Kennedy in 1963 established an Office of the Special Trade Representative and provided for the appointment of two Deputy Special Representatives for Trade Negotiations. These deputies, one based in Washington, D.C., and the other in Geneva, Switzerland (headquarters of the GATT Secretariat), were assigned major responsibilities for the conduct of the 1963–67 multilateral trade negotiations under the GATT, commonly known as the Kennedy Round.[7]

Section 141 of the Trade Act of 1974[8] established the office as an agency within the executive office of the President and ex-

[6] Public Law 87–794, approved October 11, 1962, 19 U.S.C. 1801.
[7] Public Law 97–456, approved January 12, 1983, added a third deputy trade representative.
[8] Public Law 93–618, approved January 3, 1975, 19 U.S.C. 2171.

panded the STR's duties to include responsibility for the trade agreements program under the Tariff Act of 1930, the Trade Expansion Act of 1962 and the Trade Act of 1974. Other duties and responsibilities also were assigned by the 1974 Trade Act and by Executive Order 11846 of March 27, 1975, as amended. Section 141 elevated the STR to Cabinet level by adding it to the list of positions at level I of the executive schedule of salaries, with the rank of ambassador. The STR was also made directly responsible to the President and the Congress.

Reorganization Plan No. 3 of 1979, implemented by Executive Order 12188 of January 4, 1980,[9] authorized certain changes in the trade responsibilities of the STR. Plan No. 3 redesignated the Office of the Special Representative for Trade Negotiations as the Office of the United States Trade Representative (USTR). The new name reflected the plan's intent for the Trade Representative to have overall responsibility, on a permanent basis, for developing and coordinating the implementation of U.S. trade policy.

The 1979 Reorganization Plan specified that the USTR is the President's principal adviser and chief spokesman on trade, including advice on the impact of international trade on other U.S. government policies. The USTR also became Vice Chairman of the Overseas Private Investment Corporation (OPIC), a nonvoting member of the Export-Import Bank, and a member of the National Advisory Committee on International Monetary and Financial Policies. In addition to these responsibilities, section 306(c) of the Trade and Tariff Act of 1984[10] specified that the USTR, through the interagency organization, is responsible for developing and coordinating U.S. policies on trade in services.

Section 1601 of the Omnibus Trade and Competitiveness Act of 1988[11] amended section 141 of the 1974 Act to the responsibilities of the USTR first enumerated under Reorganization Plan No. 3 and other statutes, as the following:

(1) to have primary responsibility for developing and coordinating the implementation of U.S. international trade policy;

(2) to serve as the principal adviser to the President on international trade policy and advise the President on the impact of other U.S. government policies on international trade;

(3) to have lead responsibility for the conduct of, and be chief U.S. representative for, international trade negotiations, including commodity and direct investment negotiations;

(4) to coordinate trade policy with other agencies;

(5) to act as the principal international trade spokesman of the President;

(6) to report to the President and the Congress on, and be responsible to the President and the Congress for, the administration of the trade agreements program, including advising on nontariff barriers, international commodity agreements, and other matters relating to the trade agreements program; and

(7) to be chairman of the Trade Policy Committee.

In addition, the Omnibus Trade and Competitiveness Act also included the sense of Congress that the USTR be the senior rep-

[9] 44 Fed. Reg. 69273.
[10] Public Law 98–573, approved October 30, 1984.
[11] Public Law 100–418, section 1601, approved August 23, 1988.

resentative on any body the President establishes to advise him on overall economic policies in which international trade matters predominate and that the USTR be included in all economic summits and other international meetings at which international trade is a major topic. The USTR was made responsible for identifying and coordinating agency resources on unfair trade practices cases that may be actionable under U.S. antidumping and countervailing duty statutes, section 337, or section 301. The Act established an unfair trade practices committee to advise the USTR.

Under the Omnibus Trade and Competitiveness Act of 1988, the Congress further sought to elevate the importance of the USTR in trade matters by shifting to the USTR from the President responsibility for implementing actions under section 301 of that Act, subject to the specific direction, if any, of the President.

The Uruguay Round Agreements Act specifies that the USTR is to have lead responsibility for all negotiations on any matter considered under the auspices of the World Trade Organization.

The Lobbying Disclosure Act of 1995 amended section 141 to prohibit the appointment of a person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, U.S. Code) in any trade negotiations, or trade dispute, with the United States as U.S. Trade Representative or Deputy U.S. Trade Representative.[12]

Section 141(g) of the Trade Act of 1974 provides for a 2-year authorization of appropriations for USTR.

## DEPARTMENT OF COMMERCE

The Department of Commerce was established in 1903 as the Department of Commerce and Labor.[13] A 1913 act of Congress split the Department of Commerce and Labor into two separate departments.[14] The mandate of the Commerce Department originally was to promote the foreign and domestic commerce of the United States. In subsequent years, its authority was extended to other areas bearing on the economic and technological development of the country. The titles of the component units of the Department indicate the diversity of the agency's current programs and services: Bureau of the Census; Bureau of Economic Analysis; Economic Development Administration; Bureau of Export Administration; International Trade Administration; Minority Business Development Agency; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration; Patent and Trademark Office; and U.S. Travel and Tourism Administration.

While most of these agencies have some responsibilities that affect U.S. trade, the U.S. Department of Commerce's major trade responsibilities are centered in the International Trade Administration and the Bureau of Export Administration.

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[12] Public Law 104–65, approved December 19, 1995.
[13] 32 Stat. 827, 5 U.S.C. 591.
[14] 37 Stat. 736, 15 U.S.C. 1501.

The International Trade Administration (ITA), which was established by the Secretary of Commerce on January 2, 1980,[15] administers many of the Department's international trade responsibilities and activities as prescribed by Reorganization Plan No. 3 of 1979. The plan provides that the Commerce Department has "general operational responsibility for major nonagricultural international trade functions," as well as for any other functions assigned by law. Those include export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms, research and analysis, and compliance with international trade agreements to which the United States is a party.

The Bureau of Export Administration (BXA) controls exports of commodities and technology for reasons of national security, foreign policy, and short supply. BXA issues export licenses in accordance with the export control regulations. Export control regulations are developed in consultation with other agencies, and some export license applications require interagency review.

### U.S. Customs Service

The second act of Congress, dated July 4, 1789, authorized the collection of duties on imported goods, wares and merchandise. The fifth act of Congress, passed in July 31, 1789, established customs districts and authorized customs officers to collect import duties. On March 3, 1927, the Bureau of Customs was established as a separate agency under the Treasury Department.[16] The Bureau was redesignated the United States Customs Service on August 1, 1973.[17]

The Customs Service collects import duties and enforces more than 400 laws or regulations relating to international trade. Among the many responsibilities falling to Customs are assessing and collecting duties, excise taxes, penalties and other fees due on imported goods; interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo and mail into and out of the United States; helping enforce U.S. laws against the transfer of certain technologies to certain countries under export control authorities, laws on copyright, patent and trademark rights; and administering quotas and other import restrictions. The U.S. Customs Service maintains close ties with private business associations, international organizations, and foreign customs services.

The Commissioner of Customs is appointed by the President and subject to confirmation by the Senate.

The Customs Procedural Reform and Simplification Act of 1978 provides for a 2-year authorization of appropriations for Customs.

## U.S. International Trade Commission

The U.S. International Trade Commission (ITC) is an independent and quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the President and the Congress on a wide range of international trade issues. The

[15] 45 Fed. Reg. 11862, as amended by 46 Fed. Reg. 13537.
[16] 44 Stat. 1381.
[17] Treasury Department Order 165–23, of April 4, 1973.

agency was established on September 8, 1916[18] as the U.S. Tariff Commission. In 1974 the name was changed to the United States International Trade Commission by section 171 of the Trade Act of 1974.[19]

Commissioners are appointed by the President for 9-year terms, unless they are appointed to fill an unexpired term. Any Commissioner who has served for more than 5 years may not be reappointed. Of the six commissioners, not more than three may be of the same political party. The Chairman and Vice Chairman are designated by the President for 2-year terms, and successive Chairmen may not be of the same political party. After June 17, 1996, a Commissioner with less than 1 year of continuous service as a Commissioner may not be designated as Chairman.

The Commission has numerous responsibilities for advice, investigations, studies, and data collection and analysis which may be grouped into the following general areas: advice on trade negotiations; Generalized System of Preferences; import relief for domestic industries; East-West trade; investigations of injury caused by subsidized or dumped goods; import interference with agricultural programs; unfair practices in import trade; development of uniform statistical data; matters related to the U.S. tariff schedules; international trade studies; trade and tariff summaries.

Statutory authority for the Commission's responsibilities is provided primarily by the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, the Omnibus Trade and Competitiveness Act of 1988, and the Uruguay Round Agreements Act.

The Tariff Act of 1930 gives the Commission broad authority to conduct studies and investigations relating to the impact of international trade on U.S. industries. Various sections under title VII of the Tariff Act authorize the Commission to determine whether U.S. industries are materially injured by imports which benefit from subsidies or are priced below fair value.[20] If the Secretary of Commerce decides to suspend an antidumping or countervailing duty investigation upon reaching an agreement to eliminate the injury caused by the subsidized or dumped imports, the Commission is authorized to study whether or not the injury in fact is being eliminated. Section 337 of the Tariff Act authorizes the ITC to investigate whether unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.[21] The Commission is authorized to order actions to remedy any such violations, subject to presidential disapproval.

Upon the request of the President, the House Committee on Ways and Means, the Senate Committee on Finance, or on its own motion, the ITC conducts studies and investigations under section 332 of the Tariff Act of 1930 on a wide range of trade-related issues.[22] Public reports generally are issued following such studies and investigations. The ITC also publishes summaries outlining

[18] 39 Stat. 795.
[19] 19 U.S.C. 2231.
[20] Sections 704, 734, and 751; 19 U.S.C. 1671c, 1673c, and 1675c.
[21] 19 U.S.C. 1337.
[22] 19 U.S.C. 1332.

the types of products entering the United States, their importance in U.S. consumption, production, and trade, and other relevant information. The ITC also is required to establish and maintain statistics on U.S. trade and to review the international commodity code for classifying products and reporting trade statistics among countries.[23]

The Trade Expansion Act of 1962 and the Trade Act of 1974 expanded the duties of the ITC. Both laws require the Commission to review developments within an industry receiving import protection and to advise the President on the probable impact of reducing or eliminating the protection.[24]

The Trade Act of 1974 gives the Commission a presidential advisory role on the probable domestic economic effects of trade concessions proposed during trade negotiations.[25] The ITC performs a similar advisory role in relation to duty-free treatment under the Generalized System of Preferences.[26] Under section 201 of the 1974 Trade Act,[27] the Commission conducts investigations to determine whether increased imports are causing or threatening serious injury to the competing domestic industry and reports its findings and recommendations for relief to the President.

Sections 406 and 410[28] of the 1974 Trade Act provide for ITC monitoring and investigation of various aspects of trade with nonmarket economics.

Section 221 of the Trade and Tariff Act of 1984, amended by section 1614 of the Omnibus Trade and Competitiveness Act of 1988, established a separate Trade Remedy Assistance Office within the ITC to provide information to the public on remedies and benefits available under U.S. trade laws and on the procedures and filing dates for relief petitions.

Section 330(e)(2) of the Tariff Act of 1930 contains a 2-year authorization of appropriations for the ITC.

## Private or Public Sector Advisory Committees

The first formal mechanism providing for ongoing advice from the private sector on international trade matters was authorized by section 135 of the Trade Act of 1974.[29] In view of the positive contribution of the advisory committees to the Tokyo Round of multilateral trade negotiations and to passage of the implementing legislation—the Trade Agreements Act of 1979—Congress provided for continuation of the advisory committee structure in section 1631 of the Omnibus Trade and Competitiveness Act of 1988. Congress also expanded the committees' responsibilities by authorizing them to provide advice on the priorities and direction of U.S. trade policy, in addition to their previous responsibilities.

The U.S. Trade Representative manages the advisory committees in cooperation with the Departments of Agriculture, Commerce, Labor, and other departments. The committee structure is three-tiered, with the most senior level represented by the Advisory Com-

[23] 19 U.S.C. 1484(e).
[24] 19 U.S.C. 1981, 2253.
[25] 19 U.S.C. 2151.
[26] 19 U.S.C. 2151, 2163.
[27] 19 U.S.C. 2251.
[28] 19 U.S.C. 2240, 2436.
[29] 19 U.S.C. 2155.

mittee for Trade Policy and Negotiations (ACTPN). The ACTPN is a 45-member body composed of presidential-appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group provides overall guidance on trade policy matters, including trade agreements and negotiations, and is chaired by a chairman elected by the committee. The group convenes at the call of the U.S. Trade Representative.

The second tier is made up of policy advisory committees representing overall sectors of the economy (e.g., industry, agriculture, labor, services) whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of sector advisory committees consisting of experts from various fields. Their role is to provide specific, technical information and advice on trade issues involving their particular sector. Members of the second and third tier are appointed by the U.S. Trade Representative and the Secretary of the relevant department or agency.

# PART II: COMPILATION OF U.S. TRADE STATUTES

## Chapter 8: TARIFF AND CUSTOMS LAWS

## A. IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

### Title I, Subtitle B (Sections 1201–1217) of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 3001 et seq.; P.L. 100–418, as amended by P.L. 100–647]

**SEC. 1201. PURPOSES.**

The purposes of this subtitle are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

(3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

**SEC. 1202. DEFINITIONS.**

As used in this subtitle:

(1) The term "Commission" means the United States International Trade Commission.

(2) The term "Convention" means 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, submitted to the Congress on June 15, 1987.

(3) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term "Federal agency" means any establishment in the executive branch of the United States Government.

(5) The term "old Schedules" means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a).

(6) The term "technical rectifications" means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—

(A) errors in spelling, numbering, or punctuation;

(B) errors in indentation;

(C) errors (including inadvertent omissions) in cross-references to headings or subheadings or notes; and

(D) other clerical or typographical errors.

**SEC. 1203. CONGRESSIONAL APPROVAL OF UNITED STATES ACCESSION TO THE CONVENTION.**

(a) CONGRESSIONAL APPROVAL.—The Congress approves the accession by the United States of America to the Convention.

(b) ACCEPTANCE OF THE FINAL LEGAL TEXT OF THE CONVENTION BY THE PRESIDENT.—The President may accept for the United States the final legal instruments embodying the Convention. The President shall submit a copy of each final instrument to the Congress on the date it becomes available.

(c) UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of the Convention nor the enactment of this subtitle may be construed as creating any private right of action or remedy for which provision is not explicitly made under this subtitle or under other laws of the United States.

(d) TERMINATION.—The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) do not apply to the Convention.

**SEC. 1204. ENACTMENT OF THE HARMONIZED TARIFF SCHEDULE.**

(a) IN GENERAL.—The Tariff Act of 1930 is amended by striking out title I and inserting a new title I entitled "Title I—Harmonized Tariff Schedule of the United States" (hereinafter in this subtitle referred to as the "Harmonized Tariff Schedule") which—

(1) consists of—

(A) the General Notes;

(B) the General Rules of Interpretation;

(C) the Additional U.S. Rules of Interpretation;

(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

(E) the Chemical Appendix to the Harmonized Tariff Schedule;

all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes" and Supplement No. 1, thereto; but

(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1, thereto.

(b) MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE.—At the earliest practicable date after the date of the enactment of the Onmibus Trade and Competitiveness Act of 1988, the President shall—

(1) proclaim such modifications to the Harmonized Tariff Schedule as are consistent with the standards applied in con-

verting the old Schedules into the format of the Convention, as reflected in such Publication No. 2030 and Supplement No. 1, thereto, and as are necessary or appropriate to implement—

(A) the future outstanding staged rate reductions authorized by the Congress in—

(i) the Trade Act of 1974 (19 U.S.C. 2101 et seq.) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) to reflect the tariff reductions that resulted from the Tokyo Round of multilateral trade negotiations, and

(ii) the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 1202 note) to reflect the tariff reduction resulting from the United States-Israel Free Trade Area Agreement,

(B) the applicable provisions of—

(i) statutes enacted,

(ii) executive actions taken, and

(iii) final judicial decisions rendered,

after January 1, 1988, and before the effective date of the Harmonized Tariff Schedule, and

(C) such technical rectifications as the President considers necessary; and

(2) take such action as the President considers necessary to bring trade agreements to which the United States is a party into conformity with the Harmonized Tariff Schedule.

(c) STATUS OF THE HARMONIZED TARIFF SCHEDULE.—

(1) The following shall be considered to be statutory provisions of law for all purposes:

(A) The provisions of the Harmonized Tariff Schedule as enacted by this subtitle.

(B) Each statutory amendment to the Harmonized Tariff Schedule.

(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974).

(2) Neither the enactment of this subtitle nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—

(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or

(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.

(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in

lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective rate of duty.

(d) INTERIM INFORMATIONAL USE OF HARMONIZED TARIFF SCHEDULE CLASSIFICATIONS.—Each—

(1) proclamation issued by the President;

(2) public notice issued by the Commission or other Federal agency; and

(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency;

during the period between the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 and the effective date of the Harmonized Tariff Schedule shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

**SEC. 1205. COMMISSION REVIEW OF, AND RECOMMENDATIONS REGARDING, THE HARMONIZED TARIFF SCHEDULE.**

(a) IN GENERAL.—The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

(b) AGENCY AND PUBLIC VIEWS REGARDING RECOMMENDATIONS.—In formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

(1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and

(2) may provide for a public hearing.

(c) SUBMISSION OF RECOMMENDATIONS.—The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) REQUIREMENTS REGARDING RECOMMENDATIONS.—The Commission may not recommend any modification to the Harmonized

Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

**SEC. 1206. PRESIDENTIAL ACTION ON COMMISSION RECOMMENDATIONS.**

(a) IN GENERAL.—The President may proclaim modifications, based on the recommendations by the Commission under section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with United States obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) LAY-OVER PERIOD.—

(1) The President may proclaim a modification under subsection (a) only after the expiration of the 60-day period beginning on the date on which the President submits 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 the proposed modification and the reasons therefor.

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) 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

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) EFFECTIVE DATE OF MODIFICATIONS.—Modifications proclaimed by the President 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. 1207. PUBLICATION OF THE HARMONIZED TARIFF SCHEDULE.**

(a) IN GENERAL.—The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

(1) in the form of microfilm images; or

(2) in the form of electronic media.

(b) CONTENT.—Publications under subsection (a), in whatever format, shall contain—

(1) the then current Harmonized Tariff Schedule;

(2) statistical annotations and related statistical information formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)); and

(3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.

**SEC. 1208. IMPORT AND EXPORT STATISTICS.**

The Secretary of Commerce shall compile, and make publicly available, the import and export trade statistics of the United States. Such statistics shall be conformed to the nomenclature of the Convention.

**SEC. 1209. COORDINATION OF TRADE POLICY AND THE CONVENTION.**

The United States Trade Representative is responsible for coordination of United States trade policy in relation to the Convention. Before formulating any United States position with respect to the Convention, including any proposed amendments thereto, the United States Trade Representative shall seek, and consider, information and advice from interested parties in the private sector (including a functional advisory committee) and from interested Federal agencies.

**SEC. 1210. UNITED STATES PARTICIPATION ON THE CUSTOMS COOPERATION COUNCIL REGARDING THE CONVENTION.**

(a) PRINCIPAL UNITED STATES AGENCIES.—

(1) Subject to the policy direction of the Office of the United States Trade Representative under section 1209, the Department of the Treasury, the Department of Commerce, and the Commission shall, with respect to the activities of the Customs Cooperation Council relating to the Convention—

(A) be primarily responsible for formulating United States Government positions on technical and procedural issues; and

(B) represent the United States Government.

(2) The Department of Agriculture and other interested Federal agencies shall provide to the Department of the Treasury, the Department of Commerce, and the Commission technical advice and assistance relating to the functions referred to in paragraph (1).

(b) DEVELOPMENT OF TECHNICAL PROPOSALS.—

(1) In connection with responsibilities arising from the implementation of the Convention and under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) regarding United States programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall prepare technical proposals that are appropriate or required to assure that the United States contribution to the development of the Convention recognizes the needs of the United States business community for a Convention which reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices.

(2) In carrying out this subsection, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall—

(A) solicit and consider the views of interested parties in the private sector (including a functional advisory committee) and of interested Federal agencies;

(B) establish procedures for reviewing, and developing appropriate responses to, inquiries and complaints from interested parties concerning articles produced in and exported from the United States; and

(C) where appropriate, establish procedures for—

(i) ensuring that the dispute settlement provisions and other relevant procedures available under the Convention are utilized to promote United States export interests, and

(ii) submitting classification questions to the Harmonized System Committee of the Customs Cooperation Council.

(c) AVAILABILITY OF CUSTOMS COOPERATION COUNCIL PUBLICATIONS.—As soon as practicable after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, and periodically thereafter as appropriate, the Commission shall see to the publication of—

(1) summary records of the Harmonized System Committee of the Customs Cooperation Council; and

(2) subject to applicable copyright laws, the Explanatory Notes, Classification Opinions, and other instruments of the Customs Cooperation Council relating to the Convention.

**SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.**

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) are in effect on the day before the effective date of the Harmonized Tariff Schedule; and

(B) contain references to the tariff classification of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the United States Government to make the conforming changes required under paragraph (1), shall affect to any extent the validity or effect of the proclamation, regulation, ruling, notice, finding, determination, order, recommendation, or other action referred to in paragraph (1).

(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2463(a), 2464(c)(3)).

(2) In applying section 504(c)(1) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)) for calendar year 1989, the reference in such

section to July 1 shall be treated as a reference to September 1.

(c) IMPORT RESTRICTIONS UNDER THE AGRICULTURAL ADJUSTMENT ACT.—

(1) Whenever the President determines that the conversion of an import restriction proclaimed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) from part 3 of the Appendix to the old Schedules to subchapter IV of chapter 99 of the Harmonized Tariff Schedule results in—

(A) an article that was previously subject to the restriction being excluded from the restriction; or

(B) an article not previously subject to the restriction being included within the restriction;

the President may proclaim changes in subchapter IV of chapter 99 of the Harmonized Tariff Schedule to conform that subchapter to the fullest extent possible to part 3 of the Appendix to the old Schedules.

(2) Whenever the President determines that the conversion from headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules to Additional U.S. Note 2, chapter 17, of the Harmonized Tariff Schedule results in—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1990.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This subtitle may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this subtitle shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19

U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on February 1, 1988; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

No later than September 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

(3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform such Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 180 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

**SEC. 1212. REFERENCE TO THE HARMONIZED TARIFF SCHEDULE.**

Any reference in any law to the "Tariff Schedules of the United States", "the Tariff Schedules", "such Schedules", and any other general reference that clearly refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule.

**[SEC. 1213. TECHNICAL AMENDMENTS.]**

**[SEC. 1214. CONFORMING AMENDMENTS.**—Amendments to codified titles, the Tobacco Adjustment Act of 1983, the Federal Hazardous Substances Act, the Consumer Product Safety Act, the Toxic Substances Control Act, the Emergency Wetlands Resources Act of 1986, COBRA of 1985, the Tariff Act of 1930, the Automotive Products Trade Act of 1965, the Trade Act of 1974, the Trade Agreements Act of 1979, the Act of March 2, 1897, the Controlled Substances Import and Export Act, the Comprehensive Anti-Apartheid Act of 1986, the Strategic and Critical Materials Stock Piling Act, the Internal Revenue Code of 1986, the Caribbean Basin Economic Recovery Act, the Act Relating to Reforestation Trust Fund, the Trade and Tariff Act of 1984, the Meat Import Act of 1979, the National Wool Act of 1954, and the Agricultural Act of 1949.**]**

**[SEC. 1215. NEGOTIATING AUTHORITY FOR CERTAIN ADP EQUIPMENT.**

Amendments to section 128(b) of the Trade Act of 1974 (19 U.S.C. 2138(b))**]**

**SEC. 1216. COMMISSION REPORT ON OPERATION OF SUBTITLE.**

The Commission, in consultation with other appropriate Federal agencies, shall prepare, and submit to the Congress and to the President, a report regarding the operation of this subtitle during the 12-month period commencing on the effective date of the Harmonized Tariff Schedule. The report shall be submitted to the Congress and to the President before the close of the 6-month period beginning on the day after the last day of such 12-month period.

**SEC. 1217. EFFECTIVE DATES.**

(a) ACCESSION TO CONVENTION AND PROVISIONS OTHER THAN THE IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—Except as provided in subsection (b), the provisions of this subtitle take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988.

(b) IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

(1) the amendments made by sections 1204(a), 1213, 1214, and 1215 take effect and apply with respect to articles entered on or after such date; and

(2) sections 1204(c), 1211, and 1212 take effect.

## Section 484(e) of the Tariff Act of 1930, as amended

[19 U.S.C. 1484(e); P.L. 71–361, as amended by P.L. 93–618 and P.L. 95–106]

**SEC. 484. ENTRY OF MERCHANDISE.**

* * * * * * *

(e) STATISTICAL ENUMERATION.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached

thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

## B. EXCERPTS FROM THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) RELATING TO SPECIAL DUTY TREATMENT

### 1. American Goods Returned (HTS Item 9801.00.10)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER I

ARTICLES EXPORTED AND RETURNED, NOT ADVANCED OR IMPROVED IN CONDITION; ANIMALS EXPORTED AND RETURNED

*U.S. Notes*

1. The provisions in this subchapter (except subheadings 9801.00.70 and 9801.00.80) shall not apply to any article:

(a) Exported with benefit of drawback;

(b) Of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and was not refunded; or

(c) Manufactured or produced in the United States in a customs bonded warehouse or under subheading 9813.00.05 and exported under any provision of law.

* * * * * * *

| Heading/ subheading | Stat. suffix | Article description | Units of quantity | Rates of duty | | |
|---|---|---|---|---|---|---|
| | | | | 1 | | 2 |
| | | | | General | Special | |
| 9801.00.10 | | Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad ..... | ..... | Free | | |

## 2. American Goods Repaired or Altered Abroad (HTS Items 9802.00.40, .50)

## American Metal Articles Processed Abroad (HTS Item 9802.00.60)

## American Components Assembled Abroad (HTS Item 9802.00.80)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER II

ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD

*U.S. Notes*

1. Except for goods subject to NAFTA drawback, this subchapter shall not apply to any article exported:

(a) From continuous customs custody with remission, abatement or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under heading 9813.00.05.

2. (a) Except as provided in paragraph (b), any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article, and, if subject to a duty which is wholly or partly ad valorem, shall be dutiable, except as otherwise prescribed in this part, on its full value determined in accordance with section 402 of the Tariff Act of 1930, as amended. If such product or such article is dutiable at a rate dependent upon its value, the value for the purpose of determining the rate shall be its full value under the said section 402.

(b) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710) may be treated as a foreign article, or as subject to duty, if—

(i) the article is—

(A) assembled or processed in whole of fabricated components that are a product of the United States, or

(B) processed in whole of ingredients (other than water) that are a product of the United States,

in a beneficiary country; and

(ii) neither the fabricated components, materials or ingredients, after exportation from the United States, nor the article itself, before importation into the United States, enters the commerce of any foreign country other than a beneficiary country.

As used in this paragraph, the term *"beneficiary country"* means a country listed in general note 7(a).

3. *Articles repaired, altered, processed or otherwise changed in condition abroad.*—The following provisions apply only to subheadings 9802.00.40 through 9802.00.60, inclusive:

(a) The value of repairs, alterations, processing or other change in condition outside the United States shall be:

(i) The cost to the importer of such change; or

(ii) If no charge is made, the value of such change,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) No appraisement of the imported article in its changed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.

(c) The duty, if any, upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the article, as returned to the United States, is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate which when applied to the full value of such article determined in accordance with said section 402 would provide the same amount of duties as the specific or compound rate. In order to compute the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the United States.

(d) For purposes of subheading 9802.00.60, the term "*metal*" covers (1) the base metals enumerated in additional U.S. note 1 to section XV; (2) arsenic, barium, boron, calcium, mercury, selenium, silicon, strontium, tellurium, thorium, uranium and the rare-earth elements; and (3) alloys of any of the foregoing.

4. *Articles assembled abroad with components produced in the United States.*—The following provisions apply only to subheading 9802.00.80 and 9802.00.90:

(a) The value of the products of the United States assembled into the imported article shall be:

(i) The cost of such products at the time of the last purchase; or

(ii) If no charge is made, the value of such products at the time of the shipment for exportation,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) The duty, if any, on the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in

such proportion as the cost or value of such products of the United States bears to the full value of the imported article.

5. No imported article shall be accorded partial exemption from duty under more than one provision in this subchapter.

6. Notwithstanding the partial exemption from ordinary customs duties on the value of the metal product exported from the United States provided under subheading 9802.00.60, articles imported under subheading 9802.00.60 are subject to all other duties, and any other restrictions or limitations, imposed pursuant to title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), or chapter 1 of title II or chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2251 et seq., 19 U.S.C. 2411 et seq.).

| Heading/ subheading | Stat. suffix | Article description | Units of quantity | Rates of duty 1 General | Rates of duty 1 Special | Rates of duty 2 |
|---|---|---|---|---|---|---|
| | | Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means: | | | | |
| | | Articles exported for repairs or alterations: | | | | |
| 9802.00.40 | | Repairs or alterations made pursuant to a warranty | ..... | A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter) | Free (B, C, CA, IL, MX) | A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter). |
| | 20 [1] | Internal combustion engines . . . dutiable value ..... | ([1]) | | | |
| | 40 [1] | Other . . . dutiable value ..... | ([1]) | | | |
| 9802.00.50 | | Other ..... | ..... | A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter) | Free (IL, MX). A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter) (B, C, CA) | A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter). |
| 9802.00.60 | 00 [1] | Any article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing ..... | ([1 3]) | A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter) | Free (IL). A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter) (B, C, CA, MX) | A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter). |

| | | | | | | |
|---|---|---|---|---|---|---|
| 9802.00.80 | | Articles, except goods of heading 9802.00.90, assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting ..... | ..... | A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter) | Free (IL).<br>A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter) (B, C, CA, MX) | A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter). |

### 3. Personal (Tourist) Exemptions (HTS Items 9804.00.65, .70, .72)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

SUBCHAPTER IV

PERSONAL EXEMPTIONS EXTENDED TO RESIDENTS AND NONRESIDENTS

*U.S. Notes*

* * * * * * *

2. In the case of persons arriving from a contiguous country which maintains a free zone or free port, if the Secretary of the Treasury deems it necessary in the public interest and to facilitate enforcement of the requirement that the exemption in subheading 9804.00.70 shall apply only to articles acquired as an incident of the foreign journey, he shall prescribe by regulation or instruction, the application of which may be restricted to one or more ports of entry, that such exemption shall be allowed only to residents who have remained beyond the territorial limits of the United States for not less than a specified period, not to exceed 24 hours, and, after the expiration of 90 days after the date of such regulation or instruction, allowance of the said exemption shall be subject to the limitations so prescribed.

3. A person arriving in the United States:

(a) On duty as an employee of a vessel, vehicle or aircraft, engaged in international traffic, or

(b) From a trip during which he was so employed,

shall not be entitled to the exemptions provided for in this subchapter (other than those in heading 9804.00.80), unless he is permanently leaving such employment without the intention of resuming it on the same or another carrier.

4. As used in subheadings 9804.00.70 and 9804.00.72, the term *"beneficiary country"* means a country listed in general notes 7(a) or 11(a).

| Heading/ subheading | Stat. suffix | Article description | Units of quantity | Rates of duty 1 General | Rates of duty 1 Special | Rates of duty 2 |
|---|---|---|---|---|---|---|
| | | Articles imported by or for the account of any person arriving in the United States who is a returning resident thereof (including American citizens who are residents of American Samoa, Guam or the Virgin Islands of the United States) (con.): | | | | |
| | | Other articles acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 within 30 days preceding his arrival, and claims exemption under only one of such items on his arrival: | | | | |
| 9804.00.65 | (1) | Articles, accompanying a person, not over $400, in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages and including not more than 200 cigarettes and 100 cigars ..... | ..... | Free | | Free |

| Heading/ subheading | Stat. suffix | Article description | Units of quantity | Rates of duty 1 General | Rates of duty 1 Special | Rates of duty 2 |
|---|---|---|---|---|---|---|
| 9804.00.70 | ([1]) | Articles whether or not accompanying a person, not over $1,200 in aggregate fair market value in the country of acquisition, including:<br>(a) but only in the case of an individual who has attained the age of 21, not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in American Samoa, Guam or the Virgin Islands of the United States, and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions, and<br>(b) not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in such insular possessions, and not more than 100 cigars,<br>if such person arrives directly or indirectly from such insular possessions, not more than $400 of which shall have been acquired elsewhere than in such insular possessions or up to $600 of which have been acquired in one or more beneficiary countries (but this subheading does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions) ..... | | Free | | Free |

| | | | | | | |
|---|---|---|---|---|---|---|
| 9804.00.72 | (1) | Articles whether or not accompanying a person, not over $600 in aggregate fair market value in the country of acquisition, including—<br>(a) but only in the case of an individual who has attained the age of 21, not more than 1 liter of alcoholic beverages or not more than 2 liters if at least 1 liter is the product of one or more beneficiary countries, and<br>(b) not more than 200 cigarettes, and not more than 100 cigars,<br>if such person arrives directly from a beneficiary country, not more than $400 of which shall have been acquired elsewhere than in beneficiary countries (but this item does not permit the entry of articles not accompanying a person which were acquired elsewhere than in beneficiary countries) ..... | | Free | | Free |

## 4. Products of U.S. Insular Possessions (General Note 3(a)(iv))

*Products of Insular Possessions*

(A) Except as provided in additional U.S. note 5 of chapter 91 and except as provided in additional U.S. note 2 of chapter 96, and except as provided in section 423 of the Tax Reform Act of 1986, goods imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column 1 of the tariff schedule, except that all such goods the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to goods described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(B) In determining whether goods produced or manufactured in any such insular possession contain foreign materials to the value of more than 70 percent, no material shall be considered foreign which either—

(1) at the time such goods are entered, or

(2) at the time such material is imported into the insular possession,

may be imported into the customs territory from a foreign country, and entered free of duty; except that no goods containing material to which (2) of this subparagraph applies shall be exempt from duty under subparagraph (A) unless adequate documentation is supplied to show that the material has been incorporated into such goods during the 18-month period after the date on which such material is imported into the insular possession.

(C) Subject to the limitations imposed under subsections (a), (c), and (d) of section 503 of the Trade Act of 1974, goods designated as eligible under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such goods imported from a beneficiary developing country under title V of such Act.

(D) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such goods when they are imported from a beneficiary country under such Act.

(E) Subject to the provisions in section 204 of the Andean Trade Preference Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable

than the treatment afforded such goods when they are imported from a beneficiary country under such Act.

(F) No quantity of an agricultural product that is subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this paragraph.

### 5. Rates of Duty on Certain Motor Vehicles (General Note 3(d))

(d) CERTAIN MOTOR VEHICLES MANUFACTURED IN FOREIGN TRADE ZONES.

(i) DUTY IMPOSED.—Notwithstanding any other provision of law, the duty imposed on a qualified article shall be the amount determined by multiplying the applicable foreign value content of such article by the applicable rate of duty for such article.

(ii) QUALIFIED ARTICLE.—For purposes of this subdivision, the term "qualified article" means an article that is—

(A) classifiable under any of subheadings 8702.10 through 8704.90 of the Harmonized Tariff Schedule of the United States,

(B) produced or manufactured in a foreign trade zone before January 1, 1996,

(C) exported therefrom to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301(4)), and

(D) subsequently imported from that NAFTA country into the customs territory of the United States—

(I) on or after the effective date of this subdivision, or

(II) on or after January 1, 1994, and before such effective date, if the entry of such article is unliquidated, under protest, or in litigation, or liquidation is otherwise not final on such effective date.

(iii) APPLICABLE FOREIGN VALUE CONTENT.

(A) APPLICABLE FOREIGN VALUE CONTENT.—For purposes of this subdivision, the term "applicable foreign value content" means the amount determined by multiplying the value of a qualified article by the applicable percentage.

(B) APPLICABLE PERCENTAGE.—The term "applicable percentage" means the FTZ percentage for the article plus 5 percentage points.

(iv) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subdivision—

(A) FTZ PERCENTAGE.—The FTZ percentage for a qualified article shall be the percentage determined in accordance with subparagraph (I), (II), or (III) of this paragraph, whichever is applicable.

(I) REPORT FOR YEAR PUBLISHED.—If, at the time a qualified article is entered, the FTZ Annual Report for the year in which the article was manufactured has been published, the FTZ percentage for the article shall be the percentage of foreign status merchandise set forth in that report for the subzone in which the qualified article was manufactured, or if not manufac-

tured in a subzone, the foreign trade zone in which the qualified article was manufactured.

(II) REPORT FOR YEAR NOT PUBLISHED.—If, at the time a qualified article is entered, the FTZ Annual Report for the year in which the article was manufactured has not been published, the FTZ percentage for the article shall be the percentage of foreign status merchandise set forth in the most recently published FTZ Annual Report for the subzone in which the article was manufactured, or if not manufactured in a subzone, the foreign trade zone in which the qualified article was manufactured.

(B) APPLICABLE RATE OF DUTY.—The term "applicable duty rate" means the rate of duty set forth in any of subheadings 8702.10 through 8704.90 of the Harmonized Tariff Schedule of the United States that is applicable to the qualified article and which would apply to that article if the article were directly entered for consumption into the United States from the foreign trade zone with nonprivileged foreign status having been claimed for all foreign merchandise used in the manufacture or production of the qualified article.

(C) FOREIGN TRADE ZONE; SUBZONE.—The terms "foreign trade zone" and "subzone" mean a zone or subzone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(D) FTZ ANNUAL REPORT.—The term "FTZ Annual Report" means the Annual Report to the Congress published in accordance with section 16 of the Foreign Trade Zones Act (19 U.S.C. 81p(c)).

(E) NON-PRIVILEGED FOREIGN STATUS.—The term "nonprivileged foreign status" means that privilege has not been requested with respect to an article pursuant to section 3 of the Foreign Trade Zones Act.

## C. GENERALIZED SYSTEM OF PREFERENCES

### Title V of the Trade Act of 1974, as amended

[19 U.S.C. 2461 et seq.; P.L. 93–618, as amended by P.L. 94–455, P.L. 96–39, P.L. 98–573, P.L. 99–47, P.L. 99–514, P.L. 99–570, P.L. 100–418, P.L. 101–179, P.L. 101–382, P.L. 103–66, P.L. 103–465, P.L. 104–188, and P.L. 104–295]

**SEC. 501. AUTHORITY TO EXTEND PREFERENCES.**

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

**SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.**

(a) AUTHORITY TO DESIGNATE COUNTRIES.—

(1) BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

(2) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

(b) COUNTRIES INELIGIBLE FOR DESIGNATION.—

(1) SPECIFIC COUNTRIES.—The following countries may not be designated as beneficiary developing countries for purposes of this title:

(A) Australia.
(B) Canada.
(C) European Union member states.
(D) Iceland.
(E) Japan.
(F) Monaco.
(G) New Zealand.
(H) Norway.
(I) Switzerland.

(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United

States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers

in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

(3) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

(f) CONGRESSIONAL NOTIFICATION.—

(1) NOTIFICATION OF DESIGNATION.—

(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

**SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.**

(a) ELIGIBLE ARTICLES.—

(1) DESIGNATION.—

(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502(d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive

in the context of imports from least-developed beneficiary developing countries.

(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) RULE OF ORIGIN.—

(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

(A) Textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) Articles against which other actions taken.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) COMPETITIVE NEED LIMITATION.—

(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year, the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

(B) COUNTRY DEFINED.—For purposes of this paragraph, the term "country" does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) DE MINIMIS WAIVERS.—

(i) IN GENERAL.—The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, $13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) OTHER BASES FOR WAIVER.—The President may waive the application of subsection (c)(2) if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with respect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) LIMITATIONS ON WAIVERS.—

(A) IN GENERAL.—The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

(B) OTHER WAIVER LIMITS.—The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free

under this title that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

(C) CALCULATION OF LIMITATIONS.—There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this title during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

(5) EFFECTIVE PERIOD OF WAIVER.—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) INTERNATIONAL TRADE COMMISSION ADVICE.—Before designating articles as eligible articles under subsection (a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

(f) SPECIAL RULE CONCERNING PUERTO RICO.—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico.(19 U.S.C. 2463)

**SEC. 504. REVIEW AND REPORT TO CONGRESS.**

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

**SEC. 505. DATE OF TERMINATION.**

No duty-free treatment provided under this title shall remain in effect after May 31, 1997.

**SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.**

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

**SEC. 507. DEFINITIONS.**

For purposes of this title:

(1) BENEFICIARY DEVELOPING COUNTRY.—The term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

(2) COUNTRY.—The term "country" means any foreign country or territory, including any overseas dependent territory or

possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

(3) ENTERED.—The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term "internationally recognized worker rights" includes—

(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.

(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—The term "least-developed beneficiary developing country" means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).

## General Note 4 of the Harmonized Tariff Schedule

*Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP)*

(a) The following countries, territories and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) are designated beneficiary developing countries for the purposes of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*):

*Independent Countries*

Albania
Angola
Antigua and Barbuda
Argentina
Armenia
Bahrain
Bangladesh
Barbados
Belarus
Belize
Benin
Bhutan
Bolivia
Bosnia and Hercegovina
Brazil
Bulgaria
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Djibouti

Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Estonia
Ethiopia
Fiji
Gambia, The
Ghana
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hungary
India
Indonesia
Jamaica
Jordan
Kazakhstan
Kenya
Kiribati
Kyrgyzstan
Latvia
Lebanon
Lesotho
Lithuania
Macedonia, Former Yugoslav Republic of
Madagascar
Malawi
Mali
Malta
Mauritius
Moldova
Morocco
Mozambique
Namibia
Nepal
Niger
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Romania
Russia
Rwanda
St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Slovakia
Slovenia
Solomon Islands
Somalia
South Africa
Sri Lanka
Suriname
Swaziland
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Uganda
Ukraine
Uruguay
Uzbekistan
Vanuatu
Venezuela
Republic of Yemen
Zaire
Zambia

*Non-Independent Countries and Territories*

Anguilla
Aruba
British Indian Ocean Territory
Cayman Islands
Christmas Island (Australia)
Cocos (Keeling) Islands
Cook Islands
Falkland Islands (Islas Malvinas)
French Polynesia
Gibraltar
Greenland
Heard Island and McDonald Islands
Macau
Montserrat
Netherlands Antilles
New Caledonia
Niue
Norfolk Island
Pitcairn Islands
Saint Helena
Tokelau
Turks and Caicos Islands
Virgin Islands, British
Wallis and Futuna
West Bank and Gaza Strip
Western Sahara

*Associations of Countries (treated as one country)*

| *Member Countries of the Cartagena Agreement (Andean Group)* | *Members of the Association of South East Asian Nations (ASEAN) Eligible for GSP except Brunei Darussalam, Malaysia and Singapore* | *Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas* |
|---|---|---|
| Consisting of: | Consisting of: | Consisting of: |
| Bolivia | Indonesia | Antigua and Barbuda |
| Colombia | Philippines | Barbados |
| Ecuador | Thailand | Belize |
| Peru | | Dominica |
| Venezuela | | Grenada |
| | | Guyana |
| | | Jamaica |
| | | Montserrat |
| | | St. Kitts and Nevis |
| | | Saint Lucia |
| | | Saint Vincent and the Grenadines |
| | | Trinidad and Tobago |

(b) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the Trade Act of 1974, as amended:

Angola
Bangladesh
Benin
Bhutan
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Equatorial Guinea
Ethiopia
Gambia, The
Guinea
Guinea-Bissau
Haiti
Kiribati
Lesotho
Madagascar
Malawi
Mali
Mozambique
Nepal
Niger
Rwanda
Sao Tome and Principe
Sierra Leone
Somalia
Tanzania
Togo
Tuvalu
Uganda
Vanuatu
Republic of Yemen
Zaire
Zambia

Whenever an eligible article which is the growth, product or manufacture of one of the countries designated as a least-developed beneficiary developing country is imported into the customs territory of the United States directly from such country, such article shall be entitled to receive the duty-free treatment provided for in subdivision (c) of this note without regard to the limitations on preferential treatment of eligible articles in section 504(c) of the Trade Act, as amended (19 U.S.C. 2464(c)).

## D. CARIBBEAN BASIN INITIATIVE (CBI)

### Caribbean Basin Economic Recovery Act, as amended

[19 U.S.C. 2701 et seq.; P.L. 98–67, title II, as amended by P.L. 98–573, P.L. 99–514, P.L. 99–570, P.L. 100–418, P.L. 100–647, P.L. 101–382, P.L. 103–182, P.L. 103–465, P.L. 104–188, and P.L. 104–295]

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Caribbean Basin Economic Recovery Act".

SUBTITLE A—DUTY-FREE TREATMENT

**SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.**

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

**SEC. 212. BENEFICIARY COUNTRY.**

(a)(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "HTS" means Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Cayman Islands
Montserrat
Netherlands Antilles
Saint Christopher-Nevis
Turks and Caicos Islands
Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that

there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under 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);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

[(d) Amendment to general headnote 3(a) to the Tariff Schedules of the United States, redesignated as General Note 3(a)(iv) of the HTS, relating to products of insular possessions (reprinted elsewhere).]

(e)(1) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(A) withdraw or suspend the designation of any country as a beneficiary country, or

(B) withdraw, suspend, or limit the application of duty-free treatment under this subtitle to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in subsections (b) and (c).

**SEC. 213. ELIGIBLE ARTICLES.**

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies,

an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment 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.

(3) As used in this subsection, the phrase "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.

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 (i) profit, and (ii) 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.

(4) Notwithstanding section 311 of the Tariff Act of 1930, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(5) The duty-free treatment provided under this chapter shall apply to an article (other than an article listed in subsection (b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if—

(A) the article is imported directly from the beneficiary country into the customs territory of the United States,

(B) the article was by any means advanced in value or improved in condition in a beneficiary country, and

(C) if any materials are added to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.

(b) The duty-free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

(6) articles to which reduced rates of duty apply under subsection (h).

(c)(1) As used in this subsection—

(A) The term "sugar and beef products" means—

(i) sugars, sirups, and molasses provided for in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the Harmonized Tariff Schedule of the United States, and

(ii) articles of beef or veal, however provided for in chapters 2 and 16 of the Harmonized Tariff Schedule of the United States.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this title to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this title;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this title to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—

(A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 212, does not submit a Plan to the President for evaluation;

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2) (A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

(d) TARIFF-RATE QUOTAS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(e)(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is provided under chapter 1 of title II of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the President under section 201(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 unless the United States International Trade 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 such 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 duty-free treatment provided by this title.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 203 of the Trade Act of 1974.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country 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

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974,

(B) on the day a determination by the President not to take action under section 203 of such Act not to take action becomes final,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheading 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; and

(D) 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.

(g) No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

(h)(1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(A) are the product of any beneficiary country; and

(B) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) The reduction required under paragraph (1) in the rate of duty on any article shall—

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first one-fifth of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(3) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed—

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

**SEC. 214. MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS.**

[(a) Amendments to general headnote 3(a) to the Tariff Schedules of the United States, redesignated as general note 3(a)(iv) of the HTS, relating to products of insular possessions (reprinted elsewhere).]

(b) Item 813.31 of the TSUS is amended by striking out "4 liters" and inserting in lieu thereof "5 liters", and by inserting after "United States,", "and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions,".

(c) If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title. The President shall submit a report to the Congress on the measures he takes.

(d) Section 1112 of the Trade Agreements Act of 1979 (19 U.S.C. 2582) is repealed.

(e) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico.

(f) For purposes of chapter 1 of title II of the Trade Act of 1974, the term "industry" shall include producers located in the United States insular possessions.

(g) Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954) shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act if—

(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

**SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.**

(a) The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during—

(1) the twenty-four-month period beginning with the date of enactment of this Act; and

(2) each calendar year occuring thereafter until duty-free treatment under this title is terminated under section 216(b).

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b)(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, 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, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c)(1) Each report required under subsection (a) shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

**SEC. 216. IMPACT STUDY BY SECRETARY OF LABOR.**

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this title have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

**SEC. 217. FEASIBILITY STUDY REGARDING A CARIBBEAN TRADE INSTITUTE.**

(a) The Secretary of State shall prepare a study regarding the feasibility of establishing a Caribbean Trade Institute in Harlem, New York City, supported by a combination of Federal and private funds.

(b) The study shall include, but not be limited to, an assessment of the extent to which, and the means by which, a Caribbean Trade Institute could—

(1) facilitate cooperation between public and private entities interested in engaging in or furthering Caribbean trade;

(2) serve as a catalyst for greater cultural exchange between the United States and Caribbean nations; and

(3) facilitate expansion of job opportunities both in the United States and the Caribbean Basin.

The study shall also include suggestions regarding the organization and staffing of such an institute.

(c) The study required by this section shall be submitted to the Congress within six months after the date of enactment of this Act.

**SEC. 218. EFFECTIVE DATE.**

(a) This chapter shall take effect on August 5, 1983.

[(b) Repealed.]

**SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.**

(a) ESTABLISHMENT.—The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the "Center"). The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) SCOPE OF THE CENTER.—The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine—

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere;

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) CONSULTATION; SELECTION CRITERIA.—The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to—

(1) the institution's ability to carry out the programs and activities described in this section; and

(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) PROGRAMS AND ACTIVITIES.—The Center shall conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center.

(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

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

(1) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(2) WESTERN HEMISPHERE COUNTRIES.—The terms "Western Hemisphere countries", "countries in the Western Hemisphere", and "Western Hemisphere" means Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(f) FEES FOR SEMINARS AND PUBLICATIONS.—Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

(g) DURATION OF GRANT.—The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

(h) REPORT.—The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants

are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

(1) a statement identifying the institution or institutions selected as the Center;

(2) the reasons for selecting the institution or institutions as the Center; and

(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.

[Section 515(b) of the NAFTA Implementation Act authorizes to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary in the 3 succeeding fiscal years to carry out the purposes of section 219 of the Caribbean Basin Economic Recovery Act (as added by subsection (a)).]

## SUBTITLE B—TAX PROVISIONS

### SEC. 221. PAYMENT OF EXCISE TAXES COLLECTED ON RUM TO PUERTO RICO AND THE UNITED STATES VIRGIN ISLANDS.

[Amends section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) by inserting after subsection (b) the following new subsection, applicable to articles imported into the United States after June 30, 1983:

[“(e) SHIPMENTS OF RUM TO THE UNITED STATES.—

[“(1) EXCISE TAXES ON RUM COVERED INTO TREASURIES OF PUERTO RICO AND VIRGIN ISLANDS.—All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

[“(2) SECRETARY PRESCRIBES FORMULA.—The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

[“(3) RUM DEFINED.—For purposes of this subsection, the term ‘rum’ means any article classified under subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[“(4) COORDINATION WITH SUBSECTIONS (a) AND (b).—Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).”.]

### SEC. 222. TREATMENT OF CARIBBEAN CONVENTIONS, ETC.

[Amends subsection (h) of section 274 of the Internal Revenue Code of 1954 (relating to attendance at conventions, etc.) by adding at the end thereof the following new paragraph, applicable to conventions, seminars, or other meetings beginning after June 30, 1983:

[“(6) TREATMENT OF CONVENTIONS IN CERTAIN CARIBBEAN COUNTRIES.—

[“(A) IN GENERAL.—For purposes of this subsection, the term ‘North American area’ includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

[“(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

[“(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

[“(B) BENEFICIARY COUNTRY.—For purposes of this paragraph, the term ‘beneficiary country’ has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

[“(C) AUTHORITY TO CONCLUDE EXCHANGE OF INFORMATION AGREEMENTS.—

[“(i) IN GENERAL.—The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

[“(ii) NONDISCLOSURE OF QUALIFIED CONFIDENTIAL INFORMATION SOUGHT FOR CIVIL TAX PURPOSES.—An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

[“(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which

was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

[“(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

[“(iii) QUALIFIED CONFIDENTIAL INFORMATION DEFINED.—For purposes of this subparagraph, the term ‘qualified confidential information’ means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

[“(iv) CIVIL TAX PURPOSES.—For purposes of this subparagraph, the determination of whether information is sought only for civil purposes shall be made by the requesting party.

[“(D) COORDINATION WITH SECTION 6103.—Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4).

[“(E) DETERMINATIONS PUBLISHED IN THE FEDERAL REGISTER.—The following shall be published in the Federal Register—

[“(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

[“(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

[“(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).”]

**SEC. 223. REPORT WITH RESPECT TO USE OF CARIBBEAN BASIN TAX HAVENS.**

The Secretary of the Treasury shall, not later than ninety days after the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes, and the effect on Federal revenues of such use,

(2) any information he may have on the relationship of such use to drug trafficking and other criminal activities, and

(3) current antitax haven enforcement activities of the Department of the Treasury.

## SUBTITLE C—SENSE OF THE CONGRESS REGARDING SUGAR IMPORTS

**SEC. 231. SUGAR IMPORTS.**

It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States.

## Caribbean Basin Economic Recovery Expansion Act of 1990

[19 U.S.C. 2701–2707, 2701 note, 20 U.S.C. 226, 26 U.S.C. 936; P.L. 101–382; title II]

### SUBTITLE A—SHORT TITLE AND FINDINGS

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Caribbean Basin Economic Recovery Expansion Act of 1990".

**SEC. 202. CONGRESSIONAL FINDINGS.**

The Congress finds that—

(1) a stable political and economic climate in the Caribbean region is necessary for the development of the countries in that region and for the security and economic interests of the United States;

(2) the Caribbean Basin Economic Recovery Act was enacted in 1983 to assist in the achievement of such a climate by stimulating the development of the export potential of the region; and

(3) the commitment of the United States to the successful development of the region, as evidenced by the enactment of the Caribbean Basin Economic Recovery Act, should be reaffirmed, and further strengthened, by amending that Act to improve its operation.

### SUBTITLE B—AMENDMENTS TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT AND RELATED PROVISIONS

**[SEC. 211. REPEAL OF TERMINATION DATE ON DUTY-FREE TREATMENT UNDER THE ACT.**

Repeals section 218 of the Caribbean Basin Economic Recovery Act.]

**[SEC. 212. DUTY REDUCTION FOR CERTAIN LEATHER-RELATED PRODUCTS.**

Amendments to section 213 of the Caribbean Basin Economic Recovery Act providing duty reductions on certain leather-related products (reprinted elsewhere).]

**[SEC. 213. WORKER RIGHTS.**

Amendments to section 212 of the Caribbean Basin Economic Recovery Act on worker rights criteria (reprinted elsewhere).]

**[SEC. 214. REPORTS.**

Amendments to section 212 of the Caribbean Basin Economic Recovery Act requiring reports to the Congress (reprinted elsewhere).]

**[SEC. 215. TREATMENT OF ARTICLES GROWN, PRODUCED, OR MANUFACTURED IN PUERTO RICO.**

Amendments to section 213 of the Caribbean Basin Economic Recovery Act relating to duty-free treatment for articles of Puerto Rico (reprinted elsewhere).]

**SEC. 216. APPLICATION OF ACT IN EASTERN CARIBBEAN AREA.**

It is the sense of the Congress that there should be undertaken special efforts in order to improve the ability of the Organization

of Eastern Caribbean States countries and Belize to benefit from the Caribbean Basin Economic Recovery Act.

**[SEC. 221. INCREASE IN DUTY-FREE TOURIST ALLOWANCES.**

Amendments to subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States to increase duty-free tourist allowances.]

**[SEC. 222. DUTY-FREE TREATMENT FOR ARTICLES ASSEMBLED IN BENEFICIARY COUNTRIES FROM COMPONENTS PRODUCED IN THE UNITED STATES.**

Amendments to U.S. Note 2 of subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States providing duty-free treatment for certain imports wholly of U.S. components or materials.]

**SEC. 223. RULES OF ORIGIN FOR PRODUCTS OF BENEFICIARY COUNTRIES.**

(a) ITC INVESTIGATION.—

(1) The United States International Trade Commission shall immediately undertake, pursuant to section 332(g) of the Tariff Act of 1930, an investigation for the purpose of assessing whether revised rules of origin for products of countries designated as beneficiary countries under the Caribbean Basin Economic Recovery Act are appropriate. If the Commission makes an affirmative assessment, it shall develop recommended revised rules of origin.

(2) The Commission shall submit a report on the results of the investigation under paragraph (1), together with the text of recommended rules, if any, to the President and the Congress no later than 9 months after the date of the enactment of this Act.

(b) LEGISLATIVE RECOMMENDATIONS.—If the President considers that the implementation of revised rules of origin for products of beneficiary countries would be appropriate, the President shall transmit to the Congress suggested legislation containing such rules of origin. In formulating such suggested legislation, the President shall—

(1) take into account the report and recommended rules submitted under subsection (a); and

(2) obtain the advice of—

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

(B) the governments of the beneficiary countries,

(C) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and

(D) other interested parties.

**[SEC. 224. CUMULATION INVOLVING BENEFICIARY COUNTRY PRODUCTS UNDER THE COUNTERVAILING DUTY AND ANTIDUMPING DUTY LAWS.**

Amendments to section 771(7) of the Tariff Act of 1930 relating to cumulation (reprinted elsewhere).]

**[SEC. 225. ETHYL ALCOHOL.**

Amendment to section 7(b) of the Steel Trade Liberalization Program Implementation Act relating to imports of ethyl alcohol.]

**[SEC. 226. CONFORMING AMENDMENT.**

Amendment to section 503(b) of the Trade Act of 1974 relating to rules of origin under the Generalized System of Preferences program (reprinted elsewhere).]

**SEC. 227. REQUIREMENT FOR INVESTMENT OF SECTION 936 FUNDS IN CARIBBEAN BASIN COUNTRIES.**

[Amends paragraph (4) of section 936(d) of the Internal Revenue Code of 1986 (relating to investment in Caribbean Basin countries) by adding at the end thereof the following new subparagraph, applicable to calendar years after 1989:

[“(D) REQUIREMENT FOR INVESTMENT IN CARIBBEAN BASIN COUNTRIES.—

[“(i) IN GENERAL.—For each calendar year, the government of Puerto Rico shall take such steps as may be necessary to ensure that at least $100,000,000 of qualified Caribbean Basin country investments are made during such calendar year.

[“(ii) QUALIFIED CARIBBEAN BASIN COUNTRY INVESTMENT.—For purposes of clause (i), the term ‘qualified Caribbean Basin country investment’ means any investment if—

[“(I) the income from such investment is treated as qualified possession source investment income by reason of subparagraph (A), and

[“(II) such investment is not (directly or indirectly) a refinancing of a prior investment (whether or not such prior investment was a qualified Caribbean Basin country investment).”]

SUBTITLE C—SCHOLARSHIP ASSISTANCE AND TOURISM PROMOTION

**SEC. 231. COOPERATIVE PUBLIC AND PRIVATE SECTOR PROGRAM FOR PROVIDING SCHOLARSHIPS TO STUDENTS FROM THE CARIBBEAN AND CENTRAL AMERICA.**

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to encourage the establishment of partnerships between State governments, universities, community colleges, and businesses to support scholarships for talented socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States in order to—

(1) improve the diversity and quality of educational opportunities for such students;

(2) assist the development efforts of eligible countries by providing training and educational assistance to persons who can help address the social and economic needs of these countries;

(3) expand opportunities for cross-cultural studies and exchanges and improve the exchange of understanding and principles of democracy;

(4) promote positive and productive relationships between the United States and its neighbor countries in the Caribbean and Central American regions;

(5) give added visibility and focus to the “scholarship diplomacy” efforts of the United States Government by leveraging the monies available for this purpose through the development

of partnerships among Federal, State, and local governments and the business and academic communities; and

(6) promote community involvement with the scholarship program as a tool for broadening and strengthening the "American experience" for foreign students.

(b) ESTABLISHMENT OF SCHOLARSHIP PROGRAM.—The Administrator of the Agency for International Development shall establish and administer a program of scholarship assistance, in cooperation with State governments, universities, community colleges, and businesses, to provide scholarships to enable socially and economically disadvantaged students from eligible countries in the Caribbean and Central America to study in the United States.

(c) GRANTS TO STATES.—In carrying out this section, the Administrator may make grants to States to provide scholarship assistance for undergraduate degree programs and for training programs of one year or longer in study areas related to the critical development needs of the students' respective countries.

(d) AGREEMENT WITH STATES.—The Administrator and each participating State shall agree on a program regarding the educational opportunities available within the State, the selection and assignment of scholarship recipients, and related issues. To the maximum extent practicable, each State shall be given flexibility in designing its program.

(e) FEDERAL SHARE.—The Federal share for each year for which a State receives payments under this section shall be not less than 50 percent.

(f) NON-FEDERAL SHARE.—The non-Federal share of payments under this section may be in cash, including the waiver of tuition or the offering of in-State tuition or housing waivers or subsidies, or in-kind fairly evaluated, including the provision of books or supplies.

(g) FORGIVENESS OF SCHOLARSHIP ASSISTANCE.—The obligation of any recipient to reimburse any entity for any or all scholarship assistance provided under this section shall be forgiven upon the recipient's prompt return to his or her country of domicile for a period which is at least one year longer than the period spent studying in the United States with scholarship assistance.

(h) PRIVATE SECTOR PARTICIPATION.—To the maximum extent practicable, each participating State shall enlist the assistance of the private sector to enable the State to meet the non-Federal share of payments under this section. Wherever appropriate, each participating State shall encourage the private sector to offer internships or other opportunities consistent with the purposes of this section to students receiving scholarships under this section.

(i) FUNDING.—Any funds used in carrying out this section shall be derived from funds allocated for Latin American and Caribbean regional programs under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 and following; relating to the economic support fund).

(j) DEFINITIONS.—As used in this section—

(1) The term "eligible country" means any country—

(A) which is receiving assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 and following; relating to development assistance) or chap-

ter 4 of part II of that Act (22 U.S.C. 2346 and following; relating to the economic support fund); and

(B) which is designated by the President as a beneficiary country pursuant to the Caribbean Basin Economic Recovery Act.

(2) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

**SEC. 232. PROMOTION OF TOURISM.**

(a) CONGRESSIONAL FINDING.—The Congress finds that the tourism industry must be recognized as a central element in the economic development and political stability of the Caribbean Basin region because of the potential that the industry has for increasing employment and foreign exchange earnings, establishing important linkages with other related sectors, and having a positive complementary effect on trade with the United States.

(b) FEDERAL AGENCY PRIORITY.—It is the sense of the Congress that increased tourism and related activities should be developed in the Caribbean Basin region as a central part of the Caribbean Basin Initiative program and, to that end, the appropriate agencies of the United States Government should assign a high priority to projects that promote the tourism industry in the Caribbean Basin.

(c) STUDY.—The Secretary of Commerce shall complete the study begun in 1986 regarding tourism development strategies for the Caribbean Basin region. The study shall include—

(1) information on the mutual benefits received by the United States and the Caribbean Basin economies as a result of tourist activity in the area; and

(2) proposals for developing increased linkages between the tourism industry and local industries in the region such as the agribusiness.

**SEC. 233. PILOT PRECLEARANCE PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.—Subject to subsection (b), the Commissioner of Customs shall carry out, during fiscal years 1991 and 1992, preclearance operations at a facility of the United States Customs Service in a country within the Caribbean Basin which the Commissioner of Customs considers appropriate for testing the extent to which the availability of preclearance operations can assist in the development of tourism.

(b) RESTRICTIONS REGARDING PROGRAM.—

(1) The Commissioner of Customs may not consider a country within the Caribbean Basin to be appropriate for the testing referred to in subsection (a) if preclearance operations are currently carried out by the United States Customs Service in that country.

(2) Preclearance operations may not be commenced in the country selected for testing under subsection (a) unless the Commissioner of Customs and the Commissioner of Immigration and Naturalization jointly certify that—

(A) there exists a bilateral agreement between the United States Government and the government of such country

which protects the interests of the United States and affords diplomatic protection to United States employees working at the preclearance location;

(B) the facilities at the preclearance location conform to Federal Inspection Services standards and are suitable for the duties to be performed therein;

(C) there is adequate security around the structure used for the reception of international arrivals;

(D) the government of such country grants the United States Customs Service and the United States Immigration and Naturalization Service appropriate search, seizure, and arrest authority; and

(E) United States employees and their families will not be subject to fear of reprisal, acts of terrorism, and threats of intimidation.

(3) In determining the country in which to establish the operation described in paragraph (1), the Commissioner of Customs and the Commissioner of Immigration and Naturalization shall first determine the viability of establishing such operations in either Aruba or Jamaica. If the Commissioners determine, after full consultation with the governments of such countries, that it is not viable to establish pre-clearance operations in either Aruba or Jamaica, they shall so report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, including an explanation of how this determination was reached. Such report shall be submitted to those Committees within six months after the date of the enactment of this Act. Following the submission of such a report, the Commissioners shall take all necessary steps, consistent with the requirements of this section, to establish such operations in another country.

(c) REPORT.—As soon as practicable after September 30, 1992, the Commissioner of Customs shall submit to the Congress a report regarding the preclearance operations program carried out under subsection (a). The report shall include—

(1) a summary of the preclearance operations, including the number of individuals processed, any administrative problems encountered, and cost of the operations;

(2) an evaluation of the extent to which the preclearance operations contributed to—

(A) the stimulation of the tourism industry of the country concerned, and

(B) expedited customs processing at United States ports of entry;

(3) the opinion of the Commissioner of Customs regarding the efficacy of extending preclearance operations to other countries within the Caribbean Basin that are developing tourism industries, and if the opinion is affirmative, the identity of those countries to which such operations should be extended and the estimated costs and results of such extensions; and

(4) such other matters that the Commissioner of Customs considers relevant.

SUBTITLE D—MISCELLANEOUS PROVISIONS

**[SEC. 241. TRADE BENEFITS FOR NICARAGUA.**

Authority to designate Nicaragua as a beneficiary developing country during 1990.]

**SEC. 242. AGRICULTURAL INFRASTRUCTURE SUPPORT.**

It is the sense of Congress that in order to facilitate trade with, and the economic development of, the countries designated as beneficiary countries under the Caribbean Basin Economic Recovery Act, the Secretary of Agriculture should, in consultation with the Agribusiness Promotion Council, coordinate with the Agency for International Development the development of programs to encourage improvements in the transportation and cargo handling infrastructure in these countries for the purpose of improving agricultural trade between these countries and the United States. Such programs should focus on improving distribution of agricultural commodities and products in these countries, and the phytosanitary institutions, quarantine capabilities, and pesticide regulations of these countries regarding agricultural commodities and products.

**[SEC. 243. EXTENSION OF TRADE BENEFITS TO THE ANDEAN REGION.**

Findings and sense of the Congress on providing trade benefits to the Andean region.]

## Section 423 of the Tax Reform Act of 1986, as amended (Treatment of Imports of Ethyl Alcohol)

[19 U.S.C. 2703 note; P.L. 99–514, as amended by P.L. 100–418 and P.L. 101–221]

**SEC. 423. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.**

(a) IN GENERAL.—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

(1) for purposes of general headnote 3(a) of the Tariff Schedules of the United States, to be—

(A) the growth or product of an insular possession of the United States,

(B) manufactured or produced in an insular possession from materials which are the growth, product, or manufacture of any such possession, or

(C) otherwise eligible for exemption from duty under such headnote as the growth or product of an insular possession; or

(2) for purposes of section 213 of the Caribbean Basin Economic Recovery Act, to be—

(A) an article that is wholly the growth, product, or manufacture of a beneficiary country,

(B) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country,

(C) a material produced in a beneficiary country, or

(D) otherwise eligible for duty-free treatment under such Act as the growth, product, or manufacture of a beneficiary country;

unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

(b) EXCEPTION.—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987, 1988, and 1989 and produced in—

(A) an azeotropic distillation facility located in a beneficiary country, if that facility was established before, and in operation on, July 1, 1987,

(B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

(I) produced in the United States, and

(II) owned by a corporation at least 50 percent of the total value of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

(I) located in the United States under the possession or control of such corporation,

(II) ready for shipment to, and installation in, a beneficiary country or an insular possession of the United States, and

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act),

a stated capacity to produce not more than 42,000,000 gallons of such product per year, or

(C) a distillation facility operated by a corporation which, before the date of enactment of the Omnibus Trade Act of 1987—

(i) has completed engineering and design of a full-scale fermentation facility in the United States Virgin Islands, and

(ii) has obtained authorization from authorities of the United States Virgin Islands to operate a full-scale fermentation facility.

(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987, 1988, and 1989 to ethyl alcohol produced in a facility described in subparagraph (A), (B), or (C) of paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

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

(1) The term "ethyl alcohol or a mixture thereof" means (except for purposes of subsection (e)) ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) Ethyl alcohol or a mixture thereof that is produced by a process of full fermentation in an insular possession or beneficiary country shall be treated as being an indigenous product of that possession or country.

(3)(A) Ethyl alcohol and mixtures thereof that are only dehydrated within an insular possession or beneficiary country (hereinafter in this paragraph referred to as "dehydrated alcohol and mixtures") shall be treated as being indigenous products of that possession or country only if the alcohol or mixture, when entered, meets the applicable local feedstock requirement.

(B) The local feedstock requirement with respect to any calendar year is—

(i) 0 percent with respect to the base quantity of dehydrated alcohol and mixtures that is entered;

(ii) 30 percent with respect to the 35,000,000 gallons of dehydrated alcohol and mixtures next entered after the base quantity; and

(iii) 50 percent with respect to all dehydrated alcohol and mixtures entered after the amount specified in clause (ii) is entered.

(C) For purposes of this paragraph:

(i) The term "base quantity" means, with respect to dehydrated alcohol and mixtures entered during any calendar year, the greater of—

(I) 60,000,000 gallons; or

(II) an amount (expressed in gallons) equal to 7 percent of the United States domestic market for ethyl alcohol, as determined by the United States International Trade Commission, during the 12-month period ending on the preceding September 30;

that is first entered during that calendar year.

(ii) The term "local feedstock" means hydrous ethyl alcohol which is wholly produced or manufactured in any insular possession or beneficiary country.

(iii) The term "local feedstock requirement" means the minimum percent, by volume, of local feedstock that must be included in dehydrated alcohol and mixtures.

(4) The term "beneficiary country" has the meaning given to such term under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702).

(5) The term "United States person" has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986.

(6) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(d) AMENDMENT TO APPENDIX TO SCHEDULES.—The item designation for item 901.50 of the Appendix to the Tariff Schedules of the United States is amended to read as follows: "Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) or any mixture containing such ethyl alcohol (provided for in part 1, 2, or 10, schedule 4) if such ethyl alcohol or mixture is to be used as fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in item 475.25), or is suitable for any such uses."

(e) DRAWBACKS.—

(1) For purposes of subsections (b) and (j)(2) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313), as amended by section 1888(2) of this Act, any ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) which is subject to the additional duty imposed by item 901.50 of the Appendix to such Schedules may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol (provided for in item 427.88 of such Schedules) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

(2) Paragraph (1) shall not apply with respect to ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) that is exempt from the additional duty imposed by item 901.50 of the Appendix to such Schedules by reason of—

(A) subsection (b), or

(B) any agreement entered into under section 102(b) of the Trade Act of 1974.

(f) CONFORMING AMENDMENTS.—

[(1) Amendment to general note 3(a)(iv) of the Harmonized Tariff Schedule of the United States relating to products of insular possessions.

[(2) Amendment to section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1) relating to eligible articles.]

(3) The headnotes to subpart A of part 1 of the Appendix to the Tariff Schedules of the United States are amended by adding at the end thereof the following:

"2. For purposes of item 901.50, the phrase 'is suitable for any such uses' does not include ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is certified by the importer of record to the satisfaction of the Commissioner of Customs (hereinafter in this headnote referred to as the 'Commissioner') to be ethyl alcohol or a mixture containing such ethyl alcohol imported for uses other than liquid motor fuel use or use in producing liquid motor fuel related mixtures. If the importer of record certifies nonliquid motor fuel use for purposes of establishing actual use or suitability under item 901.50, the Commissioner shall not liquidate the entry of ethyl alcohol until he is satisfied that the ethyl alcohol has in fact not been used for liquid motor fuel use or use in producing liquid motor fuel related mixtures. If he is not satisfied within a reasonable period of time not less than 18 months from the date of entry, then the duties provided for in item 901.50 shall be payable retroactive to the date of entry. Such duties shall also become payable, retroactive to the date of entry, immediately upon the diversion to liquid motor fuel use of any ethyl alcohol or ethyl alcohol mixture certified upon entry as having been imported for nonliquid motor fuel use."

(g) EFFECTIVE PERIOD.—

(1) The provisions of, and the amendments made by, this section (other than subsection (e)) shall apply to articles entered—

(A) after December 31, 1986, and

(B) before the expiration of the effective period of item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

### General Note 7(a) of the Harmonized Tariff Schedule

*Products of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA).*

(a) The following countries and territories or successor political entities are designated beneficiary countries for the purposes of the CBERA, pursuant to section 212 of that Act (19 U.S.C. 2702):

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Virgin Islands, British

## E. ANDEAN INITIATIVE

### Andean Trade Preference Act, as amended

[19 U.S.C. 3201; P.L. 102–182, title II, as amended by P.L. 102–583, P.L. 103–465, and P.L. 104–188]

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Andean Trade Preference Act".

**SEC. 202. AUTHORITY TO GRANT DUTY-FREE TREATMENT.**

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

**SEC. 203. BENEFICIARY COUNTRY.**

(a) DEFINITIONS.—For purposes of this title—

(1) The term "beneficiary country" means any country listed in subsection (b)(1) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title.

(2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(b) COUNTRIES ELIGIBLE FOR DESIGNATION; CONGRESSIONAL NOTIFICATION.—(1) In designating countries as beneficiary countries under this title, the President shall consider only the following countries or successor political entities:

Bolivia
Ecuador
Colombia
Peru.

(2) Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(c) LIMITATIONS ON DESIGNATION.—The President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed

for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President—

(A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

(B) reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(d) FACTORS AFFECTING DESIGNATION.—In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under 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);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to protect its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) [deemed to be a reference to section 490 of the Foreign Assistance Act of 1991 by section 6(a) of Public Law 102–583] of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

(e) WITHDRAWAL OR SUSPENSION OF DESIGNATION.—(1) The President may—

(A) withdraw or suspend the designation of any country as a beneficiary country, or

(B) withdraw, suspend, or limit the application of duty-free treatment under this title to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) TRIENNIAL REPORT.—On or before the 3rd, 6th, and 9th anniversaries of the date of the enactment of this title, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in subsection (c) and (d). In reporting on the considerations described in subsection (d)(11), the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this title.

**SEC. 204. ELIGIBLE ARTICLES.**

(a) IN GENERAL.—(1) Unless otherwise excluded from eligibility by this title, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of—

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this Act, or a beneficiary country under the Caribbean Basin Economic Recovery Act or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this Act or the Caribbean Basin Economic Recovery Act),

is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) 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 attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out subsection (a) including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment 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.

(3) As used in this subsection, the phrase "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.

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 (i) profit, and (ii) general expense 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, interest, and salesmen's salaries, commissions or expenses.

(4) If the President, pursuant to section 223 of the Caribbean Basin Economic Recovery Expansion Act of 1990, considers that the implementation of revised rules of origin for products of beneficiary countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) would be appropriate, the President may include similarly revised rules of origin for products of beneficiary countries designated under this title in any suggested legislation transmitted to the Congress that contains such rules of origin for products of beneficiary countries under the Caribbean Basin Economic Recovery Act.

(b) EXCEPTIONS TO DUTY-FREE TREATMENT.—The duty free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of this Act as eligible for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(6) articles to which reduced rates of duty apply under subsection (c).

(7) sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

(8) rum and tafia classified in subheading 2208.40.00 of the HTS.

(c) DUTY REDUCTIONS FOR CERTAIN GOODS.—(1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(A) are the product of any beneficiary country; and

(B) were not designated on August 5, 1993, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) The reduction required under paragraph (1) in the rate of duty on any article shall—

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first ⅕ of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(3) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed—

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

(d) SUSPENSION OF DUTY-FREE TREATMENT.—(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 1 of title II of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the United States International Trade Commission to the President under section 202(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation providing solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 unless the United States International Trade 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 such 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 duty-free treatment provided by this title.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 that is in effect when duty-free treatment is proclaimed under section 202 of this title shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed under section 202 of this title, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 204 of the Trade Act of 1974.

(e) EMERGENCY RELIEF WITH RESPECT TO PERISHABLE PRODUCTS.—(1) If a petition is filed with the United States International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging in-

jury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country 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

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974,

(B) on the day a determination by the President not to take action under section 203(b)(2) of such Act becomes final,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day of the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(D) 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) SECTION 22 FEES.—No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

(g) TARIFF-RATE QUOTAS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this Act.

**[SEC. 205. RELATED AMENDMENTS.**

[(a) Amendment to Note 4 to subchapter IV of chapter 98 of the HTS relating to duty-free tourist allowances.

[(b) Amendment to general note 3(a)(iv) of the HTS relating to products of the insular possessions (reprinted elsewhere).]

**SEC. 206. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ANDEAN TRADE PREFERENCE ACT.**

(a) IN GENERAL.—The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress, a report regarding the economic impact of this title on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during—

(1) and 24-month period beginning with the date of enactment of this title; and

(2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under section 208(b).

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b) REPORT REQUIREMENTS.—(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this title on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

(B) the probable future effect that this title will have on the United States economy generally, as well as on such domestic industries, before the provisions of this title terminate; and

(C) the estimated effect that this title has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this title, 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; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this title.

(c) SUBMISSION DATES; PUBLIC COMMENT.—(1) Each report required under subsection (a) shall be submitted to the Congress before the close of the 9-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

**SEC. 207. IMPACT STUDY BY SECRETARY OF LABOR.**

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this title has with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

**SEC. 208. EFFECTIVE DATE AND TERMINATION OF DUTY-FREE TREATMENT.**

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment.

(b) TERMINATION OF DUTY-FREE TREATMENT.—No duty-free treatment extended to beneficiary countries under this title shall remain in effect 10 years after the date of the enactment of this title.

## F. CUSTOMS VALUATION

### Section 402 of the Tariff Act of 1930, as amended

[19 U.S.C. 1401a; P.L. 71–361, as amended by P.L. 96–39 and P.L. 96–490]

**SEC. 402. VALUE.**

(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection (b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Sec-

retary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are not restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will ac-

crue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incured for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of im-

portation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and the seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.—(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day

after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A) (i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, and sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost of the value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsection, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of the merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for merchandise being appraised;

(E) the price of the merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers, and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term "identical merchandise" means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirement under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all repects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term "packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term "similar merchandise" means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirements set forth in subparagraph (A) (ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information", when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) to the price actually paid or payable,

(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) as profit or general expense;

(B) and difference taken into account for purposes of subsection (b)(2)(C); or

(C) any adjustment made under subsection (c)(2);

means information that establishes the accuracy of such amount, difference, or adjustment.

## G. CUSTOMS USER FEES

### Section 13031 of the Consolidated Budget Reconciliation Act of 1985, as amended

[19 U.S.C. 58c; P.L. 99–272, as amended by P.L. 99–509, P.L. 99–514, P.L. 100–203, P.L. 100–418, P.L. 100–449, P.L. 100–647, P.L. 101–207, P.L. 101–382, P.L. 101–508, P.L. 103–66, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

**SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.**

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial truck, $5.

(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the customs territory of the United States, $6.50.

(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)(i) of this section), $5.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100.

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.21 percent nor less than 0.15 percent) and the amounts specified in subsection (b)(8)(A)(i) (but not to more than $485 nor less than $21) to rates and amounts which would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under subsection (f) with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

(I) 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

(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

(D) Any fee charged under this paragraph, whether or not adjusted under subparagraph (B), is subject to the limitations in subsection (b)(8)(A).

(10) For the processing of merchandise that is informally entered or released, other than at—

(A) a centralized hub facility,

(B) an express consignment carrier facility, or

(C) a small airport or other facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport

or facility during the fiscal year preceding such entry or release,

a fee of—

(i) $2 if the entry or release is automated and not prepared by customs personnel;

(ii) $6 if the entry or release is manual and not prepared by customs personnel; or

(iii) $9 if the entry or release, whether automated or manual, is prepared by customs personnel.

For provisions relating to the informal entry or release of merchandise at facilities referred to in subparagraphs (A), (B), and (C), see subsection (b)(9).

(b) LIMITATIONS ON FEES.—(1)(A) No fee may be charged under subsection (a) of this section for customs services provided in connection with—

(i) the arrival of any passenger whose journey—

(I) originated in—

(aa) Canada,

(bb) Mexico,

(cc) a territory or possession of the United States, or

(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

(II) originated in the United States and was limited to—

(aa) Canada,

(bb) Mexico,

(cc) territories and possessions of the United States, and

(dd) such adjacent islands;

(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

(iii) the arrival of any ferry; or

(iv) the arrival of any passenger on board a commercial vessel traveling only between ports which are within the customs territory of the United States.

(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

(C) The exemption provided for in subparagraph (A)(i) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary

of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(4)(A) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

(i) who is in transit to a destination outside the customs territory of the United States, and

(ii) for whom customs inspectional services are not provided.

(B) In the case of a commercial vessel making a single voyage involving 2 or more United States ports with respect to which the passengers would otherwise by charged a fee pursuant to subsection (a)(5), such fee shall be charged only 1 time for each passenger.

(5) No fee may be charged under subsection (a)(1) for the arrival of—

(A) a vessel during a calendar year after a total of $5,955 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under section (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraphs (2), (3), or (4) of subsection (a) for the arrival of any—

(A) commercial truck,

(B) railroad car, or

(C) private vessel,

that is being transported, at the time of the arrival, by any vessel that is not a ferry.

(8)(A)(i) Subject to clause (ii), the fee charged under subsection (a)(9) for the formal entry or release of merchandise may not exceed $485 or be less than $25, unless adjusted pursuant to subsection (a)(9)(B).

(ii) A surcharge of $3 shall be added to the fee determined after application of clause (i) for any manual entry or release of merchandise.

(B) No fee may be charged under subsection (a)(9) or (10) for the processing of any article that is—

(i) provided for under any item in chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80,

(ii) a product of an insular possession of the United States, or

(iii) a product of any country listed in subdivision (c)(ii)(B) or (c)(v) of general note 3 to such Schedule.

(C) For purposes of applying subsection (a)(9) or (10)—

(i) expenses incurred by the Secretary of the Treasury in the processing of merchandise do not include costs incurred in—

(I) air passenger processing,

(II) export control, or

(III) international affairs, and

(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—

(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or

(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.

(D) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

(i) be paid by the importer of record of the merchandise;

(ii) except as otherwise provided in the paragraph, be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930;

(iii) in the case of merchandise classified under subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States, be applied to the value of the foreign repairs or alterations to the merchandise;

(iv) in the case of merchandise classified under heading 9802.00.80 of such Schedule, be applied to the full value of the merchandise, less the cost or value of the component United States products;

(v) in the case of agricultural products of the United States that are processed and packed in a foreign trade zone, be applied only to the value of material used to make the container for such merchandise, if such merchandise is subject to entry and the container is of a kind normally used for packing such merchandise; and

(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).

With respect to merchandise that is classified under subheading 9802.00.60 or heading 9802.00.80 of such Schedule and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a)(9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.

(E) For purposes of subsection (a)(9) and (10), merchandise is entered or released, as the case may be, if the merchandise is—

(i) permitted or released under section 448(b) of the Tariff Act of 1930,

(ii) entered or released from customs custody under section 484(a)(1)(A) of the Tariff Act of 1930, or

(iii) withdrawn from warehouse for consumption.

(9)(A) With respect to the processing of merchandise that is informally entered or released at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following reimbursements and payments are required:

(i) In the case of a small airport or other facility—

(I) the reimbursement which such facility is required to make during the fiscal year under section 9701 of title 31, United States Code or section 236 of the Trade and Tariff Act of 1984; and

(II) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) for such fiscal year, in an amount equal to the reimbursement under subclause (I).

(ii) In the case of an express consignment carrier facility or centralized hub—

(I) an amount, for which the Customs Service shall be reimbursed under section 524 of the Tariff Act of 1930, equal to the cost of the services provided by the Customs Service for the facility during the fiscal year; and

(II) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) for such fiscal year, in an amount equal to the reimbursement made under subclause (I).

(B) For purposes of this paragraph:

(i) The terms "centralized hub facility" and "express consignment carrier facility" have the respective meanings that are applied to such terms in part 128 of chapter I of title 19, Code of Federal Regulations.

(ii) The term "small airport or other facility" means any airport or facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year.

Nothing in this paragraph shall be construed as prohibiting the Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).

(10)(A) The fee charged under subsection (a)(9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with article 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a)(9) or (10)—

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(11) No fee may be charged under subsection (a)(9) or (10) with respect to products of Israel if an exemption with respect to the fee is implemented under section 112 of the Customs and Trade Act of 1990.

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

(1) The term "ferry" means any vessel which is being used—

(A) to provide transportation only between places that are no more than 300 miles apart, and

(B) to transport only—

(i) passengers, or

(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by general note 2 of the Harmonized Tariff Schedule of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(5) The term "barge or other bulk carrier" means any vessel which—

(A) is not self-propelled, or

(B) transports fungible goods that are not packaged in any form.

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before

the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.

(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7).

(e)(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers.

(2)(A) This subsection shall not apply with respect to any airport, seaport, or other facility to which section 236(c) of the Trade and Tariff Act of 1984 (19 U.S.C. 58b(c)) applies.

(B) Subparagraph (C) of paragraph (6) shall not apply with respect to any foreign trade zone or subzone that is located at, or in the vicinity of, an airport, seaport, or other facility to which section 236 of the Trade and Tariff Act of 1984 applies.

(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any provision of law—

(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places.

(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

(5) For purposes of this subsection, customs services shall be treated as being "adequately provided" if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

(A) the unavoidability of weather, mechanical, and other delays;

(B) the necessity for prompt and efficient passenger and baggage clearance;

(C) the perishability of cargo;

(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

(F) the need for specific enforcement checks.

(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

(A) for any—

(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

(ii) customs personnel provided, in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

(C) in connection with—

(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except—

(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).

(2) Except as otherwise provided in this subsection, all funds in the Customs User Fee Account shall be available, to the extent provided for appropriations Acts, to pay the costs (other than costs for

which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commercial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) (other than the fees under subsection (a)(9) and (10) and the excess fees determined by the Secretary under paragraph (5)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary—

(i) in—

(I) paying overtime compensation under section 5(a) of the Act of February 13, 1911,

(II) paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the total cost of all the premium pay for such year calculated under section 5(b) and the cost of the night and holiday premium pay that the Customs Service would have incurred for the same inspectional work on the day before the effective date of section 13813 of the Omnibus Budget Reconciliation Act of 1993,

(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

(V) paying foreign language proficiency awards under section 13812(b) of the Omnibus Budget Reconciliation Act of 1993, and

(ii) to the extent funds remain available to make reimbursements under clause (i), in providing salaries for full-time and part-time inspectional personnel and equipment that enhance customs services for those persons or entities that are required to pay fees under paragraphs (1) through (8) of subsection (a) of this section (distributed on a basis proportionate to the fees collected under subsection (a)(1) through (a)(8) of this section).

The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i). Funds described in clause (ii) shall only be available to reimburse costs in excess of the highest amount appropriated for such costs during the period beginning with fiscal year 1990 and ending with the current fiscal year.

(B) Reimbursement of appropriations under this paragraph—

(i) shall be subject to apportionment or similar administrative practices;

(ii) shall be made at least quarterly; and

(iii) to the extent necessary, may be made on the basis of estimates made by the Secretary of the Treasury and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.

(C)(i) For fiscal year 1991 and subsequent fiscal years, the amount required to reimburse costs described in subparagraph (A)(i) shall be projected from actual requirements, and only the excess of collections over such projected costs for such fiscal year shall be used as provided in subparagraph (A)(ii).

(ii) The excess of collections over inspectional overtime and preclearance costs (under subparagraph (A)(i)) reimbursed for fiscal years 1989 and 1990 shall be available in fiscal year 1991 and subsequent fiscal years for the purposes described in subparagraph (A)(ii), except that $30,000,000 of such excess shall remain without fiscal year limitation in a contingency fund and, in any fiscal year in which receipts are insufficient to cover the costs described in subparagraph (A) (i) and (ii), shall be used for—

(I) the costs of providing the services described in paragraph (A)(i), and

(II) after the costs described in subclause (I) are paid, the costs of providing the personnel and equipment described in subparagraph (A)(ii) at the preceding fiscal year level.

(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between—

(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267), as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

(II) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 5 of the Act of February 13, 1911, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, and under section 8331(3) of title 5, United States Code, as amended by section 13812(a)(1) of such Act of 1993, plus the actual cost that is incurred during that fiscal year for foreign language proficiency awards under section 13812(b) of such Act of 1993,

and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the difference calculated under this clause, or $18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).

(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives summarizing the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii).

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5)) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.

(g) REGULATIONS AND ENFORCEMENT.—(1) The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

[(h) CONFORMING AMENDMENTS.]

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a),

nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

(3) Fees may not be charged under subsection (a) after September 30, 2003.

## Sections 111(f), 112, and 113 of the Customs and Trade Act of 1990, as amended

[19 U.S.C. 58c note, 19 U.S.C. 2082; P.L. 101–382, as amended by P.L. 101–508]

**SEC. 111. CUSTOMS USER FEES.**

* * * * * * *

(f) AGGREGATION OF MERCHANDISE PROCESSING FEES.—

(1) Notwithstanding any provision of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c), in the case of entries of merchandise made under the temporary monthly entry programs established by the Commissioner of Customs before July 1, 1989, for the purpose of testing entry processing improvements, the fee charged under section 13031(a)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 for each day's importations at each port by the same importer from the same exporter shall be the lesser of—

(A) $400, or

(B) the amount determined by applying the ad valorem rate currently in effect under such section 13031(a)(9) to the total value of each day's importations at each port by the same importer from the same exporter.

(2) The fees described in paragraph (1) that are payable under the program described in paragraph (1) shall be paid with each monthly consumption entry. Interest shall accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

**SEC. 112. EXEMPTION OF ISRAELI PRODUCTS FROM CERTAIN USER FEES.**

If the United States Trade Representative determines that the Government of Israel has provided reciprocal concessions in exchange for the exemption of the products of Israel from the fees imposed under section 13031(a) (9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 111), such fees may not be charged with respect to any product of Israel that is entered, or withdrawn from warehouse for consumption, on or after the 15th day (which day may not be before October

1, 1990) after the date on which the determination is published in the Federal Register.

## Section 236 of the Trade and Tariff Act of 1984, as amended

[19 U.S.C. 58b; P.L. 98–573, as amended by P.L. 99–190, P.L. 99–272, P.L. 100–418, and P.L. 101–207]

**SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS AND OTHER FACILITIES.**

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire,

(2) the airport located at Pontiac/Oakland, Michigan, and

(3) any other airport, seaport, or other facility designated by the Secretary of the Treasury under subsection (c).

(b) The fee which is charged under subsection (a) shall be paid by each person using the customs services at the airport, seaport, or other facility and shall be in an amount equal to the expenses incurred by the Secretary of the Treasury in providing the customs services which are rendered to such person at such airport, seaport, or other facility (including the salary and expenses of individuals employed by the Secretary of the Treasury to provide such customs services).

(c) The Secretary of the Treasury may designate airports, seaports, and other facilities under this subsection. An airport, seaport, or other facility may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport, seaport, or other facility is insufficient to justify the availability of customs services at such airport, seaport, or other facility, and

(2) the governor of the State in which such airport, seaport, or other facility is located approves such designation.

(d) Any person who, after notice and demand for payment of any fee charged under subsection (a), fails to pay such fee shall be guilty of a misdemeanor and if convicted thereof shall pay a fine that does not exceed an amount equal to 200 percent of such fee.

(e) Fees collected by the Secretary of the Treasury under subsection (a) with respect to the provision of services at an airport, seaport, or other facility shall be deposited in an account within the Treasury of the United States that is specially designated for such airport, seaport, or other facility. The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in providing customs services at such airport, seaport, or other facility (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

(f) For purposes of this section, customs services provided in connection with, or with respect to, any foreign trade zone or subzone that is located at, or in the vicinity of, any airport, seaport, or other facility described in subsection (a) or designated under subsection

(c) shall be considered to be customs services provided at such airport, seaport, or other facility.

### Section 1893(f) of the Tax Reform Act of 1986, as amended

[19 U.S.C. 58c note; P.L. 99–514, as amended by P.L. 100–203]

**SEC. 1893. TECHNICAL AMENDMENTS RELATING TO CUSTOMS USER FEES.**

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(f) REINSTATING LIMIT ON CHARGES FOR OTHER INSPECTION SERVICES.—Section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741), as amended by section 13031(h)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is further amended by adding at the end thereof the following new subsection:

"(e)(1) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine, service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

"(2) Nothing in this subsection may be construed as requiring reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

## H. OTHER CUSTOMS LAWS

### 1. Country of Origin Marking

### Section 304 of the Tariff Act of 1930, as amended

[19 U.S.C. 1304; P.L. 71–361, as amended by P.L. 98–573, P.L. 99–514, P.L. 100–418, P.L. 103–182, and P.L. 104–295]

**SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.**

(a) MARKING OF ARTICLES.—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous

place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin or any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided,* That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C., 1934 edition, title 19, sections 1351, 1352, 1353, 1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in mold lettering, etching, engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) MARKING OF COMPRESSED GAS CYLINDERS.—No exception may be made under subsection (a)(3) with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) MARKING OF CERTAIN MANHOLE RINGS OR FRAMES, COVERS AND ASSEMBLIES THEREOF.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

(f) MARKING OF CERTAIN COFFEE AND TEA PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) MARKING OF SPICES.—The marking requirements of subsections (a) and (b) shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50,

0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050, of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) ADDITIONAL DUTIES FOR FAILURE TO MARK.—If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(i) DELIVERY WITHHELD UNTIL MARKED.—No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (h) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(j) TREATMENT OF GOODS OF A NAFTA COUNTRY.—

(1) APPLICATION OF SECTION.—In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) shall be applied by substituting "reasonably know" for "necessarily know";

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3) (E) or (I) or subparagraph (B) (i) or (ii) of this paragraph.

(2) PETITION RIGHTS OF NAFTA EXPORTERS AND PRODUCERS REGARDING MARKING DETERMINATIONS.—

(A) DEFINITIONS.—For purposes of this paragraph:

(i) The term "adverse marking decision" means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) INTERVENTION OR PETITION REGARDING ADVERSE MARKING DECISIONS.—If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) EFFECT OF DETERMINATION REGARDING DECISION.—If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) JUDICIAL REVIEW.—For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.

(k) PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

## Section 1907 (b) and (c) of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 1304; P.L. 100–418]

**SEC. 1907. IMPORT MARKING PROVISIONS.**

* * * * * * *

(b) MARKING OF CONTAINERS OF IMPORTED MUSHROOMS.—Imported preserved mushrooms shall not be considered to be in compliance with section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or any other law relating to the marking of imported articles unless the containers thereof indicate in English the country in which the mushrooms were grown.

(c) NATIVE-AMERICAN STYLE JEWELRY AND NATIVE-AMERICAN STYLE ARTS AND CRAFTS.—By no later than the date that is 1 year after the date of enactment of this Act, the Secretary of the Treasury shall prescribe and implement regulations under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) which require, to the greatest extent possible, that all Native-American style jewelry and Native-American style arts and crafts that are imported into the United States have the English name of the country of origin of such jewelry or arts and crafts indelibly marked in a conspicuous place on such jewelry or arts and crafts by a permanent method of marking.

[Section 207(b) of the NAFTA Implementation Act provides that: Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).]

## Section 210 of the Motor Vehicle Information and Cost Savings Act

[15 U.S.C. 1901 et seq.; P.L. 92–513, as added by P.L. 102–388, section 355]

**SEC. 210. LABELING REQUIREMENTS FOR AUTOMOBILES.**

(a) SHORT TITLE.—This section may be cited as the "American Automobile Labeling Act".

(b) LABEL REQUIREMENT.—(1) Each manufacturer of a new passenger motor vehicle distributed in commerce for sale in the United States shall annually establish for each model year and cause to be affixed, and each dealer shall cause to be maintained, on each such vehicle manufactured on or after October 1, 1994, in a prominent place, one or more labels—

(A) indicating the percentage (by value) of passenger motor vehicle equipment installed on such vehicle within a carline which originated in the United States and Canada to be identified with the words "U.S./Canadian content";

(B) indicating the final assembly point by city, State (where appropriate), and country of such automobile;

(C) in the case of any country (other than the United States and Canada) in which 15 percent or more (by value) of equipment installed on passenger motor vehicles within a carline originated, indicating the names of at least the 2 countries in which the greatest amount (by value) of such equipment originated and the percentage (by value) of the equipment originating in each such country;

(D) indicating the country of origin of the engine for each passenger motor vehicle; and

(E) indicating the country of origin of the transmission for each passenger motor vehicle.

(2) The percentages required to be indicated by this section may be rounded to the nearest 5 percent by the manufacturers. Such percentage shall be established at the beginning of each model year for such carline and shall be applicable to that carline for the entire model year.

(3) The disclosure requirement of subparagraph (1)(B) of this section supersedes the disclosure requirement of section 3(b) of the Automobile Information Disclosure Act (15 U.S.C. 1232(b)). A manufacturer who indicates the final assembly point as required by this section shall be deemed to have satisfied the disclosure requirement imposed by section 3(b) of the Automobile Information Disclosure Act.

(c) FORM AND CONTENT OF LABEL.—The form and content of the label required under subsection (b), and the manner and location in which such label shall be affixed, shall be prescribed by the Secretary by rule. The Secretary shall permit a manufacturer to comply with this section by allowing such manufacturer to disclose the information required under this section on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232), on the label required by section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006), or on a readily visible separate label.

(d) REGULATIONS.—The Secretary, in consultation with the Secretary of Commerce and the Secretary of the Treasury, shall pro-

mulgate such regulations as may be necessary to carry out this section, including regulations to establish a procedure to verify the labeling information required by this section. Such regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. The regulations shall be promulgated promptly after the enactment of this section in order to provide adequate lead time for all manufacturers to comply with this section. The regulations shall include provisions applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers is U.S./Canada or foreign and to provide such other information as may be necessary, as determined by the Secretary, to enable the manufacturer to reasonably comply with the provisions of this section and to reply on such certification and information. The regulations applicable to all suppliers shall be enforceable as a regulation of the Secretary under the appropriate provisions of this Act.

(e) VIOLATIONS AND PENALTIES.—Any manufacturer of automobiles distributed in commerce for sale in the United States who willfully fails to affix to any new automobile so manufactured or imported by him for sale in the United States the label required by this section, or any dealer who fails to maintain such label as required by this section, shall be fined not more than $1,000. Such failure with respect to each automobile shall constitute a separate offense.

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

(1) The term "manufacturer" means any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

(2) The term "person" means an individual, partnership, corporation, business trust, or any organized group of persons.

(3) The term "passenger motor vehicle" has the meaning provided in section 2(1) of this Act, except that it shall include any multipurpose vehicle and light duty truck that is rated at 8,500 pounds gross vehicle weight or less.

(4) The term "passenger motor vehicle equipment" means any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. The term "component" shall not include minor parts, such as attachment hardware (nuts, bolts, clips, screws, pins, braces, etc.) and such other similar items as the Secretary, in consultation with manufacturers and labor, may prescribe by rule.

(5) The terms "originated in the United States and Canada", "U.S./Canadian", and "of U.S./Canadian origin", in referring to automobile equipment, mean:

(A) for outside suppliers, the purchase price of automobile equipment which contains at least 70 percent value added in the United States and Canada; and

(B) for allied suppliers, the manufacturer shall determine the foreign content of any passenger motor vehicle equipment supplied by the allied supplier by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment and subtracting such purchase price from the total purchase price of such equipment. Determination of foreign or U.S./Canadian origin from outside suppliers will be consistent with subparagraph (A).

(6) The term "new passenger motor vehicle" means a passenger motor vehicle the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(7) The term "dealer" means any person or resident located in the United States, including any territory of the United States, or the District of Columbia, engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(8) The term "Secretary" means the Secretary of Transportation.

(9) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(10)(A) The term "value added in the United States and Canada" means a percentage derived as follows: Value Added equals the total purchase price, minus total purchase price of foreign content, divided by the total purchase price.

Costs incurred or profits made at the final vehicle assembly point and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in such calculation.

(B) In determining the origin and value added of engines and transmissions, the following groupings will be used:

(1) Engines of same displacement produced at the same plant.

(2) Transmissions of the same type produced at the same plant.

(11) The term "carline" means a name denoting a group of vehicles which has a degree of commonality in construction (e.g., body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. Light duty trucks are considered to be different carlines than passenger cars.

(12) The term "country of origin", in referring to the origin of an engine or transmission, means the country in which 50 percent or more of the dollar value added of an engine or transmission originated. If no country accounts for 50 percent or more of the dollar value, then the country of origin is the country from which the largest share of the value added originated. The estimate of the percentage of the dollar value shall be based upon the purchase price of direct materials as re-

ceived at individual engine or transmission plants of engines of the same displacement and transmissions of the same transmission type. For the purpose of determining the country of origin for engines and transmissions, the United States and Canada shall be treated separately.

(13) When used in reference to passenger motor vehicle equipment which is of U.S./Canadian origin, the term "percentage (by value)" means the resulting percentage when the percentage (by value) of such equipment not of U.S./Canadian origin that will be installed or included on such vehicles produced within a carline is subtracted from 100 percent. Value shall be expressed in terms of purchase price. For both outside suppliers and allied suppliers the value used shall be the purchase price of the passenger motor vehicle equipment as paid at the final assembly point.

(14) The term "final assembly point" shall mean the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle.

(15) The term "allied supplier" means a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement.

(16) The terms "foreign" or "foreign content" mean passenger motor vehicle equipment not determined to be U.S./Canadian origin.

(17) The term "outside supplier" means a supplier of passenger motor vehicle equipment to a manufacturer's allied supplier or anyone other than an allied supplier who ships directly to the manufacturer's final assembly point.

(g) EFFECT ON STATE LAW.—(1) Whenever a content labeling requirement established under this section is in effect, no State or political subdivision of a State shall have the authority to adopt or enforce any law or regulation relating to the content of vehicles covered by such Federal requirement.

(2) Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing requirements with respect to content of automobiles procured for its own use.

## 2. Drawback

### Section 313 of the Tariff Act of 1930, as amended

[19 U.S.C. 1313; P.L. 71–361, as amended by Act of June 26, 1936; Act of Aug. 8, 1951; Act of Aug. 8, 1953; Act of Aug. 6, 1956; P.L. 85–673; P.L. 90–630; P.L. 91–692; P.L. 96–609; P.L. 98–573; P.L. 99–514, P.L. 100–449, P.L. 101–382, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

**SEC. 313. DRAWBACK AND REFUNDS.**

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—

(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

(2) upon which the duties have been paid;

(3) which has been entered or withdrawn for consumption; and

(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(d) FLAVORING EXTRACTS; MEDICINAL OR TOILET PREPARATIONS; BOTTLED DISTILLED SPIRITS AND WINES.—Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) IMPORTED SALT FOR CURING FISH.—Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) EXPORTATION OF MEATS CURED WITH IMPORTED FISH.—Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

(g) MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS BUILT FOR FOREIGNERS.—The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such such vessels may not within the strict meaning of the term be articles exported.

(h) JET AIRCRAFT ENGINES.—Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than $100.

(i) TIME LIMITATION ON EXPORTATION.—No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the 3-year period beginning on the date of importation—

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2).

(k) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

(m) SOURCE OF PAYMENT.—Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n)(1) For purposes of this subsection and subsection (o)—

(A) the term "NAFTA Act" means the North American Free Trade Agreement Implementation Act;

(B) the terms "NAFTA country" and "good subject to NAFTA drawback" have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; and

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B).

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(o)(1) For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback,

the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988. [Section 213(c) of the North American Free Trade Agreement Implementation Act provides that these amendments made by section 203(b) of that Act apply

(A) with respect to exports from the United States to Canada—

(i) on January 1, 1996, if Canada is a NAFTA country on that date, and

(ii) after such date for so long as Canada continues to be a NAFTA country; and

(B) with respect to exports from the United States to Mexico—

(i) on January 1, 2001, if Mexico is a NAFTA country on that date; and

(ii) after such date for so long as Mexico continues to be a NAFTA country.]

(p) SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, if—

(A) an article (hereafter referred to in this subsection as the "exported article") of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article;

the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.

(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article—

(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, the qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,

(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or

(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) DEFINITION OF QUALIFIED ARTICLE, ETC.—For purposes of this subsection—

(A) The term 'qualified article' means an article—

(i) described in—

(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes, and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative, or

(II) imported duty-paid.

(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under

this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.

(C) The term "drawback claimant" means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) LIMITATION ON DRAWBACK.—The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A).

(q) PACKAGING MATERIAL.—Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

(r) FILING DRAWBACK CLAIMS.—

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(3)(A) The Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—

(i) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and

(ii) the claimant files a request for such extension with the Customs Service—

(I) within 1 year from the last day of the 3-year period referred to in paragraph (1), or

(II) within 1 year after the date of the enactment of this paragraph,

whichever is later.

(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 508(c)(3) shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

(C) For purposes of this paragraph, the term 'major disaster' has the meaning given that term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) for purposes of subsection (j)(2), a drawback successor may designate—

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the predecessor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the predecessor such merchandise;

as the basis for drawback on merchandise possessed by the drawback predecessor after the date of succession.

(3) For purposes of this subsection, the term "drawback successor" means an entity to which another entity (in this subsection referred to as the "predecessor") has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this Act, with the retention period beginning on the date that such certificate is issued.

(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

(w) LIMITED APPLICABILITY FOR CERTAIN AGRICULTURAL PRODUCTS.—

(1) IN GENERAL.—No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).

(2) APPLICATION TO TOBACCO.—Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

## 3. Entry of Merchandise

## Section 484 of the Tariff Act of 1930, as amended

[19 U.S.C. 1484; P.L. 71–361, as amended by P.L. 103–182 and P.L. 104–295]

**SEC. 484. ENTRY OF MERCHANDISE.**

(a) REQUIREMENT AND TIME.—

(1) Except as provided in sections 490, 498, 552, and 553, one of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefor by filing with the Customs Service—

(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) RECONCILIATION.—[2]

(1) IN GENERAL.—A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 15 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to

[2] Section 18(a) of the Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295) changed the definition of "reconciliation" in section 410(s) of the Tariff Act of 1930 to read as follows: "The term 'reconciliation' means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 484(a)(1)(B), or the import activity summary statement, are provided to the Customs Service at a later time."

the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) REGULATIONS REGARDING AD/CV DUTIES.—The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) SIGNING AND CONTENTS.—Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

(h) ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

## 4. Copyrights and Trademark Enforcement

## Section 101 of the Copyright Revision Act of 1976

[17 U.S.C. 602; P.L. 94–553]

**SEC. 602. INFRINGING IMPORTATION OF COPIES OR PHONORECORDS.**

(a) Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to—

(1) importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for any organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of any audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies of phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

## Section 526 of the Tariff Act of 1930, as amended

[19 U.S.C. 1526; P.L. 71–361, as amended by P.L. 93–596, P.L. 95–410, P.L. 103–182, and P.L. 104–153]

**SEC. 526. MERCHANDISE BEARING AMERICAN TRADEMARK.**

(a) IMPORTATION PROHIBITED.—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of the Act entitled "An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same," approved February 20, 1905, as amended [sections 81 to 109 of title 15], and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act [15 U.S.C. 106], unless written consent of the owner of such trademark is produced at the time of making entry.

(b) SEIZURE AND FORFEITURE.—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) INJUNCTION AND DAMAGES.—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trademark, under the provisions of such Act of February 20, 1905, as amended [sections 81 to 109 of title 15].

(d) EXEMPTIONS; PUBLICATIONS IN FEDERAL REGISTER; FORFEITURE; RULES AND REGULATIONS.—

(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer),

is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

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

(e) MERCHANDISE BEARING COUNTERFEIT MARK; SEIZURE AND FORFEITURE; DISPOSITION OF SEIZED GOODS.—Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,

(3) more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(4) [Deleted]

(f) CIVIL PENALTIES.—(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

## Section 431 of the Tariff Act of 1930, as amended

[19 U.S.C. 1431; P.L. 71–361, as amended by P.L. 98–573, P.L. 100–690, P.L. 103–182, P.L. 104–153, and P.L. 104–295]

**SEC. 431. MANIFEST—REQUIREMENT, FORM, AND CONTENTS.**

(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c)(1) Except as provided in subparagraph (2), the following information, when contained in a vessel manifest or aircraft manifest, shall be available to public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

(B) The general character of the cargo.

(C) The number of packages and gross weight.

(D) The name of the vessel, aircraft, or carrier.

(E) The seaport or airport of loading.

(F) The seaport or airport of discharge.

(G) The country of origin of the shipment.

(H) The trademarks appearing on the goods or packages.

(2) The information listed in paragraph (1) shall not be available for public disclosure if—

(A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

(B) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and

(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).

(2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—

(A) the Customs Service may require with respect to letters and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term "letters and documents" means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

## 5. Penalties

### Sections 592 and 592A of the Tariff Act of 1930, as amended

[19 U.S.C. 1592 and 1592A; P.L. 71–361, as amended by Act of Aug. 5, 1935, P.L. 95–410, P.L. 96–417, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

**SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.**

(a) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false,

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligible conduct.

(b) PROCEDURES.—

(1) PRE-PENALTY NOTICE.—

(A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, taxes, and fees, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the Customs Service shall provide to the person concerned

a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a for-

mal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) PRIOR DISCLOSURE REGARDING NAFTA CLAIMS.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES, TAXES, OR FEES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) the Customs Service shall require that such lawful duties, taxes and fees be restored, whether or not a monetary penalty is assessed.

(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(f) FALSE CERTIFICATIONS REGARDING EXPORTS TO NAFTA COUNTRIES.—

(1) IN GENERAL.—Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

(2) APPLICABLE PROVISIONS.—The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that—

(A) subsection (d) does not apply, and

(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

**SEC. 592A. SPECIAL PROVISIONS REGARDING CERTAIN VIOLATIONS.**

(a) PUBLICATION OF NAMES OF CERTAIN VIOLATORS.—

(1) PUBLICATION.—The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 592, and

(B) if a petition with respect to that claim has been filed under section 618, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) VIOLATIONS.—The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit

visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) REMOVAL FROM LIST.—Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS AND OTHERS.—After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(b) LIST OF HIGH RISK COUNTRIES.—

(1) LIST.—The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Fed-

eral Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS OF RECORD.—The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labelling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(3) DEFINITION.—For purposes of this subsection, the term "country" means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

## 6. National Customs Automation Program

## Part I, Subpart B of Title IV (Sections 411–414) of the Tariff Act of 1930, as amended

[19 U.S.C. 1411, P.L. 103–182 as amended by P.L. 104–295]

**SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

(A) The electronic entry of merchandise.

(B) The electronic entry summary of required information.

(C) The electronic transmission of invoice information.

(D) The electronic transmission of manifest information.

(E) Electronic payments of duties, fees, and taxes.

(F) The electronic status of liquidation and reliquidation.

(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

(A) The electronic filing and status of protests.

(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.

(D) The electronic filing of bonds.

(E) The electronic penalty process.

(F) The electronic filing of drawback claims, records, or entries.

(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

**SEC. 412. PROGRAM GOALS.**

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

**SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.**

(a) OVERALL PROGRAM PLAN.—

(1) IN GENERAL.—Before the 180th day after the date of the enactment of the North American Free Trade Agreement Implementation Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) IMPLEMENTATION.—

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days 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

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) EVALUATION AND REPORT.—The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year.

(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) COMMITTEES.—For purposes of this section, and the term "Committees" means the Committee on Ways and Means of the

House of Representatives and the Committee on Finance of the Senate.

**SEC. 414. REMOTE LOCATION FILING.**

(a) CORE ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a "remote location") if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) REQUIREMENTS.—

(A) IN GENERAL.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) RESTRICTION ON EXEMPTION FROM REQUIREMENTS.—The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) CONDITIONS ON FILING UNDER THIS SECTION.—The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(A) fails to meet all the compliance requirements and operational standards of remote location filing; or

(B) fails to adhere to all applicable laws and regulations.

(4) ALTERNATIVE FILING.—Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) ADDITIONAL ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) FILING OF ADDITIONAL INFORMATION.—

(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the "appropriate location" is—

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) DEFINITIONS.—As used in this section:

(1) The term "designated location" means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term "Program participant" means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

## 7. Commercial Operations

### Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987

[19 U.S.C. 2071 note; P.L. 100–203]

**SEC. 9503. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.**

* * * * * * *

(c) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the "Advisory Committee on Commercial Operations of the United States Customs Service" (hereafter in this subsection referred to as the "Advisory Committee").

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

## Section 301 of the Customs Procedural Reform and Simplification Act of 1978, as amended

[19 U.S.C. 2075; P.L. 95–410, as amended by P.L. 97–456, P.L. 98–573, P.L. 99–272, P.L. 99–509, P.L. 100–203, P.L. 100–690, P.L. 101–207, and P.L. 101–382]

**SEC. 301. CUSTOMS SERVICE APPROPRIATIONS AUTHORIZATION.**

(a) IN GENERAL.—

(1) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for the United States Customs Service only such sums as may hereafter be authorized by law.

(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for the salaries and expenses of the Cus-

toms Service that are incurred in noncommercial operations not to exceed the following:

(A) $516,217,000 for fiscal year 1991.

(B) $542,091,000 for fiscal year 1992.

(2) FOR COMMERCIAL OPERATIONS.—(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

(i) $672,021,000 for fiscal year 1991.

(ii) $705,793,000 for fiscal year 1992.

(B) The monies authorized to be appropriated under subparagraph (A) for any fiscal year, except for such sums as may be necessary for the salaries and expenses of the Customs Service that are incurred in connection with the processing of merchandise that is exempt from the fees imposed under section 13031(a)(9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985, shall be appropriated from the Customs User Fee Account.

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:

(A) $143,047,000 for fiscal year 1991.

(B) $150,199,000 for fiscal year 1992.

(c) MANDATORY 10-DAY DEFERMENT.—No part of any sum that is appropriated under the authority of subsection (b) of this section may be used to implement any procedure relating to the time of collection of estimated duties that shortens the maximum 10-day deferment procedure in effect on January 1, 1981.

(d) OVERTIME PAY LIMITATIONS; WAIVER.—No part of any sum that is appropriated under subsection (b) of this section for fiscal years after September 30, 1984, may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

(e) PAY COMPARABILITY AUTHORIZATION.—For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for salaries of the United States Customs Service such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970 [5 U.S.C.A. § 5301 et seq.].

(f) If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

(g)(1) The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs per-

sonnel assigned to the headquarters office of any Customs district designated by statute before April 7, 1986. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.

(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

(A) result in any significant reduction in force of employees other than by means of attrition;

(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

(C) eliminate or relocate any office of the United States Customs Service;

(D) eliminate any port of entry; or

(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.

(3) The total number of employees of the United States Customs Service shall be equivalent to at least 17,174 full-time employees.

## I. FOREIGN TRADE ZONES

### Act of June 18, 1934, as amended

[19 U.S.C. 81a–u; Act of June 18, 1934, as amended by Act of June 17, 1950, P.L. 85–791, P.L. 91–271, P.L. 96–609, P.L. 98–573, P.L. 99–514, P.L. 100–418, P.L. 100–449, P.L. 100–647, P.L. 101–382, P.L. 103–182, P.L. 104–201, and P.L. 104–295]

**SECTION 1. DEFINITIONS.**

When used in this chapter—

(a) The term "Secretary" means the Secretary of Commerce;

(b) The term "Board" means the Board which is established to carry out the provisions of this chapter. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, and the Secretary of the Treasury;

(c) The term "State" includes any State, the District of Columbia, and Puerto Rico;

(d) The term "corporation" means a public corporation and a private corporation, as defined in this chapter;

(e) The term "public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term "private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-

trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;

(g) The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;

(h) The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;

(i) The term "zone" means a "foreign-trade zone" as provided in this chapter.

**SEC. 2. ESTABLISHMENT OF ZONES.**

(a) BOARD AUTHORIZATION TO GRANT ZONES.—The Board is authorized, subject to the conditions and restrictions of this chapter and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

(b) NUMBER OF ZONES PER PORT OF ENTRY.—Each port of entry shall be entitled to at least one zone, but when a port of entry is located within the confines of more than one State such port of entry shall be entitled to a zone in each of such States, and when two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto. Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

(c) PREFERENCE TO PUBLIC CORPORATION.—In granting applications preference shall be given to public corporations.

(d) OWNERSHIP OF HARBOR FACILITIES BY STATE.—In case of any State in which harbor facilities of any port of entry are owned and controlled by the State and in which State harbor facilities of any other port of entry are owned and controlled by a municipality, the Board shall not grant an application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934).

**SEC. 3. ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.**

(a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested

and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24 chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned: *Provided, further,* That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day, after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: *Provided, further,* That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada during the period such Agreement is in operation without the payment of a duty that

shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.

(b) The exemption from the customs laws of the United States provided under subsection (a) shall not be available on or before December 31, 1992, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(c)(1) Notwithstanding the provisions of the fifth proviso of subsection (a), any article (within the meaning of section 5002(a)(14) of the Internal Revenue Code of 1986) may be manufactured or produced from denatured distilled spirits which have been withdrawn free of tax from a distilled spirits plant (within the meaning of section 5002(a)(1) of the Internal Revenue Code of 1986), and articles thereof, in a zone.

(2) Notwithstanding the provisions of the fifth proviso of subsection (a), distilled spirits which have been removed from a distilled spirits plant (as defined in section 5002(a)(1) of the Internal Revenue Code of 1986) upon payment or determination of tax may be used in the manufacture or production of medicines, medicinal preparation, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, in a zone. Such products will be eligible for drawback under the internal revenue laws under the same conditions applicable to similar manufacturing or production operations occurring in customs territory.

(d) In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.

(e) PRODUCTION EQUIPMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, if all applicable customs laws are complied with (except as otherwise provided in this subsection), merchandise which is admitted into a foreign trade zone for use within such zone as production equipment or as parts for such equipment, shall not be subject to duty until such merchandise is completely assembled, installed, tested, and used in the production for which it was admitted.

(2) ADMISSION PROCEDURES.—The person who admits the merchandise described in paragraph (1) into the zone shall, at the time of such admission, certify to the Customs Service that the merchandise is admitted into the zone pursuant to this subsection for use within the zone as production equipment or as parts for such equipment and that the merchandise will be entered and estimated duties deposited when use of the merchandise in production begins.

(3) ENTRY PROCEDURES.—At the time use of the merchandise in production begins, the merchandise shall be entered, as provided for in section 484 of the Tariff Act of 1930, and estimated duties shall be deposited with the Customs Service. The merchandise shall be subject to tariff classification according to its character, condition, and quantity, and at the rate of duty applicable, at the time use of the merchandise in production begins.

(4) FOREIGN TRADE ZONE.—For purposes of the subsection, the term 'foreign trade zone' includes a subzone.

**SEC. 4. CUSTOMS OFFICERS AND GUARDS.**

The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory.

**SEC. 5. VESSELS ENTERING OR LEAVING ZONE; COASTWISE TRADE.**

Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in this chapter, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in this chapter shall be construed in any manner so as to permit vessels under foreign flags to carry goods or merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States.

**SEC. 6. APPLICATION FOR ESTABLISHMENT OF ZONE; EXPANSION OF ZONE.**

(a) APPLICATION FOR ESTABLISHMENT; REQUIREMENTS.—Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) AMENDMENT OF APPLICATION; EXPANSION OF ZONE.—The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the same manner as an original application.

**SEC. 7. GRANTING OF APPLICATION.**

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

**SEC. 8. RULES AND REGULATIONS.**

The Board shall prescribe such rules and regulations not inconsistent with the provisions of this chapter or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out this chapter.

**SEC. 9. COOPERATION OF BOARD WITH OTHER AGENCIES.**

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, sanitary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.

**SEC. 10. COOPERATION OF OTHER AGENCIES WITH BOARD.**

For the purpose of facilitating the investigations of the Board and its work in the granting of the privilege, in the establishment, operation, and maintenance of a zone, the President may direct the executive departments and other establishments of the Government to cooperate with the Board, and for such purpose each of the several departments and establishments is authorized, upon direction of the President, to furnish to the Board such records, papers, and information in their possession as may be required by him, and temporarily to detail to the service of the Board such officers, experts, or engineers as may be necessary.

**SEC. 11. AGREEMENTS AS TO USE OF PROPERTY.**

If the title to or the right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions approved by the Board and such department or officer, as may be agreed upon.

**SEC. 12. FACILITIES TO BE PROVIDED AND MAINTAINED.**

Each grantee shall provide and maintain in connection with the zone—

(a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;

(b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;

(c) Adequate facilities for coal or other fuel and for light and power;

(d) Adequate water and sewer mains;

(e) Adequate quarters and facilities for the officers and employees of the United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board.

**SEC. 13. PERMISSION TO OTHERS TO USE ZONE.**

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: *Provided,* That such permission shall not constitute a vested right as against the United States nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: *And provided further,* That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone: *And provided further,* That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in this chapter.

**SEC. 14. OPERATION OF ZONE AS PUBLIC UTILITY; COST OF CUSTOMS SERVICE.**

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the additional customs service required under this chapter shall be paid by the operator of the zone.

**SEC. 15. RESIDENTS OF ZONE.**

(a) PERSONS ALLOWED TO RESIDE IN ZONE.—No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary to the Board.

(b) RULES AND REGULATIONS FOR EMPLOYEES ENTERING AND LEAVING ZONE.—The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) EXCLUSION FROM ZONE OF GOODS OR PROCESS OF TREATMENT.—The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) RETAIL TRADE WITHIN ZONE.—No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods ex-

cept such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory.

(e) Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

**SEC. 16. ACCOUNTS AND RECORDKEEPING.**

(a) MANNER OF KEEPING ACCOUNTS.—The form and manner of keeping the accounts of each zone shall be prescribed by the Board.

(b) ANNUAL REPORT BY GRANTEE.—Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports on zone operations.

(c) REPORT TO CONGRESS.—The Board shall make a report to Congress annually containing a summary of zone operations.

**SEC. 17. TRANSFER OF GRANT.**

The grant shall not be sold, conveyed, transferred, set over, or assigned.

**SEC. 18. REVOCATION OF GRANTS.**

(a) PROCEDURE FOR REVOCATION.—In the event of repeated willful violations of any of the provisions of this chapter by the grantee, the Board may revoke the grant after four months notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE.—In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the giving of testimony and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) NATURE OF ORDER OF REVOCATION; APPEAL.—An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the court of appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.

**SEC. 19. OFFENSES.**

In case of a violation of this chapter, or any regulation under this chapter, by the grantee, any officer, agent or employee thereof responsible for or permitting any such violation shall be subject to a

fine of not more than $1,000. Each day during which a violation continues shall constitute a separate offense.

**SEC. 20. SEPARABILITY OF PROVISIONS.**

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

**SEC. 21. RIGHT TO ALTER, AMEND, OR REPEAL CHAPTER.**

The right to alter, amend, or repeal this chapter is reserved.

## J. IMPLEMENTATION OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT

### Title VI of the Trade Agreements Act of 1979

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 96–39]

**SEC. 601. CIVIL AIRCRAFT AND PARTS.**

(a) GENERAL.—When the conditions under section 2(b) of this Act on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled, the President may proclaim after September 30, 1979, the changes provided for under the following amendments:

(1) The headnotes to schedule 6, part 6, subpart C of the Tariff Schedules of the United States are amended by inserting the following new headnote:

"3. Certified for Use in Civil Aircraft.

"(a) Whenever the term 'certified for use in civil aircraft' is used in an item description in the schedules, the importer shall file a written statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, with the appropriate customs officer stating that the imported article has been imported for use in civil aircraft, that it will be so used, and that the article has been approved for such use by the Administrator of the Federal Aviation Administration (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the FAA.

"(b) For purposes of the schedules, the term 'civil aircraft' means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.".

(2) A duty rate of "Free" in rate column numbered 1 of the Tariff Schedules of the United States for those articles classified in the following items which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States:

| | | |
|---|---|---|
| 518.51 | 647.05 | 660.44 |
| 544.41 | 652.09 | 660.46 |
| 642.20 | 653.39 | 660.52 |
| 647.03 | 653.94 | 660.54 |

| | | |
|---|---|---|
| 660.85 | 683.60 | 710.14 |
| 660.97 | 684.30 | 710.16 |
| 661.10 | 684.40 | 710.30 |
| 661.12 | 684.50 | 710.46 |
| 661.15 | 684.70 | 711.36 |
| 661.20 | 685.24 | 711.37 |
| 661.35 | 685.29 | 711.82 |
| 661.90 | 685.40 | 711.84 |
| 661.95 | 685.60 | 711.98 |
| 662.50 | 685.70 | 712.05 |
| 664.10 | 686.22 | 712.47 |
| 676.15 | 686.24 | 712.49 |
| 676.30 | 686.60 | 715.15 |
| 678.50 | 688.12 | 720.08 |
| 680.47 | 688.40 | 727.47 |
| 680.50 | 694.15 | 727.48 |
| 680.55 | 694.20 | 727.55 |
| 680.56 | 694.40 | 745.45 |
| 682.07 | 694.60 | 772.45 |
| 682.40 | 709.45 | 772.65. |
| 682.60 | 710.08 | |

(3) Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection:

"(f) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States.".

(b) TERMINATION AND WITHDRAWAL.—For purposes of section 125 of the Trade Act of 1974, the amendments made under subsection (a), if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

## Section 234 of the Trade and Tariff Act of 1984

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 98–573]

**SEC. 234. MODIFICATION OF DUTIES ON CERTAIN ARTICLES USED IN CIVIL AVIATION.**

(a) The President may proclaim modifications in the rate of duty column numbered 1 and in the article descriptions, including the superior headings thereto, for the articles provided for in the following items in the Tariff Schedules of the United States (19 U.S.C. 1202) in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Agreement on Trade in Civil Aircraft pursuant to the extension of the Annex to the Agreement on Trade in Civil Aircraft on October 6, 1983, and recorded in the decision of the Committee on March 22, 1984, if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of such Schedules:

| | | |
|---|---|---|
| 646.95 | 661.35 | 681.15 |
| 660.85 | 680.59 | 681.18 |
| 660.97 | 680.61 | 681.21 |
| 661.06 | 680.62 | 681.24 |
| 661.10 | 680.92 | 682.05 |
| 661.15 | 680.95 | 683.05 |
| 661.20 | 681.01 | 683.07 |

| | | |
|---|---|---|
| 683.15 | 708.09 | 708.29 |
| 708.01 | 708.21 | 711.77 |
| 708.03 | 708.23 | 711.78 |
| 708.05 | 708.25 | 711.98 |
| 708.07 | 708.27 | 711.49 |

(b) For purposes of section 125 of the Trade Act of 1974, the duty-free treatment, if any, proclaimed under subsection (a) shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

## General Note 6 of the Harmonized Tariff Schedule

*Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft*

(a) Whenever a product is entered under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn and a claim for such rate of duty is made, the importer—

(i) shall maintain such supporting documentation as the Secretary of the Treasury may require; and

(ii) shall be deemed to certify that the imported article is a civil aircraft, or has been imported for use in a civil aircraft and will be so used.

The importer may amend the entry or file a written statement to claim a free rate of duty under this note at any time before the liquidation of the entry becomes final, except that, notwithstanding section 505(c) of the Tariff Act of 1930 (19 U.S.C. 1505(c)), any refund resulting from any such claim shall be without interest.

(b)(i) For purposes of the tariff schedule, the term "civil aircraft" means any aircraft, aircraft engine, or ground flight simulator (including parts, components, and subassemblies thereof)—

(A) that is used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(B)(1) that is manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (hereafter referred to as the "FAA") under section 44704 of title 49, United States Code, or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for such an FAA certificate;

(2) for which an application for such certificate has been submitted to, and accepted by, the Administrator of the FAA by an existing type and production certificate holder pursuant to section 44702 of title 49, United States Code, and regulations promulgated thereunder; or

(3) for which an application for such approval or certificate will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the Administrator of the FAA.

(ii) The term "civil aircraft" does not include any aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) purchased for use by the Department of Defense or the United States Coast Guard, unless such aircraft, aircraft engine, or ground flight simulator (or parts, components, and subassemblies thereof) satisfies the requirements of subdivisions (i)(A) and (i)(B)(1) or (2).

(iii) Subdivision (i)(B)(3) shall apply only to such quantities of the parts, components, and subassemblies as are required to meet the design and technical requirements stipulated by the Administrator. The Commissioner of Customs may require the importer to estimate the quantities of parts, components, and subassemblies covered for purposes of such subdivision.

# Chapter 9: TRADE REMEDY LAWS

## A. AUTHORITIES TO RESPOND TO FOREIGN SUBSIDY AND DUMPING PRACTICES

### 1. Countervailing Duties

### Section 753 of the Tariff Act of 1930, as amended

[19 U.S.C. 1675b; P.L. 103–465, as amended by P.L. 104–295]

**SEC. 753. SPECIAL RULES FOR INJURY INVESTIGATIONS FOR CERTAIN SECTION 303 OR SECTION 701(c) COUNTERVAILING DUTY ORDERS AND INVESTIGATIONS.**

(a) IN GENERAL.—

(1) INVESTIGATION BY THE COMMISSION UPON REQUEST.—In the case of a countervailing duty order described in paragraph (2), which—

(A) applies to merchandise that is the product of a Subsidies Agreement country, and

(B)(i) is in effect on the date on which such country becomes a Subsidies Agreement country, or

(ii) is issued on a date that is after the date described in clause (i) pursuant to a court order in an action brought under section 516A,

the Commission, upon receipt of a request from an interested party described in section 771(9) (C), (D), (E), (F), or (G) for an injury investigation with respect to such order, shall initiate an investigation and shall determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

(2) DESCRIPTION OF COUNTERVAILING DUTY ORDERS.—A countervailing duty order described in this paragraph is an order issued under section 303 or section 701(c) with respect to which the requirement of an affirmative determination of material injury was not applicable at the time such order was issued.

(3) REQUIREMENTS OF REQUEST FOR INVESTIGATION.—A request for an investigation under this subsection shall be submitted—

(A) in the case of an order described in paragraph (1)(B)(i), within 6 months after the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), within 6 months after the date the order is issued.

(4) SUSPENSION OF LIQUIDATION.—With respect to entries of subject merchandise made on or after—

(A) in the case of an order described in paragraph (1)(B)(i), the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), the date on which the order is issued,

liquidation shall be suspended at the cash deposit rate in effect on the date described in subparagraph (A) or (B) (whichever is applicable).

(b) INVESTIGATION PROCEDURE AND SCHEDULE.—

(1) COMMISSION PROCEDURE.—

(A) IN GENERAL.—Except as otherwise provided in this section, the provisions of this title regarding evidence in and procedures for investigations conducted under subtitle A shall apply to investigations conducted by the Commission under this section.

(B) TIME FOR COMMISSION DETERMINATION.—Except as otherwise provided in subparagraph (C), the Commission shall issue its determination under subsection (a)(1), to the extent possible, not later than 1 year after the date on which the investigation is initiated under this section.

(C) SPECIAL RULE TO PERMIT ADMINISTRATIVE FLEXIBILITY.—In the case of requests for investigations received under this section within 1 year after the date on which the WTO Agreement enters into force with respect to the United States, the Commission may, after consulting with the administering authority, initiate its investigations in a manner that results in determinations being made in all such investigations during the 4-year period beginning on such date.

(2) NET COUNTERVAILABLE SUBSIDY; NATURE OF SUBSIDY.—

(A) NET COUNTERVAILABLE SUBSIDY.—The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order which is the subject of the investigation is revoked. The administering authority normally shall choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751. If the Commission considers the magnitude of the net countervailable subsidy in making its determination under this section, the Commission shall use the net countervailable subsidy provided by the administering authority.

(B) NATURE OF SUBSIDY.—The administering authority shall inform the Commission of, and the Commission, in making its determination under this section, shall consider, the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

(3) EFFECT OF COMMISSION DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission that it has made an affirmative determination under subsection (a)(1)—

(i) the administering authority shall order the termination of the suspension of liquidation required pursuant to subsection (a)(4), and

(ii) the countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(d).

For purposes of section 751(c), a countervailing duty order described in this section shall be treated as issued on the date of publication of the Commission's determination under this subsection.

(B) NEGATIVE DETERMINATION.—

(i) IN GENERAL.—Upon being notified by the Commission that it has made a negative determination under subsection (a)(1), the administering authority shall revoke the countervailing duty order, and shall refund, with interest, any estimated countervailing duties collected during the period liquidation was suspended pursuant to subsection (a)(4).

(ii) LIMITATION ON NEGATIVE DETERMINATION.—A determination by the Commission that revocation of the order is not likely to result in material injury to an industry by reason of imports of the subject merchandise shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States that were specifically intended to offset the countervailable subsidy received.

(4) COUNTERVAILING DUTY ORDERS WITH RESPECT TO WHICH NO REQUEST FOR INJURY INVESTIGATION IS MADE.—If, with respect to a countervailing duty order described in subsection (a), a request for an investigation is not made within the time required by subsection (a)(3), the Commission shall notify the administering authority that a negative determination has been made under subsection (a) and the provisions of paragraph (3)(B) shall apply with respect to the order.

(c) PENDING AND SUSPENDED COUNTERVAILING DUTY INVESTIGATIONS.—If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 303 or section 701(c) that applies to merchandise which is a product of that country and with respect to which the requirement of an affirmative determination of material injury was not applicable at the time the investigation was initiated, the Commission shall—

(1) in the case of an investigation in progress, make a final determination under section 705(b) within 75 days after the date of an affirmative final determination, if any, by the administering authority,

(2) in the case of a suspended investigation to which section 704(i)(1)(B) applies, make a final determination under section 705(b) within 120 days after receiving notice from the administering authority of the resumption of the investigation pursuant to section 704(i), or within 45 days after the date of an affirmative final determination, if any, by the administering authority, whichever is later, or

(3) in the case of a suspended investigation to which section 704(i)(1)(C) applies, treat the countervailing duty order issued pursuant to such section as if it were—

(A) an order issued under subsection (a)(1)(B)(ii) for purposes of subsection (a)(3); and

(B) an order issued under subsection (a)(1)(B)(i) for purposes of subsection (a)(4).

(d) PUBLICATION IN FEDERAL REGISTER.—The administering authority or the Commission, as the case may be, shall publish in the Federal Register a notice of the initiation of any investigation, and a notice of any determination or revocation, made pursuant to this section.

(e) REQUEST FOR SIMULTANEOUS EXPEDITED REVIEW UNDER SECTION 751(c).—

(1) GENERAL RULE.—

(A) REQUESTS FOR REVIEWS.—Notwithstanding section 751(c)(6)(A) and except as provided in subparagraph (B), an interested party may request a review of an order under section 751(c) at the same time the party requests an investigation under subsection (a), if the order involves the same or comparable subject merchandise. Upon receipt of such request, the administering authority, after consulting with the Commission, shall initiate a review of the order under section 751(c). The Commission shall combine such review with the investigation under this section.

(B) EXCEPTION.—If the administering authority determines that the interested party who requested an investigation under this section is a related party or an importer within the meaning of section 771(4)(B), the administering authority may decline a request by such party to initiate a review of an order under section 751(c) which involves the same or comparable subject merchandise.

(2) CUMULATION.—If a review under section 751(c) is initiated under paragraph (1), such review shall be treated as having been initiated on the same day as the investigation under this section, and the Commission may, in accordance with section 771(7)(G), cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which such investigations are treated as initiated on the same day.

(3) TIME AND PROCEDURE FOR COMMISSION DETERMINATION.—The Commission shall render its determination in the investigation conducted under this section at the same time as the Commission's determination is made in the review under section 751(c) that is initiated pursuant to this subsection. The Commission shall in all other respects apply the procedures and standards set forth in section 751(c) to such section 751(c) reviews.

## Section 261 (a)–(c) of the Uruguay Round Agreements Act

[19 U.S.C. 1303; P.L. 103–465]

**SEC. 261. REPEAL OF SECTION 303.**

(a) IN GENERAL.—Section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) is repealed effective on the effective date of this title.

(b) SAVINGS PROVISIONS.—

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, and other administrative actions—

(A) which have been issued pursuant to an investigation conducted under section 303 of the Tariff Act of 1930, and

(B) which are in effect on the effective date of this title, or were final before such date and are to become effective on or after such date,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, the International Trade Commission, or a court of competent jurisdiction, or by operation of law. Except as provided in paragraph (3), such orders or determinations shall be subject to review under section 751 of the Tariff Act of 1930 and, to the extent applicable, investigation under section 753 of such Act (as added by this title).

(2) PROCEEDINGS NOT AFFECTED.—The provisions of subsection (a) shall not affect any proceedings, including notices of proposed rulemaking, pending before the administering authority or the International Trade Commission on the effective date of this title with respect to such section 303. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, in accordance with such section 303 as in effect on the day before the effective date of this title and, except as provided in paragraph (3), shall be subject to review under section 751 of the Tariff Act of 1930 and, to the extent applicable, investigation under section 753 of such Act. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(3) SUITS NOT AFFECTED.—The provisions of subsection (a) shall not affect the review pursuant to section 516A of the Tariff Act of 1930 of a countervailing duty order issued pursuant to an investigation conducted under section 303 of such Act or a review of a countervailing duty order issued under section 751 of such Act, if such review is pending or the time for filing such review has not expired on the effective date of this title.

(c) DEFINITION OF ADMINISTERING AUTHORITY.—For purposes of this section, the term "administering authority" has the meaning given such term by section 771(1) of the Tariff Act of 1930.

## Subtitle A of Title VII (Sections 701–709) of the Tariff Act of 1930, as amended

[19 U.S.C. 1671–1671h; P.L. 71–361, as amended by P.L. 96–39, P.L. 98–181, P.L. 98–573, P.L. 99–514, P.L. 100–418, P.L. 100–647, P.L. 103–465, and P.L. 104–295]

**SEC. 701. COUNTERVAILING DUTIES IMPOSED.**

(a) GENERAL RULE.—If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) SUBSIDIES AGREEMENT COUNTRY.—For purposes of this title, the term "Subsidies Agreement country" means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on the date of the enactment of the Uruguay Round Agreements Act, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and

(B) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 2(1) of the Uruguay Round Agreements Act, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) COUNTERVAILING DUTY INVESTIGATIONS INVOLVING IMPORTS NOT ENTITLED TO A MATERIAL INJURY DETERMINATION.—In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—

(1) no determination by the Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c) or 704(l),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705(a)(2),

(4) section 706(c) shall not apply,

(5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 704(c) or 704(l), shall be disregarded, and

(6) section 751(c) shall not apply.

(d) TREATMENT OF INTERNATIONAL CONSORTIA.—For purposes of this subtitle, if the members (or other participating entities) of an international consortium that is engaged in the production of subject merchandise receive countervailable subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such countervailable subsidies, as well as countervailable subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) UPSTREAM SUBSIDY.—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

**SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.**

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—A countervailing duty proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.—If the sole basis of a petition filed under paragraph (1) is the derogation of an international undertaking on official export credits, the administering authority shall immediately notify the Sec-

retary of the Treasury who shall, in consultation with the administering authority, within 5 days after the date on which the administering authority initiates an investigation under subsection (c), determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) ACTION WITH RESPECT TO PETITIONS.—

(A) NOTIFICATION OF GOVERNMENTS.—Upon receipt of a petition filed under paragraph (1), the administering authority shall—

(i) notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) PETITION DETERMINATION.—

(1) IN GENERAL.—

(A) TIME FOR INITIAL DETERMINATION.—Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) EXTENSION OF TIME.—In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting "a maximum of 40 days" for "20 days".

(C) TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.—If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) a countervailing duty order that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.

(3) NEGATIVE DETERMINATIONS.—If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) CERTAIN POSITIONS DISREGARDED.—

(i) PRODUCERS RELATED TO FOREIGN PRODUCERS.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by ap-

plying subparagraph (A) on the basis of production in the region.

(D) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term "domestic producers or workers" means those interested parties who are eligible to file a petition under subsection (b)(1).

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 705(a), the investigation is terminated, or the administering authority withdraws the request.

**SEC. 703. PRELIMINARY DETERMINATIONS.**

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 702(b)—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 702(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 702(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b)(1) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 65 days after the date on which the administering authority initiates an investigation under section 702(c), or an investigation is initiated under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to the subject merchandise.

(2) Notwithstanding paragraph (1), when the petition is one subject to section 702(b)(3), the administering authority shall, taking into account the nature of the countervailable subsidy concerned, make the determination required by paragraph (1) on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 702(c) unless the provisions of subsection (c) of this section apply.

(3) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received

during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(4)[1] DE MINIMIS COUNTERVAILABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de minimis countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) EXCEPTION FOR DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with section 771(36), a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) CERTAIN OTHER DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country that is—

(i) a least developed country, as determined by the Trade Representative in accordance with section 771(36), or

(ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement,

[1] Indentation so in law.

subparagraph (B) shall be applied by substituting "3 percent" for "2 percent".

(D) LIMITATIONS ON APPLICATION OF SUBPARAGRAPH (C).—

(i) IN GENERAL.—In the case of a country described in subparagraph (C)(i), the provisions of subparagraph (C) shall not apply after the date that is 8 years after the date the WTO Agreement enters into force.

(ii) SPECIAL RULE FOR SUBPARAGRAPH (C)(ii) COUNTRIES.—In the case of a country described in subparagraph (C)(ii), the provisions of subparagraph (C) shall not apply after the earlier of—

(I) the date that is 8 years after the date the WTO Agreement enters into force, or

(II) the date on which the Trade Representative notifies the administering authority that such country is providing an export subsidy.

(5)[2] NOTIFICATION OF ARTICLE 8 VIOLATION.—If the only subsidy under investigation is a subsidy with respect to which the administering authority received notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement, paragraph (1) shall be applied by substituting "60 days" for "65 days".

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 130th day after the date on which the administering authority initiates an investigation under section 702(c), or an investigation is initiated under section 702(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination

[2] Indentation so in law.

would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with section 705(c)(5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or

(ii) if section 777A(e)(2)(B) applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(g) TIME PERIOD WHERE UPSTREAM SUBSIDIZATION INVOLVED.—

(1) IN GENERAL.—Whenever the administering authority concludes prior to a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or initiation of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) EXCEPTIONS.—Whenever the administering authority concludes, after a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1); or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 751 of any eventual countervailing duty order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1), as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 706(a).

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

**SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.**

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—

(A) WITHDRAWAL OF PETITION.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(B) REFILING OF PETITION.—If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the countervailable subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater ad-

verse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A COUNTERVAILABLE SUBSIDY OR TO CEASE EXPORTS OF SUBJECT MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe

regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET COUNTERVAILABLE SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 703(d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1)(B).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the subject merchandise shall be suspended under section 703(d)(2),

or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(1)(B) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the countervailable subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(1)(B).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(2) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure,

as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

(l) SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.—

(1) SUSPENSION AGREEMENTS.—If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b) or (c).

(2) REQUIREMENTS FOR SUSPENSION AGREEMENTS.—Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 705(b) but not in the preliminary affirmative determination under section 703(a), any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 706.

(3) EFFECT OF SUSPENSION AGREEMENT ON COUNTERVAILING DUTY ORDER.—If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 703(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to countervailing duties.

**SEC. 705. FINAL DETERMINATIONS.**

(a) FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a countervailable subsidy is being provided with respect to the subject merchandise; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph

to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(3) DE MINIMIS COUNTERVAILABLE SUBSIDY.—In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 703(b)(4).

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a). If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) are likely to undermine seriously the remedial effect of the countervailing duty order to be issued under section 706.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) any rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with paragraph (5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or

(II) if section 777A(e)(2)(B) applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers,

(ii) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the esti-

mated country-wide subsidy rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order the suspension of liquidation under paragraph (2) of section 703(d).

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(1)(B).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) and was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 705(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn

from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) METHOD FOR DETERMINING THE ALL-OTHERS RATE AND THE COUNTRY-WIDE SUBSIDY RATE.—

(A) ALL-OTHERS RATE.—

(i) GENERAL RULE.—For purposes of this subsection and section 703(d), the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776.

(ii) EXCEPTION.—If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 776, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(B) COUNTRY-WIDE SUBSIDY RATE.—The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 777A(e)(2)(B). The estimated country-wide rate determined under section 703(d)(1)(A)(ii) or paragraph (1)(B)(i)(II) of this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

**SEC. 706. ASSESSMENT OF DUTY.**

(a) PUBLICATION OF COUNTERVAILING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net countervailable subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a).

(2) SPECIAL RULE.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

(1) IN GENERAL.—In an investigation under this subtitle in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.—After publication of the countervailing duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).

**SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.**

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703(d)(1)(B).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(1)(B) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

**SEC. 708. EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.**

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the event of an assessment of duty based on a derogation under section 706 or action under section 703(d)(1)(B), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 1912 of such Act.

**SEC. 709. CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.**

(a) IN GENERAL.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.

## 2. Antidumping Duties

## Subtitle B of Title VII (Sections 731–739) of the Tariff Act of 1930, as amended

[19 U.S.C. 1673–1673h; P.L. 71–361, as amended by P.L. 96–39, P.L. 98–573, P.L. 99–514, P.L. 100–418, P.L. 100–647, P.L. 103–465, and P.L. 104–295]

**SEC. 731. ANTIDUMPING DUTIES IMPOSED.**

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this subsection and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

**SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.**

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING PERSISTENT DUMPING.—

(A) MONITORING.—The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to initiate a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately initiate such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) EXPEDITIOUS ACTION.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation initiated under subparagraph (B).

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) ACTION WITH RESPECT TO PETITIONS.—

(A) NOTIFICATION OF GOVERNMENTS.—Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) PETITION DETERMINATION.—

(1) IN GENERAL.—

(A) TIME FOR INITIAL DETERMINATION.—Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) EXTENSION OF TIME.—In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting "a maximum of 40 days" for "20 days".

(C) TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.—If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) an antidumping duty order or finding that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) NEGATIVE DETERMINATIONS.—If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the

production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) CERTAIN POSITIONS DISREGARDED.—

(i) PRODUCERS RELATED TO FOREIGN PRODUCERS.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.

(ii) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term "domestic producers or workers" means those interested parties who are eligible to file a petition under subsection (b)(1).

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to

prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.

**SEC. 733. PRELIMINARY DETERMINATIONS.**

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 732(b)—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 732(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 732(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), within 140 days after the date on which the administering authority initiates an investigation under section 732(c), or an investigation is initiated under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value.

(B) IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.—If a petition filed under section 732(b), or an investigation initiated under section 732(a), concerns short life cycle merchandise that is included in a product category established under section 739(a), subparagraph (A) shall be applied—

(i) by substituting "100 days" for "140 days" if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting "80 days" for "140 days" if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) DEFINITIONS OF OFFENDERS.—For purposes of subparagraph (B)—

(i) the term "second offender" means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) the term "multiple offender" means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case

received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the initiation of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.

(3) DE MINIMIS DUMPING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiates an investigation under section

732(c), or an investigation is initiated under section 732(a). No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and

(ii) determine, in accordance with section 735(c)(5), an estimated all-others rate for all exporters and producers not individually investigated, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

**SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.**

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—

(A) WITHDRAWAL OF PETITION.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner

or by the administering authority if the investigation was initiated under section 732(a).

(B) REFILING OF PETITION.—If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORTS OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 733(d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the subject merchandise shall be suspended under section 733(d)(2), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(1)(B) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect

to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(1)(B).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination it shall—

(A) suspend liquidation under section 733(d)(2) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all

of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATION INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 732(a) after providing notice of such termination to all parties to the investigation.

(l) SPECIAL RULE FOR NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) FAILURE OF AGREEMENTS.—If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) shall apply.

(m) SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.—

(1) SUSPENSION AGREEMENTS.—If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (l).

(2) REQUIREMENTS FOR SUSPENSION AGREEMENTS.—Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (l), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 735(b) but not in the preliminary affirmative determination under section 733(a), any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 736.

(3) EFFECT OF SUSPENSION AGREEMENT ON ANTIDUMPING DUTY ORDER.—If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.

**SEC. 735. FINAL DETERMINATIONS.**

(a) FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping and material in jury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(4) DE MINIMIS DUMPING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 733(b)(3).

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1). If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 736.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such deter-

mination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order the suspension of liquidation under section 733(d)(2).

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security and refund any cash deposit, required under section 733(d)(1)(B).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(a).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(3).—If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 733(b) and 733(e)(1) were both affirmative, continue the retroactive

suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 733(b) was affirmative, but the preliminary determination under section 733(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 733(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 735(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) METHOD FOR DETERMINING ESTIMATED ALL-OTHERS RATE.—

(A) GENERAL RULE.—For purposes of this subsection and section 733(d), the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776.

(B) EXCEPTION.—If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other

arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

**SEC. 736. ASSESSMENT OF DUTY.**

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then subject merchandise which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the normal value and the export price (or the constructed export price) for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 733(b), or

(ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); and

(E) the data concerning the normal value and the export price (or the constructed export price) apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the normal value and the export price (or the constructed export price) of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

(4) PROVISION OF BUSINESS PROPRIETARY INFORMATION; WRITTEN COMMENTS.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 777(c) to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 771(9), and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

(d) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

(1) IN GENERAL.—In an investigation in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.—After publication of the antidumping duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).

**SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.**

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(1)(B).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 733(d)(1)(B) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for

consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security collected is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

**SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.**

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the export price (or the constructed export price) of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the constructed export price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

**SEC. 739. ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.**

(a) ESTABLISHMENT OF PRODUCT CATEGORIES.—

(1) PETITIONS.—

(A) IN GENERAL.—An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) CONTENTS.—A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(2) DETERMINATIONS ON SUFFICIENCY OF PETITION.—Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) NOTICE; HEARINGS.—If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) DETERMINATIONS.—

(A) IN GENERAL.—By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) MODIFICATIONS NOT REQUESTED BY PETITION.—

(i) IN GENERAL.—The Commission may, on its own initiative, make a determination modifying the scope

of any product category established under subparagraph (A) at any time.

(ii) NOTICE AND HEARING.—Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) BASIS OF DETERMINATIONS.—In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

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

(1) ELIGIBLE DOMESTIC ENTITY.—The term "eligible domestic entity" means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) AFFIRMATIVE DUMPING DETERMINATION.—The term "affirmative dumping determination" means—

(A) any affirmative final determination made by the administering authority under section 735(a) during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 736 which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 733(b) during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 735 by reason of a suspension of the investigation under section 734, and

(ii) includes a determination that the estimated average amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is not less than 15 percent ad valorem.

(3) SUBJECT OF AFFIRMATIVE DUMPING DETERMINATION.—

(A) IN GENERAL.—Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirm-

ative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the normal value of such merchandise of the manufacturer exceeds the export price (or the constructed export price) of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) EXCLUSION.—Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the normal value of the merchandise in such group exceeds the export price (or the constructed export price) of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) SHORT LIFE CYCLE MERCHANDISE.—That term "short life cycle merchandise" means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term "outmoded" refers to a kind of style that is no longer state-of-the-art.

(c) TRANSITIONAL RULES.—

(1) For purposes of this section and section 733(b)(1) (B) and (C), all affirmative dumping determinations described in subsection (b)(2)(A) that were made after December 31, 1980, and before the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) that were made after December 31, 1984, and before the date of enactment of such Act, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) and was made before January 1, 1985,

may be taken into account under this section or section 733(b)(1) (B) and (C).

## 3. Administrative Review of Antidumping and Countervailing Duties

## Subtitle C of Title VII (Sections 751, 752, 761, and 762) of the Tariff Act of 1930, as amended

[19 U.S.C. 1675, 1675a, 1676, 1676a; P.L. 71–361, as amended, by P.L. 96–39, P.L. 98–573, P.L. 100–418 and P.L. 103–465]

### CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

**SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.**

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—

(A) IN GENERAL.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) DETERMINATION OF ANTIDUMPING OR COUNTERVAILING DUTIES FOR NEW EXPORTERS AND PRODUCERS.—

(i) IN GENERAL.—If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 771(33)) with any

exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) TIME FOR REVIEW UNDER CLAUSE (i).—The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter,

if the request for the review is made during that 6-month period.

(iii) POSTING BOND OR SECURITY.—The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) TIME LIMITS.—The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) RESULTS OF DETERMINATIONS.—The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) TIME LIMITS.—

(A) PRELIMINARY AND FINAL DETERMINATIONS.—The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend

that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

(B) LIQUIDATION OF ENTRIES.—If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) EFFECT OF PENDING REVIEW UNDER SECTION 516A.—In a case in which a final determination under paragraph (1) is under review under section 516A and a liquidation of entries covered by the determination is enjoined under section 516A(c)(2) or suspended under section 516A(g)(5)(C), the administering authority shall, within 10 days after the final disposition of the review under section 516A, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

(4) ABSORPTION OF ANTIDUMPING DUTIES.—During any review under this subsection initiated 2 years or 4 years after the publication of an antidumping duty order under section 736(a), the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c).

(b) REVIEWS BASED ON CHANGED CIRCUMSTANCES.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of—

(A) a final affirmative determination that resulted in an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or in a countervailing duty order under this title or section 303,

(B) a suspension agreement accepted under section 704 or 734, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 704(g) or 734(g),

which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) COMMISSION REVIEW.—In conducting a review under this subsection, the Commission shall—

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 704(h)(2) or 734(h)(2), determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 704(g) or 734(g), determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) BURDEN OF PERSUASION.—During a review conducted by the Commission under this subsection—

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination made under section 705(b) or 735(b), or an investigation suspended under section 704 or 734, and

(B) the administering authority may not review a determination made under section 705(a) or 735(a), or an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) FIVE-YEAR REVIEW.—

(1) IN GENERAL.—Notwithstanding subsection (b) and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of—

(A) a countervailing duty order (other than a countervailing duty order to which subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 303), an antidumping duty order, or a notice of suspension of an investigation, described in subsection (a)(1),

(B) a notice of injury determination under section 753 with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement,

the administering authority and the Commission shall conduct a review to determine, in accordance with section 752, whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) NOTICE OF INITIATION OF REVIEW.—Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit—

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) RESPONSES TO NOTICE OF INITIATION.—

(A) NO RESPONSE.—If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 771(9) (C), (D), (E), (F), or (G).

(B) INADEQUATE RESPONSE.—If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 776.

(4) WAIVER OF PARTICIPATION BY CERTAIN INTERESTED PARTIES.—

(A) IN GENERAL.—An interested party described in section 771(9) (A) or (B) may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) EFFECT OF WAIVER.—In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) CONDUCT OF REVIEW.—

(A) TIME LIMITS FOR COMPLETION OF REVIEW.—Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall

make its final determination pursuant to section 752 (b) or (c) within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 752(a) within 360 days after the date on which a review is initiated under this subsection.

(B) EXTENSION OF TIME LIMIT.—The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a final determination, but the Commission does not extend the time for making a determination, the Commission's determination shall be made not later than 120 days after the date on which the final determination of the administering authority is published.

(C) EXTRAORDINARILY COMPLICATED.—For purposes of this subsection, the administering authority or the Commission (as the case may be) may treat a review as extraordinarily complicated if—

(i) there is a large number of issues,

(ii) the issues to be considered are complex,

(iii) there is a large number of firms involved,

(iv) the orders or suspended investigations have been grouped as described in subparagraph (D), or

(v) it is a review of a transition order.

(D) GROUPED REVIEWS.—The Commission, in consultation with the administering authority, may group orders or suspended investigations for review if it considers that such grouping is appropriate and will promote administrative efficiency. Where orders or suspended investigations have been grouped, the Commission shall, subject to subparagraph (B), make its final determination under this subsection not later than 120 days after the date that the administering authority publishes notice of its final determination with respect to the last order or agreement in the group.

(6) SPECIAL TRANSITION RULES.—

(A) SCHEDULE FOR REVIEWS OF TRANSITION ORDERS.—

(i) INITIATION.—The administering authority shall begin its review of transition orders in the 42d calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.

(ii) COMPLETION.—A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months

after the 5th anniversary of the date such orders are issued.

(iii) SUBSEQUENT REVIEWS.—The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting "date of the determination to continue such orders" for "date such orders are issued".

(iv) REVOCATION AND TERMINATION.—No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) SEQUENCE OF TRANSITION REVIEWS.—The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) DEFINITION OF TRANSITION ORDER.—For purposes of this section, the term "transition order" means—

(i) a countervailing duty order under this title or under section 303,

(ii) an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or

(iii) a suspension of an investigation under section 704 or 734,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) ISSUE DATE FOR TRANSITION ORDERS.—For purposes of this subsection, a transition order shall be treated as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

(d) REVOCATION OF ORDER OR FINDING; TERMINATION OF SUSPENDED INVESTIGATION.—

(1) IN GENERAL.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b). The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States which are specifically intended to offset the countervailable subsidy received.

(2) FIVE-YEAR REVIEWS.—In the case of a review conducted under subsection (c), the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 752(a).

(3) APPLICATION OF REVOCATION OR TERMINATION.—A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section, it shall, upon the request of an interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(f) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under subsection (b)(2)(B) is negative, the suspension agreement shall be treated as not accepted, beginning on the date of publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) REVIEWS TO IMPLEMENT RESULTS OF SUBSIDIES ENFORCEMENT PROCEEDING.—

(1) VIOLATIONS OF ARTICLE 8 OF THE SUBSIDIES AGREEMENT.—If—

(A) the administering authority receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) is in progress,

the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subject merchandise is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) WITHDRAWAL OF SUBSIDY OR IMPOSITION OF COUNTERMEASURES.—If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement—

(A)(i) the United States has imposed countermeasures, and

(ii) such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or

(B) a WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order,

the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.

(3) EXPEDITED REVIEW.—The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.

(h) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

**SEC. 752. SPECIAL RULES FOR SECTION 751(b) AND 751(c) REVIEWS.**

(a) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY.—

(1) IN GENERAL.—In a review conducted under section 751 (b) or (c), the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and

(D) in an antidumping proceeding under section 751(c), the findings of the administering authority regarding duty absorption under section 751(a)(4).

(2) VOLUME.—In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms

or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

(3) PRICE.—In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and

(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

(4) IMPACT ON THE INDUSTRY.—In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

The Commission shall evaluate all relevant economic factors described in this paragraph within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

(5) BASIS FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to consider under this subsection shall not necessarily give decisive guidance with respect to the Commission's determination of whether material injury is likely to continue or recur within a reasonably foreseeable time if the order is revoked or the suspended investigation is terminated. In making that determination, the Commission shall consider that the effects of revocation or ter-

mination may not be imminent, but may manifest themselves only over a longer period of time.

(6) MAGNITUDE OF MARGIN OF DUMPING AND NET COUNTERVAILABLE SUBSIDY; NATURE OF COUNTERVAILABLE SUBSIDY.—In making a determination under section 751 (b) or (c), the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.

(7) CUMULATION.—For purposes of this subsection, the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 751 (b) or (c) were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

(8) SPECIAL RULE FOR REGIONAL INDUSTRIES.—In a review under section 751 (b) or (c) involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this title, another region that satisfies the criteria established in section 771(4)(C), or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 771(4)(C) are likely to be satisfied if the order is revoked or the suspended investigation is terminated.

(b) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF A COUNTERVAILABLE SUBSIDY.—

(1) IN GENERAL.—In a review conducted under section 751(c), the administering authority shall determine whether revocation of a countervailing duty order or termination of a suspended investigation under section 704 would be likely to lead to continuation or recurrence of a countervailable subsidy. The administering authority shall consider—

(A) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(B) whether any change in the program which gave rise to the net countervailable subsidy described in subparagraph (A) has occurred that is likely to affect that net countervailable subsidy.

(2) CONSIDERATION OF OTHER FACTORS.—If good cause is shown, the administering authority shall also consider—

(A) programs determined to provide countervailable subsidies in other investigations or reviews under this title, but only to the extent that such programs—

(i) can potentially be used by the exporters or producers subject to the review under section 751(c), and

(ii) did not exist at the time that the countervailing duty order was issued or the suspension agreement was accepted, and

(B) programs newly alleged to provide countervailable subsidies but only to the extent that the administering authority makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the review.

(3) NET COUNTERVAILABLE SUBSIDY.—The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) TREATMENT OF ZERO AND DE MINIMIS RATES.—A net countervailable subsidy described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

(B) APPLICATION OF DE MINIMIS STANDARDS.—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b)(1) of section 751.

(c) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING.—

(1) IN GENERAL.—In a review conducted under section 751(c), the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 734 would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider—

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.

(2) CONSIDERATION OF OTHER FACTORS.—If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

(3) MAGNITUDE OF THE MARGIN OF DUMPING.—The administering authority shall provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) TREATMENT OF ZERO OR DE MINIMIS MARGINS.—A dumping margin described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

(B) APPLICATION OF DE MINIMIS STANDARDS.—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b) of section 751.

## CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

**SEC. 761. REQUIRED CONSULTATIONS.**

(a) AGREEMENTS IN RESPONSE TO COUNTERVAILABLE SUBSIDIES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the countervailable subsidy completely, or

(2) reducing the net countervailable subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) MODIFICATION OF AGREEMENTS ON BASIS OF CONSULTATIONS.—At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a).

(c) SPECIAL RULE REGARDING AGREEMENTS UNDER SECTION 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

**SEC. 762. REQUIRED DETERMINATIONS.**

(a) IN GENERAL.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any countervailable subsidy is being provided with respect to the subject merchandise and, if being so provided, the net countervailable subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) DETERMINATIONS.—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made under such procedures as the administer-

ing authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 for purposes of judicial review under section 516A. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 706 effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of subject merchandise which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) HEARINGS.—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

## 4. General Provisions Relating to Antidumping and Countervailing Duties

## Subtitle D of Title VII (Sections 771–782) of the Tariff Act of 1930, as amended

[19 U.S.C. 1677, 1677–1, 1677–2, 1677a–1677n; P.L. 71–361, as amended by P.L. 96–39, P.L. 98–573, P.L. 100–418, P.L. 103–465, and P.L. 104–295]

**SEC. 771. DEFINITIONS; SPECIAL RULES.**

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—The term "industry" means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

(B) RELATED PARTIES.—

(i) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise,

the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if—

(I) the producer directly or indirectly controls the exporter or importer,

(II) the exporter or importer directly or indirectly controls the producer,

(III) a third party directly or indirectly controls the producer and the exporter or importer, or

(IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

(C) REGIONAL INDUSTRIES.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the domestic like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefiting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy. The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.

(D) PRODUCT LINES.—The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed in relation to the United States production of a domestic like product if available data per-

mit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the domestic like product has no separate identity in terms of such criteria, then the effect of the dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed by the examination of the production of the narrowest group or range of products, which includes a domestic like product, for which the necessary information can be provided.

(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

(i) IN GENERAL.—Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) PROCESSING.—For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) RELEVANT ECONOMIC FACTORS.—For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

(v) TERMINATION OF THIS SUBPARAGRAPH.—This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) COUNTERVAILABLE SUBSIDY.—

(A) IN GENERAL.—Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).

(B) SUBSIDY DESCRIBED.—A subsidy is described in this paragraph in the case in which an authority—

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments,

to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term "authority" means a government of a country or any public entity within the territory of the country.

(C) OTHER FACTORS.—The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.

(D) FINANCIAL CONTRIBUTION.—The term "financial contribution" means—

(i) the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,

(ii) foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,

(iii) providing goods or services, other than general infrastructure, or

(iv) purchasing goods.

(E) BENEFIT CONFERRED.—A benefit shall normally be treated as conferred where there is a benefit to the recipient, including—

(i) in the case of an equity infusion, if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,

(ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,

(iii) in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and

(iv) in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

(F) CHANGE IN OWNERSHIP.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

(5A) SPECIFICITY.—

(A) IN GENERAL.—A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substitution subsidy described in subparagraph (C), or if it is determined to be specific pursuant to subparagraph (D).

(B) EXPORT SUBSIDY.—An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.

(C) IMPORT SUBSTITUTION SUBSIDY.—An import substitution subsidy is a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.

(D) DOMESTIC SUBSIDY.—In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply:

(i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.

(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if—

(I) eligibility is automatic,

(II) the criteria or conditions for eligibility are strictly followed, and

(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term "objective criteria or conditions" means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

(iii) Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In evaluating the factors set forth in subclauses (I), (II), (III), and (IV), the administering authority shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

(iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.

For purposes of this paragraph and paragraph (5B), any reference to an enterprise or industry is a reference to a foreign enterprise or foreign industry and includes a group of such enterprises or industries.

(5B) CATEGORIES OF NONCOUNTERVAILABLE SUBSIDIES.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under subtitle A

or a review under subtitle C that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) RESEARCH SUBSIDY.—

(i) IN GENERAL.—Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable, if the subsidy covers not more than 75 percent of the costs of industrial research or not more than 50 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to—

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity,

(II) the costs of instruments, equipment, land, or buildings that are used exclusively and permanently (except when disposed of on a commercial basis) for the research activity,

(III) the costs of consultancy and equivalent services used exclusively for the research activity, including costs for bought-in research, technical knowledge, and patents,

(IV) additional overhead costs incurred directly as a result of the research activity, and

(V) other operating costs (such as materials and supplies) incurred directly as a result of the research activity.

(ii) DEFINITIONS.—For purposes of this subparagraph—

(I) INDUSTRIAL RESEARCH.—The term "industrial research" means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, or services, or in bringing about a significant improvement to existing products, processes, or services.

(II) PRECOMPETITIVE DEVELOPMENT ACTIVITY.—The term "precompetitive development activity" means the translation of industrial research findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation.

The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) CALCULATION RULES.—

(I) IN GENERAL.—In the case of a research activity that spans both industrial research and precompetitive development activity, the allowable level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (II), (III), (IV), and (V) of clause (i).

(II) TOTAL ELIGIBLE COSTS.—The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) SUBSIDY TO DISADVANTAGED REGIONS.—

(i) IN GENERAL.—A subsidy provided, pursuant to a general framework of regional development, to a person located in a disadvantaged region within a country shall be treated as noncountervailable, if it is not specific (within the meaning of paragraph (5A)) within eligible regions and if the following conditions are met:

(I) Each region identified as disadvantaged within the territory of a country is a clearly designated, contiguous geographical area with a definable economic and administrative identity.

(II) Each region is considered a disadvantaged region on the basis of neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances, and such criteria are clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification.

(III) The criteria described in subclause (II) include a measurement of economic development.

(IV) Programs provided within a general framework of regional development include ceilings on the amount of assistance that can be granted to a subsidized project. Such ceilings are differentiated according to the different levels of development of assisted regions, and are expressed in terms of investment costs or costs of job creation. Within such ceilings, the distribution of assistance is sufficiently broad and even to avoid the predominant use of a subsidy by, or the provision of disproportionately large amounts of a subsidy to, an enterprise or industry as described in paragraph (5A)(D).

(ii) MEASUREMENT OF ECONOMIC DEVELOPMENT.—For purposes of clause (i), the measurement of economic development shall be based on one or more of the following factors:

(I) Per capita income, household per capita income, or per capita gross domestic product that does not exceed 85 percent of the average for the country subject to investigation or review.

(II) An unemployment rate that is at least 110 percent of the average unemployment rate for the country subject to investigation or review.

The measurement of economic development shall cover a 3-year period, but may be a composite measurement and may include factors other than those set forth in this clause.

(iii) DEFINITIONS.—For purposes of this subparagraph—

(I) GENERAL FRAMEWORK OF REGIONAL DEVELOPMENT.—The term "general framework of regional development" means that the regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

(II) NEUTRAL AND OBJECTIVE CRITERIA.—The term "neutral and objective criteria" means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.

(D) SUBSIDY FOR ADAPTATION OF EXISTING FACILITIES TO NEW ENVIRONMENTAL REQUIREMENTS.—

(i) IN GENERAL.—A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy—

(I) is a one-time nonrecurring measure,

(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) EXISTING FACILITIES.—For purposes of this subparagraph, the term "existing facilities" means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.

(E) NOTIFIED SUBSIDY PROGRAM.—

(i) GENERAL RULE.—If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this title.

(ii) EXCEPTION.—Notwithstanding clause (i), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

(F) CERTAIN SUBSIDIES ON AGRICULTURAL PRODUCTS.—Domestic support measures that are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) PROVISIONAL APPLICATION.—

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 282(c) of the Uruguay Round Agreements Act.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agriculture and such date shall be notified to the administering authority.

(6) NET COUNTERVAILABLE SUBSIDY.—For the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission in each case—

(i) shall consider—

(I) the volume of imports of the subject merchandise,

(II) the effect of imports of that merchandise on prices in the United States for like products [1], and

(III) the impact of imports of such merchandise on domestic producers of like products [1], but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as compared with the price of like products [3] of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing

[3] Section 233(a)(3)(B) of P.L. 103–465 amends this subclause by striking "like product" and inserting "domestic like product." The phrase "like product" does not appear.

on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(V) in a proceeding under subtitle B, the magnitude of the margin of dumping.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(iv) CAPTIVE PRODUCTION.—If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to the United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF COUNTERVAILABLE SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider information provided to it by the administering authority regarding the nature

of the countervailable subsidy granted by a foreign country (particularly whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and the effects likely to be caused by the countervailable subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors—

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with

respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

(I) IN GENERAL.—In investigations under subtitle B, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) WTO MEMBER MARKET.—For purposes of this clause, the term "WTO member market" means the market of any country which is a WTO member.

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

(G) CUMULATION FOR DETERMINING MATERIAL INJURY.—

(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 702(b) or 732(b) on the same day,

(II) investigations were initiated under section 702(a) or 732(a) on the same day, or

(III) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the volume and effect of imports under clause (i)—

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission's final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(iv) REGIONAL INDUSTRY DETERMINATIONS.—In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based

upon the volume and effect of imports into the region or regions determined by the Commission. The provisions of clause (iii) shall apply to such investigations.

(H) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which—

(i) petitions were filed under section 702(b) or 732(b) on the same day,

(ii) investigations were initiated under section 702(a) or 732(a) on the same day, or

(iii) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(I) CONSIDERATION OF POST-PETITION INFORMATION.—The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under subtitle A or B is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

(8) SUBSIDIES AGREEMENT; AGREEMENT ON AGRICULTURE.—

(A) SUBSIDIES AGREEMENT.—The term "Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

(B) AGREEMENT ON AGRICULTURE.—The term "Agreement on Agriculture" means the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act.

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) DOMESTIC LIKE PRODUCT.—The term "domestic like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission, including a determination under section 751, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) ATTRIBUTION OF MERCHANDISE TO COUNTRY OF MANUFACTURE OR PRODUCTION.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) [Repealed.]

(14) SOLD OR, IN THE ABSENCE OF SALES, OFFERED FOR SALE.—The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) ORDINARY COURSE OF TRADE.—The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 773(b)(1).

(B) Transactions disregarded under section 773(f)(2).

(16) FOREIGN LIKE PRODUCT.—The term "foreign like product" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the subject merchandise,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) USUAL COMMERCIAL QUANTITIES.—The term "usual commercial quantities", in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(18) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) DETERMINATION IN EFFECT.—

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle B.

(E) COLLECTION OF INFORMATION.—Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 777.

(19) EQUIVALENCY OF LEASES TO SALES.—In determining whether a lease is equivalent to a sale for purposes of this title, the administering authority shall consider—

(A) the terms of the lease,

(B) commercial practice within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) APPLICATION TO GOVERNMENTAL IMPORTATIONS.—

(A) IN GENERAL.—Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of countervailing duties or antidumping duties under this title or section 303.

(B) EXCEPTIONS.—Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this title if—

(i) the merchandise is acquired by, or for use of, such Department—

(I) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superseding agreements, and

(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial nonmilitary use.

(21) UNITED STATES-CANADA AGREEMENT.—The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(22) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(23) ENTRY.—The term "entry" includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24) NEGLIGIBLE IMPORTS.—

(A) IN GENERAL.—

(i) LESS THAN 3 PERCENT.—Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are "negligible" if such imports account for less than 3 percent of the volume of all such merchandise imported into the United

States in the most recent 12-month period for which data are available that precedes—

(I) the filing of the petition under section 702(b) or 732(b), or

(II) the initiation of the investigation, if the investigation was initiated under section 702(a) or 732(a).

(ii) EXCEPTION.—Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) DETERMINATION OF AGGREGATE VOLUME.—In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) NEGLIGIBILITY IN THREAT ANALYSIS.—Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) NEGLIGIBILITY FOR CERTAIN COUNTRIES IN COUNTERVAILING DUTY INVESTIGATIONS.—In the case of an investigation under section 701, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting "4 percent" for "3 percent" in subparagraph (A)(i) and by substituting "9 percent" for "7 percent" in subparagraph (A)(ii).

(C) COMPUTATION OF IMPORT VOLUMES.—In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available statistics.

(D) REGIONAL INDUSTRIES.—In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission's examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) SUBJECT MERCHANDISE.—The term "subject merchandise" means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act, 1921.

(26) SECTION 303.—The terms "section 303" and "303" mean section 303 of this Act as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act.

(27) SUSPENSION AGREEMENT.—The term "suspension agreement" means an agreement described in section 704(b), 704(c), 734(b), 734(c), or 734(l).

(28) EXPORTER OR PRODUCER.—The term "exporter or producer" means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 773, the term "exporter or producer" includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

(29) WTO AGREEMENT.—The term "WTO Agreement" means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

(30) WTO MEMBER AND WTO MEMBER COUNTRY.—The terms "WTO member" and "WTO member country" mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(31) GATT 1994.—The term "GATT 1994" means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

(33) AFFILIATED PERSONS.—The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(34) DUMPED; DUMPING.—The terms "dumped" and "dumping" refer to the sale or likely sale of goods at less than fair value.

(35) DUMPING MARGIN; WEIGHTED AVERAGE DUMPING MARGIN.—

(A) DUMPING MARGIN.—The term "dumping margin" means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

(B) WEIGHTED AVERAGE DUMPING MARGIN.—The term "weighted average dumping margin" is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.

(C) MAGNITUDE OF THE MARGIN OF DUMPING.—The magnitude of the margin of dumping used by the Commission shall be—

(i) in making a preliminary determination under section 733(a) in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering authority in its notice of initiation of the investigation;

(ii) in making a final determination under section 735(b), the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission's administrative record;

(iii) in a review under section 751(b)(2), the most recent dumping margin or margins determined by the administering authority under section 752(c)(3), if any, or under section 733(b) or 735(a); and

(iv) in a review under section 751(c), the dumping margin or margins determined by the administering authority under section 752(c)(3).

(36) DEVELOPING AND LEAST DEVELOPED COUNTRY.—

(A) DEVELOPING COUNTRY.—The term "developing country" means a country designated as a developing country by the Trade Representative.

(B) LEAST DEVELOPED COUNTRY.—The term "least developed country" means a country which the Trade Representative determines is—

(i) a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or

(ii) any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than $1,000 per annum as measured by the most recent data available from the World Bank.

(C) PUBLICATION OF LIST.—The Trade Representative shall publish in the Federal Register, and update as necessary, a list of—

(i) developing countries that have eliminated their export subsidies on an expedited basis within the

meaning of Article 27.11 of the Subsidies Agreement, and

(ii) countries determined by the Trade Representative to be least developed or developing countries.

(D) FACTORS TO CONSIDER.—In determining whether a country is a developing country under subparagraph (A), the Trade Representative shall consider such economic, trade, and other factors which the Trade Representative considers appropriate, including the level of economic development of such country (the assessment of which shall include a review of the country's per capita gross national product) and the country's share of world trade.

(E) LIMITATION ON DESIGNATION.—A determination that a country is a developing or least developed country pursuant to this paragraph shall be for purposes of this title only and shall not affect the determination of a country's status as a developing or least developed country with respect to any other law.

**SEC. 771A. UPSTREAM SUBSIDIES.**

(a) DEFINITION.—The term "upstream subsidy" means any countervailable subsidy, other than an export subsidy, that—

(1) is paid or bestowed by an authority (as defined in section 771(5)) with respect to a product (hereafter in this section referred to as an "input product") that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the countervailable subsidy is provided by the customs union.

(b) DETERMINATION OF COMPETITIVE BENEFIT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) ADJUSTMENTS.—If the administering authority has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the ef-

fects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.

(c) INCLUSION OF AMOUNT OF SUBSIDY[4].—If the administering authority decides, during the course of a countervailing duty proceeding that an upstream countervailable subsidy is being or has been paid or bestowed regarding the subject merchandise, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater than the amount of the countervailable subsidy determined with respect to the upstream product.

**SEC. 771B. CALCULATION OF COUNTERVAILABLE SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.**

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

**SEC. 772. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.**

(a) EXPORT PRICE.—The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

(b) CONSTRUCTED EXPORT PRICE.—The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

(c) ADJUSTMENTS FOR EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.—The price used to establish export price and constructed export price shall be—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

[4] Section 270(a)(2)(B) of P.L. 103–465 amended "section 771(A)(c)" in the heading by striking "Subsidy" and inserting "Countervailable Subsidy."

(C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

(d) ADDITIONAL ADJUSTMENTS TO CONSTRUCTED EXPORT PRICE.—For purposes of this section, the price used to establish constructed export price shall also be reduced by—

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

(2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and

(3) the profit allocated to the expenses described in paragraphs (1) and (2).

(e) SPECIAL RULE FOR MERCHANDISE WITH VALUE ADDED AFTER IMPORTATION.—Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administer-

ing authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) SPECIAL RULE FOR DETERMINING PROFIT.—

(1) IN GENERAL.—For purposes of subsection (d)(3), profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) DEFINITIONS.—For purposes of this subsection:

(A) APPLICABLE PERCENTAGE.—The term "applicable percentage" means the percentage determined by dividing the total United States expenses by the total expenses.

(B) TOTAL UNITED STATES EXPENSES.—The term "total United States expenses" means the total expenses described in subsection (d) (1) and (2).

(C) TOTAL EXPENSES.—The term "total expenses" means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) TOTAL ACTUAL PROFIT.—The term "total actual profit" means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

**SEC. 773. NORMAL VALUE.**

(a) DETERMINATION.—In determining under this title whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) DETERMINATION OF NORMAL VALUE.—

(A) IN GENERAL.—The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 772(a) or (b).

(B) PRICE.—The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative,

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

(C) THIRD COUNTRY SALES.—This subparagraph applies when—

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) FICTITIOUS MARKETS.—No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount

by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) EXPORTATION FROM AN INTERMEDIATE COUNTRY.—Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if—

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;

(B) the subject merchandise is merely transshipped through the intermediate country;

(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(C); or

(D) the foreign like product is not produced in the intermediate country.

(4) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(5) INDIRECT SALES OR OFFERS FOR SALE.—If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;

(B) reduced by—

(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,

(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and

(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and

(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or con-

structed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,

(ii) the fact that merchandise described in subparagraph (B) or (C) of section 771(16) is used in determining normal value, or

(iii) other differences in the circumstances of sale.

(7) ADDITIONAL ADJUSTMENTS.—

(A) LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) CONSTRUCTED EXPORT PRICE OFFSET.—When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).

(8) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (e), may be adjusted, as appropriate, pursuant to this subsection.

(b) SALES AT LESS THAN COST OF PRODUCTION.—

(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that

product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time,

such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—There are reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the cost of production of the product, if—

(i) in an investigation initiated under section 732 or a review conducted under section 751, an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) provides information, based upon observed prices or constructed prices or costs, that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of the product; or

(ii) in a review conducted under section 751 involving a specific exporter, the administering authority disregarded some or all of the exporter's sales pursuant to paragraph (1) in the investigation or if a review has been completed, in the most recently completed review.

(B) EXTENDED PERIOD OF TIME.—The term "extended period of time" means a period that is normally 1 year, but not less than 6 months.

(C) SUBSTANTIAL QUANTITIES.—Sales made at prices below the cost of production have been made in substantial quantities if—

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) RECOVERY OF COSTS.—If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this subtitle, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

(A) the subject merchandise is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a),

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

(A) comparable to the subject merchandise, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable merchandise.

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,

(2) subsection (a)(1)(C) applies, and

(3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,

it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the cost of production (including taxes, labor, materials, and overhead) of the foreign like product produced in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) CONSTRUCTED VALUE.—For purposes of this title, the constructed value of imported merchandise shall be an amount equal to the sum of—

(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business;

(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a for-

eign like product, in the ordinary course of trade, for consumption in the foreign country, or

(B) if actual data are not available with respect to the amounts described in subparagraph (A), then—

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e).—

(1) COSTS.—

(A) IN GENERAL.—Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amorti-

zation and depreciation periods, and allowances for capital expenditures and other development costs.

(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) STARTUP COSTS.—

(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) MAJOR INPUT RULE.—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the admin-

istering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

**SEC. 773A. CURRENCY CONVERSION.**

(a) IN GENERAL.—In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

(b) SUSTAINED MOVEMENT IN FOREIGN CURRENCY VALUE.—In an investigation under subtitle B, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.

**SEC. 774. HEARINGS.**

(a) INVESTIGATION HEARINGS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.

(2) EXCEPTION.—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

**SEC. 775. COUNTERVAILABLE SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.**

If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters al-

leged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 777(a)(1), if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

**SEC. 776. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.**

(a) IN GENERAL.—If—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this title,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

(C) significantly impedes a proceeding under this title, or

(D) provides such information but the information cannot be verified as provided in section 782(i),

the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

(1) the petition,

(2) a final determination in the investigation under this title,

(3) any previous review under section 751 or determination under section 753, or

(4) any other information placed on the record.

(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

**SEC. 777. ACCESS TO INFORMATION.**

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) PROPRIETARY INFORMATION.—

(1) PROPRIETARY STATUS MAINTAINED.—

(A) IN GENERAL.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this title covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) SECTION 751 REVIEWS.—Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 751(b) or 751(c) which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 751(d), be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 774.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) TIME LIMITATION ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted, or

(ii) if—

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted.

(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) [Repealed.]

(f) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO THE NORTH AMERICAN FREE TRADE AGREEMENT OR THE UNITED STATES-CANADA AGREEMENT.—

(1) ISSUANCE OF PROTECTIVE ORDERS.—

(A) IN GENERAL.—If binational panel review of a determination under this title is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administrating authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) AUTHORIZED PERSONS.—For purposes of this subsection, the term "authorized persons" means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and

(iv) any officer or employee of the Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement.

(C) REVIEW.—A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on

any question of law or fact by an action in the nature of mandamus or otherwise.

(2) CONTENTS OF PROTECTIVE ORDER.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) PROHIBITED ACTS.—It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of a free trade area country (as defined in section 516A(f)(10)) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.—Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized agency of a free trade area country (as defined in section 516A(f)(10)).

(5) REVIEW OF SANCTIONS.—Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering au-

thority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(6) ENFORCEMENT OF SANCTIONS.—If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) TESTIMONY AND PRODUCTION OF PAPERS.—

(A) AUTHORITY TO OBTAIN INFORMATION.—For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, 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 subparagraph (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 issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require 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 any order requiring such individual or entity to appear before the administering authority or the

Commission, 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 the court as a contempt thereof.

(C) MANDAMUS.—Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) DEPOSITIONS.—For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission 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 administering authority or Commission, as provided in this paragraph.

(E) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

(h) OPPORTUNITY FOR COMMENT BY CONSUMERS AND INDUSTRIAL USERS.—The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.

(i) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) IN GENERAL.—Whenever the administering authority makes a determination under section 702 or 732 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 703 or 733, a final determination under section 705 or section 735, a preliminary or final determination in a review under section 751, a determination to suspend an investigation under

this title, or a determination under section 753, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

(A) in the case of a determination of the administering authority—

(i) the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,

(ii) a description of the subject merchandise that is sufficient to identify the subject merchandise for customs purposes,

(iii)(I) with respect to a determination in an investigation under subtitle A or section 753 or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full explanation of the methodology used in establishing the amount, and

(II) with respect to a determination in an investigation under subtitle B or in a review of an antidumping duty order, the weighted average dumping margins established and a full explanation of the methodology used in establishing such margins, and

(iv) the primary reasons for the determination; and

(B) in the case of a determination of the Commission—

(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

(3) ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.—In addition to the requirements set forth in paragraph (2)—

(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.

**SEC. 777A. SAMPLING AND AVERAGING; DETERMINATION OF WEIGHTED AVERAGE DUMPING MARGIN AND COUNTERVAILABLE SUBSIDY RATE.**

(a) IN GENERAL.—For purposes of determining the export price (or constructed export price) under section 772 or the normal value under section 773, and in carrying out reviews under section 751, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) SELECTION OF AVERAGES AND SAMPLES.—The authority to select averages and statistically valid samples shall rest exclusively with the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) DETERMINATION OF DUMPING MARGIN.—

(1) GENERAL RULE.—In determining weighted average dumping margins under section 733(d), 735(c), or 751(a), the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) EXCEPTION.—If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

(d) DETERMINATION OF LESS THAN FAIR VALUE.—

(1) INVESTIGATIONS.—

(A) IN GENERAL.—In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value—

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) EXCEPTION.—The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the

weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) REVIEWS.—In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

(e) DETERMINATION OF COUNTERVAILABLE SUBSIDY RATE.—

(1) GENERAL RULE.—In determining countervailable subsidy rates under section 703(d), 705(c), or 751(a), the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) EXCEPTION.—If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5).

**SEC. 778. INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENTS.**

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this title or section 303, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) RATE.—The rate of interest payable under subsection (a) for any period of time is the rate of interest established under section 6621 of the Internal Revenue Code of 1954 for such period.

**SEC. 779. DRAWBACK TREATMENT.**

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title shall not be treated as being regular customs duties.

**SEC. 780. DOWNSTREAM PRODUCT MONITORING.**

(a) PETITION REQUESTING MONITORING.—

(1) IN GENERAL.—A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (b). The petition shall specify—

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

(C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(2) DETERMINATION REGARDING PETITION.—Within 14 days after receiving a petition submitted under paragraph (1), the administering authority shall determine—

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether—

(i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303, or

(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303.

(3) FACTORS TO TAKE INTO ACCOUNT.—In making a determination under paragraph (2)(A), the administering authority may, if appropriate, take into account such factors as—

(A) the value of the component part in relation to the value of the downstream product,

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and

(C) the relationship between the producers of component parts and producers of downstream products.

(4) PUBLICATION OF DETERMINATION.—The administering authority shall publish in the Federal Register notice of each determination made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any subparagraph of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) DETERMINATIONS NOT SUBJECT TO JUDICIAL REVIEW.—Notwithstanding any other provision of law, any determination made by the administering authority under paragraph (2) shall not be subject to judicial review.

(b) MONITORING BY THE COMMISSION.—

(1) IN GENERAL.—If the determination made under subsection (a)(2)(A) and a determination made under any clause of subsection (a)(2)(B) with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) REPORTS.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) ACTION ON BASIS OF MONITORING REPORTS.—The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

(1) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

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

(1) The term "component part" means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to—

(i) a countervailing or antidumping duty order issued under this title or section 303 that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 704, 734, or 303 after a preliminary affirmative determination under section 703(b), 733(b)(1), or 303 was made by the administering authority which included a determination that the estimated net countervailable subsidy was at least 15 percent ad valorem or that the estimated average amount by which the normal value exceeded the export price (or the constructed export price) was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term "downstream product" means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

**SEC. 781. PREVENTION OF CIRCUMVENTION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.**

(a) MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—

(1) IN GENERAL.—If—

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.—In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) FACTORS TO CONSIDER.—In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

(1) IN GENERAL.—If—

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and

(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.—In determining whether the process of assembly or

completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the foreign country,

(B) the level of research and development in the foreign country,

(C) the nature of the production process in the foreign country,

(D) the extent of production facilities in the foreign country, and

(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) FACTORS TO CONSIDER.—In determining whether to include merchandise assembled or completed in a foreign country in a countervailing duty order or an antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(c) MINOR ALTERATIONS OF MERCHANDISE.—

(1) IN GENERAL.—The class or kind of merchandise subject to—

(A) an investigation under this title,

(B) an antidumping duty order issued under section 736,

(C) a finding issued under the Antidumping Act, 1921, or

(D) a countervailing duty order issued under section 706 or section 303,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(d) LATER-DEVELOPED MERCHANDISE.—

(1) IN GENERAL.—For purposes of determining whether merchandise developed after an investigation is initiated under this title or section 303 (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order issued under this title or section 303 as a result of such investigation, the administering authority shall consider whether—

(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product"),

(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

(C) the ultimate use of the earlier product and the later-developed merchandise are the same,

(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) before making a determination under this subparagraph.

(2) EXCLUSION FROM ORDERS.—The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

(A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or

(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) COMMISSION ADVICE.—

(1) NOTIFICATION TO COMMISSION OF PROPOSED ACTION.—Before making a determination—

(A) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(B) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or

(C) under subsection (d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) REQUEST FOR CONSULTATION.—After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such con-

sultation shall be completed within 15 days after the date of the request.

(3) COMMISSION ADVICE.—If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

(f) TIME LIMITS FOR ADMINISTERING AUTHORITY DETERMINATIONS.—The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.

**SEC. 782. CONDUCT OF INVESTIGATIONS AND ADMINISTRATIVE REVIEWS.**

(a) TREATMENT OF VOLUNTARY RESPONSES IN COUNTERVAILING OR ANTIDUMPING DUTY INVESTIGATIONS AND REVIEWS.—In any investigation under subtitle A or B or a review under section 751(a) in which the administering authority has, under section 777A(c)(2) or section 777A(e)(2)(A) (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if—

(1) such information is so submitted by the date specified—

(A) for exporters and producers that were initially selected for examination, or

(B) for the foreign government, in a countervailing duty case where the administering authority has determined a single country-wide rate; and

(2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

(b) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(c) DIFFICULTIES IN MEETING REQUIREMENTS.—

(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations and reviews under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses.

(e) USE OF CERTAIN INFORMATION.—In reaching a determination under section 703, 705, 733, 735, 751, or 753 the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

(f) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 705, 735, 751, or 753 shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) TERMINATION OF INVESTIGATION OR REVOCATION OF ORDER FOR LACK OF INTEREST.—The administering authority may—

(1) terminate an investigation under subtitle A or B with respect to a domestic like product if, prior to publication of an order under section 706 or 736, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 706 or 736 with respect to a domestic like product, or terminate an investigation suspended under section 704 or 734 with respect to a domestic like product, if the administering authority determines that producers accounting for substantially all of the production of that domestic like product, have expressed a lack of interest in the order or suspended investigation.

(i) VERIFICATION.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 751(d), and

(3) a final determination in a review under section 751(a), if—

(A) verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G), and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

## 5. Judicial and Panel Review of Antidumping and Countervailing Duty Actions

### Section 516A of the Tariff Act of 1930, as amended

[19 U.S.C. 1516A; P.L. 71–361, as amended by P.L. 96–39, P.L. 96–417, P.L. 96–542, P.L. 97–164, P.L. 98–573, P.L. 99–514, P.L. 100–449, P.L. 101–382, P.L. 103–465, and P.L. 104–295]

**SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.**

(a) REVIEW OF DETERMINATION.—

(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under section 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 751(c)(3),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(vii) A determination by the administering authority or the Commission under section 129 of the Uruguay Round Agreements Act concerning a determination under title VII of the Tariff Act of 1930.

(3) EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act.

(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of Title 28 apply to an action under this section.

(5) TIME LIMITS IN CASES INVOLVING MERCHANDISE FROM FREE TRADE AREA COUNTRIES.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to

run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8) of this section, the day after the date as of which—

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B) of this section.

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for—

(i) under subsection (g)(12)(B) of this section, the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D) of this section, the day after the date that notice of settlement is published in the Federal Register.

(E) For a determination described in clause (vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation of the determination is published in the Federal Register.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a)(1) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)(i) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial

evidence on the record, or otherwise not in accordance with law, or,

(ii) in an action brought under paragraph (1)(D) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) EFFECT OF DECISIONS BY NAFTA OR UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a) of this section, a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a de-

termination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) REMAND FOR FINAL DISPOSITION.—If the final decision of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) STANDING.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.

(e) LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) DEFINITIONS.—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the administering authority described in section 771(1) of this Act.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 771(9) of this Act.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(5) AGREEMENT.—The term "Agreement" means the United States-Canada Free-Trade Agreement.

(6) UNITED STATES SECRETARY.—The term "United States Secretary" means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) RELEVANT FTA SECRETARY.—The term "relevant FTA Secretary" means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement, of the relevant FTA country.

(8) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(9) RELEVANT FTA COUNTRY.—The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) FREE TRADE AREA COUNTRY.—The term "free trade area country" means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING FREE TRADE AREA COUNTRY MERCHANDISE.—

(1) DEFINITION OF DETERMINATION.—For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a) of this section,

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) EXCLUSIVE REVIEW OF DETERMINATION BY BINATIONAL PANELS.—If binational panel review of a determination is requested pursuant to Article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraph (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.—

(A) IN GENERAL.—A determination is reviewable under subsection (a) of this section if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) of this section prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

(i) the United States Secretary, the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational panel dispute settlement system under Chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) OTHER CONSTITUTIONAL REVIEW.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an

issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) COMMENCEMENT OF REVIEW.—Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) TRANSFER OF ACTIONS TO APPROPRIATE COURT.—Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) FRIVOLOUS CLAIMS.—Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure.

(F) SECURITY.—

(i) SUBPARAGRAPH (A) ACTIONS.—The security requirements of Rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) SUBPARAGRAPH (B) ACTIONS.—No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) PANEL RECORD.—The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) APPEAL TO SUPREME COURT OF COURT ORDERS ISSUED IN SUBPARAGRAPH (A) ACTIONS.—Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subpara-

graph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) LIQUIDATION OF ENTRIES.—

(A) APPLICATION.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) GENERAL RULE.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or im-

ported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) JUDICIAL REVIEW.—Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational level review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904 OF THE NAFTA OR THE AGREEMENT.—

(A) IN GENERAL.—If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) APPLICATION IF SUBPARAGRAPH (A) HELD UNCONSTITUTIONAL.—In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judical review, and no court of the United States shall

have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—

(i) GENERAL RULE.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) of this section that is applicable to such determination. 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 NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) SUSPENSION OF TIME TO REQUEST BINATIONAL PANEL REVIEW UNDER THE NAFTA.—Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) SERVICE BY INTERESTED PARTY.—If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review under article 1904 of the NAFTA or the Agreement of a determination.

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and

the Commission shall be represented by attorneys who are employees of the administering authority or the Commission respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under article 1904(4) of the NAFTA or the Agreement.

(11) SUSPENSION AND TERMINATION OF SUSPENSION OF ARTICLE 1904 OF THE NAFTA.—

(A) SUSPENSION OF ARTICLE 1904.—If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) TERMINATION OF SUSPENSION OF ARTICLE 1904.—If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) JUDICIAL REVIEW UPON TERMINATION OF BINATIONAL PANEL OR COMMITTEE REVIEW UNDER THE NAFTA.—

(A) NOTICE OF SUSPENSION OR TERMINATION OF SUSPENSION OF ARTICLE 1904.—

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW UPON SUSPENSION OF ARTICLE 1904.—If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination

that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section; or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(C) PERSONS AUTHORIZED TO REQUEST TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW.—A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B) of this section,

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) of this section made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) TRANSFER FOR JUDICIAL REVIEW UPON SETTLEMENT.—(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) of this section pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

## Section 129 of the Uruguay Round Agreements Act

[19 U.S.C. 3538; P.L. 103–465]

**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 VII 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.

## 6. Third-Country Dumping

## Section 1317 of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 1677k; P.L. 100–418 and P.L. 103–465]

**SEC. 1317. THIRD-COUNTRY DUMPING.**

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

(1)(A) The term "Agreement" means the agreement on Implementation of Article VI of the GATT 1994 (relating to antidumping measures).

(B) The term "GATT 1994" has the meaning given that term in section 2(1)(B) of the Uruguay Round Agreements Act.

(2) The term "Agreement country" means a foreign country that has accepted the Agreement.

(3) The term "Trade Representative" means the United States Trade Representative.

(b) PETITION BY DOMESTIC INDUSTRY.—

(1) A domestic industry that produces a product that is like or directly competitive with merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that—

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

(c) APPLICATION FOR ANTIDUMPING ACTION ON BEHALF OF THE DOMESTIC INDUSTRY.—

(1) If the Trade representative, on the basis of the information contained in a petition submitted under paragraph (1), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Agreement country where the alleged dumping is occurring an application pursuant to article 12 of the Agreement which requests that appropriate antidumping action under the law of that country be taken, on behalf of the United States, with respect to imports into that country of the merchandise concerned.

(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

(d) CONSULTATION AFTER SUBMISSION OF APPLICATION.—After submitting an application under subsection (c)(1), the Trade Representative shall seek consultations with the appropriate authority

of the Agreement country regarding the request for antidumping action.

(e) ACTION UPON REFUSAL OF AGREEMENT COUNTRY TO ACT.—if the appropriate authority of an Agreement country refuses to undertake antidumping measures in response to a request made therefore by the Trade Representative under subsection (c), the Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

## 7. Antidumping Petitions by Third Countries

## Section 783 of the Tariff Act of 1930, as amended

[19 U.S.C. 1677n; P.L. 103–465, as amended by P.L. 104–295]

**SEC. 783. ANTIDUMPING PETITIONS BY THIRD COUNTRIES.**

(a) FILING OF PETITION.—The government of a WTO member may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

(1) imports from another country are being sold in the United States at less than fair value, and

(2) an industry in the petitioning country is materially injured by reason of those imports.

(b) INITIATION.—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the WTO Council for Trade in Goods, shall determine whether to initiate an investigation described in subsection (a).

(c) DETERMINATIONS.—Upon initiation of an investigation under this section, the Trade Representative shall request the following determinations be made according to substantive and pro cedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

(1) The administering authority shall determine whether imports into the United States of the subject merchandise are being sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of imports of the subject merchandise into the United States.

(d) PUBLIC COMMENT.—An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determination required by subsection (b), and

(2) by the administering authority and the Commission, in making the determination required by subsection (c).

(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall issue an antidumping duty order in accordance with section 736 and take such other actions as are required by section 736.

(f) REVIEWS OF DETERMINATIONS.—For purposes of review under section 516A or review under section 751, if an order is issued under subsection (c), the final determinations of the administering

authority and the Commission under this section shall be treated as final determinations made under section 735.

(g) ACCESS TO INFORMATION.—Section 777 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

## 8. Antidumping Act of 1916

[15 U.S.C. 71 et seq.; Act of Sept. 8, 1916, sections 800–806]

**SEC. 800. DEFINITION.**

When used in this subchapter, the term "person" includes partnerships, corporations, and associations.

**SEC. 801. IMPORTATION OR SALE OF ARTICLES AT LESS THAN MARKET VALUE OR WHOLESALE PRICE.**

It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.

**SEC. 802. AGREEMENTS INVOLVING RESTRICTIONS IN FAVOR OF IMPORTED GOODS.**

If any article produced in foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty paid thereon, in ad-

dition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provision of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

**SEC. 803. RULES AND REGULATIONS.**

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

**SEC. 804. RETALIATION AGAINST COUNTRY PROHIBITING IMPORTATIONS.**

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

**SEC. 805. RETALIATION AGAINST RESTRICTION OF IMPORTATIONS IN TIME OF WAR.**

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion

of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

**SEC. 806. DISCRIMINATION AGAINST NEUTRAL AMERICANS IN TIME OF WAR.**

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

## B. ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

### Title III, Chapter 1 (Sections 301–310) of the Trade Act of 1974, as amended

[19 U.S.C. 2411–2420; P.L. 93–618, as amended by P.L. 96–39, P.L. 98–573, P.L. 100–418, P.L. 103–465, and P.L. 104–295]

**SEC. 301. ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.**

(a) MANDATORY ACTION.—

(1) If the United States Trade Representative determines under section 304(a)(1) that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) The Dispute Settlement Body (as defined in section 121(5) of the Uruguay Round Agreements Act) has adopted a report, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice—

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(B) the Trade Representative finds that—

(i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(ii) the foreign country has—

(I) agreed to eliminate or phase out the act, policy, or practice, or

(II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this chapter, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) DISCRETIONARY ACTION.—If the Trade Representative determines under section 304(a)(1) that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.

Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(c) SCOPE OF AUTHORITY.—

(1) For purposes of carrying out the provisions of subsection (a) or (b), the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;

(C) in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 502 of this Act, subsections (b) and (c) of section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702 (b) and (c)), or subsections (c) and (d) of section 203 of the Andean Trade Preference Act (19 U.S.C. 3202 (c) and (d)), withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or

(D) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b),

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b)—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 302(a), or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 302(b).

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(D)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b), or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible, or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) are to be in the form of import restrictions, the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this chapter—

(1) The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

(II) provision of 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,

(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,

(ii) constitutes export targeting, or

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(i)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder's rights.

(ii) For purposes of subparagraph (B)(i)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term "foreign country" includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term "Trade Representative" means the United States Trade Representative.

(9) The term "interested persons", only for purposes of sections 302(a)(4)(B), 304(b)(1)(A), 306(c)(2), and 307(a)(2), includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b).

**SEC. 302. INITIATION OF INVESTIGATIONS.**

(a) PETITIONS.—

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period beginning on the date of affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) INITIATION OF INVESTIGATION BY MEANS OTHER THAN PETITION.—

(1)(A) If the Trade Representative determines that an investigation should be initiated under this chapter with respect to any matter in order to determine whether the matter is actionable under section 301, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 135.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 182(a)(2), the Trade Representative shall initiate an investigation under this chapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this chapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this chapter with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the

Federal Government, during any investigation initiated under this chapter by reason of subparagraph (A).

(c) DISCRETION.—In determining whether to initiate an investigation under subsection (a) or (b) of any act, policy, or practice that is enumerated in any provision of section 301(d), the Trade Representative shall have discretion to determine whether action under section 301 would be effective in addressing such act, policy, or practice.

**SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.**

(a) IN GENERAL.—

(1) On the date on which an investigation is initiated under section 302, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 302 involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) DELAY OF REQUEST FOR CONSULTATIONS.—

(1) Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 309(a)(3).

**SEC. 304. DETERMINATIONS BY THE TRADE REPRESENTATIVE.**

(a) IN GENERAL.—

(1) On the basis of the investigation initiated under section 302 and the consultations (and the proceedings, if applicable) under section 303, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 301 exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 301.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement, the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act), is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 302(b)(2) (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the

minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) CONSULTATION BEFORE DETERMINATIONS.—

(1) Before making the determinations required under subsection (a)(1), the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 135, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1), comply with such subparagraphs.

(c) PUBLICATION.—The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.

**SEC. 305. IMPLEMENTATION OF ACTIONS.**

(a) ACTIONS TO BE TAKEN UNDER SECTION 301.—

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 304(a)(1)(B) to take under section 301, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 301—

(i) if—

(I) in the case of an investigation initiated under section 302(a), the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 302(b)(1) or to which section 304(a)(3)(B) applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable to obtain United States rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(A) applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(B) applies by more than 90 days.

(b) ALTERNATIVE ACTIONS IN CERTAIN CASES OF EXPORT TARGETING.—

(1) If the Trade Representative makes an affirmative determination under section 304(a)(1)(A) involving export targeting by a foreign country and determines to take no action under section 301 with respect to such affirmation determination, the Trade Representative—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2)(A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A), and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A).

**SEC. 306. MONITORING OF FOREIGN COMPLIANCE.**

(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into to provide a satisfactory resolution of a matter subject

to investigation under this chapter or subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement providing for such proceedings.

(b) FURTHER ACTION.—

(1) IN GENERAL.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).

(2) WTO DISPUTE SETTLEMENT RECOMMENDATIONS.—If the measure or agreement referred to in subsection (a) concerns the implementation of a recommendation made pursuant to dispute settlement proceedings under the World Trade Organization, and the Trade Representative considers that the foreign country has failed to implement it, the Trade Representative shall make the determination in paragraph (1) no later than 30 days after the expiration of the reasonable period of time provided for such implementation under paragraph 21 of the Understanding on Rules and Procedures Governing the Settlement of Disputes that is referred to in section 101(d)(16) of the Uruguay Round Agreements Act.

(c) CONSULTATIONS.—Before making any determination under subsection (b), the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

**SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.**

(a) IN GENERAL.—

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 301 if—

(A) any of the conditions described in section 301(a)(2) exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 301(b) and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 301, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) NOTICE; REPORT TO CONGRESS.—The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 301 and the reasons therefor.

(c) REVIEW OF NECESSITY.—

(1) If—

(A) a particular action has been taken under section 301 during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

(2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 301, the Trade Representative shall conduct a review of—

(A) the effectiveness in achieving the objectives of section 301 of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

**SEC. 308. REQUEST FOR INFORMATION.**

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade Representative, or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by a person under subsection (a) is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for refusal.

(c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.—

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

**SEC. 309. ADMINISTRATION.**

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this chapter, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations made (and reasons therefor) under section 302,

(B) developments in, and the current status of, each investigation or proceeding under this chapter,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 301 with respect to investigations conducted under this chapter, and

(D) the commercial effects of actions taken under section 301.

**SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIORITIES.**

(a) IDENTIFICATION.—

(1) Within 180 days after the submission in calendar year 1995 of the report required by section 181(b), the Trade Representative shall—

(A) review United States trade expansion priorities,

(B) identify priority foreign country practices, the elimination of which is likely to have the most significant po-

tential to increase United States exports, either directly or through the establishment of a beneficial precedent, and

(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices identified.

(2) In identifying priority foreign country practices under paragraph (1) of this section, the Trade Representative shall take into account all relevant factors, including—

(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 181(b);

(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(C) the medium- and long-term implications of foreign government procurement plans; and

(D) the international competitive position and export potential of United States products and services.

(3) The Trade Representative may include in the report, if appropriate—

(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and

(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries and progress is being made toward the elimination of such practices.

(b) INITIATION OF INVESTIGATIONS.—By no later than the date which is 21 days after the date on which a report is submitted to the appropriate Congressional committees under subsection (a)(1), the Trade Representative shall initiate under section 302(b)(1) investigations under this chapter with respect to all of the priority foreign country practices identified.

(c) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (b), the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

(d) REPORTS.—The Trade Representative shall include in the semiannual report required by section 309 a report on the status of any investigations initiated pursuant to subsection (b) and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

## Sections 281 and 282 of the Uruguay Round Agreements Act, as amended

[19 U.S.C. 3571, 3572; P.L. 103–465, as amended by P.L. 104–295]

**SEC. 281. SUBSIDIES ENFORCEMENT.**

(a) ASSISTANCE REGARDING MULTILATERAL SUBSIDY REMEDIES.—The administering authority shall provide information to the public upon request, and, to the extent feasible, assistance and advice to interested parties concerning—

(1) remedies and benefits available under relevant provisions of the Subsidies Agreement, and

(2) the procedures relating to such remedies and benefits.

(b) PROHIBITED SUBSIDIES.—

(1) NOTIFICATION OF TRADE REPRESENTATIVE.—If the administering authority determines pursuant to title VII of the Tariff Act of 1930 that a class or kind of merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall notify the Trade Representative and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) REQUEST BY INTERESTED PARTY REGARDING PROHIBITED SUBSIDY.—An interested party may request that the administering authority determine if there is reason to believe that merchandise produced in a WTO member country is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that such merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(c) SUBSIDIES ACTIONABLE UNDER THE AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines pursuant to title VII of the Tariff Act of 1930 that a class or kind of merchandise is benefiting from a subsidy described in Article 6.1 of the Subsidies Agreement, the administering authority shall notify the Trade Representative, and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) REQUEST BY INTERESTED PARTY REGARDING ADVERSE EFFECTS.—An interested party may request the administering authority to determine if there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects. The request shall contain such information as the administering authority may require to support the allegations contained in the request. At the request of the administering authority, the Commission shall assist the administering authority in analyzing the information pertaining to the existence of such adverse effects. If the administering authority,

after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(d) INITIATION OF SECTION 301 INVESTIGATION.—On the basis of the notification and information provided by the administering authority pursuant to subsection (b) or (c), such other information as the Trade Representative may have or obtain, and where applicable, after consultation with an interested party referred to in subsection (b)(2) or (c)(2), the Trade Representative shall, unless such interested party objects, determine as expeditiously as possible, in accordance with the procedures in section 302(b)(1) of the Trade Act of 1974 (19 U.S.C. 2412(b)(1)), whether to initiate an investigation pursuant to title III of that Act (19 U.S.C. 2411 et seq.). At the request of the Trade Representative, the administering authority and the Commission shall assist the Trade Representative in an investigation initiated pursuant to this subsection.

(e) NONACTIONABLE SUBSIDIES.—

(1) COMPLIANCE WITH ARTICLE 8 OF THE SUBSIDIES AGREEMENT.—

(A) MONITORING.—In order to monitor whether a subsidy meets the conditions and criteria described in Article 8.2 of the Subsidies Agreement and is nonactionable, the Trade Representative shall provide the administering authority on a timely basis with any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program. The administering authority shall review such information and reports, and where appropriate, shall recommend to the Trade Representative that the Trade Representative seek pursuant to Article 8.3 or 8.4 of the Subsidies Agreement additional information regarding the notified subsidy program or a subsidy granted pursuant to the notified subsidy program. If the administering authority has reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(B) REQUEST BY INTERESTED PARTY REGARDING VIOLATION OF ARTICLE 8.—An interested party may request the administering authority to determine if there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that additional information is needed, the administering authority shall recommend to the Trade Representative that the Trade Representative seek, pursuant to Article 8.3 or 8.4 of the Subsidies Agreement, additional information regarding the particular notified subsidy pro-

gram or a subsidy granted pursuant to the notified subsidy program. If the administering authority determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(C) ACTION BY TRADE REPRESENTATIVE.—

(i) If the Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (A) or (B), and such other information as the Trade Representative may have or obtain, and after consulting with the interested party referred to in subparagraph (B) and appropriate domestic industries, determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the Trade Representative shall invoke the procedures of Article 8.4 or 8.5 of the Subsidies Agreement.

(ii) For purposes of clause (i), the Trade Representative shall determine that there is reason to believe that a violation of Article 8 exists in any case in which the Trade Representative determines that a notified subsidy program or a subsidy granted pursuant to a notified subsidy program does not satisfy the conditions and criteria required for a nonactionable subsidy program under this Act, the Subsidies Agreement, and the statement of administrative action approved under section 101(a).

(D) NOTIFICATION OF ADMINISTERING AUTHORITY.—The Trade Representative shall notify the administering authority whenever a violation of Article 8 of the Subsidies Agreement has been found to exist pursuant to Article 8.4 or 8.5 of that Agreement.

(2) SERIOUS ADVERSE EFFECTS.—

(A) REQUEST BY INTERESTED PARTY.—An interested party may request the administering authority to determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. The request shall contain such information as the administering authority may require to support the allegations contained in the request.

(B) ACTION BY ADMINISTERING AUTHORITY.—Within 90 days after receipt of the request described in subparagraph (A), the administering authority, after analyzing the request and other information reasonably available to the administering authority, shall determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. If the determination of the administering authority is affirmative, it shall so notify the Trade Representative and shall include supporting information with the notification. The Commission shall assist the administering authority in analyzing the information pertaining to the existence of such serious adverse effects if the administering

authority requests the Commission's assistance. If the subsidy program that is alleged to result in serious adverse effects has been the subject of a countervailing duty investigation or review under subtitle A or C of title VII of the Tariff Act of 1930, the administering authority shall take into account the determinations made by the administering authority and the Commission in such investigation or review and the administering authority shall complete its analysis as expeditiously as possible.

(C) ACTION BY TRADE REPRESENTATIVE.—The Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (B), and such other information as the Trade Representative may have or obtain, shall determine as expeditiously as possible, but not later than 30 days after receipt of the notification provided by the administering authority, if there is reason to believe that serious adverse effects exist resulting from the subsidy program which is the subject of the administering authority's notification. The Trade Representative shall make an affirmative determination regarding the existence of such serious adverse effects unless the Trade Representative finds that the notification of the administering authority is not supported by the facts.

(D) CONSULTATIONS.—If the Trade Representative determines that there is reason to believe that serious adverse effects resulting from the subsidy program exist, the Trade Representative, unless the interested party referred to in subparagraph (A) objects, shall invoke the procedures of Article 9 of the Subsidies Agreement, and shall request consultations pursuant to Article 9.2 of the Subsidies Agreement with respect to such serious adverse effects. If such consultations have not resulted in a mutually acceptable solution within 60 days after the request is made for such consultations, the Trade Representative shall refer the matter to the Subsidies Committee pursuant to Article 9.3 of the Subsidies Agreement.

(E) DETERMINATION BY SUBSIDIES COMMITTEE.—If the Trade Representative determines that—

(i) the Subsidies Committee has been prevented from making an affirmative determination regarding the existence of serious adverse effects under Article 9 of the Subsidies Agreement by reason of the refusal of the WTO member country with respect to which the consultations have been invoked to join in an affirmative consensus—

(I) that such serious adverse effects exist, or

(II) regarding a recommendation to such WTO member country to modify the subsidy program in such a way as to remove the serious adverse effects, or

(ii) the Subsidies Committee has not presented its conclusions regarding the existence of such serious adverse effects within 120 days after the date the matter

was referred to it, as required by Article 9.4 of the Subsidies Agreement,

the Trade Representative shall, within 30 days after such determination, make a determination under section 304(a)(1) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)) regarding what action to take under section 301(a)(1)(A) of that Act.

(F) NONCOMPLIANCE WITH COMMITTEE RECOMMENDATION.—In the event that the Subsidies Committee makes a recommendation under Article 9.4 of the Subsidies Agreement and the WTO member country with respect to which such recommendation is made does not comply with such recommendation within 6 months after the date of the recommendation, the Trade Representative shall make a determination under section 304(a)(1) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)) regarding what action to take under section 301(a) of that Act.

(f) NOTIFICATION, CONSULTATION, AND PUBLICATION.—

(1) NOTIFICATION OF CONGRESS.—The Trade Representative shall submit promptly to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of the Congress any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(2) PUBLICATION IN THE FEDERAL REGISTER.—The administering authority shall publish regularly in the Federal Register a summary notice of any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding notified subsidy programs.

(3) CONSULTATIONS WITH CONGRESS AND PRIVATE SECTOR.—The Trade Representative and the administering authority promptly shall consult with the committees referred to in paragraph (1), and with interested representatives of the private sector, regarding all information submitted or reports made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(4) ANNUAL REPORT.—Not later than February 1 of each year beginning in 1996, the Trade Representative and the administering authority shall issue a joint report to the Congress detailing—

(A) the subsidies practices of major trading partners of the United States, including subsidies that are prohibited, are causing serious prejudice, or are nonactionable, under the Subsidies Agreement, and

(B) the monitoring and enforcement activities of the Trade Representative and the administering authority during the preceding calendar year which relate to subsidies practices.

(g) COOPERATION OF OTHER AGENCIES.—All agencies, departments, and independent agencies of the Federal Government shall cooperate fully with one another in carrying out the provisions of this section, and, upon the request of the administering authority, shall furnish to the administering authority all records, papers,

and information in their possession which relate to the requirements of this section.

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

(1) ADVERSE EFFECTS.—The term "adverse effects" has the meaning given that term in Articles 5(a) and 5(c) of the Subsidies Agreement.

(2) ADMINISTERING AUTHORITY.—The term "administering authority" has the meaning given that term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(4) INTERESTED PARTY.—The term "interested party" means a party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9) (C), (D), (E), (F), or (G)).

(5) NONACTIONABLE SUBSIDY.—The term "nonactionable subsidy" means a subsidy described in Article 8.1(b) of the Subsidies Agreement.

(6) NOTIFIED SUBSIDY PROGRAM.—The term "notified subsidy program" means a subsidy program which has been notified pursuant to Article 8.3 of the Subsidies Agreement.

(7) SERIOUS ADVERSE EFFECTS.—The term "serious adverse effects" has the meaning given that term in Article 9.1 of the Subsidies Agreement.

(8) SUBSIDIES AGREEMENT.—The term "Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures described in section 771(8) of the Tariff Act of 1930 (19 U.S.C. 1677(8)).

(9) SUBSIDIES COMMITTEE.—The term "Subsidies Committee" means the committee established pursuant to Article 24 of the Subsidies Agreement.

(10) SUBSIDY.—The term "subsidy" has the meaning given that term in Article 1 of the Subsidies Agreement.

(11) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

(12) VIOLATION OF ARTICLE 8.—The term "violation of Article 8" means the failure of a notified subsidy program or an individual subsidy granted pursuant to a notified subsidy program to meet the applicable conditions and criteria described in Article 8.2 of the Subsidies Agreement.

(i) TREATMENT OF PROPRIETARY INFORMATION.—Notwithstanding any other provision of law, the administering authority may provide the Trade Representative with a copy of proprietary information submitted to, or obtained by, the administering authority that the Trade Representative considers relevant in carrying out its responsibilities under this part. The Trade Representative shall protect from public disclosure proprietary information obtained from the administering authority under this part.

**SEC. 282. REVIEW OF SUBSIDIES AGREEMENT.**

(a) GENERAL OBJECTIVES.—The general objectives of the United States under this part are—

(1) to ensure that parts II and III of the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) (hereafter in this section referred to as the "Sub-

sidies Agreement") are effective in disciplining the use of subsidies and in remedying the adverse effects of subsidies, and

(2) to ensure that part IV of the Subsidies Agreement does not undermine the benefits derived from any other part of that Agreement.

(b) SPECIFIC OBJECTIVE.—The specific objective of the United States under this part shall be to create a mechanism which will provide for an ongoing review of the operation of part IV of the Subsidies Agreement.

(c) SUNSET OF NONCOUNTERVAILABLE SUBSIDIES PROVISIONS.—

(1) IN GENERAL.—Subparagraphs (B), (C), (D), and (E) of section 771(5B) of the Tariff Act of 1930 shall cease to apply as provided in subparagraph (G)(i) of such section, unless, before the date referred to in such subparagraph (G)(i)—

(A) the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement as in effect on the date on which the Subsidies Agreement enters into force or in a modified form, in accordance with Article 31 of such Agreement,

(B) the President consults with the Congress in accordance with paragraph (2), and

(C) an implementing bill is submitted and enacted into law in accordance with paragraphs (3) and (4).

(2) CONSULTATION WITH CONGRESS BEFORE SUBSIDIES COMMITTEE AGREES TO EXTEND.—Before a determination is made by the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding such extension.

(3) IMPLEMENTATION OF EXTENSION.—

(A) NOTIFICATION AND SUBMISSION.—Any extension of subparagraphs (B), (C), (D), and (E) of section 771(5B) of the Tariff Act of 1930 shall take effect if (and only if)—

(i) after the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President submits to the committees referred to in paragraph (2) a copy of the document describing the terms of such extension, together with—

(I) a draft of an implementing bill,

(II) a statement of any administrative action proposed to implement the extension, and

(III) the supporting information described in subparagraph (C); and

(ii) the implementing bill is enacted into law.

(B) IMPLEMENTING BILL.—The implementing bill referred to in subparagraph (A) shall contain only those provisions that are necessary or appropriate to implement an extension of the provisions of section 771(5B) (B), (C), (D), and (E) of the Tariff Act of 1930 as in effect on the day before the date of the enactment of the implementing bill or as modified to reflect the determination of the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement.

(C) SUPPORTING INFORMATION.—The supporting information required under subparagraph (A)(i)(III) consists of—

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

(ii) a statement regarding—

(I) how the extension serves the interests of United States commerce, and

(II) why the implementing bill and proposed administrative action is required or appropriate to carry out the extension.

[(4) APPLICATION OF CONGRESSIONAL "FAST TRACK" PROCEDURES TO IMPLEMENTING BILL.—Amendments to section 151 of the Trade Act of 1974.]

(5) REPORT BY THE TRADE REPRESENTATIVE.—Not later than the date referred to in section 771(5B)(G)(i) of the Tariff Act of 1930, the Trade Representative shall submit to the Congress a report setting forth the provisions of law which were enacted to implement Articles 6.1, 8, and 9 of the Subsidies Agreement and should be repealed or modified if such provisions are not extended.

(d) REVIEW OF THE OPERATION OF THE SUBSIDIES AGREEMENT.—The Secretary of Commerce, in consultation with other appropriate departments and agencies of the Federal Government, shall undertake an ongoing review of the operation of the Subsidies Agreement. The review shall address—

(1) the effectiveness of part II of the Subsidies Agreement in disciplining the use of subsidies which are prohibited under Article 3 of the Agreement,

(2) the effectiveness of part III and, in particular, Article 6.1 of the Subsidies Agreement, in remedying the adverse effects of subsidies which are actionable under the Agreement, and

(3) the extent to which the provisions of part IV of the Subsidies Agreement may have undermined the benefits derived from other parts of the Agreement, and, in particular—

(A) the extent to which WTO member countries have cooperated in reviewing and improving the operation of part IV of the Subsidies Agreement,

(B) the extent to which the provisions of Articles 8.4 and 8.5 of the Subsidies Agreement have been effective in identifying and remedying violations of the conditions and criteria described in Article 8.2 of the Agreement, and

(C) the extent to which the provisions of Article 9 of the Subsidies Agreement have been effective in remedying the serious adverse effects of subsidy programs described in Article 8.2 of the Agreement.

Not later than 4 years and 6 months after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Congress a report on the review required under this subsection.

## Section 307(b) of the Trade and Tariff Act of 1984

[19 U.S.C. 2114d; P.L. 98–573]

**SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.**

* * * * * * *

(b)(1) If the United States Trade Representative, with the advice of the committee established by section 242 of the Trade Expansion [Act] of 1962 (19 U.S.C. 1872), determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in paragraph (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before the date of enactment of this Act, or

(B) any written commitment relating to a foreign direct investment that is binding on the date of enactment of this Act has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C. 2133) for providing compensation for actions taken under section 203 of that Act.

## Foreign Air Transportation: Section 2 of the International Air Transportation Fair Competitiveness Act of 1974, as amended, and the Federal Aviation Act of 1958, as amended

[49 U.S.C. 41310 (previously codified as 49 App. U.S.C. 1159b); P.L. 85–726, P.L. 103–272, and P.L. 104–287]

**SEC. 41310. DISCRIMINATORY PRACTICES.**

(a) PROHIBITION.—An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.

(b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign

country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the aircraft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(2) The Secretary of Transportation may deny, amend, modify, suspend, revoke, or transfer under paragraph (1) of this subsection a foreign air carrier permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or 41509 of this title [Sections 402, 403, 801, and 1002 of the Federal Aviation Act of 1958, as amended].

(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that with additional time it is likely that a complaint can be resolved satisfactorily through negotiations with the government of the foreign country or foreign entity. The Secretary must act not later than 90 days after receiving the complaint. However, the Secretary may extend this 90-day period for not more than an additional 90 days if, on the last day of the initial 90-day period, the Secretary finds that—

(A) negotiations with the government have progressed to a point that a satisfactory resolution of the complaint appears imminent;

(B) an air carrier has not been subjected to economic injury by the government or entity as a result of filing the complaint; and

(C) the public interest requires additional time before the Secretary acts on the complaint.

(2) In carrying out paragraph (1) of this subsection and subsection (c) of this section, the Secretary of Transportation shall—

(A) solicit the views of the Secretaries of Commerce and State and the United States Trade Representative;

(B) give an affected air carrier or foreign air carrier reasonable notice and an opportunity to submit written evidence and arguments within the time limits of this subsection; and

(C) submit to the President under section 41307 or 41509(f) of this title [Section 801 of the Federal Aviation Act of 1958, as amended] actions proposed by the Secretary of Transportation.

(e) REVIEW.—(1) the Secretaries of State, the Treasury, and Transportation and the heads of other departments, agencies, and instrumentalities of the Government shall keep under review, to the extent of each of their jurisdictions, each form of discrimination or unfair competitive practice to which an air carrier is subject when providing foreign air transportation. Each Secretary and head shall—

(A) take appropriate action to eliminate any discrimination or unfair competitive practice found to exist; and

(B) request Congress to enact legislation when the authority to eliminate the discrimination or unfair practice is inadequate.

(2) The Secretary of Transportation shall report to Congress annually on each action taken under paragraph (1) of this subsection and on the continuing program to eliminate discrimination and unfair competitive practices. The Secretaries of State and the Treasury each shall give the Secretary of Transportation information necessary to prepare the report.

(f) REPORTS.—Not later than 30 days after acting on a complaint under this section, the Secretary of Transportation shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on action taken under this section on the complaint.

## Section 19 of the Merchant Marine Act of 1920, as amended

[46 App. U.S.C. 876; Act June 5, 1920, as amended by Act June 29, 1936, Reorganization Plan No. 21 of 1950, Reorganization Plan No. 7 of 1961; P.L. 97–31; and P.L. 101–595]

SEC. 19. (1) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(a) To make all necessary rules and regulations to carry out the provisions of this Act;

And the the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet

general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(c) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the steamboat inspection service.

(2) No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the steamboat inspection service, until such rule or regulation has been submitted to the Federal Martime Commission for its approval and final action has been taken thereon by the Commission or the President.

(3) Whenever the head of any department board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the Federal Maritime Commission, as provided in subdivision (c) of paragraph (1) of this section, or objects to the decision of the Commission in respect to the approval of any rule or regulation, as provided in paragraph (2) of this section, either the Commission or the head of the department board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is authorized to establish or suspend, modify, or annul such rule or regulation.

(4) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

(5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

(6) In furtherance of the purposes of paragraph (1)(b) of this section—

(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association' ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other in-

formation which the Commission considers necessary or appropriate;

(b) the Commission may require a report or answers to questions to be made under oath;

(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(d) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(7) In proceedings under paragraph (1)(b) of this section—

(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(b) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

(c) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(d) for failure to supply information ordered to be produced or compelled by subpoena in proceedings under paragraph (1)(b)(7) of this section, the Commission may—

(i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or

(ii) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

(a) limit sailings to and from United States ports or the amount or type of cargo carried;

(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commis-

sion, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(d) impose a fee, not to exceed $1,000,000 per voyage; or

(e) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(10) Upon request by the Commission—

(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff.

(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

## Section 10002 of the Foreign Shipping Practices Act of 1988

[46 App. U.S.C. 1710a; P.L. 100–418]

**SEC. 10002. FOREIGN LAWS AND PRACTICES.**

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

(1) "common carrier", "marine terminal operator", "non-vessel-operating common carrier", "ocean common carrier", "person", "shipper", "shippers' association", and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702);

(2) "foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) "maritime services" means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation

systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(5) "United States carrier" means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(c) INVESTIGATIONS.—(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

(d) INFORMATION REQUESTS.—(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

(e) ACTION AGAINST FOREIGN CARRIERS.—(1) Whenever, after notice and opportunity for comment or hearing, the Commission de-

termines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed $1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) ACTIONS UPON REQUEST OF THE COMMISSION.—Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) REPORT.—The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5)) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

## C. UNFAIR PRACTICES IN IMPORT TRADE

### Section 337 of the Tariff Act of 1930, as amended

[19 U.S.C. 1337; P.L. 71–361, as amended by P.L. 85–686, P.L. 93–618, P.L. 96–39, P.L. 96–417, P.L. 97–164, P.L. 98–620, P.L. 100–418, P.L. 100–647, P.L. 102–563, P.L. 102–572, P.L. 103–465, and P.L. 104–295]

**SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.**

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—

(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D) into the United States, or in the sale of such articles by owner, importer, or consignee, the threat or effect or which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee of articles that—

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

(D) the importation into the United States, the sale for importation or the sale within the United States after importation by the owner, importer, or consignee, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry, in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, or mask work concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(4) For the purposes of this section, the phrase "owner, importer, or consignee" includes any agent of the owner, importer, or consignee.

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commissioner shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation and make its determination under this section at the earliest practicable time after the date of publication of notice of such investigation. To promote expeditious adjudication, the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of subtitle B of title VII of this Act, it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by such subtitle. If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 701 or 731, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and ef-

fects which are within the purview of section 701 or 731 of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. Any final decision by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 701 or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28, United States Code. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection. Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code. Determinations by the Commission under subsections (e), (f), and (j) with respect to forfeiture of bonds and under subsection (h) with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be

reviewable in accordance with section 706 of title 5, United States Code.

(d) EXCLUSION OF ARTICLES FROM ENTRY.—(1) If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(2) The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the com-

plainant to post a bond as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(4) The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).

(f) CEASE AND DESIST ORDERS.—(1) In addition to, or in lieu of, taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be. If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e), the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $100,000, twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person; the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) are met.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) FORFEITURE.—

(1) In addition to taking action under subsection (d), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d); and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide—

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is de-

nied entry into the United States by reason of an order issued under subsection (d); and

(B) a copy of such written notice to the Commission.

(j) REFERRAL TO THE PRESIDENT.—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), (f), (g), or (i) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g), or (i) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) PERIOD OF EFFECTIVENESS.—(1) Except as provided in subsections (f) and (j), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(l) IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i), in cases based on a preceding involving a patent, copyright, or mask work under subsection (a)(1), shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Court of Federal Claims pursuant to the procedures of section 1498 of title 28, United States Code.

(m) DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term "United States" means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with—

(i) carrying out the investigation or related proceeding in connection with which the information is submitted,

(ii) the administration of a bond posted pursuant to subsection (e), (f), or (j),

(iii) the administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c),

(iv) proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i), or a consent order issued under this section, or

(v) maintaining the administrative record of the investigation or related proceeding,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j), or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under subsection (d), (e), or (g) resulting from the investigation or related proceeding in connection with which the information is submitted.

## D. SAFEGUARD ACTIONS

### Chapter 1 of Title II (Sections 201–204) of the Trade Act of 1974, as amended

[19 U.S.C. 2251 et seq.; P.L. 93–618, as amended by P.L. 96–39, Reorganization Plan No. 3 of 1979, P.L. 98–573, P.L. 100–418, P.L. 100–647, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

**SEC. 201. ACTION TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.**

(a) PRESIDENTIAL ACTION.—If the United States International Trade Commission (hereinafter referred to in this chapter as the "Commission") determines under section 202(b) that an article 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 an article like or directly competitive with the imported article, the President, in accordance with this chapter, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) POSITIVE ADJUSTMENT TO IMPORT COMPETITION.—

(1) For purposes of this chapter, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 204 terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 202(b).

**SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.**

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) A petition requesting action under this chapter for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request provisional relief under subsection (d)(2).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this chapter referred to as the "Trade Representative"), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this chapter.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b), the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

(i) firm in the domestic industry;

(ii) certified or recognized union or group of workers in the domestic industry;

(iii) State or local community;

(iv) trade association representing the domestic industry; or

(v) any other person or group of persons,

may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted

under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indiciate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

(1)(A) Upon the filing of a petition under subsection (a), the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article 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 an article like or directly competitive with the imported article.

(B) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b), the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article 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.

(4) For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this section:

(A)(i) The term "domestic industry" means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term "domestic industry" includes producers located in the United States insular possessions.

(B) The term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(C) The term "serious injury" means a significant overall impairment in the position of a domestic industry.

(D) The term "threat of serious injury" means serious injury that is clearly imminent.

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of

serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A) (i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

(2)(A) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this chapter would cause damage to that industry that would be difficult to repair.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) regarding injury or the threat thereof by imports of such article;

(ii) action described in section 203(a)(3) (A) or (C) takes effect under section 203 with respect to such article;

(iii) a decision by the President not to take any action under section 203(a) with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) 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) If an increase in, or the imposition of, a duty that is proclaimed under section 203 on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, 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) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 203 regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) The term "citrus product" means any processed oranges or grapefruit or any orange or grapefruit juice, including concentrate.

(B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(I) a short shelf life,

(II) a short growing season, or

(III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(C) The term "provisional relief" means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) COMMISSION RECOMMENDATIONS.—

(1) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall also recommend

the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 203(e) are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(B) take into account—

(i) the form and amount of action described in paragraph (2) (A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6),

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under

paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 203.

(f) REPORT BY COMMISSION.—

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that crucial circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) and an explanation of the basis for the determination.

(B) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) The findings required to be included in the report under subsection (c)(2).

(E) A copy of the adjustment plan, if any, submitted under section 201(b)(4).

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under section 202(a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) EXPEDITED CONSIDERATION OF ADJUSTMENT ASSISTANCE PETITIONS.—If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under chapter 2; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under chapter 3.

(h) LIMITATIONS ON INVESTIGATIONS.—

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 203(a)(3)(A), (B), (C), or (E) if the last day on which the President could take action under section 203 in the new investigation is a date earlier than that permitted under section 203(e)(7).

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 331 of the Uruguay Round Agreements Act.

(B) For purposes of this paragraph:

(i) The term 'Textiles Agreement' means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act.

(ii) The term 'GATT 1994' has the meaning given that term in section 2(1)(B) of the Uruguay Round Agreements Act.

(i) LIMITED DISCLOSURE OF CONFIDENTIAL BUSINESS INFORMATION UNDER PROTECTIVE ORDER.—The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

**SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.**

(a) IN GENERAL.—

(1)(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 shall, with respect to each affirmative determination reported under section 202(f), make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefiting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 202(a)) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 202(e)(5).

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2;

(E) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(J) take any combination of actions listed in subparagraphs (A) through (I).

(4)(A) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930).

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 202(b)(1), request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) REPORTS TO CONGRESS.—

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the

action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF.—

(1) Except as provided in paragraph (2), any action described in subsection (a)(3) (A), (B), or (C), that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) in which case the action under subsection (a)(3) (A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 202(e)(1).

(e) LIMITATIONS ON ACTIONS.—

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 202(d) was in effect.

(B)(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 204(c) (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3) (A), (B), or (C) may be taken under subsection (a)(1), under section 202(d)(1)(G), or under section 202(d)(2)(D) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) 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 average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3) (A), (B), or (C) that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 202(e), unless the Commission, in addition to making an affirmative determination under section 202(b)(1), determines in the course of its investigation under section 202(b) that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of title V.

(7)(A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new ac-

tion may be taken under any of those subparagraphs with respect to such article for—

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates,

whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

(i) at least 1 year has elapsed since the previous action went into effect; and

(ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) CERTAIN AGREEMENTS.—

(1) If the President takes action under this section other than the implementation of agreements of the type described in subsection (a)(3)(E), the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E), and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an agreement implemented under subsection (a)(3)(E) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(g) REGULATIONS.—

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter.

(2) In order to carry out an international agreement concluded under this chapter, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) that is concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

**SEC. 204. MONITORING, MODIFICATION, AND TERMINATION OF ACTION.**

(a) MONITORING.—

(1) So long as any action taken under section 203 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) If the initial period during which the action taken under section 203 is in effect exceeds 3 years, or if an extension of such action exceeds 3 years, the Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than the date that is the mid-point of the initial period, and of each such extension, during which the action is in effect.

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 which is under consideration.

(b) REDUCTION, MODIFICATION, AND TERMINATION OF ACTION.—

(1) Action taken under section 203 may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2)(A)) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 203 as may be necessary to eliminate any circumvention of any action previously taken under such section.

(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 Representa-

tives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under section 203.

(c) EXTENSION OF ACTION.—

(1) Upon request of the President, or upon 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 any action taken under section 203 is to terminate, the Commission shall investigate to determine whether action under section 203 continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection 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.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under section 203 is to terminate, unless the President specifies a different date.

(d) EVALUATION OF EFFECTIVENESS OF ACTION.—

(1) After any action taken under section 203 has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 203 terminated.

(e) OTHER PROVISIONS.—

(1) Action by the President under this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 202(c)(4)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

## E. RELIEF FROM MARKET DISRUPTION BY IMPORTS FROM COMMUNIST COUNTRIES

### Section 406 of the Trade Act of 1974, as amended

[19 U.S.C. 2436; P.L. 93–618, as amended by Reorganization Plan No. 3 of 1979 and P.L. 100–418]

**SEC. 406. MARKET DISRUPTION.**

(a)(1) Upon the filing of a petition by an entity described in section 202(a), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 202 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also 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.

(b) With respect to any affirmative determination of the Commission under subsection (a)—

(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 202 and 203 of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect

to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action was taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 202(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term "significant cause" refers to a cause which contributes significantly to the material injury of the do-

mestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

## F. AUTHORITY TO AUCTION IMPORT LICENSES

### Section 1102 of the Trade Agreements Act of 1979

[19 U.S.C. 2581, P.L. 96–39, as amended by P.L. 100–418]

**SEC. 1102. AUCTION OF IMPORT LICENSES.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) DEFINITION OF IMPORT LICENSE.—For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701–1706),

(3) authority under the notes of the Harmonized Tariff Schedule of the United States, but not including any quantitative restriction imposed under section 22 of the Agriculture Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1–44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing any international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

## G. TRADE ADJUSTMENT ASSISTANCE

## Chapters 2, 3, 4, and 5 of Title II of the Trade Act of 1974, as amended

[19 U.S.C. 2271 et seq.; P.L. 93–618, as amended by P.L. 96–417, P.L. 97–35, P.L. 98–120, P.L. 98–369, P.L. 99–107, P.L. 99–155, P.L. 99–181, P.L. 99–189, P.L. 99–272, P.L. 100–418, P.L. 100–647, P.L. 101–382, P.L. 102–318, P.L. 103–66, and P.L. 103–182]

### CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

### Subchapter A—Petitions and Determinations

**SEC. 221. PETITIONS.**

(a) A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

**SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.**

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this subchapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(b) For purposes of subsection (a)(3)—

(1) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be pro-

ducing articles directly competitive with imports of oil and with imports of natural gas.

**SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.**

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this subchapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

**SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.**

(a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f). Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

**SEC. 225. BENEFIT INFORMATION TO WORKERS.**

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A or subchapter D of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A or subchapter D in newspapers of general circulation in the areas in which such workers reside.

## Subchapter B—Program Benefits

### PART I—TRADE READJUSTMENT ALLOWANCES

**SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.**

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at

least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purpose of this paragraph, any week in which such worker—

(A) is on the employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States,

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision, or

(D) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is "Federal service" as defined in 5 U.S.C. 8521(a)(1),[5]

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D)), may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A) is enrolled in a training program approved by the Secretary under section 236(a), or

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement certified under subsection (c)(1) after the date described in subparagraph (B).

[5] Effective with respect to weeks beginning after August 1, 1990.

(b)(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

(B) before the first week following the week in which such certification is made under subchapter (A).

(c)(1)(A) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

(B) If a State or State agency has an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

(i) submit to such worker a written statement certifying such finding, and

(ii) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

(2)(A) If, after submitting to a worker a written statement certified under paragraph (1)(A), the Secretary finds that it is feasible or appropriate to approve a training program for such worker under section 236(a), the Secretary shall submit to such worker a written statement that revokes the certification made under paragraph (1)(A) with respect to such worker.

(B) If, after submitting to a worker a written statement certified under paragraph (1)(B), a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker, and to the Secretary, a written statement that revokes the certification made under paragraph (1)(B) with respect to such worker.

(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under paragraph (1) during the preceding

year and the number of certifications made under paragraph (1) that were revoked during the preceding year.

**SEC. 232. WEEKLY AMOUNTS.**

(a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 231(b)) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

**SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.**

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is participating in such training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 14 days if—

(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

(2) the break is provided under such training program.

**SEC. 234. APPLICATION OF STATE LAWS.**

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

**SEC. 235. EMPLOYMENT SERVICES.**

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with the States.

**SEC. 236. TRAINING.**

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers),

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $80,000,000, ac-

cept that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000.

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation proposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section, and

(F) any other training program approved by the Secretary.

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which

the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.

(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations, and

(c) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the work force of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(d) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(e) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

**SEC. 237. JOB SEARCH ALLOWANCES.**

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b) (1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

**SEC. 238. RELOCATION ALLOWANCES.**

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certification, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation ex-

penses at levels not exceeding those allowable under section 236(b) (1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

Subchapter C—General Provisions

**SEC. 239. AGREEMENTS WITH STATES.**

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 231(c)(2), and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the work-

er applies for trade readjustment allowances under part I of subchapter B, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

[Section 3302(c)(3) of the Internal Revenue Code of 1986 (relating to credits against Federal unemployment tax) was originally enacted as part of section 239 of the Trade Act of 1974:

[“(3) If the Secretary of Labor determines that a State, or State agency, has not—

[“(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

[“(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.”.]

**SEC. 240. ADMINISTRATION ABSENT STATE AGREEMENT.**

(a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

**SEC. 241. PAYMENTS TO STATES.**

(a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may pro-

vide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

**SEC. 242. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.**

(a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

**SEC. 243. FRAUD AND RECOVERY OF OVERPAYMENTS.**

(a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

**SEC. 244. PENALTIES.**

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

**SEC. 245. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of this chapter, other than subchapter D.

(b) SUBCHAPTER D.—There are authorized to be appropriated to the Department of Labor, for each of fiscal years 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of subchapter D of this chapter.

**SEC. 246. SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.**

(a) The Secretary shall establish one or more demonstration projects during fiscal years 1989 and 1990 for the purpose of—

(1) determining the attractiveness of a supplemental wage allowance to various categories of workers eligible for assistance under this chapter, based on the amount and duration of the supplement;

(2) determining the effectiveness of a supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers; and

(3) determining whether a supplemental wage allowance should be made an option under the Trade Adjustment Assistance program for all fiscal years.

(b)(1) For purposes of this section, the term "supplemental wage allowance" means a payment that is made to an adversely affected worker who—

(A) accepts full-time employment at an average weekly wage that is less than the average weekly wage of the worker in the adversely affected employment,

(B) prior to such acceptance, is eligible for trade readjustment allowances under part I of subchapter B, and

(C) voluntarily elects to receive such payment in lieu of any trade readjustment allowances that the worker would otherwise be eligible to receive with respect to the period covered by the certification made under subchapter A that applies to such worker.

(2) A supplemental wage allowance shall be provided under any demonstration project established under subsection (a) to a worker described in paragraph (1) for each week during which the worker performs services in the full-time employment referred to in paragraph (1)(A) in an amount that does not exceed the lesser of—

(A) the amount of the trade readjustment allowance that the worker would have been eligible to receive for any week under part 1 of subchapter B if the worker had not accepted the full-time employment and had not made the election described in paragraph (1)(C), or

(B) the excess of—

(i) an amount equal to 80 percent of the average weekly wage of the worker in the adversely affected employment, over

(ii) the average weekly wage in the full-time employment.

(3)(A) Supplemental wage allowances shall not be provided under any demonstration project established under subsection (a) for more than 52 weeks.

(B) The total amount of supplemental wage allowances that may be paid to any worker under any demonstration project established under subsection (a) with respect to the period covered by the certification applicable to such worker shall not exceed an amount that is equal to the excess of—

(i) the amount of the limitation imposed under section 233(a)(1) with respect to such worker for such period, over

(ii) the amount of the trade readjustment allowances paid under part I of subchapter B to such worker for such period.

(c) The Secretary shall provide for an evaluation of demonstration projects conducted under this section to determine at least the following:

(1) the extent to which different age groups of eligible recipients utilize the supplemental wage allowance;

(2) the effect of the amount and duration of the supplemental wage allowance on the utilization of the allowance;

(3) the extent to which the supplemental wage allowance affects the demand for training and the appropriateness thereof;

(4) the extent to which the supplemental wage allowance facilitates the readjustment of workers who would not otherwise utilize benefits provided under this chapter;

(5) the extent to which the allowance affects the cost of carrying out the provisions of this chapter; and

(6) the effectiveness of the supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers.

(d) By no later than the date that is 6 years after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, the Secretary shall transmit to the Congress a report that includes—

(1) an evaluation of the projects authorized under this section that is conducted in accordance with subsection (c), and

(2) a recommendation as to whether the supplemental wage allowance should be available on a permanent basis as an op-

tion for some or all workers eligible for assistance under this chapter.

[Paragraph 2 of section 1423(d) of the Omnibus Trade and Competitiveness Act of 1988 provides:

[“For purposes of funding the demonstration projects established under section 246(a) of the Trade Act of 1974, as added by paragraph (1) of this subsection—

[“(A) the supplemental wage allowances payable under such projects shall be considered to be trade readjustment allowances payable under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and

[“(B) the costs of administering such projects by the States shall be considered to be costs of administering such part I.”.]

**SEC. 247. DEFINITIONS.**

For purposes of this chapter—

(1) The term “adversely affected employment” means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term “adversely affected worker” means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.]

(4) The term “average weekly wage” means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual’s total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term “average weekly hours” means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term “partial separation” means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

[(7) Repealed.]

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note.)

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, résumé writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 and 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

**SEC. 248. REGULATIONS.**

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

**SEC. 249. SUBPENA POWER.**

(a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

**SEC. 249A. NONDUPLICATION OF ASSISTANCE.**

No worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D of this chapter.

## Subchapter D—NAFTA Transitional Adjustment Assistance Program

**SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.**

(a) GROUP ELIGIBILITY REQUIREMENTS.—

(1) CRITERIA.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under this subchapter pursuant to a petition filed under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such worker's firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either—

(A) that—

(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

(2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—The term "contributed importantly", as used in paragraph (1)(A)(iii), means a cause which is important but not necessarily more important than any other cause.

(3) REGULATIONS.—The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—

(1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed by a group of workers (including workers in any

agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

(2) FINDINGS AND ASSISTANCE.—Upon receipt of a petition under paragraph (1), the Governor shall—

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition—

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described under subparagraph (A)(iii) of such subsection shall be disregarded), and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons therefor, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under the Federal law are made available to the workers.

(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFICATIONS.—

(1) IN GENERAL.—The Secretary, within 30 days after receiving a petition under subsection (b), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance described in subsection (d).

(2) DENIAL OF CERTIFICATION.—Upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of subchapter A to determine if the workers may be certified under such subchapter.

(d) COMPREHENSIVE ASSISTANCE.—Workers covered by certification issued by the Secretary under subsection (c) shall be provided, in the same manner and to the same extent as workers covered under a certification under subchapter A, the following:

(1) Employment services described in section 235.

(2) Training described in section 236, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for training under this subchapter for any fiscal year shall not exceed $30,000,000.

(3) Trade readjustment allowances described in sections 231 through 234, except that—

(A) the provisions of sections 231(a)(5)(c) and 231(c), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of such allowances under this subchapter; and

(B) notwithstanding the provisions of section 233(b), in order for a worker to qualify for trade readjustment allowances under this subchapter, the worker shall be enrolled

in a training program approved by the Secretary under section 236(a) by the later of—

(i) the last day of the 16th week of such worker's initial unemployment compensation benefit period, or

(ii) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

In cases of extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days.

(4) Job search allowances described in section 237.

(5) Relocation allowances described in section 238.

(e) ADMINISTRATION.—The provisions of subchapter C shall apply to the administration of the program under this subchapter in the same manner and to the same extent as such provisions apply to the administration of the program under subchapters A and B, except that the agreement between the Secretary and the States described in section 239 shall specify the procedures that will be used to carry out the certification process under subsection (c) and the procedures for providing relevant data by the Secretary to assist the States in making prliminary findings under subsection (b).

[Section 506(b) of the NAFTA Implementation Act provides:

["(b) COVERED WORKERS.—

["(1) GENERAL RULE.—Except as provided in paragraph (2), no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974 (as added by this subtitle) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of entry into force.

["(2) REACHBACK.—Notwithstanding paragraph (1), any worker—

["(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs—

["(i) after the date of the enactment of this Act, and

["(ii) before such date of entry into force, and

["(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974,

["shall be eligible to receive such assistance in the same manner as if such separation occurred on or after such date of entry into force.".]

## CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

**SEC. 251. PETITIONS AND DETERMINATIONS.**

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Sec-

retary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) that—

(i) sales or production, or both, of the firm have decreased absolutely, or

(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

(C) increases of imports of articles like or directly competitive with articles which are produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(2) For purposes of paragraph (1)(C)—

(A) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise producing articles directly competitive with imports of oil and with imports of natural gas.

(d) A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

**SEC. 252. APPROVAL OF ADJUSTMENT PROPOSALS.**

(a) A firm certified under section 251 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this chapter. Such application shall include a proposal for the economic adjustment of such firm.

(b)(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Whenever the Secretary determines that any firm no longer requires assistance under this chapter, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.

**SEC. 253. TECHNICAL ASSISTANCE.**

(a) The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this chapter with respect to the firm. The technical assistance furnished under this chapter may consist of one or more of the following:

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 251 of this chapter.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance of a certified firm in the implementation of such a proposal.

(b)(1) The Secretary shall furnish technical assistance under this chapter through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

**SEC. 254. FINANCIAL ASSISTANCE.**

(a) The Secretary may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Loans or guarantee of loans shall be made under this chapter only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) No direct loan may be provided to a firm under this chapter if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 7(a) of the Small Business Act.

(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1986.

**SEC. 255. CONDITIONS FOR FINANCIAL ASSISTANCE.**

(a) No financial assistance shall be provided under this chapter unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b)(1) The rate of interest on direct loans made under this chapter shall be—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this chapter if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions; and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of the Internal Revenue Code of 1954.

(c) The Secretary shall make no loan or guarantee of a loan under section 254(b)(1) having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 254(b)(2) having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d)(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this chapter, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evi-

dences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) The following conditions apply with respect to any loan guaranteed under this chapter:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) The Secretary shall maintain operating reserve with respect to anticipated claims under guarantees made under this chapter. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

(g) The Secretary may charge a fee to a lender which makes a loan guaranteed under this chapter in such amount as is necessary to cover the cost of administration of such guarantee.

(h)(1) The aggregate amount of loans made to any firm which are guaranteed under this chapter and which are outstanding at any time shall not exceed $3,000,000.

(2) The aggregate amount of direct loans made to any firm under this chapter which are outstanding at any time shall not exceed $1,000,000.

(i)(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 251, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities

among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligations to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of the Internal Revenue Code of 1954 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) "employee stock ownership plan" means a plan described in section 4975(e)(7) of the Internal Revenue Code of 1954,

(B) "qualified trust" means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 and section 401 of the Internal Revenue Code of 1954,

(C) "qualified employer securities" means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) "equity capital" means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

**SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.**

(a) In the case of any firm which is small (within the meaning of the Small Business Act and regulations promulgated thereunder), the Secretary may delegate all of his functions under this chapter (other than the functions under sections 251 and 252(d) with respect to the certification of eligibility and section 264) to the Administrator of the Small Business Administration.

(b) There are hereby authorized to be appropriated to the Secretary for fiscal years 1993, 1994, 1995, 1996, 1997, and 1998 such sums as may be necessary to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this chapter), which sums are authorized to be appropriated to remain available until expended.

(c) The unexpended balances of appropriations authorized by section 312(d) of the Trade Expansion Act of 1962 are transferred to the Secretary to carry out his functions under this chapter.

**SEC. 257. ADMINISTRATION OF FINANCIAL ASSISTANCE.**

(a) In making and administering guarantees and loans under section 254, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any

real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 254.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

(c) All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Secretary pursuant to this chapter, shall be available for financing functions performed under this chapter, including administrative expenses in connection with such functions.

(d) To the extent the Secretary deems it appropriate, and consistent with the provisions of section 552(b)(4) and section 552b(c)(4) of title 5, United States Code, that portion of any record, material or data received by the Secretary in connection with any application for financial assistance under this chapter which contains trade secrets or commercial or financial information regarding the operation or competitive position of any business shall be deemed to be privileged or confidential within the meaning of those provisions.

(e) Direct loans made, or loans guaranteed, under this chapter for the acquisition or development of real property or other capital assets shall ordinarily be secured by a first lien on the assets to be financed and shall be fully amortized. To the extent that the Secretary finds that exceptions to these standards are necessary to achieve the objectives of this chapter, he shall develop appropriate criteria for the protection of the interests of the United States.

**SEC. 258. PROTECTIVE PROVISIONS.**

(a) Each recipient of adjustment assistance under this chapter shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) The Secretary and the Comptroller General of the United States shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient petaining to adjustment assistance under this chapter.

(c) No adjustment assistance under this chapter shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

(d) No financial assistance shall be provided to any firm under this chapter unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for profes-

sional services any person who, on the date such assistance or any part thereof was provided, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the provision of such financial assistance.

**SEC. 259. PENALTIES.**

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.

**SEC. 260. CIVIL ACTIONS.**

In providing technical and financial assistance under this chapter the Secretary may sue and be sued in any court of record of a State having general jurisidiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 253 and 254 from the application of sections 516, 547, and 2679 of title 28 of the United States Code.

**SEC. 261. DEFINITIONS.**

For purposes of this chapter, the term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

**SEC. 262. REGULATIONS.**

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

**[SEC. 263.** Repealed.]

**SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.**

(a) Whenever the Commission begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f). Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section 202(b) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

**SEC. 265. ASSISTANCE TO INDUSTRIES.**

(a) The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this chapter. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 223 or 251.

(b) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

[CHAPTER 4—ADJUSTMENT ASSISTANCE FOR COMMUNITIES.—The program terminated on September 30, 1982.]

CHAPTER 5—MISCELLANEOUS PROVISIONS

**SEC. 280. GENERAL ACCOUNTING OFFICE REPORT.**

(a) The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under chapters 2, 3, and 4 of this title and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the

Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this title.

**SEC. 281. COORDINATION.**

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

**SEC. 282. TRADE MONITORING SYSTEM.**

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

**SEC. 283. FIRMS RELOCATING IN FOREIGN COUNTRIES.**

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b) It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this title,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

**SEC. 284. JUDICIAL REVIEW.**

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 or section 250(c) of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this

title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.

**SEC. 285. TERMINATION.**

(a) Chapter 4 shall terminate on September 30, 1982.

(b) No duty shall be imposed under section 287, after September 30, 1993.

(c)(1) Except as provided in paragraph (2), no assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.

(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after the day that is the earlier of—

(i) September 30, 1998, or

(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.

(B) Nothwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker—

(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

(ii) is otherwise eligible to receive assistance in accordance with section 250,

such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

# Chapter 10: OTHER LAWS REGULATING IMPORTS

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

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

[7 U.S.C. 1854; P.L. 84–540, as amended by P.L. 87–488, P.L. 103–465, and P.L. 104–295]

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

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

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

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

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

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

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

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

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

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

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

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

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

## Tariff-Rate Quotas and Safeguards

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

[19 U.S.C. 3601, 3602; P.L. 103–465, as amended by P.L. 104–295]

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

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

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

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

(d) COVERAGE OF TARIFF-RATE QUOTAS.—

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

subject to the over-quota rate of duty established under a tariff-rate quota if the agricultural product—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) for each special safeguard agricultural good—

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

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

(C) the relevant period.

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

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

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

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

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

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

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

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

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

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

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

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

(3) the term "special safeguard agricultural good" means an agricultural good on which an additional duty may be imposed pursuant to the special safeguard provisions of Article 5.

## Reciprocal Meat Inspection Requirement

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

[21 U.S.C. 620; P.L. 90–201 as added by P.L. 100–418, section 4604]

**SEC. 20.**

* * * * * * *

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

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

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

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

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

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

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

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

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

## Sugar Tariff-Rate Quotas Under Headnote Authority

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

### CHAPTER 17.—SUGARS AND SUGAR CONFECTIONERY

*Additional U.S. Notes*

1. The term *"degree"* as used in the "Rates of Duty" columns of this chapter means International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA).

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

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

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

5. (a)(i) The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

(ii) Whenever the Secretary believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable

prices, the Secretary may modify any quantitative limitations which have previously been established under this note but may not reduce the total amounts below the amounts provided for in subdivision (i) hereof.

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

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

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

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

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

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

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

(A) For articles described in subheadings 1701.11.05, 1701.11.10, 1701.11.20, 1701.11.50, 1701.12.05, 1701.12.10, 1701.12.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.99.05, 1701.99.10, 1701.99.50, 2106.90.42, 2106.90.44 and 2106.90.46 by multiplying the number of kilograms thereof by the greater

of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

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

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

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

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

## Import Prohibitions on Certain Agricultural Commodities Under Marketing Orders

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

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

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

(a) Subject to the provisions of subsections (c) and (d) and notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 608c of this title contains any terms or conditions regulating the grade, size, quality or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, eggplants, kiwifruit, nectarines, plums, pistachios, or apples produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this

prohibition shall not apply to such commodities when shipped into the continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this chapter has force and effect; *Provided further,* That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States or any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision of this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 608a(5) of this title or, upon conviction, a penalty in the amount prescribed in section 608c(14) of this title, or to both such forfeiture and penalty.

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

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

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

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

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or

would have been marketed during such time if not for any additional period established by the Secretary);

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

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

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

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

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

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

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

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

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

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

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

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

### [Excerpts]

[16 U.S.C. 1371, 1411–1412, and 1415–1417; P.L. 92–522, as amended by P.L. 93–205, P.L. 94–265, P.L. 95–136, P.L. 96–470, P.L. 97–58, P.L. 97–389, P.L. 98–364, P.L. 102–523, P.L. 102–582, P.L. 102–587, and P.L. 103–238]

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

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

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

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued thereof pursuant to section 104 of this title, subject to regulations prescribed by the Secretary in accordance with section 103 hereof, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety

techniques and equipment that are economically and technologically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

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

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

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless—

(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

(III) the total number of eastern spinner dolphin (Stenella longirostris) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dol-

phin (Stenella attenuata) incidentally taken by such vessels in such seasons does not exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;

(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title;

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

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

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

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

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

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) prescribes regulations setting forth—

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

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

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical

region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

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

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

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

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

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

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

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

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

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

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed mon-

itoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119.

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

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

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

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

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

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

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

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not

be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

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

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

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

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

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

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

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

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

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

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

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

such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

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

(1) is for subsistence purposes; or

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

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

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

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

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## TITLE III—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES

**SEC. 301. FINDINGS AND POLICY.**

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

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

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

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

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.

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

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

(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;

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

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

**SEC. 302. INTERNATIONAL AGREEMENTS TO ESTABLISH GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES.**

(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this title, a global moratorium of at least 5 years duration to prohibit harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals.

(b) TERMS OF AGREEMENT.—Any agreement entered into under this section shall—

(1) establish a moratorium described in subsection (a) which takes effect on March 1, 1994;

(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

(3) provide for reviews and reports in accordance with section 304 on results of research conducted under the research program;

(4) require each country that is a party to the agreement to take all the necessary and appropriate steps to ensure compliance with the moratorium; and

(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

(c) COMPLIANCE BY UNITED STATES WITH MORATORIUM.—The moratorium authorized under subsection (a) may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

(1) the Secretary submits to the Congress in accordance with section 304(b) a recommendation that the moratorium be terminated; and

(2) the recommendation is approved by enactment of a joint resolution of approval.

* * * * * * *

**SEC. 305. INTERNATIONAL COMMITMENTS.**

(a) LIMITATION ON APPLICATION OF BAN ON IMPORTS.—Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2) (A) and (B), ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

(1) implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 302(c);

(2) require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;

(3) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and

(4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

(b) SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.—

(1) BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.—The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

(A) the Secretary shall notify the President and the Congress of that determination; and

(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

(2) BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.—

(A) IN GENERAL.—If—

(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a) (2), (3), and (4); and

(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

(B) BAN CRITERIA.—The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

(C) DEFINITION OF BASE YEAR.—For purposes of subparagraph (B), the term "base year" means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

(3) DURATION OF IMPORT BANS.—Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a).

(4) IMPLEMENTATION OF IMPORT BANS.—The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

(c) REVIEWS AND REPORTS.—The Secretary, in consultation with the Secretary of State, shall—

(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments; and

(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a).

**SEC. 306. PERMITS FOR TAKING DOLPHINS.**

(a) ADDITIONAL RESTRICTIONS UNDER GENERAL PERMIT.—Notwithstanding section 104(h), the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (Stenella longirostris) or coastal spotted dolphin (Stenella attenuata) is observed prior to release of the net skiff.

(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before March 1, 1994, and not withstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statistically significant amounts each year to levels approaching zero by December 31, 1999;

(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

(D) the permit shall expire December 31, 1999.

(b) PERMITS REQUIRED FOR TAKING DOLPHINS FOR RESEARCH PURPOSES.—An agreement entered into under section 302 shall not supersede or be interpreted to supersede any provision of this Act under which a permit under this Act is required for activities conducted pursuant to this title.

(c) MAJOR PURSE SEINE TUNA FISHING COUNTRY DEFINED.—For purposes of this section, the term "major purse seine tuna fishing country" means a country which on the effective date of this title has an active purse seine tuna fishing fleet of 20 or more vessels.

**SEC. 307. PROHIBITIONS.**

(a) IN GENERAL.—It is unlawful—

(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

(B) in accordance with a recommendation that is approved under section 302(c)(2); or

(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a)), notwithstanding any agreement under section 302 with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c));

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b)(1) or (2);

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

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

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

(b) PENALTIES.—

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

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

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

(d) DOLPHIN SAFE TUNA.—For purposes of this section, tuna or a tuna product is dolphin safe if—

(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is de-

fined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of the Dolphin Protection Consumer Information Act;

(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

* * * * * * *

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

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

PROHIBITED ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

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

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

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provisions of this Act or any regulation issued pursuant to this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[22 U.S.C. 1978; P.L. 90–578, as added by P.L. 92–219 and amended by P.L. 95–376, P.L. 96–61, P.L. 96–88, P.L. 100–711, and P.L. 102–582]

SEC. 8. (a)(1) When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species,

the Secretary making such finding shall certify such fact to the President.

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

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

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

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

(4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) As used in this section—

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

(2) The term "United States" means the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and every other territory and possession of the United States.

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

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

of which is to protect endangered or threatened species of animals.

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

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

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

## High Seas Driftnet Fisheries Enforcement Act

## [Excerpts]

[16 U.S.C. 1826a–1826c, 1826a note, and 1861 note; P.L. 102–582]

**SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

(7) The United States, in section 307(1)(M) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-

scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

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

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

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

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

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

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

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

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

(a) DENIAL OF PORT PRIVILEGES.—

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

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

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

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

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

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

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

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

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

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

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

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

(i) identify that nation; and

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

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

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

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

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within 90 days,

shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined

in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

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

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

(4) ADDITIONAL ECONOMIC SANCTIONS.—

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

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

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

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

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

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

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

* * * * * * *

**SEC. 104. DEFINITIONS.**

In this title, the following definitions apply:

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

(2) LARGE-SCALE DRIFTNET FISHING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of web-

bing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

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

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

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

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

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**SEC. 202. ENFORCEMENT.**

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement under section 311(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(a)) in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

(b) TERMS.—The agreement entered into under subsection (a) shall include—

(1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;

(2) requirements for the use of the surveillance capabilities of the Department of Defense; and

(3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.

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

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

(1) address environmental issues related to the negotiations;

(2) modify articles of the General Agreement on Tariffs and Trade (referred to in this section as "GATT") to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties;

(3) secure a working party on trade and the environment within GATT as soon as possible;

(4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns;

(5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and

(6) periodically consult with interested parties concerning the progress of the negotiations.

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

[16 U.S.C. 4904, 4907; P.L. 102–440]

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

(a) IMMEDIATE MORATORIUM.—

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

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

(A) determines that appropriate remedial measures have been taken in the countries of origin for that species, so as to eliminate the threat of trade to the conservation of the species; and

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

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

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

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

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

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

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

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

(c) MORATORIUM AFTER ONE YEAR FOR OTHER SPECIES LISTED IN APPENDICES.—Effective on the date that is one year after the date of the enactment of this Act, the importation of any exotic bird of

a species that is listed in any Appendix to the Convention is prohibited unless the Secretary makes the findings described in section 106(c) and includes the species in the list published under section 106(a).

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

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

(a) IN GENERAL.—The Secretary shall—

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

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

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

(i) the findings described in section 106(c) (2), (3), and (4) cannot be made with respect to the species;

(ii) the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title; or

(B) the importation of all species of exotic birds from a particular country, if—

(i) the country has not developed and implemented a management program for exotic birds in trade generally, that ensures both the conservation and the humane treatment of exotic birds during capture, transport, and maintenance; and

(ii) the Secretary finds that the moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of this title.

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

## Atlantic Tunas Convention Act of 1975, as amended

## [Excerpts]

[16 U.S.C. 971 and 971d; P.L. 94–70, as amended by P.L. 94–265, P.L. 95–33, and P.L. 104–43]

**SEC. 2. DEFINITIONS.**

For the purpose of this chapter—

(1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.

(2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.

(3) The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section 5(a) of this Act.

(4) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.

(4)[5] [1] The term "exclusive economic zone" means an exclusive economic zone as defined in section 3 of the Magnuson Fishery Conservation and Management Act.

(6) The term "fishing" means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.

(7) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

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

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

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

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

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

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

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

[1] Section 303(1) of the Atlantic Tunas Convention Authorization Act of 1995 (P.L. 104–43) redesignated section 2(4) of the Atlantic Tunas Convention Act of 1975 as section 2(5). However, section 303(2) replaced the text of paragraph (5), as redesignated, with language designating the paragraph as (4).

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

(5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secreary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(6) IDENTIFICATION AND NOTIFICATION.—

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

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

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

(iii) publish a list of those Nations identified under subparagraph (A).

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

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

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

(B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the

imposition of subsequent-year deductions for quota overages; and

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

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## C. NATIONAL SECURITY IMPORT RESTRICTIONS

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

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

**SEC. 232. SAFEGUARDING NATIONAL SECURITY.**

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

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

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

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

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

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

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

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

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

being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

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

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

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

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

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

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

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

(3)(A) If—

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

(ii) either—

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

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

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If—

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

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

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

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

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

(2) The President shall submit to the Congress an annual report on the operation of the provisions of this section.

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

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

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

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

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ———— dated ————.", the first blank space being filled with the number of the proclamation, Executive order,

or other Executive act issued under the authority of subsection (c) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

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

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

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

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

## D. BALANCE OF PAYMENTS AUTHORITY

### Section 122 of the Trade Act of 1974

[19 U.S.C. 2132; P.L. 93–618]

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

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

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

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

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

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

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

import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

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

(1) immediately inform Congress of his determination, and

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

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

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

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

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

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

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

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

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

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

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

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of sur-

charges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

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

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

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

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

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

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

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

### Title IV of the Trade Agreements Act of 1979

[19 U.S.C. 2531; P.L. 96–39, as amended by Reorganization Plan No. 3 of 1979, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

### Subtitle A—Obligations of the United States

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

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

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

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

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

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

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

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

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

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

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

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

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

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

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

(4) ACCESS FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any, to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

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

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

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

## Subtitle B—Functions of Federal Agencies

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

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

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

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

**SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.**

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

**SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.**

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Trade Representative with respect to international standard-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c).

(b) REPRESENTATION OF UNITED STATES INTERESTS BY PRIVATE PERSONS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION MEMBER.—The term "organization member" means the private person who holds membership in a private international standards organization.

(B) PRIVATE INTERNATIONAL STANDARDS ORGANIZATION.—The term "private international standards organization" means any international standards organization before

which the interests of the United States are represented by a private person who is officially recognized by that organization for such purposes.

(2) IN GENERAL.—Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) INADEQUATE REPRESENTATION.—If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 417.

(4) ACTION BY ORGANIZATION MEMBER.—If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) ACTION BY SECRETARY CONCERNED.—If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) REPRESENTATION OF UNITED STATES INTERESTS BY FEDERAL AGENCIES.—With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purposes, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform

position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

**SEC. 414. STANDARDS INFORMATION CENTER.**

(a) ESTABLISHMENT.—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) FUNCTIONS.—The standards information center shall—

(1) serve as the central national collection facility for information relating to—

(A) standards, technical regulations, conformity assessment procedures, and standards-related activities, whether such standards, technical regulations, conformity assessment procedures, or activities are public or private, domestic or foreign, or international, regional, national, or local and

(B) the membership and participation of Federal, State, or local government bodies or private bodies in the United States in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements concerning standards-related activities;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 412(a)(2) within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 412 as may be requested by those offices in carrying out their functions.

(c) SANITARY AND PHYTOSANITARY MEASURES.—

(1) PUBLIC INFORMATION.—The standards information center shall, in addition to the functions specified under subsection

(b), make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(A) any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by a Federal agency or agency of a State or local government;

(B) the procedures of a Federal agency or an agency of a State or local government for risk assessment and factors the agency considers in conducting the assessment;

(C) the determination of the levels of protection that a Federal agency or an agency of a State or local government considers appropriate; and

(D) the membership and participation of the Federal Government and State and local governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements.

(2) DEFINITIONS.—The definitions in section 463 apply for purposes of this subsection.

**SEC. 415. CONTRACTS AND GRANTS.**

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) LIMITATIONS.—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in

cash or kind, consistent with the maintenance of the program or activity concerned.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Trade Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

**SEC. 416. TECHNICAL ASSISTANCE.**

The Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

**SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.**

In carrying out the functions for which responsible under this title, the Trade Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

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

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

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

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

**SEC. 422. REPRESENTATIONS.**

Any—

(1) Party to the Agreement; or

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

may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect.

No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

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

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

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

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

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

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

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

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

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

## CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

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

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

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

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

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of

title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or appeal of a rule.

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

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

## Subtitle D—Definitions and Miscellaneous Provisions

**SEC. 451. DEFINITIONS.**

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Technical Barriers to Trade referred to in section 101(d)(5) of the Uruguay Round Agreements Act.

(2) CONFORMITY ASSESSMENT PROCEDURE.—The term "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

(3) FEDERAL AGENCY.—The term "Federal agency" means any of the following within the meaning of chapter 2 of part I of title 5, United States Code:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This title does not apply to—

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

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

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

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

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

### CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES

**SEC. 461. GENERAL.**

Nothing in this chapter may be construed—

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

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

**SEC. 462. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;

(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and

(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

**SEC. 463. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter—

(1) ANIMAL.—The term "animal" includes fish, bees, and wild fauna.

(2) APPROVAL PROCEDURE.—The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for—

(A) approving the use of an additive for a stated purpose or under stated conditions, or

(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

(3) CONTAMINANT.—The term "contaminant" includes pesticide and veterinary drug residues and extraneous matter.

(4) CONTROL OR INSPECTION PROCEDURE.—The term "control or inspection procedure" means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

(5) PLANT.—The term "plant" includes wild flora.

(6) RISK ASSESSMENT.—The term "risk assessment" means an evaluation of—

(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) SANITARY OR PHYTOSANITARY MEASURE.—

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

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

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

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

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

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

(i) end product criteria;

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

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

(iv) a relevant statistical method;

(v) a sampling procedure;

(vi) a method of risk assessment;

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

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

CHAPTER 2—STANDARDS-RELATED MEASURES

**SEC. 471. GENERAL.**

(a) NO BAR TO ENGAGING IN STANDARDS ACTIVITY.—Nothing in this chapter shall be construed—

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

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

(b) EXCLUSION.—This chapter does not apply to—

(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or

(2) sanitary or phytosanitary measures under chapter 1.

**SEC. 472. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;

(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and

(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

**SEC. 473. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter—

(1) APPROVAL PROCEDURE.—The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

(2) CONFORMITY ASSESSMENT PROCEDURE.—The term "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection,

evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(3) OBJECTIVE.—The term "objective" includes—

(A) safety,

(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(C) sustainable development,

but does not include the protection of domestic production.

(4) SERVICE.—The term "service" means a land transportation service or a telecommunications service.

(5) STANDARD.—The term "standard" means—

(A) characteristics for a good or a service,

(B) characteristics, rules, or guidelines for—

(i) processes or production methods relating to such good, or

(ii) operating methods relating to such service, and

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production methods, or

(ii) a service or its related operating methods,

for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

(6) STANDARDS-RELATED MEASURE.—The term "standards-related measure" means a standard, technical regulation, or conformity assessment procedure.

(7) TECHNICAL REGULATION.—The term "technical regulation" means—

(A) characteristics or their related processes and production methods for a good,

(B) characteristics for a service or its related operating methods, or

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production methods, or

(ii) a service or its related operating method,

set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

(8) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

## CHAPTER 3—SUBTITLE DEFINITIONS

**SEC. 481. DEFINITIONS.**

Notwithstanding section 451, for purposes of this subtitle—

(1) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(2) STATE.—The term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

## Subtitle F—International Standard-Setting Activities

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

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

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

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

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

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

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

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

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

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

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

### SEC. 492. EQUIVALENCE DETERMINATIONS.

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

(b) FDA DETERMINATION.—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary

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

(c) NOTICE.—If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a sanitary or phytosanitary measure of the Food and Drug Administration that is not required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act or other statute administered by the Food and Drug Administration, the Commissioner shall publish a notice in the Federal Register that identifies the basis for the determination that the measure provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the notice. The Commissioner shall not issue a final determination on the issue of equivalency without taking into account the comments received.

**SEC. 493. DEFINITIONS.**

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

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

(2) COMMISSIONER.—The term "Commissioner" means the Commissioner of Food and Drugs.

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

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

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

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

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

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

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

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

## F. GOVERNMENT PROCUREMENT

### 1. Buy American Requirements

### Buy American Act

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

[41 U.S.C. 10a, 10b, 10b–1, and 10c; P.L. 72–428, as amended by P.L. 100–418]

**SECTION 1. [41 U.S.C. 10c. DEFINITION OF TERMS USED IN SECTIONS 10a to 10c.]**

That when used in this title—

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

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

(c) The term "Federal agency" has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472), which includes the Departments of the Army, Navy, and Air Force.

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

Notwithstanding any other provision of law, and unless the head of the Federal agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, or supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies [of the class or kind to be used or the articles, materials, or supplies] from which they are manufactured are not mined, produced,

or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**SEC. 3. [41 U.S.C. 10b. CONTRACTS FOR PUBLIC WORKS; SPECIFICATION FOR USE OF AMERICAN MATERIALS; BLACKLISTING CONTRACTORS VIOLATING REQUIREMENTS.]**

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: *Provided, however,* That if the head of the Federal agency making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a Federal agency which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

**SEC. 4. [41 U.S.C. 10b–1. PROHIBITION ON PROCUREMENT CONTRACTS; EXCEPTIONS.]**

(a) A Federal agency shall not award any contract—

(1) for the procurement of an article, material, or supply mined, produced, or manufactured—

(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 305(f)(3)(A) of the Trade Agreements Act of 1979; or

(B) in a foreign country whose government maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of such Act; or

(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 305(f)(3)(A) or

305(g)(1)(A) of such Act, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

(b) The prohibition on procurement in subsection (a) is subject to sections 305(h) and 305(j) of such Act and shall not apply—

(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

(2) notwithstanding section 305(g) of such Act, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 305(f)(3)(A) of such Act; or

(3) notwithstanding section 305(g) of such Act, to a country that is a least developed country (as that term is defined in section 308(6) of that Act).

(c) Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

(1) determines that such action is necessary—

(A) in the public interest;

(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies or requisite quality at competitive prices; and

(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

(d) The authority of the head of a Federal agency under subsection (c) shall not apply to contracts subject to memorandums of understanding entered into by the Department of Defense (or any military department) and a representative of a foreign country (or agency or instrumentality thereof). In the case of any such contracts, any determinations and notice required by subsection (c) shall be made by—

(1) the President, or

(2) if delegated, by the Secretary of Defense or the Secretary of the Army, Navy, or Air Force, subject to review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)).

(e) The authority of the head of a Federal agency under subsection (c) or (d) of this section may not be delegated.

(f) Nothing in this section shall restrict the application of the prohibition under section 302(a)(1) of the Trade Agreements Act of 1979.

(g)(1) For purposes of this section with respect to construction services, a contractor or subcontractor is owned or controlled directly or indirectly by citizens or nationals of a foreign country if—

(A) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(B) the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

(C) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(D) in the case of a corporation—

(i) the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or

(ii) the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(E) in the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

(2)(A) For purposes of this section, except as provided in paragraph (1), a determination of whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country shall be made in accordance with policy guidance prescribed by the Administrator for Federal Procurement Policy after conducting one or more public hearings at which interested parties may present comments. Sections 556 and 557 of title 5, United States Code, shall not apply to the conduct of any such hearing.

(B) The Administrator shall include in the policy guidance prescribed under subparagraph (A) definitions, procedures, standards, and rules that, to the extent the Administrator considers appropriate and consistent with the applicability of such policy guidance to all services (other than construction services), is the same as or similar to the definitions, procedures, standards, and rules that the Administrator has developed and issued for the administration of section 109 of the Treasury, Postal Service, and General Government Appropriations Act, 1988 (101 Stat. 1329–434).

(C) The policy guidance required by subparagraph (A) shall be prescribed not later than 180 days after the date of enactment of this subsection.

(3)(A) The Administrator for Federal Procurement Policy shall conduct an assessment of the current rules under this Act for making determinations of country of origin and alternatives to such rules. Such assessment shall identify and evaluate (i) reasonable alternatives to such rules of origin, including one or more alternative rules that require a determination on the basis of total cost,

and (ii) the specific cost factors that should be included in determining total cost.

(B) In conducting the analysis, the Administrator shall consult and seek comment from representatives of United States labor and business, other interested United States persons, and other Federal agencies. The Administrator shall hold public hearings for the purpose of obtaining such comment, and a transcript of such hearings shall be appended to the report required by subparagraph (C).

(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after the date of enactment of this subsection. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.

(h) As used in this section—

(1) the term "Agreement" means the Agreement on Government Procurement as defined in section 308(1) of the Trade Agreements Act of 1979;

(2) the term "signatory" means a party to the Agreement; and

(3) the term "eligible product" has the meaning given such term by section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)).

**SEC. 5.**

This title shall take effect on the date of its enactment, but shall not apply to any contract entered into prior to such effective date.

**SEC. 6.**

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.

[Section 7004 of the Omnibus Trade and Competitiveness Act of 1988 establishes a sunset on new section 4 and the conforming amendments made to the Buy American Act and Act of October 29, 1949 by title VII of the 1988 Act:

**[SEC. 7004. SUNSET PROVISION.**

[The amendments made by this title shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979, and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.]

## Section 833 of the Defense Production Act of 1950, as amended

[41 U.S.C. 10b–2; P.L. 102–190, P.L. 103–335, and P.L. 104–61]

**SEC. 833. BUY AMERICAN ACT WAIVER RESCISSIONS.**

(a) DETERMINATIONS BY THE SECRETARY OF DEFENSE.—(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the

terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 1996. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) BUY AMERICAN ACT DEFINED.—For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

## Act of October 29, 1949

[41 U.S.C 10d; P.L. 81–434, as amended by P.L. 100–418]

**SEC. 633. [41 U.S.C. 10d. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING SECTIONS 10a AND 10b(a).]**

In order to clarify the original intent of Congress, hereafter, section 2 and that part of section 3 (a) preceding the words "*Provided, however*," of title III of the Act of March 3, 1933 (47 Stat. 1520), shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

## Executive Order No. 10582

[Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617]

UNIFORM PROCEDURES FOR DETERMINATIONS

SECTION 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [sections 10a–10c of this title], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than $25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302 (b) of the Federal Property and Administrative Services Act of 1949, as amended [section 252 (b) of this title], section 2 (b) of the Armed Services Procurement Act of 1947, as amended [former section 151 (b) of this title], and section 202 of the Small Business Act of 1953 [section 631 of Title 15]; or

(c) To reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts:

*Provided,* that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this

section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

DWIGHT D. EISENHOWER.

## 2. Implementation of the GATT Agreement on Government Procurement

### Title III of the Trade Agreements Act of 1979, as amended

[19 U.S.C. 2511–2518; P.L. 96–39, as amended by Reorganization Plan No. 3 of 1979, P.L. 99–47, P.L. 100–418, P.L. 100–449, P.L. 103–182, P.L. 103–465, and P.L. 104–295]

**SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS.**

(a) PRESIDENTAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations

of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) MODIFICATION OR WITHDRAWAL OF WAIVERS AND DESIGNATIONS.—The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

(d) LIMITATIONS ON WAIVER AUTHORITY NOT EFFECTIVE UNLESS PROVISION AMENDED.—The authority of the President under subsection (a) to waive any laws, regulations, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.

(e) PROCUREMENT PROCEDURES BY CERTAIN FEDERAL AGENCIES.—Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) SMALL BUSINESS AND MINORITY PREFERENCES.—The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

**SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.**

(a) AUTHORITY TO BAR PROCUREMENT FROM NONDESIGNATED COUNTRIES.—

(1) IN GENERAL.—Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) EXCEPTION.—Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) DEFERRALS AND WAIVERS.—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense. Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and with the appropriate committees of the Congress.

(c) REPORT ON IMPACT OF RESTRICTIONS.—

(1) IMPACT OF THE ECONOMY.—On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) RECOMMENDATIONS FOR ATTAINING RECIPROCITY.—The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report

shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 304 (a) and (b), other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) CONSULTATION.—In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 135 of the Trade Act of 1974.

(d) PROPOSED ACTION.—

(1) PRESIDENTIAL REPORT.—On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) PROCEDURE.—

(A) PRESIDENTIAL DETERMINATION.—If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) CONGRESSIONAL CONSIDERATION.—The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

**SEC. 303. WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS WITH RESPECT TO PURCHASES OF CIVIL AIRCRAFT.**

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft referred to in section 2(c) and approved under section 2(a). The President may modify or withdraw any waiver granted pursuant to this section.

**SEC. 304. EXPANSION OF THE COVERAGE OF THE AGREEMENT.**

(a) OVERALL NEGOTIATING OBJECTIVE.—The President shall seek in the renegotiations provided for in article XXIV(7) of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) SECTOR NEGOTIATING OBJECTIVES.—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) INDEPENDENT VERIFICATION OBJECTIVE.—The President shall seek to establish in the renegotiation provided for in article XXIV(7) of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to article XIX(5) of the Agreement.

(d) REPORTS ON NEGOTIATIONS.—

(1) REPORT IN THE EVENT OF INADEQUATE PROGRESS.—If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 302(c)(1). Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 302(c), the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) LEGISLATIVE RECOMMENDATIONS.—Taking into account the factors required to be analyzed under section 302(c), the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) ANNUAL REPORTS.—Each annual report of the President under section 163(a) of the Trade Act of 1974 made after the date of enactment of this Act shall report the actions, if any, the President deemed appropriate to establish reciprocity in

appropriate product sectors with major industrial countries in the area of government procurement.

(e) EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.—Before exercising the waiver authority in section 301 for procurement not covered by the Agreement on the date it enters into force with respect to the United States, the President shall follow the consultation provisions of section 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

**SEC. 305. MONITORING AND ENFORCEMENT.**

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this title, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 301(b).

(b) RULES OF ORIGIN.—

(1) ADVISORY RULINGS AND FINAL DETERMINATIONS.—For the purposes of this title, and Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), and article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).

(2) PENALTIES FOR FRAUDULENT CONDUCT.—In addition to any other provisions of law which may be applicable, section 1001 of title 18, United States Code, shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 301 or avoiding a prohibition under section 302.

(c) REPORT TO CONGRESS ON RULES OF ORIGIN.—

(1) DOMESTIC ADMINISTRATIVE PRACTICES.—As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 301(a) first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) FOREIGN ADMINISTRATIVE PRACTICES.—The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(d) ANNUAL REPORT ON FOREIGN DISCRIMINATION.—

(1) ANNUAL REPORT REQUIRED.—The President shall, no later than April 30 of each year, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

(2) IDENTIFICATIONS REQUIRED.—In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3)) any countries, other than least developed countries, that—

(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government;

(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government;

(D)(i) are not signatories to the Agreement;

(ii) fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement; and

(iii) whose products or services are acquired in significant amounts by the United States Government; or

(E)(i) are not signatories to the Agreement;

(ii) fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; and

(iii) whose products or services are acquired in significant amounts by the United States Government.

(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—

(i) use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;

(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement's value threshold or to make the procurements less attractive to United States businesses;

(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

(C) use any other additional criteria deemed appropriate, including the failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

(4) CONTENTS OF REPORTS.—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

(5) INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and from United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

(6) IMPACT OF NONCOMPLIANCE.—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of United States suppliers to participate in procurements on

terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

(7) IMPACT ON PROCUREMENT COSTS.—Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1), the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the country is identified as discriminatory pursuant to section 305(d)(1) in the preceding annual report.

(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF THE AGREEMENT.—

(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1), a signatory country identified pursuant to subsection (d)(1)(A) has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under section 305(d)(1) as not in compliance in a preceding annual report.

(2) SETTLEMENT OF DISPUTES.—If, before the end of the 18 months following the initiation of dispute settlement procedures—

(A) the other participant to the dispute settlement procedures has complied with the Agreement,

(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President,

(C) the procedures result in a determination providing a specific period of time for the other participant to bring its practices into compliance with the Agreement, or

(D) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

(3) SANCTIONS AFTER DISPUTE RESOLUTION FAILS.—

(A) FAILURES RESULTING IN SANCTIONS.—If—

(i) within 18 months from the date dispute settlement procedures are initiated with a signatory country pursuant to this section—

(I) such procedures are not concluded, or

(II) the country has not met the requirements of subparagraph (A) or (B) of paragraph (2), or

(ii) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for suspend-

ing concessions under the Agreement have been completed,

then the sanctions described in subparagraph (B) shall be imposed.

(B) SANCTIONS.—

(i) IN GENERAL.—If subparagraph (A) applies to any signatory country—

(I) the signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 4 of the Act of March 3, 1933 (41 U.S.C. 10b–1) shall apply to such country, and

(II) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 301(a).

(ii) TIME SANCTIONS ARE IMPOSED.—Any sanction—

(I) described in clause (i)(I) shall apply from the date that is the last day of the 18-month period described in subparagraph (A)(i) or, in the case of paragraph (2)(C), from the date procedures for suspending concessions under the Agreement have been completed, and

(II) described in clause (i)(II) shall apply beginning on the day after the date described in subclause (I).

(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanctions required by subclause (I) or (II) of paragraph (3)(B)(i) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with Agreement by that signatory country—

(A) withhold the imposition of either (but not both) of such sanctions;

(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

(C) take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.

(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 301(a) of this Act, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

(A) the signatory country has complied with the Agreement;

(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1), a country that is identified pursuant to subparagraph (B), (C), (D), or (E) of subsection (d)(2) has not eliminated the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be) of subsection (d)(2), then, on the day after the end of such 60-day period—

(A) the President shall identify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

(B) the prohibition on procurement contained in section 4 of the Act of March 3, 1933, shall apply to such country.

(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) at such time as the President determines that the country has eliminated the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be) of subsection (d)(2).

(h) LIMITATIONS ON IMPOSING SANCTIONS.—

(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 and the advice of United States businesses and other interested parties.

(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open com-

petition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98–369; 98 Stat. 1175).

(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

(1) NOTICES REQUIRED.—A notice shall be published in the Federal Register on the date of any action under this section, describing—

(A) the results of dispute settlement proceedings under subsection (f)(2);

(B) any sanction imposed under subsection (f)(3) or (g)(1);

(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2); and

(D) the termination of any sanction under subsection (f)(5) or (g)(3).

(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) shall include a copy of the President's determination under such subsection.

(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

(1) ADVICE TO THE CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

(2) CONTENTS OF REPORT.—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

(3) LEGISLATIVE RECOMMENDATIONS.—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.

[Section 7004 of the Omnibus Trade and Competitiveness Act of 1988 imposes a sunset on section 305(d) (i.e., the amendments made by Title VII of that Act):

[The amendments made by this title shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979, as amended, and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.]

**[SEC. 306. LABOR SURPLUS AREA STUDIES. REPEALED.]**

**SEC. 307. AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.**

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.

**SEC. 308. DEFINITIONS.**

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) CIVIL AIRCRAFT.—The term "civil aircraft and related articles" means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts of the components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) DEVELOPED COUNTRIES.—The term "developed countries" means countries so designated by the President.

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term "eligible product" includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under—

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United

States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.—Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term "eligible product" includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) INSTRUMENTALITY.—The term "instrumentality" shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community

(6) LEAST DEVELOPED COUNTRY.—The term "least developed country" means any country on the United Nations General Assembly list of least developed countries.

(7) MAJOR INDUSTRIAL COUNTRY.—The term "major industrial country" means any country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.

**SEC. 309. EFFECTIVE DATES.**

The provisions of this title shall be effective on the date of enactment of this Act, except that—

(1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and

(2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.

# Chapter 11: LAWS REGULATING EXPORT ACTIVITIES

## A. EXPORT CONTROLS

### Export Administration Act of 1979, as amended

[50 U.S.C. App. 2401 et seq.; P.L. 96–72, as amended by P.L. 96–533, P.L. 97–145, P.L. 98–108, P.L. 98–207, P.L. 98–222, P.L. 99–64, P.L. 99–399, P.L. 99–633, P.L. 100–180, P.L. 100–418, P.L. 100–449 P.L. 101–222, P.L. 101–510, P.L. 102–138, and P.L. 102–182]

GENERAL PROVISIONS

SEC. 4.(a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comphrehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its for-

eign subsidiaries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act

may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

(g) FEES.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

SEC. 5.(a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term "affiliates" includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United

States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

(i) supercomputers;

(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);

(iii) devices for surreptitious interception of wire or oral communications; and

(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the "controlled United States content" of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term "supercomputer" for purposes of those paragraphs.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) the extent to which the country's policies are adverse to the national security interests of the United States;

(B) the country's Communist or non-Communist status;

(C) the present and potential relationship of the country with the United States;

(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement to the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(iv) a system of export control documentation to verify the movement of goods or technology; and

(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed by the Secretary regarding the inclusion of such items on the list.

(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions

in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions of the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.

(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

(A) shall determine the truth of the allegation;

(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment,

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this

section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

(e) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export li-

censes described in section 4(a)(2) of this Act in lieu of individual validated licenses.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlay, and to eliminate those procedures which appear to be of marginal utility.

(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

(6) Any application for a license for the export to the People's Republic of China of any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

(f) FOREIGN AVAILABILITY.—

(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources out-

side the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this

section), the Secretary may not, after the determination is made and during the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place controls on the export of such goods or technology. The requirement with respect to a validated license in the preceeding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register no-

tice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

(i) the foreign availability does exist and—

(I) the requirement of a validated license has been removed,

(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of

that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be

designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

(6) OFFICE OF FOREIGN AVAILABILITY.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

(7) SHARING OF INFORMATION.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

(8) REMOVAL OF CONTROLS ON LESS SOPHISTICATED GOODS OR TECHNOLOGY.—In any case in which the Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

(9) NOTICE OF ALL FOREIGN AVAILABILITY ASSESSMENTS.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term "available in fact to con-

trolled countries" includes production or availability of any goods or technology in any country—

(A) from which the goods or technology is not restricted for export to any controlled country; or

(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

(i) which are eligible for export under a distribution license,

(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

(B) In any case in which the Secretary receives a request which—

(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under section (h) of this section, shall determine whether to make such revi-

sion, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral exports controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability

of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(i) MULTILATERAL EXPORT CONTROLS.—Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors to the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term "unauthorized use" means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Muni-

tions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

(1) are essential to the functioning of the good,

(2) are customarily included in sales of the good in countries other than controlled countries, and

(3) comprise 25 percent or less of the total value of the good, unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

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SHORT SUPPLY CONTROLS

SEC. 7.(a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent

to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of

export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

(A) include the name of the material that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or con-

trols, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraphs (3) (A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from the country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity and quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement

entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The Authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with

respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: "That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress

on .", with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; 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 report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which the House is in session.

(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from

the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harvested from State or Federal lands may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to

the producers of western red cedar and to further the foreign policy of the United States.

(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EFFECT OF CONTROLS ON EXISTING CONTRACTS.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

(k) OIL EXPORTS FOR USE BY UNITED STATES MILITARY FACILITIES.—For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

FOREIGN BOYCOTTS

SEC. 8.(a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a require-

ment of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in

negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust, or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other ac-

tion referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

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MULTILATERAL EXPORT CONTROL VIOLATIONS

SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) EXCLUSION.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

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

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term "sanctioned person" means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effort of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) or (h), the President shall—

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the governments participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after the violation is discovered, whichever is later.

(l) DEFINITION.—For purposes of this section, the term "foreign person" means any person other than a United States person.

MISSILE PROLIFERATION CONTROL VIOLATIONS

SEC. 11B. (a) VIOLATIONS BY UNITED STATES PERSONS.—

(1) SANCTIONS.—(A) If the President determines that a United States person knowingly—

(i) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, section 5 or 6 of this Act, or any regulations or orders issued under any such provisions,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in subparagraph (B).

(B) The sanctions which apply to a United States person under subparagraph (A) are the following:

(i) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person, for a period of 2 years, licenses for the transfer of missile equipment or technology controlled under this Act.

(ii) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR Annex, then the President shall deny to such United States person, for a period of not less than 2 years, all licenses for items the export of which is controlled under this Act.

(2) DISCRETIONARY SANCTIONS.—In the case of any determination referred to in paragraph (1), the Secretary may pursue any other appropriate penalties under section 11 of this Act.

(3) WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(b) TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.—

(1) SANCTIONS.—(A) Subject to paragraphs (3) through (7), if the President determines that a foreign person, after the date of the enactment of this section, knowingly—

(i) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it

were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(ii) conspires to or attempts to engage in such export, transfer, or trade, or

(iii) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 73(a) of the Arms Export Control Act, then the President shall impose on that foreign person the applicable sanctions under subparagraph (B).

(B) The sanctions which apply to a foreign person under subparagraph (A) are the following:

(i) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years, licenses for the transfer to such foreign person of missile equipment or technology the export of which is controlled under this Act.

(ii) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years, licenses for the transfer to such foreign person of items the export of which is controlled under this Act.

(iii) If, in addition to actions taken under clauses (i) and (ii), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(2) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Paragraph (1) does not apply with respect to—

(A) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(B) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(3) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in paragraph (1) may not be imposed under this subsection on a person with respect to acts described in such paragraph or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(4) ADVISORY OPINIONS.—The Secretary, in consultation with the Secretary of State and the Secretary of Defense, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this subsection. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter en-

gages in such activity, may not be made subject to such sanctions on account of such activity.

(5) WAIVER AND REPORT TO CONGRESS.—(A) In any case other than one in which an advisory opinion has been issued under paragraph (4) stating that a proposed activity would not subject a person to sanctions under this subsection, the President may waive the application of paragraph (1) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(B) In the event that the President decides to apply the waiver described in subparagraph (A), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(6) ADDITIONAL WAIVER.—The President may waiver the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(A) the product or service is essential to the national security of the United States; and

(B) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(7) EXCEPTIONS.—The President shall not apply the sanction under this subsection prohibiting the importation of the products of a foreign person—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(ii) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production,

(iii) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(iv) information and technology essential to United States products or production.

(c) DEFINITIONS.—For purposes of this section and subsections (k) and (l) of section 6—

(1) the term "missile" means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term "MTCR adherent" means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms "missile equipment or technology" and "MTCR equipment or technology" means those items listed in category I or category II of the MTCR Annex;

(6) the term "foreign person" means any person other than a United States person;

(7)(A) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term "person" means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

(8) the term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

SEC. 11C. (a) IMPOSITION OF SANCTION.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose the sanction described in subsection (c) if the President determines that a for-

eign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTION IS TO BE IMPOSED.—A sanction shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determination described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of a sanction pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay the imposition of a sanction pursuant to this section for a period of up to 90 days. Following these consultations, the

President shall impose the sanction unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay the imposition of the sanction for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTION.—

(1) DESCRIPTION OF SANCTION.—The sanction to be imposed pursuant to subsection (a)(1) is, except as provided in paragraph (2) of this subsection, that the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(2) EXCEPTIONS.—The President shall not be required to apply or maintain a sanction under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanction would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanction;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTION.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following

the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of the sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which the sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

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## Multilateral Export Control Enhancement Amendments Act

### (Sections 2441–2447 of the Omnibus Trade and Competitiveness Act of 1988)

[50 U.S.C. app. 2410a note; P.L. 100–418]

**SEC. 2441. SHORT TITLE.**

This part may be cited as the "Multilateral Export Control Enhancement Amendments Act".

**SEC. 2442. FINDINGS.**

The Congress makes the following findings:

(1) The diversion of advanced milling machinery to the Soviet Union by the Toshiba Machine Company and Kongsberg Trading Company has had a serious impact on United States and Western security interests.

(2) United States and Western security is undermined without the cooperation of the governments and nationals of all countries participating in the group known as the Coordinating Committee (hereafter in this part referred to as "COCOM") in enforcing the COCOM agreement.

(3) It is the responsibility of all governments participating in COCOM to place in effect strong national security export control laws, to license strategic exports carefully, and to enforce those export control laws strictly, since the COCOM system is only as strong as the national laws and enforcement on which it is based.

(4) It is also important for corporations to implement effective internal control systems to ensure compliance with export control laws.

(5) In order to protect United States national security, the United States must take steps to ensure the compliance of foreign companies with COCOM controls, including, where necessary conditions have been met, the imposition of sanctions against violators of controls commensurate with the severity of the violation.

**SEC. 2443. MANDATORY SANCTIONS AGAINST TOSHIBA AND KONGSBERG.**

(a) SANCTIONS AGAINST TOSHIBA MACHINE COMPANY, KONGSBERG TRADING COMPANY, AND CERTAIN OTHER FOREIGN PERSONS.—The President shall impose, for a period of 3 years—

(1) a prohibition on contracting with, and procurement of products and services from—

(A) Toshiba Machine Company and Kongsberg Trading Company, and

(B) any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery by Toshiba Machine Company and Kongsberg Trading Company to the Soviet Union, by any department, agency, or instrumentality of the United States Government; and

(2) a prohibition on the importation into the United States of all products produced by Toshiba Machine Company, Kongsberg Trading Company, and any foreign person described in paragraph (1)(B).

(b) SANCTIONS AGAINST TOSHIBA CORPORATION AND KONGSBERG VAAPENFABRIKK.—The President shall impose, for a period of 3 years, a prohibition on contracting with, and procurement of products and services from, the Toshiba Corporation and Kongsberg Vaapenfabrikk, by any department, agency, or instrumentality of the United States Government.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the company or foreign person to whom the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before June 30, 1987;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

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

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded in or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term "sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed under subsection (a) or (b).

**[SEC. 2444. MANDATORY SANCTIONS FOR FUTURE VIOLATIONS.**

New section 11A of the Export Administration Act of 1979, as amended.]

**[SEC. 2445. ANNUAL REPORT OF DEFENSE IMPACT.**

New subsection (f) of section 14 of the Export Administration Act of 1979, as amended.]

**[SEC. 2446. IMPROVED MULTILATERAL COOPERATION.**

Amendment to section 5(i) of the Export Administration Act of 1979, as amended.]

**[SEC. 2447. TECHNICAL AND CONFORMING AMENDMENTS.]**

## B. EXPORT FINANCING AND PROMOTION

### 1. Agriculture Export Sales and Promotion

### Agricultural Trade Development and Assistance Act of 1954, as amended

### [Excerpts]

[7 U.S.C. 1701 et seq.; P.L. 83–480, as amended by P.L. 101–508, P.L. 101–624, P.L. 102–237, and P.L. 104–127]

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# TITLE I—TRADE AND DEVELOPMENT ASSISTANCE

**SEC. 101. TRADE AND DEVELOPMENT ASSISTANCE.**

(a) IN GENERAL.—The President shall establish a program under this title to provide for the sale of agricultural commodities to developing countries and private entities for dollars on credit terms, or for local currencies (including for local currencies on credit terms) for use under this title. Such program shall be implemented by the Secretary.

(b) GENERAL AUTHORITY.—To carry out the policies and accomplish the objectives described in section 2, the Secretary may negotiate and execute agreements with developing countries and private entities to finance the sale and exportation of agricultural commodities to such countries and entities.

**SEC. 102. AGREEMENTS REGARDING ELIGIBLE COUNTRIES AND PRIVATE ENTITIES.**

(a) PRIORITY.—In selecting agreements to be entered into under this title, the Secretary shall give priority to agreements providing for the export of agricultural commodities to developing countries that—

(1) have the demonstrated potential to become commercial markets for competitively priced United States agricultural commodities;

(2) are undertaking measures for economic development purposes to improve food security and agricultural development, alleviate poverty, and promote broad-based equitable and sustainable development; and

(3) demonstrate the greatest need for food.

(b) PRIVATE ENTITIES.—An agreement entered into under this title with a private entity shall require such security, or such other provisions as the Secretary determines necessary, to provide reasonable and adequate assurance of repayment of the financing extended to the private entity.

(c) AGRICULTURAL MARKET DEVELOPMENT PLAN.—

(1) DEFINITION OF AGRICULTURAL TRADE ORGANIZATION.—In this subsection, the term "agricultural trade organization" means a United States agricultural trade organization that promotes the export and sale of a United States agricultural commodity and that does not stand to profit directly from the specific sale of the commodity.

(2) PLAN.—The Secretary shall consider a developing country for which an agricultural market development plan has been approved under this subsection to have the demonstrated potential to become a commercial market for competitively priced United States agricultural commodities for the purpose of granting a priority under subsection (a).

(3) REQUIREMENTS.—

(A) IN GENERAL.—To be approved by the Secretary, an agricultural market development plan shall—

(i) be submitted by a developing country or private entity, in conjunction with an agricultural trade organization;

(ii) describe a project or program for the development and expansion of a commercial market for a

United States agricultural commodity in a developing country, and the economic development of the country, using funds derived from the sale of agricultural commodities received under an agreement described in section 101;

(iii) provide for any matching funds that are required by the Secretary for the project or program;

(iv) provide for a results-oriented means of measuring the success of the project or program; and

(v) provide for graduation to the use of non-Federal funds to carry out the project or program, consistent with requirements established by the Secretary.

(B) AGRICULTURAL TRADE ORGANIZATION.—The project or program shall be designed and carried out by the agricultural trade organization.

(C) ADDITIONAL REQUIREMENTS.—An agricultural market development plan shall contain such additional requirements as are determined necessary by the Secretary.

(4) ADMINISTRATIVE COSTS.—

(A) IN GENERAL.—The Secretary may make funds made available to carry out this title available for the reimbursement of administrative expenses incurred by agricultural trade organizations in developing, implementing, and administering agricultural market development plans, subject to such requirements and in such amounts as the Secretary considers appropriate.

(B) DURATION.—The funds may be made available to agricultural trade organizations for the duration of the applicable agricultural market development plan.

(C) TERMINATION.—The Secretary may terminate assistance made available under this subsection if the agricultural trade organization is not carrying out the approved agricultural market development plan.

**SEC. 103. TERMS AND CONDITIONS OF SALES.**

(a) PAYMENT.—

(1) DOLLARS.—Except as provided in paragraph (2), agreements under this title shall require that payment for agricultural commodities be made in dollars.

(2) LOCAL CURRENCIES.—

(A) IN GENERAL.—The Secretary may permit payment under an agreement under this title in the local currency of the appropriate country in order to use the proceeds from such payments to carry out activities under section 104.

(B) RATES OF EXCHANGE.—Payments in local currency shall be at rates of exchange that are no less favorable than the highest exchange rate legally obtainable in the country and that are no less favorable than the highest exchange rate obtainable by any other country.

(b) INTEREST.—Such agreements shall provide that interest accrue on the payment deferred under such agreement at a concessional rate as determined appropriate by the Secretary.

(c) DURATION.—Payments required under such agreements may be made in reasonable annual amounts over the period (not more

than 30 years from the date of the last delivery of commodities in each year under such agreement) specified in the agreement.

(d) DEFERRAL OF PAYMENTS.—The Secretary may defer the date on which the developing country or private entity is required to begin making payment, under such agreements, for a period of not in excess of 5 years after the date of the last delivery of commodities in each year under the agreement, and interest shall be computed from the date of such last delivery.

(e) DELIVERY OF COMMODITIES.—Delivery of the commodities shall be made in accordance with the terms of the agreement.

**SEC. 104. USE OF LOCAL CURRENCY PAYMENT.**

(a) IN GENERAL.—Agreements under this title may provide that the Secretary shall use payments made in local currencies by the developing country or private entity in accordance with this section.

(b) SPECIAL ACCOUNT.—Foreign currencies received by the Secretary under this title shall be deposited in a separate account, that may be interest-bearing, to the credit of the United States and such currencies and interest thereon shall be used as provided for in this section.

(c) ACTIVITIES.—The proceeds from the payments referred to in subsection (a) may be used in the appropriate developing country for the following:

(1) TRADE DEVELOPMENT.—To carry out programs to help develop markets for United States agricultural commodities on a mutually beneficial basis in the appropriate developing country.

(2) AGRICULTURAL DEVELOPMENT.—To support—

(A) increased agricultural production, including availability of agricultural inputs, with emphasis on small farms, processing of agricultural commodities, forestry management, and land and water management;

(B) credit policies for private-sector agriculture development;

(C) establishment and expansion of institutions for basic and applied agricultural research and the use of such research through development of extension services; and

(D) programs to control rodents, insects, weeds, and other animal or plant pests.

(3) AGRICULTURAL BUSINESS DEVELOPMENT LOANS.—To make loans to United States business entities (including cooperatives) and branches, subsidiaries, or affiliates of such entities for agricultural business development and agricultural trade expansion in such appropriate developing countries.

(4) AGRICULTURAL FACILITIES LOANS.—To make loans to domestic or foreign entities (including cooperatives) for the establishment of facilities for aiding in the utilization or distribution of, or otherwise increasing the consumption of and markets for, United States agricultural products.

(5) TRADE PROMOTION.—To promote agricultural trade development, under procedures established by the Secretary, by making loans or through other activities (including trade fairs) that the Secretary determines to be appropriate.

(6) PRIVATE SECTOR AGRICULTURAL TRADE DEVELOPMENT.—To conduct private sector agricultural trade development activities in the appropriate developing country, as determined appropriate by the Secretary.

(7) RESEARCH.—To conduct research in agriculture, forestry, and aquaculture, including collaborative research which is mutually beneficial to the United States and the appropriate developing country.

(8) UNITED STATES OBLIGATIONS.—To make payments of United States obligations (including obligations entered into pursuant to other laws).

(d) FISCAL REQUIREMENTS REGARDING USE OF LOCAL CURRENCIES.—

(1) EXEMPTION.—Section 1306 of title 31, United States Code, shall not apply to local currencies used by the President under paragraphs (1) through (7) of subsection (c).

(2) USE OF CURRENCIES BY OTHER AGENCIES.—Any department or agency of the Federal Government other than the Department of Agriculture using any such local currencies for a purpose for which funds have been appropriated shall reimburse the Commodity Credit Corporation in an amount equivalent to the dollar value of the currencies used.

**[SEC. 105. VALUE-ADDED FOODS.** Repealed.]

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## TITLE IV—GENERAL AUTHORITIES AND REQUIREMENTS

**SEC. 401. COMMODITY DETERMINATIONS.**

(a) AVAILABILITY OF COMMODITIES.—No agricultural commodity shall be available for disposition under this Act if the Secretary determines that the disposition would reduce the domestic supply of the commodity below the supply needed to meet domestic requirements and provide adequate carryover (as determined by the Secretary), unless the Secretary determines that some part of the supply should be used to carry out urgent humanitarian purposes under this Act.

(b) INELIGIBLE COMMODITIES.—

(1) ALCOHOLIC BEVERAGES.—Alcoholic beverages shall not be made available for disposition under this Act.

(2) TOBACCO.—Tobacco or the products thereof shall not be made available under section 303 or title II of this Act.

(c) MARKET DEVELOPMENT ACTIVITIES.—Subsection (b)(1) shall not be construed to prohibit representatives of the United States wine, beer, distilled spirits, or other alcoholic beverage industry from participating in agricultural market development activities carried out by the Secretary with foreign currencies made available under title I of this Act.

**SEC. 402. DEFINITIONS.**

As used in this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Agency for International Development, unless otherwise specified in this Act.

(2) AGRICULTURAL COMMODITY.—The term "agricultural commodity", unless otherwise provided for in this Act, includes any agricultural commodity or the products thereof produced in the United States, including wood and processed wood products, fish, and livestock as well as value-added, fortified, or high-value agricultural products. Effective beginning on October 1, 1991, for purposes of title II, a product of an agricultural commodity shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is produced and is commercially available in the United States at fair and reasonable prices.

(3) COOPERATIVE.—The term "cooperative" means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

(4) DEVELOPING COUNTRY.—The term "developing country" means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

(5) FOOD SECURITY.—The term "food security" means access by all people at all times to sufficient food and nutrition for a healthy and productive life.

(6) NONGOVERNMENTAL ORGANIZATION.—The term "nongovernmental organization" means an organization that works at the local level to solve development problems in a foreign country in which the organization is located, except that the term does not include an organization that is primarily an agency or instrumentality of the government of the foreign country.

(7) PRIVATE VOLUNTARY ORGANIZATION.—The term "private voluntary organization" means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

(8) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, unless otherwise specified in this Act.

**SEC. 403. GENERAL PROVISIONS.**

(a) PROHIBITION.—No agricultural commodity shall be made available under this Act unless it is determined that—

(1) adequate storage facilities will be available in the recipient country at the time of the arrival of the commodity to prevent the spoilage or waste of the commodity; and

(2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.

(b) IMPACT ON LOCAL FARMERS AND ECONOMY.—The Secretary or the Administrator, as appropriate, shall ensure that the importa-

tion of United States agricultural commodities and the use of local currencies for development purposes will not have a disruptive impact on the farmers or the local economy of the recipient country.

(c) TRANSSHIPMENT.—The Secretary or the Administrator, as appropriate, shall, under such terms and conditions as are determined to be appropriate, require commitments designed to prevent or restrict the resale or transshipment to other countries, or use for other than domestic purposes, of agricultural commodities donated or purchased under this Act.

(d) PRIVATE TRADE CHANNELS AND SMALL BUSINESS.—Private trade channels shall be used under this Act to the maximum extent practicable in the United States and in the recipient countries with respect to—

(1) sales from privately owned stocks;

(2) sales from stocks owned by the Commodity Credit Corporation; and

(3) donations.

Small businesses shall be provided adequate and fair opportunity to participate in such sales.

(e) WORLD PRICES.—In carrying out this Act, reasonable precautions shall be taken to assure that sales or donations of agricultural commodities will not unduly disrupt world prices for agricultural commodities or normal patterns of commercial trade with foreign countries.

(f) PUBLICITY.—Commitments shall be obtained from countries or private entities, as appropriate, receiving commodities under this Act that such countries or private entities will widely publicize, to the extent practicable, through the use of the public media and through other means, that such commodities are being provided through the friendship of the American people as food for peace.

(g) PARTICIPATION OF PRIVATE SECTOR.—The Secretary or the Administrator, as appropriate, shall encourage the private sector of the United States and private importers in developing countries to participate in the programs established under this Act.

(h) SAFEGUARD USUAL MARKETINGS.—In carrying out this Act, reasonable precautions shall be taken to safeguard the usual marketings of the United States and to avoid displacing any sales of the United States agricultural commodities that the Secretary or Administrator determines would otherwise be made.

(i) MILITARY DISTRIBUTION OF FOOD AID.—

(1) IN GENERAL.—The Secretary or the Administrator, as appropriate, shall attempt to ensure that agricultural commodities made available under this Act will be provided without regard to the political affiliation, geographic location, ethnic, tribal, or religious identity of the recipient or without regard to other extraneous factors.

(2) PROHIBITION ON HANDLING OF COMMODITIES BY THE MILITARY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary or the Administrator, as appropriate, shall not enter into an agreement under this Act to provide agricultural commodities if such agreement requires or permits the distribution, handling, or allocation of such

commodities by the military forces of any government or insurgent group.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary or the Administrator, as appropriate, may authorize the handling or distribution of commodities by the military forces of a country in exceptional circumstances in which—

(i) nonmilitary channels are not available for such handling or distribution;

(ii) such action is consistent with the requirements of paragraph (1); and

(iii) the Secretary or the Administrator, as appropriate, determines that such action is necessary to meet the emergency health, safety, or nutritional requirements of the recipient population.

(3) ENCOURAGEMENT OF SAFE PASSAGE.—When entering into agreements under this Act that involve areas within recipient countries that are experiencing protracted warfare or civil strife, the Secretary or the Administrator, as appropriate, shall, to the extent practicable, encourage all parties to the conflict to permit safe passage of the commodities and other relief supplies and to establish safe zones for medical and humanitarian treatment and evacuation of injured persons.

(j) VIOLATIONS OF HUMAN RIGHTS.—

(1) INELIGIBLE COUNTRIES.—The Secretary or the Administrator, as appropriate, shall not enter into any agreement under this Act to provide agricultural commodities, or to finance the sale of agricultural commodities, to the government of any country determined by the President to engage in a consistent pattern of gross violations of internationally recognized human rights, including—

(A) the torture or cruel, inhuman, or degrading treatment or punishment of individuals;

(B) the prolonged detention of individuals without charges;

(C) the responsibility for causing the disappearance of individuals through the abduction and clandestine detention of such individuals; or

(D) other flagrant denials of the right to life, liberty, and the security of persons.

(2) WAIVER.—Paragraph (1) shall not prohibit the provision of assistance to such a country if the assistance is targeted to the most needy people in such country and is made available in such country through channels other than the government.

(k) ABORTION PROHIBITION.—Local currencies that are made available for use under this Act may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

**SEC. 404. AGREEMENTS.**

(a) IN GENERAL.—Before entering into agreements with foreign countries under titles I and III for the provision of commodities, the Secretary or the Administrator, as appropriate, shall consider the extent to which the recipient country is undertaking measures for economic development purposes in order to improve food secu-

rity and agricultural development, alleviate poverty, and promote broad-based, equitable, and sustainable development.

(b) TERMS OF AGREEMENT.—An agreement entered into under this Act shall—

(1) include an estimate of the annual value or volume of agricultural commodities proposed to be made available to the country or eligible organization under the agreement;

(2) with respect to agreements entered into with foreign countries under titles I and III, include a statement of the manner in which the agricultural commodities provided under the agreement or the revenues generated by the sale of such commodities (if such commodities are sold), will be integrated into the overall development plans of the country to improve food security and agricultural development, alleviate poverty, and promote broad-based, equitable, and sustainable agriculture and broad-based economic growth;

(3) with respect to agreements entered into under titles I and III, include a statement of the manner in which competitive private sector participation within the recipient country in the storage, marketing, transportation, and distribution of agricultural commodities made available under this Act will be encouraged;

(4) include a statement that such agreement shall be subject to the availability, during each fiscal year to which the agreement applies, of the necessary appropriations and agricultural commodities; and

(5) contain such other terms and conditions as the Secretary or the Administrator, as appropriate, determines to be necessary.

(c) MULTI-YEAR AGREEMENTS.—

(1) IN GENERAL.—Agreements to provide assistance on a multi-year basis to recipient countries or to eligible organizations—

(A) may be made available under titles I and III; and

(B) shall be made available under title II.

(2) EXCEPTION.—The Secretary or the Administrator, as appropriate, may determine not to make assistance available on a multi-year basis with respect to a recipient country or an eligible organization if it is determined that assistance should be provided to such country or through such organization only on an annual basis because—

(A) the past performance of the country or organization in meeting program objectives does not warrant a multi-year agreement;

(B) it is anticipated that the need of the country or organization for food aid does not extend beyond 1 year; or

(C) other circumstances, as determined by the Secretary or the Administrator, as appropriate, indicate there is only a need for a 1 year agreement.

(d) REVIEW OF AGREEMENTS.—The Secretary or the Administrator, as appropriate, may make a determination to terminate, or refuse to enter into, a multi-year agreement with respect to a recipient country if the Secretary or the Administrator determines that such country is not fulfilling the objectives or requirements of this

Act. In making such a determination, the Secretary or the Administrator, as appropriate, may consider the extent to which the country is—

(1) making significant economic development reforms;

(2) promoting free and open markets for food and agricultural producers; and

(3) fostering increased food security.

**SEC. 405. CONSULTATION.**

The Secretary and the Administrator shall cooperate and consult in the implementation of this Act.

**SEC. 406. USE OF COMMODITY CREDIT CORPORATION.**

(a) IN GENERAL.—The Commodity Credit Corporation may acquire and make available such agricultural commodities (that have been determined to be available under section 401(a)) as necessary to carry out agreements under this Act.

(b) INCLUDED EXPENSES.—With respect to commodities made available under titles II and III, the Commodity Credit Corporation may pay—

(1) the cost of acquiring such commodities;

(2) the costs associated with packaging, enrichment, preservation, and fortification of such commodities;

(3) the processing, transportation, handling, and other incidental costs up to the time of the delivery of such commodities free on board vessels in United States ports;

(4) the vessel freight charges from United States ports or designated Canadian transshipment ports, as determined by the Secretary, to designated ports of entry abroad;

(5) the costs associated with transporting such commodities from United States ports to designated points of entry abroad in the case—

(A) of landlocked countries;

(B) of ports that cannot be used effectively because of natural or other disturbances;

(C) of the unavailability of carriers to a specific country; or

(D) of substantial savings in costs or time that may be effected by the utilization of points of entry other than ports;

(6) in the case of commodities for urgent and extraordinary relief requirements (including pre-positioned commodities) the transportation costs incurred in moving the commodities from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs; and

(7) the charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto.

(c) COMMODITY CREDIT CORPORATION.—The funds, facilities, and authorities of the Commodity Credit Corporation may be used to carry out this Act.

(d) AVAILABILITY OF FUNDS.—Funds shall be available under this Act only to the extent provided in advance in appropriation Acts.

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# Agricultural Trade Act of 1978, as amended

## [Excerpts]

[7 U.S.C. 5621 et seq.; P.L. 95–501, as amended by P.L. 101–624, P.L. 102–237, P.L. 102–511, P.L. 103–465, and P.L. 104–127]

## TITLE I—GENERAL PROVISIONS

* * * * * * *

**SEC. 103. AGRICULTURAL EXPORT PROMOTION STRATEGY.**

(a) IN GENERAL.—The Secretary shall develop a strategy for implementing Federal agricultural export promotion programs that takes into account the new market opportunities for agricultural products, including opportunities that result from—

(1) the North American Free Trade Agreement and the Uruguay Round Agreements;

(2) any accession to membership in the World Trade Organization;

(3) the continued economic growth in the Pacific Rim; and

(4) other developments.

(b) PURPOSE OF STRATEGY.—The strategy developed under subsection (a) shall encourage the maintenance, development, and expansion of export markets for United States agricultural commodities and related products, including high-value and value-added products.

(c) GOALS OF STRATEGY.—The strategy developed under subsection (a) shall have the following goals:

(1) Increase the value of United States agricultural exports each year.

(2) Increase the value of United States agricultural exports each year at a faster rate than the rate of increase in the value of overall world export trade in agricultural products.

(3) Increase the value of United States high-value and value-added agricultural exports each year.

(4) Increase the value of United States high-value and value-added agricultural exports each year at a faster rate than the rate of increase in the value of overall world export trade in high-value and value-added agricultural products.

(5) Ensure that to the extent practicable—

(A) all obligations undertaken in the Uruguay Round Agreement on Agriculture that significantly increase access for United States agricultural commodities are implemented to the extent required by the Uruguay Round Agreements; or

(B) applicable United States laws are used to secure United States rights under the Uruguay Round Agreement on Agriculture.

(d) PRIORITY MARKETS.—

(1) IDENTIFICATION OF MARKETS.—In developing the strategy required under subsection (a), the Secretary shall annually identify as priority markets—

(A) those markets in which imports of agricultural products show the greatest potential for increase; and

(B) those markets in which, with the assistance of Federal export promotion programs, exports of United States agricultural products show the greatest potential for increase.

(2) IDENTIFICATION OF SUPPORTING OFFICES.—The President shall identify annually in the budget of the United States Government submitted under section 1105 of title 31, United States Code, each overseas office of the Foreign Agricultural Service that provides assistance to United States exporters in each of the priority markets identified under paragraph (1).

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate should conduct a thorough review of agricultural export and food aid programs not later than Decenber 31, 1998; and

(2) the review should examine what changes, if any, need to be made in the programs as a result of the effects of the Agricultural Market Transition Act, the Uruguay Round Agreements, changing world market conditions, and such other factors as the committees consider appropriate.

[(c) ELIMINATION OF REPORT.]

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**SEC. 106. IMPLEMENTATION OF COMMITMENTS UNDER URUGUAY ROUND AGREEMENTS.**

Not later than September 30 of each year, the Secretary shall evaluate whether the obligations undertaken by foreign countries under the Uruguay Round Agreement on Agriculture are being fully implemented. If the Secretary has reason to believe (based on the evaluation) that any foreign country, by not implementing the obligations of the country, may be significantly constraining an opportunity for United States agricultural exports, the Secretary shall—

(1) submit the evaluation to the United States Trade Representative; and

(2) transmit a copy of the evaluation to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate.

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## TITLE II—AGRICULTURAL EXPORT PROGRAMS

### Subtitle A—Programs

**SEC. 201. DIRECT CREDIT SALES PROGRAM.**

(a) SHORT-TERM PROGRAM.—To promote the sale of agricultural commodities, the Commodity Credit Corporation may finance the commercial export sale of such commodities from privately owned stocks on credit terms for not to exceed a 3-year period.

(b) INTERMEDIATE-TERM PROGRAM.—Subject to subsection (c), to promote the sale of agricultural commodities the Commodity Credit

Corporation may finance the commercial export sales of agricultural commodities from privately owned stocks on credit terms for a period of not less than 3 years nor in excess of 10 years in a manner that will directly benefit United States agricultural producers.

(c) DETERMINATIONS.—The Commodity Credit Corporation shall not finance an export sale under subsection (b) unless the Secretary determines that such sale will—

(1) develop, expand, or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities, without displacing normal commercial sales;

(2) improve the capability of the importing country to purchase and use, on a long-term basis, United States agricultural commodities; or

(3) otherwise promote the export of United States agricultural commodities.

The reference in paragraphs (1) and (2) to "on a long-term basis" shall not apply in the case of determinations with respect to sales to the independent states of the former Soviet Union.

(d) USE OF PROGRAM.—

(1) GENERAL USES.—The Commodity Credit Corporation may use export sales financing authorized under this section—

(A) to increase exports of agricultural commodities;

(B) to compete against foreign agricultural exports;

(C) to assist countries in meeting their food and fiber needs, particularly—

(i) developing countries; and

(ii) countries that are emerging markets that have committed to carry out, or are carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the creation and expansion of efficient domestic markets for the purchase and sale of agricultural commodities; and

(D) for such other purposes as the Secretary determines appropriate consistent with the provisions of subsection (c).

(2) GENERAL RESTRICTIONS.—Export sales financing authorized under this section shall not be used for foreign aid, foreign policy, or debt rescheduling purposes. The provisions of the cargo preference laws shall not apply to export sales financed under this section.

(e) TERMS OF CREDIT ASSISTANCE.—Any contract for the financing of exports by the Commodity Credit Corporation under this section shall include—

(1) a requirement that repayment shall be made in dollars with interest accruing thereon as determined appropriate by the Secretary; and

(2) a requirement, if the Secretary determines such requirement appropriate to protect the interests of the United States, that an initial payment be made by the purchaser at the time of sale or shipment of the agricultural commodity that is subject to the contract.

(f) RESTRICTIONS.—The Commodity Credit Corporation may not make export sales financing authorized under this section available in connection with sales of an agricultural commodity to any country that the Secretary determines cannot adequately service the debt associated with such sale.

**SEC. 202. EXPORT CREDIT GUARANTEE PROGRAM.**

(a) SHORT-TERM CREDIT GUARANTEES.—

(1) IN GENERAL.—The Commodity Credit Corporation may guarantee the repayment of credit made available to finance commercial export sales of agricultural commodities, including processed agricultural products and high-value agricultural products, from privately owned stocks on credit terms that do not exceed a 3-year period.

(2) SUPPLIER CREDITS.—In carrying out this section, the Commodity Credit Corporation may issue guarantees for the repayment of credit made available for a period of not more than 180 days by a United States exporter to a buyer in a foreign country.

(b) INTERMEDIATE-TERM CREDIT GUARANTEES.—Subject to the provisions of subsection (c), the Commodity Credit Corporation may guarantee the repayment of credit made available by financial institutions in the United States to finance commercial export sales of agricultural commodities, including processed agricultural products and high-value agricultural products, from privately owned stocks on credit terms that are for not less than a 3-year period nor for more than a 10-year period in a manner that will directly benefit United States agricultural producers.

(c) REQUIRED DETERMINATIONS.—The Commodity Credit Corporation shall not guarantee under subsection (b) the repayment of credit made available to finance an export sale unless the Secretary determines that such sale will—

(1) develop, expand, or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities, without displacing normal commercial sales;

(2) improve the capability of the importing country to purchase and use, on a long-term basis, United States agricultural commodities; or

(3) otherwise promote the export of United States agricultural commodities. The reference in paragraphs (1) and (2) to "on a long-term basis" shall not apply in the case of determinations with respect to sales to the independent states of the former Soviet Union.

(d) PURPOSE OF PROGRAM.—The Commodity Credit Corporation may use export credit guarantees authorized under this section—

(1) to increase exports of agricultural commodities;

(2) to compete against foreign agricultural exports;

(3) to assist countries in meeting their food and fiber needs, particularly—

(A) developing countries; and

(B) countries that are emerging markets that have committed to carry out, or are carrying out, policies that promote economic freedom, private domestic production of food commodities for domestic consumption, and the cre-

ation and expansion of efficient domestic markets for the purchase and sale of agricultural commodities; and

(4) for such other purposes as the Secretary determines appropriate, consistent with the provisions of subsection (c).

(e) RESTRICTIONS ON USE OF CREDIT GUARANTEES.—Export credit guarantees authorized by this section shall not be used for foreign aid, foreign policy, or debt rescheduling purposes. The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under this section.

(f) RESTRICTIONS.—

(1) IN GENERAL.—The Commodity Credit Corporation shall not make credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sale.

(2) CRITERIA FOR DETERMINATION.—In making the determination required under paragraph (1) with respect to credit guarantees under subsection (b) for a country, the Secretary may consider, in addition to financial, macroeconomic, and monetary indicators—

(A) whether an International Monetary Fund standby agreement, Paris Club rescheduling plan, or other economic restructuring plan is in place with respect to the country;

(B) whether the country is addressing issues such as—

(i) the convertibility of the currency of the country;

(ii) adequate legal protection for foreign investments;

(iii) the viability of the financial markets of the country; and

(iv) adequate legal protection for the private property rights of citizens of the country; or

(C) any other factors that are relevant to the ability of the country to service the debt of the country.

(g) TERMS.—Export credit guarantees issued pursuant to this section shall contain such terms and conditions as the Commodity Credit Corporation determines to be necessary.

(h) UNITED STATES AGRICULTURAL COMMODITIES.—The Commodity Credit Corporation shall finance or guarantee under this section only United States agricultural commodities.

(i) INELIGIBILITY OF FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—A financial institution shall be ineligible to receive an assignment of a credit guarantee issued by the Commodity Credit Corporation under this section if it is determined by the Corporation, at the time of the assignment, that such financial institution—

(A) is the financial institution issuing the letter of credit or a subsidiary of such institution; or

(B) is owned or controlled by an entity that owns or controls that financial institution issuing the letter of credit.

(2) THIRD COUNTRY BANKS.—The Commodity Credit Corporation may guarantee under subsections (a) and (b) the repayment of credit made available to finance an export sale irre-

spective of whether the obligor is located in the country to which the export sale is destined.

(j) CONDITIONS FOR FISH AND PROCESSED FISH PRODUCTS.—In making available any guarantees of credit under this section in connection with sales of fish and processed fish products, the Secretary shall make such guarantees available under terms and conditions that are comparable to the terms and conditions that apply to guarantees provided with respect to sales of other agricultural commodities under this section.

(k) PROCESSED AND HIGH-VALUE PRODUCTS.—

(1) IN GENERAL.—In issuing export credit guarantees under this section, the Commodity Credit Corporation shall, subject to paragraph (2), ensure that not less than 25 percent for each of fiscal years 1996 and 1997, 30 percent for each of fiscal years 1998 and 1999, and 35 percent for each of fiscal years 2000, 2001, and 2002, of the total amount of credit guarantees issued for a fiscal year is issued to promote the export of processed or high-value agricultural products and that the balance is issued to promote the export of bulk or raw agricultural commodities.

(2) LIMITATION.—The percentage requirement of paragraph (1) shall apply for a fiscal year to the extent that a reduction in the total amount of credit guarantees issued for the fiscal year is not required to meet the percentage requirement.

**SEC. 203. MARKET ACCESS PROGRAM.**

(a) IN GENERAL.—The Commodity Credit Corporation shall establish and carry out a program to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program.

(b) TYPE OF ASSISTANCE.—Assistance under this section may be provided in the form of funds of, or commodities owned by, the Commodity Credit Corporation, as determined appropriate by the Secretary.

(c) REQUIREMENTS FOR PARTICIPATION.—To be eligible for cost-share assistance under this section, an organization shall—

(1) be an eligible trade organization;

(2) prepare and submit a marketing plan to the Secretary that meets the guidelines governing such plans established by the Secretary; and

(3) meet any other requirements established by the Secretary.

(d) ELIGIBLE TRADE ORGANIZATIONS.—An eligible trade organization shall be—

(1) a United States agricultural trade organization or regional State-related organization that promotes the export and sale of agricultural commodities and that does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization or State agency that promotes the sale of agricultural commodities; or

(3) a private organization that promotes the export and sale of agricultural commodities if the Secretary determines that

such organization would significantly contribute to United States export market development.

(e) APPROVED MARKETING PLAN.—

(1) IN GENERAL.—A marketing plan submitted by an eligible trade organization under this section shall describe the advertising or other market oriented export promotion activities to be carried out by the eligible trade organization with respect to which assistance under this section is being requested.

(2) REQUIREMENTS.—To be approved by the Secretary, a marketing plan submitted under this subsection shall—

(A) specifically describe the manner in which assistance received by the eligible trade organization in conjunction with funds and services provided by the eligible trade organization will be expended in implementing the marketing plan;

(B) establish specific market goals to be achieved as a result of the market access program; and

(C) contain whatever additional requirements are determined by the Secretary to be necessary.

(3) AMENDMENTS.—A marketing plan may be amended by the eligible trade organization at any time, with the approval of the Secretary.

(4) BRANDED PROMOTION.—An agreement entered into under this section may provide for the use of branded advertising to promote the sale of agricultural commodities in a foreign country under such terms and conditions as may be established by the Secretary.

(f) OTHER TERMS AND CONDITIONS.—

(1) MULTI-YEAR BASIS.—The Secretary may provide assistance under this section on a multi-year basis, subject to annual review by the Secretary for compliance with the approved marketing plan.

(2) TERMINATION OF ASSISTANCE.—The Secretary may terminate any assistance made, or to be made, available under this section if the Secretary determines that—

(A) the eligible trade organization is not adhering to the terms and conditions of the program established under this section;

(B) the eligible trade organization is not implementing the approved marketing plan or is not adequately meeting the established goals of the market access program;

(C) the eligible trade organization is not adequately contributing its own resources to the market access program; or

(D) the Secretary determines that termination of assistance in a particular instance is in the best interests of the program.

(3) EVALUATIONS.—The Secretary shall monitor the expenditure of funds received under this section by recipients of such funds. The Secretary shall make evaluations of such expenditure, including—

(A) an evaluation of the effectiveness of the program in developing or maintaining markets for United States agricultural commodities;

(B) an evaluation of whether assistance provided under this section is necessary to maintain such markets; and

(C) a thorough accounting of the expenditure of such funds by the recipient. The Secretary shall make an initial evaluation of expenditures of a recipient not later than 15 months after the initial provision of funds to the recipient.

(4) USE OF FUNDS.—Funds made available to carry out this section—

(A) shall not be used to provide direct assistance to any foreign for-profit corporation for the corporation's use in promoting foreign-produced products;

(B) shall not be used to provide direct assistance to any for-profit corporation that is not recognized as a small-business concern described in section 3(a) of the Small Business Act (15 U.S.C. 632(a)), excluding—

(i) a cooperative;

(ii) an association described in the first section of the Act entitled "An Act To authorize association of producers of agricultural products", approved February 18, 1922 (7 U.S.C. 291); and

(iii) a nonprofit trade association; and

(C) may be used by a United States trade association, cooperative, or small business for individual branded promotional activity related to a United States branded product, if the beneficiaries of the activity have provided funds for the activity in an amount that is at least equivalent to the amount of assistance provided under this section.

(g) LEVEL OF MARKETING ASSISTANCE.—

(1) IN GENERAL.—The Secretary shall justify in writing the level of assistance provided to an eligible trade organization under the program under this section and the level of cost-sharing required of such organization.

(2) LIMITATION.—Assistance provided under this section for activities described in subsection (e)(4) shall not exceed 50 percent of the cost of implementing the marketing plan, except that the Secretary may determine not to apply such limitation in the case of agricultural commodities with respect to which there has been a favorable decision by the United States Trade Representative under section 301 of the Trade Act of 1974. Criteria for determining that the limitation shall not apply shall be consistent and documented.

(3) STAGED REDUCTION IN ASSISTANCE.—In the case of participants that received assistance under section 1124 of the Food Security Act of 1985 prior to November 28, 1990, and with respect to which assistance under this section would be limited under paragraph (2), any such reduction in assistance shall be phased down in equal increments over a 5-year period.

**SEC. 204. BARTER OF AGRICULTURAL COMMODITIES.**

(a) IN GENERAL.—The Secretary or the Commodity Credit Corporation may provide eligible commodities in barter for foreign products under such terms and conditions as the Secretary or the Corporation shall prescribe.

(b) ELIGIBLE COMMODITIES.—Unless otherwise specified, eligible commodities shall include—

(1) agricultural commodities acquired by the Commodity Credit Corporation through price support operations; and

(2) agricultural commodities acquired by the Secretary or the Commodity Credit Corporation in the normal course of business and available for disposition.

(c) BARTER BY EXPORTERS OF AGRICULTURAL COMMODITIES.—

(1) PURPOSE.—The Secretary or the Commodity Credit Corporation shall encourage exporters of agricultural commodities to barter such commodities for foreign products—

(A) to acquire such foreign products needed by such exporters; and

(B) to develop, maintain, or expand foreign markets for United States agricultural exports.

(2) ELIGIBLE ACTIVITIES.—The Secretary or the Commodity Credit Corporation may provide eligible commodities to exporters to assist such exporters in barter transactions.

(3) TECHNICAL ASSISTANCE.—The Secretary or the Commodity Credit Corporation shall provide technical advice and assistance relating to the barter of agricultural commodities to any United States exporter who requests such advice or assistance.

(d) TRANSFER OF FOREIGN PRODUCTS TO OTHER GOVERNMENT AGENCIES.—The Secretary or the Commodity Credit Corporation may transfer any foreign products that the Secretary or such Corporation obtains through barter activities to other Government agencies if the Corporation receives assurances that it will receive full reimbursement from the agency within the same fiscal year in which such transfer occurs.

(e) CORPORATION AUTHORITY NOT LIMITED.—Nothing contained in this section shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such foreign materials as such Corporation determines appropriate in carrying out the functions and protecting the assets of the Corporation.

(f) PROHIBITED ACTIVITIES.—The Secretary or the Commodity Credit Corporation shall take reasonable precautions to prevent the misuse of eligible commodities in a barter or exchange program, including activities that—

(1) displace or interfere with commercial sales of United States agricultural commodities that otherwise might be made;

(2) unduly disrupt world prices of agricultural commodities or the normal patterns of commercial trade with recipient countries; or

(3) permit the resale or transshipment of eligible commodities to countries other than the intended recipient country.

**SEC. 205. COMBINATION OF PROGRAMS.**

The Commodity Credit Corporation may carry out a program under which commercial export credit guarantees available under section 202 are combined with direct credits from the Commodity Credit Corporation under section 201 to reduce the effective rate of interest on export sales of agricultural commodities.

## Subtitle B—Implementation

**SEC. 211. FUNDING LEVELS.**

(a) DIRECT CREDIT PROGRAMS.—The Commodity Credit Corporation may make available for each fiscal year such funds of the Commodity Credit Corporation as it determines necessary to carry out any direct credit program established under section 201.

(b) EXPORT CREDIT GUARANTEE PROGRAMS.—

(1) EXPORT CREDIT GUARANTEES.—The Commodity Credit Corporation shall make available for each of fiscal years 1996 through 2002 not less than $5,500,000,000 in credit guarantees under subsections (a) and (b) of section 202.

(2) LIMITATION ON ORIGINATION FEE.—Notwithstanding any other provision of law, the Secretary may not charge an origination fee with respect to any credit guarantee transaction under section 202(a) in excess of an amount equal to 1 percent of the amount of credit to be guaranteed under the transaction, except with respect to an export credit guarantee transaction pursuant to section 1542(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101 624; 7 U.S.C. 5622 note).

(c) MARKET ACCESS PROGRAMS.—The Commodity Credit Corporation or the Secretary shall make available for market access activities authorized to be carried out by the Commodity Credit Corporation under section 203—

(1) in addition to any funds that may be specifically appropriated to implement a market access program, not less than $200,000,000 for each of the fiscal years 1991 through 1993, not less than $110,000,000 for each of the fiscal years 1994 through 1995, and not more than $90,000,000 for each of fiscal years 1996 through 2002, of the funds of, or an equal value of commodities owned by, the Commodity Credit Corporation; and

(2) any funds that may be specifically appropriated to carry out a market access program under section 203.

# TITLE III—EXPORT ENHANCEMENT PROGRAM

**SEC. 301. EXPORT ENHANCEMENT PROGRAM.**

(a) IN GENERAL.—The Commodity Credit Corporation shall carry out an export enhancement program in accordance with this section to encourage the commercial sale of United States agricultural commodities in world markets at competitive prices. The program shall be carried out in a market sensitive manner. Activities under the program shall not be limited to responses to unfair trade practices.

(b) EXPORT BONUS.—

(1) IN GENERAL.—In carrying out the program established under this section, the Commodity Credit Corporation may—

(A) make agricultural commodities, acquired by the Commodity Credit Corporation, available to exporters, users, processors, or foreign purchasers at no cost either directly or through the issuance of commodity certificates; and

(B) make cash payments to exporters, users, and processors.

(2) CALCULATION OF BONUS LEVELS.—The Commodity Credit Corporation shall—

(A) maintain an established procedure for evaluating program bonus requests, with guidelines for determining prevailing market prices for targeted commodities and destinations to be used in the calculation of acceptable bonus levels;

(B) use a clear set of established procedures for measuring transportation and incidental costs to be used in the calculation of acceptable bonus levels and for determining the amount of such costs actually incurred; and

(C) maintain consistent and effective controls and procedures for auditing and reviewing payment of bonuses and for securing refunds where appropriate.

(3) DISCLOSURE OF INFORMATION.—The Secretary may, notwithstanding the provisions of section 552 of title 5, United States Code, provide for withholding from the public the procedures and guidelines established under paragraphs (2) and (B) if the Secretary determines that release of such information would adversely affect the operation of the program. Nothing in this paragraph shall be construed to authorize the withholding of information, including such procedures and guidelines, from the Congress.

(4) COMPETITIVE DISADVANTAGE.—The Secretary shall take such action as is necessary to ensure that equal treatment is provided to domestic and foreign purchasers and users of agricultural commodities in any case in which the importation of a manufactured product made, in whole or in part, from a commodity made available for export under this section would place domestic users of the commodity at a competitive disadvantage.

(5) DIFFERENT COMMODITIES.—The Commodity Credit Corporation may provide to an exporter, user, or processor, or foreign purchaser, under the program established under this section, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided.

(6) OTHER EXPORT PROGRAMS.—The Commodity Credit Corporation may provide bonuses under this section in conjunction with other export promotion programs conducted by the Secretary or the Commodity Credit Corporation.

(7) AVOIDANCE OF PREFERENTIAL APPLICATION.—When using the authorities of this section to promote the exporting of wheat, the Secretary shall make reasonable efforts to avoid giving a preference to one class of wheat disproportionately more than another class.

(8) DISPLACEMENT.—The Secretary shall avoid the displacement of usual marketings of United States agricultural commodities in carrying out this section.

(c) PRIORITY IN THE CASE OF LIVESTOCK.—In the case of proposals for bonuses for dairy cattle or other appropriate livestock, the Commodity Credit Corporation shall give priority to proposals that include, in connection with the purchase of the livestock, appropriate herd management training, veterinary services, nutritional

training, and other technical assistance necessary for the adaptation of the livestock to foreign environments.

(d) INAPPLICABILITY OF PRICE RESTRICTIONS.—Any price restrictions that otherwise may be applicable to dispositions of agricultural commodities owned by the Commodity Credit Corporation shall not apply to agricultural commodities provided under this section.

(e) FUNDING LEVELS.—

(1) IN GENERAL.—The Commodity Credit Corporation shall make available to carry out the program established under this section not more than—

(A) $350,000,000 for fiscal year 1996;
(B) $250,000,000 for fiscal year 1997;
(C) $500,000,000 for fiscal year 1998;
(D) $550,000,000 for fiscal year 1999;
(E) $579,000,000 for fiscal year 2000;
(F) $478,000,000 for fiscal year 2001; and
(G) $478,000,000 for fiscal year 2002.

(2) SET-ASIDES.—(A) For each fiscal year, the Corporation shall, to the extent practicable and subject to subparagraph (B), ensure that no less than 25 percent of the total of—

(i) the funds expended, and

(ii) the value of any commodities made available, under this section in connection with sales of agricultural commodities to the independent states of the former Soviet Union is used to promote the export of processed and high-value United States agricultural products and that the balance of the funds expended and commodities made available under this section in connection with such sales is used to promote the export of bulk or raw United States agricultural commodities.

(B) The 25 percent requirement of subparagraph (A) shall apply for a fiscal year only to the extent that the percentage of the total of—

(i) the funds expended, and

(ii) the value of commodities made available, for that fiscal year under this section to promote the export to all countries of processed and high-value United States agricultural products is less than 15 percent.

(f) EFFECT ON THIRD COUNTRIES.—It is not the purpose of the program established under this section to affect adversely the exports of fairly traded agricultural commodities.

(g) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS.—Notwithstanding any other provision of this section, the Commodity Credit Corporation shall administer and carry out the program authorized by this section in a manner consistent, as determined by the President, with the obligations undertaken by the United States set forth in the Uruguay Round Agreements.

(h) PRIORITY FUNDING FOR INTERMEDIATE PRODUCTS.—

(1) IN GENERAL.—Effective beginning in fiscal year 1996, and consistent, as determined by the Secretary, with the obligations and reduction commitments undertaken by the United States under the Uruguay Round Agreements, the Secretary may make available not more than $100,000,000 for each fiscal

year under this section for the sale of intermediate agricultural products in sufficient quantities to attain the volume of export sales consistent with the volume of intermediate agricultural products exported by the United States during the Uruguay Round base period years of 1986 through 1990.

(2) ADDITIONAL ASSISTANCE.—Notwithstanding paragraph (1), if the export sale of any intermediate agricultural product attains the volume of export sales consistent with the volume of the intermediate agricultural product exported by the United States during the Uruguay Round base period years of 1986 through 1990, the Secretary may make available additional amounts under this section for the encouragement of export sales of the intermediate agricultural product.

**SEC. 302. RELIEF FROM UNFAIR TRADE PRACTICES.**

(a) USE OF PROGRAMS.—

(1) IN GENERAL.—The Secretary may, for each article described in paragraph (2), make available some or all of the commercial export promotion programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice serving as the basis for the proceeding described in paragraph (2).

(2) COMMODITIES SPECIFIED.—Paragraph (1) shall apply in the case of articles for which the United States has instituted, under any international trade agreement, any dispute settlement proceeding based on an unfair trade practice if such proceeding has been prevented from progressing to a decision by the refusal of the party maintaining the unfair trade practice to permit the proceeding to progress.

(b) CONSULTATIONS REQUIRED.—For any article described in subsection (a)(2), the Secretary shall—

(1) promptly consult with representatives of the industry producing such articles and other allied groups or individuals regarding specific actions or the development of an integrated marketing strategy utilizing some or all of the commercial export programs of the Department of Agriculture and the Commodity Credit Corporation to help mitigate or offset the effects of the unfair trade practice identified in subsection (a)(2); and

(2) ascertain and take into account the industry preference for the practical use of available commercial export promotion programs in implementing subsection (a)(1).

**SEC. 303. EQUITABLE TREATMENT OF HIGH-VALUE AND VALUE-ADDED UNITED STATES AGRICULTURAL COMMODITIES.**

In the case of any program, such as that established under section 301, operated by the Secretary or the Commodity Credit Corporation during the fiscal years 1991 through 1995, for the purpose of discouraging unfair trade practices, the Secretary shall establish as an objective to expend annually at least 25 percent of the total funds available (or 25 percent of the value of any commodities employed) for program activities involving the export sales of high-value agricultural commodities and value-added products of United States agricultural commodities.

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TITLE IV—GENERAL PROVISIONS

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**SEC. 414. TRADE CONSULTATIONS CONCERNING IMPORTS.**

(a) CONSULTATION BETWEEN AGENCIES.—The Secretary shall require consultation between the Administrator of the Service and the heads of other appropriate agencies and offices of the Department of Agriculture, including the Administrator of the Animal and Plant Health Inspection Service, prior to relaxing or removing any restriction on the importation of any agricultural commodity into the United States.

(b) CONSULTATION WITH TRADE REPRESENTATIVE.—The Secretary shall consult with the United States Trade Representative prior to relaxing or removing any restriction on the importation of any agricultural commodity or a product thereof into the United States.

(c) MONITORING COMPLIANCE WITH SANITARY AND PHYTOSANITARY MEASURES.—The Secretary shall monitor the compliance of World Trade Organization member countries with the sanitary and phytosanitary measures of the Agreement on Agriculture of the Uruguay Round of Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade. If the Secretary has reason to believe that any country may have failed to meet the commitment on sanitary and phytosanitary measures under the Agreement in a manner that adversely impacts the exports of a United States agricultural commodity, the Secretary shall—

(1) provide such information to the United States Trade Representative of the circumstances surrounding the matter arising under this subsection; and

(2) with respect to any such circumstances that the Secretary considers to have a continuing adverse effect on United States agricultural exports, report to the Committee on Agriculture, and the Committee on Ways and Means, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Finance, of the Senate—

(A) that a country may have failed to meet the sanitary and phytosanitary commitments; and

(B) any notice given by the Secretary to the United States Trade Representative.

**SEC. 415. TECHNICAL ASSISTANCE IN TRADE NEGOTIATIONS.**

The Secretary shall provide technical services to the United States Trade Representative on matters pertaining to agricultural trade and with respect to international negotiations on issues related to agricultural trade.

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## Section 203 of the Export Administration Amendments Act of 1985

[15 U.S.C. 4053; P.L. 99–64]

**SEC. 203. BARTER ARRANGEMENTS.**

(a) REPORT ON STATUS OF FEDERAL BARTER PROGRAMS.—The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after the date of the enactment of this Act, sub-

mit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) AUTHORITIES OF THE PRESIDENT.—The President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and petroleum products, and for other meterials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur, and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) OTHER PROVISIONS OF LAW NOT AFFECTED.—In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b), nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) CONVENTIONAL MARKETS NOT TO BE DISPLACED BY BARTERS.— The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) or any purchase authorized by subsection (b)(2), existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2), as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) REPORT TO THE CONGRESS.—The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress not later than 90 days after such acquisition.

## Section 1123 of the Food Security Act of 1985

[7 U.S.C. 1736r; P.L. 99–198, as amended by P.L. 104–127]

**SEC. 1123. TRADE NEGOTIATIONS POLICY.**

(a) FINDINGS.—Congress finds that—

(1) on a level playing field, United States producers are the most competitive suppliers of agricultural products in the world;

(2) exports of United States agricultural products accounted for $54,000,000,000 in 1995, contributing a net

$24,000,000,000 to the merchandise trade balance of the United States and supporting approximately 1,000,000 jobs;

(3) increased agricultural exports are critical to the future of the farm, rural, and overall United States economy, but the opportunities for increased agricultural exports are limited by the unfair subsidies of the competitors of the United States, and a variety of tariff and nontariff barriers to highly competitive United States agricultural products;

(4) international negotiations can play a key role in breaking down barriers to United States agricultural exports;

(5) the Uruguay Round Agreement on Agriculture made significant progress in the attainment of increased market access opportunities for United States exports of agricultural products, for the first time—

(A) restraining foreign trade-distorting domestic support and export subsidy programs; and

(B) developing common rules for the application of sanitary and phytosanitary restrictions;

that should result in increased exports of United States agricultural products, jobs, and income growth in the United States;

(6) the Uruguay Round Agreement on Agriculture did not succeed in completely eliminating trade distorting domestic support and export subsidies by—

(A) allowing the European Union to continue unreasonable levels of spending on export subsidies; and

(B) failing to discipline monopolistic state trading entities, such as the Canadian Wheat Board, that use nontransparent and discriminatory pricing as a hidden de facto export subsidy;

(7) during the period 1996 through 2002, there will be several opportunities for the United States to negotiate fairer trade in agricultural products, including further negotiations under the World Trade Organization, and steps toward possible free trade agreements of the Americas and Asian-Pacific Economic Cooperation (APEC); and

(8) the United States should aggressively use these opportunities to achieve more open and fair opportunities for trade in agricultural products.

(b) GOALS OF THE UNITED STATES IN AGRICULTURAL TRADE NEGOTIATIONS.—The objectives of the United States with respect to future negotiations on agricultural trade include—

(1) increasing opportunities for United States exports of agricultural products by eliminating tariff and nontariff barriers to trade;

(2) leveling the playing field for United States producers of agricultural products by limiting per unit domestic production supports to levels that are no greater than those available in the United States;

(3) ending the practice of export dumping by eliminating all trade distorting export subsidies and disciplining state trading entities so that they do not (except in cases of bona fide food aid) sell in foreign markets at prices below domestic market

prices or prices below their full costs of acquiring and delivering agricultural products to the foreign markets; and

(4) encouraging government policies that avoid price-depressing surpluses.

## 2. Export Promotion of Goods and Services

### Sections 2303, 2306, and 2312 of the Export Enhancement Act of 1988, as amended

[15 U.S.C. 4723, 4726, 4732; P.L. 100–418, as amended by P.L. 102–240, P.L. 102–429, P.L. 102–549, and P.L. 103–392]

**SEC. 2303. MARKET DEVELOPMENT COOPERATOR PROGRAM.**

(a) AUTHORITY OF SECRETARY OF COMMERCE.—In order to promote further the exportation of goods and services from the United States, the Secretary of Commerce is authorized to establish, in the International Trade Administration of the Department of Commerce, a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) IMPLEMENTATION OF THE PROGRAM.—The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

(1) nonprofit industry organizations,

(2) trade associations,

(3) State departments of trade and their regional associations, including centers for international trade development, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

(in this section referred to as "cooperators") to engage in activities in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) COOPERATOR PARTNERSHIP PROGRAM.—

(1) IN GENERAL.—(A) As part of the Market Development Cooperator Program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry

out the purpose of the Market Development Cooperator Program set forth in subsection (a).

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)) and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) QUALIFICATIONS OF PARTICIPANTS.—In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3) EXPENSES OF THE PROGRAM.—(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) BUDGET ACT.—Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

**SEC. 2306. UNITED STATES AND FOREIGN COMMERCIAL SERVICE PACIFIC RIM INITIATIVE.**

(a) IN GENERAL.—In order to encourage the export of United States goods and services to Japan, South Korea, and Taiwan, the United States and Foreign Commercial Service shall make a special effort to—

(1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to these markets under competitive market conditions;

(2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);

(3) present, periodically, a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to appropriate authorities in Japan, South Korea, and Taiwan, with a view toward liberalizing markets to such goods and services;

(4) facilitate the entrance into such markets by United States persons identified and notified under paragraph (2); and

(5) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) REPORTS TO THE CONGRESS.—The Secretary of Commerce shall report periodically to the Congress on activities carried out under subsection (a).

(c) DEFINITION.—As used in this section, the term "United States person" means—

(1) a United States citizen; or

(2) a corporation, partnership, or other association created under the laws of the United States or any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

**SEC. 2312. TRADE PROMOTION COORDINATING COMMITTEE.**

(a) ESTABLISHMENT AND PURPOSE.—The President shall establish the Trade Promotion Coordinating Committee (hereafter in this section referred to as the "TPCC"). The purpose of the TPCC shall be—

(1) to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and

(2) to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.

(b) DUTIES.—The TPCC shall—

(1) coordinate the development of the trade promotion policies and programs of the United States Government;

(2) provide a central source of information for the business community on Federal export promotion and export financing programs;

(3) coordinate official trade promotion efforts to ensure better delivery of services to United States businesses, including—

(A) information and counseling on United States export promotion and export financing programs and opportunities in foreign markets;

(B) representation of United States business interests abroad; and

(C) assistance with foreign business contacts and projects;

(4) prevent unnecessary duplication in Federal export promotion and export financing activities;

(5) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations to the President based on its assessment; and

(6) carry out such other duties as are deemed to be appropriate consistent with the purpose of the TPCC.

(c) STRATEGIC PLAN.—To carry out subsection (b), the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall—

(1) establish a set of priorities for Federal activities in support of United States exports and explain the rationale for the priorities;

(2) review current Federal programs designed to promote the sale of United States exports in light of the priorities established under paragraph (1) and develop a plan to bring such activities into line with the priorities and to improve coordination of such activities;

(3) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(4) propose to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (2) and eliminates funding for the areas of overlap and duplication identified under paragraph (3); and

(5) review efforts by the States (as defined in section 2301(i)) to promote United States exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data.

(d) MEMBERSHIP.—

(1) IN GENERAL.—Members of the TPCC shall include representatives from—

(A) the Department of Commerce;
(B) the Department of State;
(C) the Department of the Treasury;
(D) the Department of Agriculture;
(E) the Department of Energy;
(F) the Department of Transportation;
(G) the Office of the United States Trade Representative;
(H) the Small Business Administration;
(I) the Agency for International Development;
(J) the Trade and Development Program;
(K) the Overseas Private Investment Corporation;
(L) the Export-Import Bank of the United States; and
(M) at the discretion of the President, such other departments or agencies as may be necessary.

(2) CHAIRPERSON.—The Secretary of Commerce shall serve as the chairperson of the TPCC.

(e) MEMBER QUALIFICATIONS.—Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as alternates designated by any members unable to attend a meeting of the TPCC, shall be individuals who exercise significant decisionmaking authority in their respective departments or agencies.

(f) REPORT TO THE CONGRESS.—The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto.

## Fair Trade in Auto Parts Act of 1988

## (Sections 2121–2125 of the Omnibus Trade and Competitiveness Act of 1988)

[15 U.S.C. 4701; P.L. 100–418, as amended by P.L. 103–236]

**SEC. 2121. SHORT TITLE.**

This part may be referred to as the "Fair Trade in Auto Parts Act of 1988".

**SEC. 2122. DEFINITION.**

For purposes of this part, the term "Japanese markets" refers to markets, including those in the United States and Japan, where automotive parts and accessories, both original equipment and aftermarket, are purchased for use in the manufacture or repair of Japanese automobiles.

**SEC. 2123. ESTABLISHMENT OF INITIATIVE ON AUTO PARTS SALES TO JAPAN.**

(a) IN GENERAL.—The Secretary of Commerce shall establish an initiative to increase the sale of United States-made auto parts and accessories to Japan markets.

(b) FUNCTIONS.—In carrying out this section, the Secretary shall—

(1) foster increased access for United States-made auto parts and accessories to Japanese companies, including specific consultations on access to Japanese markets;

(2) facilitate the exchange of information between United States auto parts manufacturers and the Japanese automobile industry;

(3) collect data and market information on the Japanese automobile industry regarding needs, trends, and procurement practices, including the types, volume, and frequency of parts sales to Japanese automobile manufacturers;

(4) establish contacts with Japanese automobile manufacturers in order to faciliate contact between United States auto parts manufacturers and Japanese automobile manufacturers;

(5) report on and attempt to resolve disputes, policies, or practices, whether public or private, that result in barriers to increased commerce between United States auto parts manufacturers and Japanese automobile manufacturers;

(6) take actions to initiate periodic consultations with officials of the Government of Japan regarding sales of United States-made auto parts in Japanese markets; and

(7) submit annual written reports or otherwise report annually to the Congress on the sale of United States-made auto parts in Japanese markets, including the extent to which longterm, commercial relationships exist between United States auto parts manufacturers and Japanese automobile manufacturers.

**SEC. 2124. ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE ON AUTO PARTS SALES IN JAPAN.**

(a) IN GENERAL.—The Secretary of Commerce shall seek the advice of the United States automotive parts industry in carrying out this part.

(b) ESTABLISHMENT OF COMMITTEE.—The Secretary of Commerce shall establish a Special Advisory Committee for purposes of carrying out this part.

(c) FUNCTIONS.—The Special Advisory Committee established under subsection (b) shall—

(1) report to the Secretary of Commerce on barriers to sales of United States-made auto parts and accessories in Japanese markets;

(2) review and consider data collected on sales of United States-made auto parts and accessories in Japanese markets;

(3) advise the Secretary of Commerce during consultations with the Government of Japan on issues concerning sales of United States-made auto parts in Japanese markets;

(4) assist in establishing priorities for the initiative established under section 2123, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that action; and

(5) assist the Secretary in reporting, or otherwise report to the Congress as requested on the progress of sales of United States-made auto parts in Japanese markets.

(d) AUTHORITY.—The Secretary of Commerce shall draw on existing budget authority in carrying out this part.

**SEC. 2125. EXPIRATION DATE.**

The authorities under this part shall expire on December 31, 1998.

# Chapter 12: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

## A. ECONOMIC AUTHORITIES IN NATIONAL EMERGENCIES

### International Emergency Economic Powers Act, as amended

[50 U.S.C. 1701, 50 App. 5 note; P.L. 95–223, title I and title II, as amended by P.L. 100–418 and P.L. 103–236]

## TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

* * * * * * *

SEC. 101. (b) Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination of each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions.

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## TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

SHORT TITLE

SEC. 201. This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

SEC. 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary

threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

GRANT OF AUTHORITIES

SEC. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979, or under section 6 of such Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

[Section 525(c) of P.L. 103–236 provides that paragraph (3) as amended applies to actions taken by the President under section 203 of such Act before the date of enactment of this Act which are in effect on such date, and to actions taken under such section on or after such date and that paragraph (4) shall not apply to restrictions on the transactions and activities described in section 203(b)(4) in force on the date of enactment of this Act, with respect to countries embargoed under the International Emergency Economic Powers Act on the date of enactment of this Act.]

CONSULTATION AND REPORTS

SEC. 204. (a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

AUTHORITY TO ISSUE REGULATIONS

SEC. 205. The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

PENALTIES

SEC. 206. (a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SAVINGS PROVISION

SEC. 207. (a)(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President de-

termines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section superseded the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

SEC. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

## Section 5(b) of the Trading With the Enemy Act, as amended

[50 U.S.C. App. 5(b); P.L. 65–91, as amended by P.L. 65–217, P.L. 73–1, P.L. 76–69, P.L. 77–354, P.L. 95–223, P.L. 99–93, P.L. 100–418, and P.L. 103–236]

SEC. 5. (b)(1) During the time of war the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any

foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subsection, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(4) The authority granted to the President in this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with

respect to which acts are prohibited by chapter 37 of title 18, United States Code.

[Section 2502(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 and Section 525 (b)(2) of the Foreign Relations Authorization Act of 1994 provide with respect to paragraph (4) of section 5(b):

[The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act, do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited.]

## B. TRADE SANCTIONS AGAINST UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

### Narcotics Control Trade Act

### (Title VIII of the Trade Act of 1974, as amended)

[19 U.S.C. 2491 et seq.; P.L. 93–618 as added by P.L. 99–570, title IX, and amended by P.L. 100–204, P.L. 100–690, P.L. 101–231, and P.L. 102–583]

**SEC. 801. SHORT TITLE.**

This title may be cited as the "Narcotics Control Trade Act".

**SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.**

(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b)(1)(A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961 [or Section 489A, after September 30, 1994, as required by Section 6(a) of the International Narcotics Control Corrections Act of 1994], that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B),

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States,

(III) in preventing and punishing the laundering in that country of drug-related profits or drug-related moneys, and

(IV) in preventing and punishing bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may

not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagaph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

(2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961.[1] In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

[1] For successor provisions to section 481(e) of the Foreign Assistance Act of 1961 see sections 489 and 490 of the Foreign Assistance Act of 1961; 22 U.S.C. 22918, 22 U.S.C. 2291j.

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has that government, as a matter of government policy, encouraged or facilitated the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has that government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has that government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has that government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has that government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, with 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (a), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) DURATION OF ACTION.—The action taken by the President under paragraph (1), (2), or (3) of subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) PRESIDENTIAL ACTION REGARDING AVIATION.—

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (a), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indi-

rectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the term "air transportation", "air carrier", "foreign air carrier" and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(e) For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 805(3) (A) and (B).

**SEC. 803. SUGAR QUOTA.**

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

**SEC. 804. PROGRESS REPORTS.**

The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) [or Section 489A, after September 30, 1994] an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

**SEC. 805. DEFINITIONS.**

For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term "major drug producing country" means a country that illicitly produces during a fiscal year five metric tons or more of opium or opium derivative, five hundred metric tons or more of coca, or five hundred metric tons or more of marijuana; and

(3) the term "major drug-transit country" means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

## C. ECONOMIC SANCTIONS AGAINST TERRORISM OR MISSILE PROLIFERATION

### Sections 504 and 505 of the International Security and Development Cooperation Act of 1985

[22 U.S.C. 2349 aa–8, aa–9; P.L. 99–83]

**SEC. 504. PROHIBITION ON IMPORTS FROM AND EXPORTS TO LIBYA.**

(a) PROHIBITION ON IMPORTS.—Notwithstanding any other provision of law, the President may prohibit any article grown, produced, extracted, or manufactured in Libya from being imported into the United States.

(b) PROHIBITION ON EXPORTS.—Notwithstanding any other provision of law, the President may prohibit any goods or technology, including technical data or other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, from being exported to Libya.

(c) DEFINITION.—For purposes of this section, the term "United States", when used in a geographical sense, includes territories and possessions of the United States.

**SEC. 505. BAN ON IMPORTING GOODS AND SERVICES FROM COUNTRIES SUPPORTING TERRORISM.**

(a) AUTHORITY.—The President may ban the importation into the United States of any good or service from any country which supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations.

(b) CONSULTATION.—The President, in every possible instance, shall consult with the Congress before exercising the authority granted by this section and shall consult regularly with the Congress so long as that authority is being exercised.

(c) REPORTS.—Whenever the President exercises the authority granted by this section, he shall immediately transmit to the Congress a report specifying—

(1) the country with respect to which the authority is to be exercised and the imports to be prohibited;

(2) the circumstances which necessitate the exercise of such authority;

(3) why the President believes those circumstances justify the exercise of such authority; and

(4) why the President believes the prohibitions are necessary to deal with those circumstances.

At least once during each succeeding 6-month period after transmitting a report pursuant to this subsection, the President shall report to the Congress with respect to the actions taken, since the last such report, pursuant to this section and with respect to any

changes which have occurred concerning any information previously furnished pursuant to this subsection.

(d) DEFINITION.—For purposes of this section, the term "United States" includes territories and possessions of the United States.

## Section 73 of the Arms Export Control Act

[22 U.S.C. 2797b; P.L. 90–629, added by P.L. 101–510, and amended by P.L. 102–138, P.L. 103–236, and P.L. 104–106]

**SEC. 73. TRANSFERS OF MISSILE EQUIPMENT OR TECHNOLOGY BY FOREIGN PERSONS.**

(a) SANCTIONS.—(1) Subject to subsections (c) through (g), if the President determines that a foreign person, after the date of the enactment of this chapter, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this Act,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 11B(b)(1) of the Export Administration Act of 1979, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this Act.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) INAPPLICABILITY WITH RESPECT TO MTCR ADHERENTS.—Subsection (a) does not apply with respect to—

(1) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(2) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(c) EFFECT OF ENFORCEMENT ACTIONS BY MTCR ADHERENTS.—Sanctions set forth in subsection (a) may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(d) ADVISORY OPINIONS.—The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) WAIVER AND REPORT TO CONGRESS.—(1) In any case other than one in which an advisory opinion has been issued under subsection (d) stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives not less than 45 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) PRESUMPTION.—In determining whether to apply sanctions under subsection (a) to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 6(j)(1)(A) of the Export Administration Act of 1979, has repeatedly provided support for acts of international terrorism.

(g) ADDITIONAL WAIVER.—The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(h) EXCEPTIONS.—The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(3) to—

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production,

(C) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(D) information and technology essential to United States products or production.

## D. ECONOMIC SANCTIONS AGAINST CHEMICAL AND BIOLOGICAL WEAPONS

### Chemical and Biological Weapons Control and Warfare Elimination Act of 1991

[22 U.S.C. 5601; P.L. 102–182, title III]

**SEC. 301. SHORT TITLE.**

This title may be cited as the "Chemical and Biological Weapons Control and Warfare Elimination Act of 1991".

**SEC. 302. PURPOSES.**

The purposes of this title are—

(1) to mandate United States sanctions, and to encourage international sanctions, against countries that use chemical or biological weapons in violation of international law or use lethal chemical or biological weapons against their own nation-

als, and to impose sanctions against companies that aid in the proliferation of chemical and biological weapons;

(2) to support multilaterally coordinated efforts to control the proliferation of chemical and biological weapons;

(3) to urge continued close cooperation with the Australia Group and cooperation with other supplier nations to devise ever more effective controls on the transfer of materials, equipment, and technology applicable to chemical or biological weapons production; and

(4) to require Presidential reports on efforts that threaten United States interests or regional stability by Iran, Iraq, Syria, Libya, and others to acquire the materials and technology to develop, produce, stockpile, deliver, transfer, or use chemical or biological weapons.

**SEC. 303. MULTILATERAL EFFORTS.**

(a) MULTILATERAL CONTROLS ON PROLIFERATION.—It is the policy of the United States to seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. In furtherance of this policy, the United States shall—

(1) promote agreements banning the transfer of missiles suitable for armament with chemical or biological warheads;

(2) set as a top priority the early conclusion of a comprehensive global agreement banning the use, development, production, and stockpiling of chemical weapons;

(3) seek and support effective international means of monitoring and reporting regularly on commerce in equipment, materials, and technology applicable to the attainment of a chemical or biological weapons capability; and

(4) pursue and give full support to multilateral sanctions pursuant to United Nations Security Council Resolution 620, which declared the intention of the Security Council to give immediate consideration to imposing "appropriate and effective" sanctions against any country which uses chemical weapons in violation of international law.

(b) MULTILATERAL CONTROLS ON CHEMICAL AGENTS, PRECURSORS, AND EQUIPMENT.—It is also the policy of the United States to strengthen efforts to control chemical agents, precursors, and equipment by taking all appropriate multilateral diplomatic measures—

(1) to continue to seek a verifiable global ban on chemical weapons at the 40 nation Conference on Disarmament in Geneva;

(2) to support the Australia Group's objective to support the norms and restraints against the spread and the use of chemical warfare, to advance the negotiation of a comprehensive ban on chemical warfare by taking appropriate measures, and to protect the Australia Group's domestic industries against inadvertent association with supply of feedstock chemical equipment that could be misused to produce chemical weapons;

(3) to implement paragraph (2) by proposing steps complementary to, and not mutually exclusive of, existing multilateral efforts seeking a verifiable ban on chemical weapons, such as the establishment of—

(A) a harmonized list of export control rules and regulations to prevent relative commercial advantage and disadvantages accruing to Australia Group members,

(B) liaison officers to the Australia Group's coordinating entity from within the diplomatic missions,

(C) a close working relationship between the Australia Group and industry,

(D) a public unclassified warning list of controlled chemical agents, precursors, and equipment,

(E) information-exchange channels of suspected proliferants,

(F) a "denial" list of firms and individuals who violate the Australia Group's export control provisions, and

(G) broader cooperation between the Australia Group and other countries whose political commitment to stem the proliferation of chemical weapons is similar to that of the Australia Group; and

(4) to adopt the imposition of stricter controls on the export of chemical agents, precursors, and equipment and to adopt tougher multilateral sanctions against firms and individuals who violate these controls or against countries that use chemical weapons.

**SEC. 304. UNITED STATES EXPORT CONTROLS.**

(a) IN GENERAL.—The President shall—

(1) use the authorities of the Arms Export Control Act to control the export of those defense articles and defense services, and

(2) use the authorities of the Export Administration Act of 1979 to control the export of those goods and technology,

that the President determines would assist the government of any foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons.

[(b) Amendments to section 6 of the Export Administration Act of 1979.]

**[SEC. 305. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.**

Section 11C added to the Export Administration Act of 1979; chapter 8 added to the Arms Export Control Act.]

**SEC. 306. DETERMINATIONS REGARDING USE OF CHEMICAL OR BIOLOGICAL WEAPONS.**

(a) DETERMINATION BY THE PRESIDENT.—

(1) WHEN DETERMINATION REQUIRED; NATURE OF DETERMINATION.—Whenever persuasive information becomes available to the executive branch indicating the substantial possibility that, on or after the date of the enactment of this title, the government of a foreign country has made substantial preparation to use or has used chemical or biological weapons, the President shall, within 60 days after the receipt of such information by the executive branch, determine whether that government, on or after such date of enactment, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. Section 307 applies if the President determines that that government has so used chemical or biological weapons.

(2) MATTERS TO BE CONSIDERED.—In making the determination under paragraph (1), the President shall consider the following:

(A) All physical and circumstantial evidence available bearing on the possible use of such weapons.

(B) All information provided by alleged victims, witnesses, and independent observers.

(C) The extent of the availability of the weapons in question to the purported user.

(D) All official and unofficial statements bearing on the possible use of such weapons.

(E) Whether, and to what extent, the government in question is willing to honor a request from the Secretary General of the United Nations to grant timely access to a United Nations fact-finding team to investigate the possibility of chemical or biological weapons use or to grant such access to other legitimate outside parties.

(3) DETERMINATION TO BE REPORTED TO CONGRESS.—Upon making a determination under paragraph (1), the President shall promptly report that determination to the Congress. If the determination is that a foreign government had used chemical or biological weapons as described in that paragraph, the report shall specify the sanctions to be imposed pursuant to section 307.

(b) CONGRESSIONAL REQUESTS; REPORT.—

(1) REQUEST.—The Chairman of the Committee on Foreign Relations of the Senate (upon consultation with the ranking minority member of such committee) or the Chairman of the Committee on Foreign Affairs of the House of Representatives (upon consultation with the ranking minority member of such committee) may at any time request the President to consider whether a particular foreign government, on or after the date of the enactment of this title, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals.

(2) REPORT TO CONGRESS.—Not later than 60 days after receiving such a request, the President shall provide to the Chairman of the Committee on Foreign Relations of the Senate and the Chairman of the Committee on Foreign Affairs of the House of Representatives a written report on the information held by the executive branch which is pertinent to the issue of whether the specified government, on or after the date of the enactment of this title, has used lethal chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. This report shall contain an analysis of each of the items enumerated in subsection (a)(2).

**SEC. 307. SANCTIONS AGAINST USE OF CHEMICAL OR BIOLOGICAL WEAPONS.**

(a) INITIAL SANCTIONS.—If, at any time, the President makes a determination pursuant to section 306(a)(1) with respect to the government of a foreign country, the President shall forthwith impose the following sanctions:

(1) FOREIGN ASSISTANCE.—The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

(2) ARMS SALES.—The United States Government shall terminate—

(A) sales to that country under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and

(B) licenses for the export to that country of any item on the United States Munitions List.

(3) ARMS SALES FINANCING.—The United States Government shall terminate all foreign military financing for that country under the Arms Export Control Act.

(4) DENIAL OF UNITED STATES GOVERNMENT CREDIT OR OTHER FINANCIAL ASSISTANCE.—The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

(5) EXPORTS OF NATIONAL SECURITY-SENSITIVE GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. 2405) shall be used to prohibit the export to that country of any goods or technology on that part of the control list established under section 5(c)(1) of that Act (22 U.S.C. 2404(c)(1)).

(b) ADDITIONAL SANCTIONS IF CERTAIN CONDITIONS NOT MET.—

(1) PRESIDENTIAL DETERMINATION.—Unless, within 3 months after making a determination pursuant to section 306(a)(1) with respect to a foreign government, the President determines and certifies in writing to the Congress that—

(A) that government is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals,

(B) that government has provided reliable assurances that it will not in the future engage in any such activities, and

(C) that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or other reliable means exist, to ensure that that government is not using chemical or biological weapons in violation of international law and is not using lethal chemical or biological weapons against its own nationals,

then the President, after consultation with the Congress, shall impose on that country the sanctions set forth in at least 3 of subparagraphs (A) through (F) of paragraph (2).

(2) SANCTIONS.—The sanctions referred to in paragraph (1) are the following:

(A) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.—The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial

or technical assistance to that country by international financial institutions.

(B) BANK LOANS.—The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products.

(C) FURTHER EXPORT RESTRICTIONS.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that country of all other goods and technology (excluding food and other agricultural commodities and products).

(D) IMPORT RESTRICTIONS.—Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(E) DIPLOMATIC RELATIONS.—The President shall use his constitutional authorities to downgrade or suspend diplomatic relations between the United States and the government of that country.

(F) PRESIDENTIAL ACTION REGARDING AVIATION.—(i)(I) The President is authorized to notify the government of a country with respect to which the President has made a determination pursuant to section 306(a)(1) of his intention to suspend the authority of foreign air carriers owned or controlled by the government of that country to engage in foreign air transportation to or from the United States.

(II) Within 10 days after the date of notification of a government under subclause (I), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by that government to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(ii)(I) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country with respect to which the President has made a determination pursuant to section 306(a)(1), in accordance with the provisions of that agreement.

(II) Upon termination of an agreement under this clause, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government of that country to engage in foreign air transportation to or from the United States.

(iii) The Secretary of Transportation may provide for such exceptions from clauses (i) and (ii) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(iv) For purposes of this subparagraph, the terms "air transportation", "air carrier", "foreign air carrier", and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(c) REMOVAL OF SANCTIONS.—The President shall remove the sanctions imposed with respect to a country pursuant to this section if the President determines and so certifies to the Congress after the end of the 12-month period beginning on the date on which sanctions were initially imposed on that country pursuant to subsection (a), that—

(1) the government of that country has provided reliable assurances that it will not use chemical or biological weapons in violation of international law and will not use lethal chemical or biological weapons against its own nationals;

(2) that government is not making preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals;

(3) that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers to verify that it is not making preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals, or other reliable means exist to verify that it is not making such preparations; and

(4) that government is making restitution to those affected by any use of chemical or biological weapons in violation of international law or by any use of lethal chemical or biological weapons against its own nationals.

(d) WAIVER.—

(1) CRITERIA FOR WAIVER.—The President may waive the application of any sanction imposed with respect to a country pursuant to this section—

(A) if—

(i) in the case of any sanction other than a sanction specified in subsection (b)(2)(D) (relating to import restrictions) or (b)(2)(E) (relating to the downgrading or suspension of diplomatic relations), the President determines and certifies to the Congress that such waiver is essential to the national security interests of the United States, and if the President notifies the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect, in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, or

(ii) in the case of any sanction specified in subsection (b)(2)(D) (relating to import restrictions), the President determines and certifies to the Congress that such waiver is essential to the national security interest of the United States, and if the President no-

tifies the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect; or

(B) if the President determines and certifies to the Congress that there has been a fundamental change in the leadership and policies of the government of that country, and if the President notifies the Congress at least 20 days before the waiver takes effect.

(2) REPORT.—In the event that the President decides to exercise the waiver authority provided in paragraph (1) with respect to a country, the President's notification to the Congress under such paragraph shall include a report fully articulating the rationale and circumstances which led the President to exercise that waiver authority, including a description of the steps which the government of that country has taken to satisfy the conditions set forth in paragraphs (1) through (4) of subsection (c).

(e) CONTRACT SANCTITY.—

(1) SANCTIONS NOT APPLIED TO EXISTING CONTRACTS.—(A) A sanction described in paragraph (4) or (5) of subsection (a) or in any of subparagraphs (A) through (D) of subsection (b)(2) shall not apply to any activity pursuant to any contract or international agreement entered into before the date of the presidential determination under section 306(a)(1) unless the President determines, on a case-by-case basis, that to apply such sanction to that activity would prevent the performance of a contract or agreement that would have the effect of assisting a country in using chemical or biological weapons in violation of international law or in using lethal chemical or biological weapons against its own nationals.

(B) The same restrictions of subsection (p) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as that subsection is so redesignated by section 304(b) of this title, which are applicable to exports prohibited under section 6 of that Act shall apply to exports prohibited under subsection (a)(5) or (b)(2)(C) of this section. For purposes of this subparagraph, any contract or agreement the performance of which (as determined by the President) would have the effect of assisting a foreign government in using chemical or biological weapons in violation of international law or in using lethal chemical or biological weapons against its own nationals shall be treated as constituting a breach of the peace that poses a serious and direct threat to the strategic interest of the United States, within the meaning of subparagraph (A) of section 6(p) of that Act.

(2) SANCTIONS APPLIED TO EXISTING CONTRACTS.—The sanctions described in paragraphs (1), (2), and (3) of subsection (a) shall apply to contracts, agreements, and licenses without regard to the date the contract or agreement was entered into or the license was issued (as the case may be), except that such sanctions shall not apply to any contract or agreement entered into or license issued before the date of the presidential determination under section 306(a)(1) if the President determines

that the application of such sanction would be detrimental to the national security interests of the United States.

**SEC. 308. PRESIDENTIAL REPORTING REQUIREMENTS.**

(a) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this title, and every 12 months thereafter, the President shall transmit to the Congress a report which shall include—

(1) a description of the actions taken to carry out this title, including the amendments made by this title;

(2) a description of the current efforts of foreign countries and subnational groups to acquire equipment, materials, or technology to develop, produce, or use chemical or biological weapons, together with an assessment of the current and likely future capabilities of such countries and groups to develop, produce, stockpile, deliver, transfer, or use such weapons;

(3) a description of—

(A) the use of chemical weapons by foreign countries in violation of international law,

(B) the use of chemical weapons by subnational groups,

(C) substantial preparations by foreign countries and subnational groups to do so, and

(D) the development, production, stockpiling, or use of biological weapons by foreign countries and subnational groups; and

(4) a description of the extent to which foreign persons or governments have knowingly and materially assisted third countries or subnational groups to acquire equipment, material, or technology intended to develop, produce, or use chemical or biological weapons.

(b) PROTECTION OF CLASSIFIED INFORMATION.—To the extent practicable, reports submitted under subsection (a) or any other provision of this title should be based on unclassified information. Portions of such reports may be classified.

**[SEC. 309. REPEAL OF DUPLICATIVE PROVISIONS.]**

## Section 81 of the Arms Export Control Act

[22 U.S.C. 2798; P.L. 90–629, added by P.L. 102–182, sec. 305(b)]

**SEC. 81. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.**

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979, to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may

delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply there-

after only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

## E. EMBARGO ON TRADE WITH CUBA

### Section 620(a) of the Foreign Assistance Act of 1961, as amended

[22 U.S.C. 2370; P.L. 87–195, as amended by Foreign Assistance Acts of 1963, 1965, and P.L. 95–88]

SEC. 620. PROHIBITIONS AGAINST FURNISHING ASSISTANCE.—(a)(1) No assistance shall be furnished under this Act to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this Act of any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities not less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

## Cuban Democracy Act of 1992

## (Title XVII of the National Defense Authorization Act for Fiscal Year 1993)

[22 U.S.C. 6001 et seq.; P.L. 102–484, title XVII, as amended by P.L. 104–114]

**SEC. 1701. SHORT TITLE.**

This Act may be cited as the "Cuban Democracy Act of 1992".

**SEC. 1702. FINDINGS.**

The Congress makes the following findings:

(1) The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people's exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. It has refused to admit into Cuba the representative of the United Nations Human Rights Commission appointed to investigate human rights violations on the island.

(2) The Cuban people have demonstrated their yearning for freedom and their increasing opposition to the Castro government by risking their lives in organizing independent, democratic activities on the island and by undertaking hazardous flights for freedom to the United States and other countries.

(3) The Castro government maintains a military-dominated economy that has decreased the well-being of the Cuban people in order to enable the government to engage in military interventions and subversive activities throughout the world and, especially, in the Western Hemisphere. These have included involvement in narcotics trafficking and support for the FMLN guerrillas in El Salvador.

(4) There is no sign that the Castro regime is prepared to make any significant concessions to democracy or to undertake any form of democratic opening. Efforts to suppress dissent through intimidation, imprisonment, and exile have accelerated since the political changes that have occurred in the former Soviet Union and Eastern Europe.

(5) Events in the former Soviet Union and Eastern Europe have dramatically reduced Cuba's external support and threaten Cuba's food and oil supplies.

(6) The fall of communism in the former Soviet Union and Eastern Europe, the now universal recognition in Latin America and the Caribbean that Cuba provides a failed model of government and development, and the evident inability of Cuba's economy to survive current trends, provide the United States and the international democratic community with an unprecedented opportunity to promote a peaceful transition to democracy in Cuba.

(7) However, Castro's intransigence increases the likelihood that there could be a collapse of the Cuban economy, social upheaval, or widespread suffering. The recently concluded Cuban Communist Party Congress has underscored Castro's unwill-

ingness to respond positively to increasing pressures for reform either from within the party or without.

(8) The United States cooperated with its European and other allies to assist the difficult transitions from Communist regimes in Eastern Europe. Therefore, it is appropriate for those allies to cooperate with United States policy to promote a peaceful transition in Cuba.

**SEC. 1703. STATEMENT OF POLICY.**

It should be the policy of the United States—

(1) to seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people;

(2) to seek the cooperation of other democratic countries in this policy;

(3) to make clear to other countries that, in determining its relations with them, the United States will take into account their willingness to cooperate in such a policy;

(4) to seek the speedy termination of any remaining military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from any of the independent states of the former Soviet Union;

(5) to continue vigorously to oppose the human rights violations of the Castro regime;

(6) to maintain sanctions on the Castro regime so long as it continues to refuse to move toward democratization and greater respect for human rights;

(7) to be prepared to reduce the sanctions in carefully calibrated ways in response to positive developments in Cuba;

(8) to encourage free and fair elections to determine Cuba's political future;

(9) to request the speedy termination of any military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from the government of any other country; and

(10) to initiate immediately the development of a comprehensive United States policy toward Cuba in a post-Castro era.

**SEC. 1704. INTERNATIONAL COOPERATION.**

(a) CUBAN TRADING PARTNERS.—The President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of this Act.

(b) SANCTIONS AGAINST COUNTRIES ASSISTING CUBA.—

(1) SANCTIONS.—The President may apply the following sanctions to any country that provides assistance to Cuba:

(A) The government of such country shall not be eligible for assistance under the Foreign Assistance Act of 1961 or assistance or sales under the Arms Export Control Act.

(B) Such country shall not be eligible, under any program, for forgiveness or reduction of debt owed to the United States Government.

(2) DEFINITION OF ASSISTANCE.—For purposes of paragraph (1), the term "assistance to Cuba"—

(A) means assistance to or for the benefit of the Government of Cuba that is provided by grant, concessional sale, guaranty, or insurance, or by any other means on terms more favorable than that generally available in the applicable market, whether in the form of a loan, lease, credit, or otherwise, and such term includes subsidies for exports to Cuba and favorable tariff treatment of articles that are the growth, product, or manufacture of Cuba;

(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and

(C) does not include—

(i) donations of food to non-governmental organizations or individuals in Cuba, or

(ii) exports of medicines or medical supplies, instruments, or equipment that would be permitted under section 5(c) of this Act.

As used in this paragraph, the term "agency or instrumentality of the Government of Cuba" means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to "a foreign state" deemed to be a reference to "Cuba".

(3) APPLICABILITY OF SECTION.—This section, and any sanctions imposed pursuant to this section shall cease to apply at such time as the President makes and reports to the Congress a determination under section 8(a).

**SEC. 1705. SUPPORT FOR THE CUBAN PEOPLE.**

(a) PROVISIONS OF LAW AFFECTED.—The provisions of this section apply notwithstanding any other provision of law, including section 620(a) of the Foreign Assistance Act of 1961, and notwithstanding the exercise of authorities, before the enactment of this Act, under section 5(b) of the Trading With the Enemy Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979.

(b) DONATIONS OF FOOD.—Nothing in this or any other Act shall prohibit donations of food to non-governmental organizations or individuals in Cuba.

(c) EXPORTS OF MEDICINES AND MEDICAL SUPPLIES.—Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted—

(1) except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act;

(2) except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(3) except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; and

(4) except in a case in which the item to be exported could be used in the production of any biotechnological product.

(d) REQUIREMENTS FOR CERTAIN EXPORTS.—

(1) ONSITE VERIFICATIONS.—(A) Subject to subparagraph (B), an export may be made under subsection (c) only if the President determines that the United States Government is able to verify, by onsite inspections and other appropriate means, that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.

(B) EXCEPTION.—Subparagraph (A) does not apply to donations to nongovernmental organizations in Cuba of medicines for humanitarian purposes.

(2) LICENSES.—Exports permitted under subsection (c) shall be made pursuant to specific licenses issued by the United States Government.

(e) TELECOMMUNICATIONS SERVICES AND FACILITIES.—

(1) TELECOMMUNICATIONS SERVICES.—Telecommunications services between the United States and Cuba shall be permitted.

(2) TELECOMMUNICATIONS FACILITIES.—Telecommunications facilities are authorized in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) LICENSING OF PAYMENTS TO CUBA.—(A) The President may provide for the issuance of licenses for the full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services authorized by this subsection, in a manner that is consistent with the public interest and the purposes of this Act, except that this paragraph shall not require any withdrawal from any account blocked pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(B) If only partial payments are made to Cuba under subparagraph (A), the amounts withheld from Cuba shall be deposited in an account in a banking institution in the United States. Such account shall be blocked in the same manner as any other account containing funds in which Cuba has any interest, pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(4) AUTHORITY OF FEDERAL COMMUNICATIONS COMMISSION.—Nothing in this subsection shall be construed to supersede the authority of the Federal Communications Commission.

(5) PROHIBITION ON INVESTMENT IN DOMESTIC TELECOMMUNICATIONS SERVICES.—Nothing in this subsection shall be construed to authorize the investment by any United states person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an "investment" in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

(6) REPORTS TO CONGRESS.—The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result

of the provision of telecommunications services authorized by this subsection.

(f) DIRECT MAIL DELIVERY TO CUBA.—The United States Postal Service shall take such actions as are necessary to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the 2 countries, the use of charter service providers.

(g) ASSISTANCE TO SUPPORT DEMOCRACY IN CUBA.—The United States Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

**SEC. 1706. SANCTIONS.**

(a) PROHIBITION ON CERTAIN TRANSACTIONS BETWEEN CERTAIN UNITED STATES FIRMS AND CUBA.—

(1) PROHIBITION.—Notwithstanding any other provision of law, no license may be issued for any transaction described in section 515.559 of title 31, Code of Federal Regulations, as in effect on July 1, 1989.

(2) APPLICABILITY TO EXISTING CONTRACTS.—Paragraph (1) shall not affect any contract entered into before the date of the enactment of this Act.

(b) PROHIBITIONS ON VESSELS.—

(1) VESSELS ENGAGING IN TRADE.—Beginning on the 61st day after the date of the enactment of this Act, a vessel which enters a port or place in Cuba to engage in the trade of goods or services may not, within 180 days after departure from such port or place in Cuba, load or unload any freight at any place in the United States, except pursuant to a license issued by the Secretary of the Treasury.

(2) VESSELS CARRYING GOODS OR PASSENGERS TO OR FROM CUBA.—Except as specifically authorized by the Secretary of the Treasury, a vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port. For purposes of this paragraph, the term "Cuban national" means a national of Cuba, as the term "national" is defined in section 515.302 of title 31, Code of Federal Regulations, as of August 1, 1992.

(3) INAPPLICABILITY OF SHIP STORES GENERAL LICENSE.—No commodities which may be exported under a general license described in section 771.9 of title 15, Code of Federal Regulations, as in effect on May 1, 1992, may be exported under a general license to any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest.

(4) DEFINITIONS.—As used in this subsection—

(A) the term "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft; and

(B) the term "United States" includes the territories and possessions of the United States and the customs waters of the United States (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)).

(c) RESTRICTIONS ON REMITTANCES TO CUBA.—The President shall establish strict limits on remittances to Cuba by United States persons for the purpose of financing the travel of Cubans to the United States, in order to ensure that such remittances reflect only the reasonable costs associated with such travel, and are not used by the Government of Cuba as a means of gaining access to United States currency.

(d) CLARIFICATION OF APPLICABILITY OF SANCTIONS.—The prohibitions contained in subsections (a), (b), and (c) shall not apply with respect to any activity otherwise permitted by section 5 or section 7 of this Act or any activity which may not be regulated or prohibited under section 5(b)(4) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)(4)).

**SEC. 1707. POLICY TOWARD A TRANSITIONAL CUBAN GOVERNMENT.**

Food, medicine, and medical supplies for humanitarian purposes should be made available for Cuba under the Foreign Assistance Act of 1961 and the Agricultural Trade Development and Assistance Act of 1954 if the President determines and certifies to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that the government in power in Cuba—

(1) has made a public commitment to hold free and fair elections for a new government within 6 months and is proceeding to implement that decision;

(2) has made a public commitment to respect, and is respecting, internationally recognized human rights and basic democratic freedoms; and

(3) is not providing weapons or funds to any group, in any other country, that seeks the violent overthrow of the government of that country.

**SEC. 1708. POLICY TOWARD A DEMOCRATIC CUBAN GOVERNMENT.**

(a) WAIVER OF RESTRICTIONS.—The President may waive the requirements of section 6 if the President determines and reports to the Congress that the Government of Cuba—

(1) has held free and fair elections conducted under internationally recognized observers;

(2) has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;

(3) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(4) is moving toward establishing a free market economic system; and

(5) has committed itself to constitutional change that would ensure regular free and fair elections that meet the requirements of paragraph (2).

(b) POLICIES.—If the President makes a determination under subsection (a), the President shall take the following actions with respect to a Cuban Government elected pursuant to elections described in subsection (a):

(1) To encourage the admission or reentry of such government to international organizations and international financial institutions.

(2) To provide emergency relief during Cuba's transition to a viable economic system.

(3) To take steps to end the United States trade embargo of Cuba.

**SEC. 1709. EXISTING CLAIMS NOT AFFECTED.**

Except as provided in section 5(a), nothing in this Act affects the provisions of section 620(a)(2) of the Foreign Assistance Act of 1961.

**SEC. 1710. ENFORCEMENT.**

(a) ENFORCEMENT AUTHORITY.—The authority to enforce this Act shall be carried out by the Secretary of the Treasury. The Secretary of the Treasury shall exercise the authorities of the Trading With the Enemy Act in enforcing this Act. In carrying out this subsection, the Secretary of the Treasury shall take the necessary steps to ensure that activities permitted under section 5 are carried out for the purposes set forth in this Act and not for purposes of the accumulation by the Cuban Government of excessive amounts of United States currency or the accumulation of excessive profits by any person or entity.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this Act.

(c) PENALTIES UNDER THE TRADING WITH THE ENEMY ACT.—[Amends section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16):

[(1) by inserting "(a)" before "That whoever"; and

(2) by adding at the end the following:

"(b)(1) The Secretary of the Treasury may impose a civil penalty of not more than $50,000 on any person who violates any license, order, rule, or regulation issued under this Act.

"(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

"(3) The penalties provided under this subsection may not be imposed for—

"(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

"(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

"(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

"(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.".]

(d) APPLICABILITY OF PENALTIES.—The penalties set forth in section 16 of the Trading With the Enemy Act shall apply to violations

of this Act to the same extent as such penalties apply to violations under that Act.

(e) OFFICE OF FOREIGN ASSETS CONTROL.—The Department of the Treasury shall establish and maintain a branch of the Office of Foreign Assets Control in Miami, Florida, in order to strengthen the enforcement of this Act.

**SEC. 1711. DEFINITION.**

As used in this Act, the term "United States person" means any United States citizen or alien admitted for permanent residence in the United States, and any corporation, partnership, or other organization organized under the laws of the United States.

**SEC. 1712. EFFECTIVE DATE.**

This Act shall take effect on the date of the enactment of this Act.

## Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

### [Excerpts]

[22 U.S.C. 6032, 6040, and 6062–6064; P.L. 104–114]

### TITLE I—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

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**SEC. 102. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA.**

(a) POLICY.—

(1) RESTRICTIONS BY OTHER COUNTRIES.—The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) SANCTIONS ON OTHER COUNTRIES.—The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

(b) DIPLOMATIC EFFORTS.—The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) EXISTING REGULATIONS.—The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) TRADING WITH THE ENEMY ACT.—

[(1) amends section 16(b) of the Trading With the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102–484, to read as follows:

["(b)(1) A civil penalty of not to exceed $50,000 may be imposed by the Secretary of the Treasury on any person

who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

[“(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

[“(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

[“(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.”.

[(2) Further amends section 16 of the Trading With the Enemy Act by striking subsection (b), as added by Public Law 102–393, concerning criminal forfeiture.]

(e) DENIAL OF VISAS TO CERTAIN CUBAN NATIONALS.—It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees of the Cuban Government or of the Communist Party of Cuba.

[(f) Amends section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) concerning coverage of debt-for-equity swaps by the economic embargo of Cuba.

[(g) Amends section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) concerning telecommunications services.]

(h) CODIFICATION OF ECONOMIC EMBARGO.—The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act. the term “agency” in section 551(1) of title 5, United States Code.

* * * * * * *

**SEC. 110. IMPORTATION SAFEGUARD AGAINST CERTAIN CUBAN PRODUCTS.**

(a) PROHIBITION ON IMPORT OF AND DEALINGS IN CUBAN PRODUCTS.—The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that—

(1) is of Cuban origin;

(2) is or has been located in or transported from or through Cuba; or

(3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) EFFECT OF NAFTA.—The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

(1) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . . Nothing in the NAFTA would operate to override this prohibition.".

(2) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries.".

(c) RESTRICTION OF SUGAR IMPORTS.—The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99–198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) ASSURANCES REGARDING SUGAR PRODUCTS.—Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

## TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

* * * * * * *

**SEC. 202. ASSISTANCE FOR THE CUBAN PEOPLE.**

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) EFFECT ON OTHER LAWS.—Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) PLAN FOR ASSISTANCE.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) TYPES OF ASSISTANCE.—Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) TRANSITION GOVERNMENT.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs,

as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 201.

(C) MILITARY ADJUSTMENT ASSISTANCE.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) STRATEGY FOR DISTRIBUTION.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) DISTRIBUTION.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) INTERNATIONAL EFFORTS.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) COMMUNICATION WITH THE CUBAN PEOPLE.—The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(g) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) REPORT ON TRADE AND INVESTMENT RELATIONS.—

(1) REPORT TO CONGRESS.—The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes—

(A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible—

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) CONSULTATION.—The President shall consult with the Committee on Ways and Means of the House of Representa-

tives and the Committee on Finance of the Senate and the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

**SEC. 203. COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING.**

(a) COORDINATING OFFICIAL.—The President shall designate a coordinating official who shall be responsible for—

(1) implementing the strategy for distributing assistance described in section 202(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) UNITED STATES-CUBA COUNCIL.—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) IMPLEMENTATION OF PLAN; REPORTS TO CONGRESS.—

(1) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) REPORTS TO CONGRESS.—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.—The President shall, upon determining that a democratically elected government in Cuba is in

power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) ANNUAL REPORTS TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) REPROGRAMMING.—Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1).

**SEC. 204. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.**

(a) PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) SUSPENSION OF CERTAIN PROVISIONS OF LAW.—In carrying out subsection (a), the President may suspend the enforcement of—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);

(4) section 902(c) of the Food Security Act of 1985; and

(5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) ADDITIONAL PRESIDENTIAL ACTIONS.—Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) CONFORMING AMENDMENTS.—On the date on which the President submits a determination under section 203(c)(3)—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking "Republic of Cuba";

(3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.—

(1) REVIEW.—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) JOINT RESOLUTIONS.—For purposes of this subsection, 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 disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on ——.", with the blank space being filled with the appropriate date.

(3) REFERRAL TO COMMITTEES.—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) PROCEDURES.—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

## F. ECONOMIC SANCTIONS AGAINST IRAQ, IRAN, AND LIBYA

### Iraq Sanctions Act of 1990

### (Sections 586–586I of the Foreign Assistance and Related Programs Appropriation Act, 1991)

### [Excerpts]

[50 U.S.C. 1701 note; P.L. 101–513]

**SEC. 586. SHORT TITLE.**

Sections 586 through 586J of this Act may be cited as the "Iraq Sanctions Act of 1990".

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**SEC. 586C. TRADE EMBARGO AGAINST IRAQ.**

(a) CONTINUATION OF EMBARGO.—Except as otherwise provided in this section, the President shall continue to impose the trade embargo and other economic sanctions with respect to Iraq and Kuwait that the United States is imposing, in response to Iraq's invasion of Kuwait, pursuant to Executive Orders Numbered 12724 and 12725 (August 9, 1990) and, to the extent they are still in effect, Executive Orders Numbered 12722 and 12723 (August 2, 1990). Notwithstanding any other provision of law, no funds, credits, guarantees, or insurance appropriated or otherwise made available by this or any other Act for fiscal year 1991 or any fiscal year thereafter shall be used to support or administer any financial or commercial operation of any United States Government department, agency, or other entity, or of any person subject to the jurisdiction of the United States, for the benefit of the Government of Iraq, its agencies or instrumentalities, or any person working on behalf of the Government of Iraq, contrary to the trade embargo and other economic sanctions imposed in accordance with this section.

(b) HUMANITARIAN ASSISTANCE.—To the extent that transactions involving foodstuffs or payments for foodstuffs are exempted "in humanitarian circumstances" from the prohibitions established by the United States pursuant to United Nations Security Council Resolution 661 (1990), those exemptions shall be limited to foodstuffs that are to be provided consistent with United Nations Security Council Resolution 666 (1990) and other relevant Security Council resolutions.

(c) NOTICE TO CONGRESS OF EXCEPTIONS TO AND TERMINATION OF SANCTIONS.—

(1) NOTICE OF REGULATIONS.—Any regulations issued after the date of enactment of this Act with respect to the economic sanctions imposed with respect to Iraq and Kuwait by the United States under Executive Orders Numbered 12722 and 12723 (August 2, 1990) and Executive Orders Numbered 12724 and 12725 (August 9, 1990) shall be submitted to the Congress before these regulations take effect.

(2) NOTICE OF TERMINATION OF SANCTIONS.—The President shall notify the Congress at least 15 days before the termi-

nation, in whole or in part, of any sanction imposed with respect to Iraq or Kuwait pursuant to those Executive orders.

(d) RELATION TO OTHER LAWS.—

(1) SANCTIONS LEGISLATION.—The sanctions that are described in subsection (a) are in addition to, and not in lieu of the sanctions provided for in section 586G of this Act or any other provision of law.

(2) NATIONAL EMERGENCIES AND UNITED NATIONS LEGISLATION.—Nothing in this section supersedes any provision of the National Emergencies Act or any authority of the President under the International Emergency Economic Powers Act or section 5(a) of the United Nations Participation Act of 1945.

**SEC. 586D. COMPLIANCE WITH UNITED NATIONS SANCTIONS AGAINST IRAQ.**

(a) DENIAL OF ASSISTANCE.—None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including title IV of chapter 2 of part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that—

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

(b) IMPORT SANCTIONS.—If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not prohibited—

(1) the importation of products of Iraq into its customs territory, and

(2) the export of its products to Iraq.

**SEC. 586E. PENALTIES FOR VIOLATIONS OF EMBARGO.**

Notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b))—

(1) a civil penalty of not to exceed $250,000 may be imposed on any person who, after the date of enactment of this Act, violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order; and

(2) whoever, after the date of enactment of this Act, willfully violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order—

(A) shall, upon conviction, be fined not more than $1,000,000, if a person other than a natural person; or

(B) if a natural person, shall, upon conviction, be fined not more than $1,000,000, be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (2) may be punished by imposition of the fine or imprisonment (or both) specified in subparagraph (B) of that paragraph.

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**SEC. 586G. SANCTIONS AGAINST IRAQ.**

(a) IMPOSITION.—Except as provided in section 586H, the following sanctions shall apply with respect to Iraq:

(1) FMS SALES.—The United States Government shall not enter into any sale with Iraq under the Arms Export Control Act.

(2) COMMERCIAL ARMS SALES.—Licenses shall not be issued for the export to Iraq of any item on the United States Munitions List.

(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be used to prohibit the export to Iraq of any goods or technology listed pursuant to that section or section 5(c)(1) of that Act (50 U.S.C. App. 2404(c)(1)) on the control list provided for in section 4(b) of that Act (50 U.S.C. App. 2403(b)).

(4) NUCLEAR EQUIPMENT, MATERIALS, AND TECHNOLOGY.—

(A) NRC LICENSES.—The Nuclear Regulatory Commission shall not issue any license or other authorization under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) for the export to Iraq of any source or special nuclear material, any production or utilization facility, any sensitive nuclear technology, any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109b of the Atomic Energy Act of 1954 (42 U.S.C. 2139(b)), or any other material or technology requiring such a license or authorization.

(B) DISTRIBUTION OF NUCLEAR MATERIALS.—The authority of the Atomic Energy Act of 1954 shall not be used to distribute any special nuclear material, source material, or byproduct material to Iraq.

(C) DOE AUTHORIZATIONS.—The Secretary of Energy shall not provide a specific authorization under section 57b. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)(2)) for any activity that would constitute directly or indirectly engaging in Iraq in activities that require a specific authorization under that section.

(5) ASSISTANCE FROM INTERNATIONAL FINANCIAL INSTITUTIONS.—The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(6) ASSISTANCE THROUGH THE EXPORT-IMPORT BANK.—Credits and credit guarantees through the Export-Import Bank of the United States shall be denied to Iraq.

(7) ASSISTANCE THROUGH THE COMMODITY CREDIT CORPORATION.—Credit, credit guarantees, and other assistance through the Commodity Credit Corporation shall be denied to Iraq.

(8) FOREIGN ASSISTANCE.—All forms of assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 and following) other than emergency assistance for medical supplies and other forms of emergency humanitarian assistance, and under the Arms Exports Control Act (22 U.S.C. 2751 and following) shall be denied to Iraq.

(b) CONTRACT SANCTITY.—For purposes of the export controls imposed pursuant to subsection (a)(3), the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be deemed to be August 1, 1990.

**SEC. 586H. WAIVER AUTHORITY.**

(a) IN GENERAL.—The President may waive the requirements of any paragraph of section 586G(a) if the President makes a certification under subsection (b) or subsection (c).

(b) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI POLICIES AND ACTIONS.—The authority of subsection (a) may be exercised 60 days after the President certifies to the Congress that—

(1) the Government of Iraq—

(A) has demonstrated, through a pattern of conduct, substantial improvement in its respect for internationally recognized human rights;

(B) is not acquiring, developing, or manufacturing (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses; and

(C) does not provide support for international terrorism;

(2) the Government of Iraq is in substantial compliance with its obligations under international law, including—

(A) the Charter of the United Nations;

(B) the International Covenant on Civil and Political Rights (done at New York, December 16, 1966) and the International Covenant on Economic, Social, and Cultural Rights (done at New York, December 16, 1966);

(C) the Convention on the Prevention and Punishment of the Crime of Genocide (done at Paris, December 9, 1948);

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (done at Geneva, June 17, 1925);

(E) the Treaty on the Non-Proliferation of Nuclear Weapons (done at Washington, London, and Moscow, July 1, 1968); and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (done at Washington, London, and Moscow, April 10, 1972); and

(3) the President has determined that it is essential to the national interests of the United States to exercise the authority of subsection (a).

(c) CERTIFICATION OF FUNDAMENTAL CHANGES IN IRAQI LEADERSHIP AND POLICIES.—The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that—

(1) there has been a fundamental change in the leadership of the Government of Iraq; and

(2) the new Government of Iraq has provided reliable and credible assurance that—

(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

(C) it is not and will not provide support for international terrorism; and

(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

(d) INFORMATION TO BE INCLUDED IN CERTIFICATIONS.—Any certification under subsection (b) or (c) shall include the justification for each determination required by that subsection. The certification shall also specify which paragraphs of section 586G(a) the President will waive pursuant to that certification.

**SEC. 586I. DENIAL OF LICENSES FOR CERTAIN EXPORTS TO COUNTRIES ASSISTING IRAQ'S ROCKET OR CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS CAPABILITY.**

(a) RESTRICTION ON EXPORT LICENSES.—None of the funds appropriated by this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines is assisting, or whose government officials the President determines are assisting, Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability.

(b) NEGOTIATIONS.—The President is directed to begin immediate negotiations with those governments with which the United States has bilateral supercomputer agreements, including the Government of the United Kingdom and the Government of Japan, on conditions restricting the transfer to Iraq of supercomputer or associated technology.

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## Iran-Iraq Arms Non-Proliferation Act of 1992

## (Title XVI of the National Defense Authorization Act for Fiscal Year 1993)

[50 U.S.C. 1701 note; P.L. 102–484, title XVI, and P.L. 104–106, section 1408(a)–(c)]

**SEC. 1601. SHORT TITLE.**

This title may be cited as the "Iran-Iraq Arms Non-Proliferation Act of 1992".

**SEC. 1602. UNITED STATES POLICY.**

(a) IN GENERAL.—It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

(b) SANCTIONS.—(1) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961, the Nuclear Non-Proliferation Act of 1978, the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, chapter 7 of the Arms Export Control Act, and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) PUBLIC IDENTIFICATION.—The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

**SEC. 1603. APPLICATION TO IRAN OF CERTAIN IRAQ SANCTIONS.**

The sanctions against Iraq specified in paragraphs (1) through (4) of section 586G(a) of the Iraq Sanctions Act of 1990 (as contained in Public Law 101–513), including denial of export licenses for United States persons and prohibitions on United States Government sales, shall be applied to the same extent and in the same manner with respect to Iran.

**SEC. 1604. SANCTIONS AGAINST CERTAIN PERSONS.**

(a) PROHIBITION.—If any person transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) MANDATORY SANCTIONS.—The sanctions to be imposed pursuant to subsection (a) are as follows.

(1) PROCUREMENT SANCTION.—For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.

(2) EXPORT SANCTION.—For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

**SEC. 1605. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.**

(a) PROHIBITION.—If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country), to acquire chemical, biological or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then—

(1) the sanctions described in subsection (b) shall be imposed on such country; and

(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c).

(b) MANDATORY SANCTIONS.—Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows:

(1) SUSPENSION OF UNITED STATES ASSISTANCE.—The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country.

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.—The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country.

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS.—The United States shall suspend, for a period of one year, compliance with its obligations under any memorandum of understanding with the sanctioned country for the codevelopment or coproduction of any item on the United States Munitions List (established under section 38 of the arms Export Control Act), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part.

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS.—The United States shall suspend, for a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual-use technology between the United States and the sanctioned country that does not directly contribute to the security of the United States, and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period.

(5) UNITED STATES MUNITIONS LIST.—No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctioned country for a period of one year.

(c) DISCRETIONARY SANCTION.—The sanction referred to in subsection (a)(2) is as follows:

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Except as provided in paragraph (2), the President may exercise, in accordance with the provisions of that Act, the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country.

(2) EXCEPTION.—Paragraph (1) does not apply with respect to urgent humanitarian assistance.

**SEC. 1606. WAIVER.**

The President may waive the requirement to impose a sanction described in section 1603, in the case of Iran, or a sanction described in section 1604(b) or 1605(b), in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and detailed rationale for such determination.

**SEC. 1607. REPORTING REQUIREMENT.**

(a) ANNUAL REPORT.—Beginning one year after the date of the enactment of this Act, and every 12 months thereafter, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report detailing—

(1) all transfers or retransfers made by any person or foreign government during the preceding 12-month period which are subject to any sanction under this title; and

(2) the actions the President intends to under take or has undertaken pursuant to this title with respect to each such transfer.

(b) REPORT ON INDIVIDUAL TRANSFERS.—Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this title, the President shall, within 30 days after such transfer, submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Service and Foreign Affairs of the House of Representatives a report—

(1) identifying the person or government and providing the details of the transfer; and

(2) describing the actions the President intends to undertake or has undertaken under the provisions of this title with respect to each such transfer.

(c) FORM OF TRANSMITTAL.—Reports required by this section may be submitted in classified as well as in unclassified form.

**SEC. 1608. DEFINITIONS.**

For purposes of this title:

(1) The term "advanced conventional weapons" includes—

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military

satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways;

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this title.

(2) The term "cruise missile" means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag.

(3) The term "goods or technology" means—

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data.

(4) The term "person" means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries.

(5) The term "sanctioned country" means a country against which sanctions are required to be imposed pursuant to section 1605.

(6) The term "sanctioned person" means a person that makes a transfer described in section 1604(a).

(7) The term "United States assistance" means—

(A) any assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), other than urgent humanitarian assistance or medicine;

(B) sales and assistance under the Arms Export Control Act;

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and

(D) financing under the Export-Import Bank Act.

## Compliance With United Nations Sanctions Against Iraq

[50 U.S.C. 1701 note; P.L. 104–107, sec. 534]

SEC. 534. (a) DENIAL OF ASSISTANCE.—None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including title IV of chapter 2 of part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq, Serbia or Montenegro unless the President determines and so certifies to the Congress that—

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

(b) IMPORT SANCTIONS.—If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, Serbia, or Montenegro, as the case may be, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not prohibited—

(1) the importation of products of Iraq, Serbia, or Montenegro into its customs territory, and

(2) the export of its products to Iraq, Serbia, or Montenegro, as the case may be.

## Iran and Libya Sanctions Act of 1996

[50 U.S.C. 1701 note; P.L. 104–172]

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Iran and Libya Sanctions Act of 1996".

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) The efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism endanger the national security and foreign policy interests of the United States and those countries with which the United States shares common strategic and foreign policy objectives.

(2) The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.

(3) The Government of Iran uses its diplomatic facilities and quasi-governmental institutions outside of Iran to promote acts of international terrorism and assist its nuclear, chemical, biological, and missile weapons programs.

(4) The failure of the Government of Libya to comply with Resolutions 731, 748, and 883 of the Security Council of the United Nations, its support of international terrorism, and its efforts to acquire weapons of mass destruction constitute a threat to international peace and security that endangers the national security and foreign policy interests of the United States and those countries with which it shares common strategic and foreign policy objectives.

**SEC. 3. DECLARATION OF POLICY.**

(a) POLICY WITH RESPECT TO IRAN.—The Congress declares that it is the policy of the United States to deny Iran the ability to sup-

port acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

(b) POLICY WITH RESPECT TO LIBYA.—The Congress further declares that it is the policy of the United States to seek full compliance by Libya with its obligations under Resolutions 731, 748, and 883 of the Security Council of the United Nations, including ending all support for acts of international terrorism and efforts to develop or acquire weapons of mass destruction.

**SEC. 4. MULTILATERAL REGIME.**

(a) MULTILATERAL NEGOTIATIONS.—In order to further the objectives of section 3, the Congress urges the President to commence immediately diplomatic efforts, both in appropriate international fora such as the United Nations, and bilaterally with allies of the United States, to establish a multilateral sanctions regime against Iran, including provisions limiting the development of petroleum resources, that will inhibit Iran's efforts to carry out activities described in section 2.

(b) REPORTS TO CONGRESS.—The President shall report to the appropriate congressional committees, not later than 1 year after the date of the enactment of this Act, and periodically thereafter, on the extent that diplomatic efforts described in subsection (a) have been successful. Each report shall include—

(1) the countries that have agreed to undertake measures to further the objectives of section 3 with respect to Iran, and a description of those measures; and

(2) the countries that have not agreed to measures described in paragraph (1), and, with respect to those countries, other measures (in addition to that provided in subsection (d)) the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

(c) WAIVER.—The President may waive the application of section 5(a) with respect to nationals of a country if—

(1) that country has agreed to undertake substantial measures, including economic sanctions, that will inhibit Iran's efforts to carry out activities described in section 2 and information required by subsection (b)(1) has been included in a report submitted under subsection (b); and

(2) the President, at least 30 days before the waiver takes effect, notifies the appropriate congressional committees of his intention to exercise the waiver.

(d) ENHANCED SANCTION.—

(1) SANCTION.—With respect to nationals of countries except those with respect to which the President has exercised the waiver authority of subsection (c), at any time after the first report is required to be submitted under subsection (b), section 5(a) shall be applied by substituting "$20,000,000" for "$40,000,000" each place it appears, and by substituting "$5,000,000" for "$10,000,000".

(2) REPORT TO CONGRESS.—The President shall report to the appropriate congressional committees any country with respect to which paragraph (1) applies.

(e) INTERIM REPORT ON MULTILATERAL SANCTIONS; MONITORING.—The President, not later than 90 days after the date of the enactment of this Act, shall report to the appropriate congressional committees on—

(1) whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran or Libya;

(2) the extent and duration of each instance of the application of such sanctions; and

(3) the disposition of any decision with respect to such sanctions by the World Trade Organization or its predecessor organization.

**SEC. 5. IMPOSITION OF SANCTIONS.**

(a) SANCTIONS WITH RESPECT TO IRAN.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of $40,000,000 or more (or any combination of investments of at least $10,000,000 each, which in the aggregate equals or exceeds $40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Iran's ability to develop petroleum resources of Iran.

(b) MANDATORY SANCTIONS WITH RESPECT TO LIBYA.—

(1) VIOLATIONS OF PROHIBITED TRANSACTIONS.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, exported, transferred, or otherwise provided to Libya any goods, services, technology, or other items the provision of which is prohibited under paragraph 4(b) or 5 of Resolution 748 of the Security Council of the United Nations, adopted March 31, 1992, or under paragraph 5 or 6 of Resolution 883 of the Security Council of the United Nations, adopted November 11, 1993, if the provision of such items significantly and materially—

(A) contributed to Libya's ability to acquire chemical, biological, or nuclear weapons or destabilizing numbers and types of advanced conventional weapons or enhanced Libya's military or paramilitary capabilities;

(B) contributed to Libya's ability to develop its petroleum resources; or

(C) contributed to Libya's ability to maintain its aviation capabilities.

(2) INVESTMENTS THAT CONTRIBUTE TO THE DEVELOPMENT OF PETROLEUM RESOURCES.—Except as provided in subsection (f), the President shall impose 2 or more of the sanctions described in paragraphs (1) through (6) of section 6 if the President determines that a person has, with actual knowledge, on or after the date of the enactment of this Act, made an investment of $40,000,000 or more (or any combination of investments of at

least $10,000,000 each, which in the aggregate equals or exceeds $40,000,000 in any 12-month period), that directly and significantly contributed to the enhancement of Libya's ability to develop its petroleum resources.

(c) PERSONS AGAINST WHICH THE SANCTIONS ARE TO BE IMPOSED.—The sanctions described in subsections (a) and (b) shall be imposed on—

(1) any person the President determines has carried out the activities described in subsection (a) or (b); and

(2) any person the President determines—

(A) is a successor entity to the person referred to in paragraph (1);

(B) is a parent or subsidiary of the person referred to in paragraph (1) if that parent or subsidiary, with actual knowledge, engaged in the activities referred to in paragraph (1); or

(C) is an affiliate of the person referred to in paragraph (1) if that affiliate, with actual knowledge, engaged in the activities referred to in paragraph (1) and if that affiliate is controlled in fact by the person referred to in paragraph (1).

For purposes of this Act, any person or entity described in this subsection shall be referred to as a "sanctioned person".

(d) PUBLICATION IN FEDERAL REGISTER.—The President shall cause to be published in the Federal Register a current list of persons and entities on whom sanctions have been imposed under this Act. The removal of persons or entities from, and the addition of persons and entities to, the list, shall also be so published.

(e) PUBLICATION OF PROJECTS.—The President shall cause to be published in the Federal Register a list of all significant projects which have been publicly tendered in the oil and gas sector in Iran.

(f) EXCEPTIONS.—The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines in writing that the person to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such articles or services are essential to the national security under defense coproduction agreements;

(2) in the case of procurement, to eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b)(1) of that Act (19 U.S.C. 2511(b)(1));

(3) to products, technology, or services provided under contracts entered into before the date on which the President publishes in the Federal Register the name of the person on whom the sanctions are to be imposed;

(4) to—

(A) spare parts which are essential to United States products or production;

(B) component parts, but not finished products, essential to United States products or production; or

(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(6)[2] to information and technology essential to United States products or production; or

(7) to medicines, medical supplies, or other humanitarian items.

**SEC. 6. DESCRIPTION OF SANCTIONS.**

The sanctions to be imposed on a sanctioned person under section 5 are as follows:

(1) EXPORT-IMPORT BANK ASSISTANCE FOR EXPORTS TO SANCTIONED PERSONS.—The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.

(2) EXPORT SANCTION.—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—

(i) the Export Administration Act of 1979;

(ii) the Arms Export Control Act;

(iii) the Atomic Energy Act of 1954; or

(iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.

(3) LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS.—The United States Government may prohibit any United States financial institution from making loans or providing credits to any sanctioned person totaling more than $10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

(4) PROHIBITIONS ON FINANCIAL INSTITUTIONS.—The following prohibitions may be imposed against a sanctioned person that is a financial institution:

(A) PROHIBITION ON DESIGNATION AS PRIMARY DEALER.—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.

[2] There is no subsection (5) in original.

(B) PROHIBITION ON SERVICE AS A REPOSITORY OF GOVERNMENT FUNDS.—Such financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds. The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.

(5) PROCUREMENT SANCTION.—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.

(6) ADDITIONAL SANCTIONS.—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, in accordance with the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

**SEC. 7. ADVISORY OPINIONS.**

The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity.

**SEC. 8. TERMINATION OF SANCTIONS.**

(a) IRAN.—The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran—

(1) has ceased its efforts to design, develop, manufacture, or acquire—

(A) a nuclear explosive device or related materials and technology;

(B) chemical and biological weapons; and

(C) ballistic missiles and ballistic missile launch technology; and

(2) has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979, to have repeatedly provided support for acts of international terrorism.

(b) LIBYA.—The requirement under section 5(b) to impose sanctions shall no longer have force or effect with respect to Libya if the President determines and certifies to the appropriate congressional committees that Libya has fulfilled the requirements of United Nations Security Council Resolution 731, adopted January 21, 1992, United Nations Security Council Resolution 748, adopted March 31, 1992, and United Nations Security Council Resolution 883, adopted November 11, 1993.

**SEC. 9. DURATION OF SANCTIONS; PRESIDENTIAL WAIVER.**

(a) DELAY OF SANCTIONS.—

(1) CONSULTATIONS.—If the President makes a determination described in section 5(a) or 5(b) with respect to a foreign person, the Congress urges the President to initiate consultations

immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions under this Act.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue consultations under paragraph (1) with the government concerned, the President may delay imposition of sanctions under this Act for up to 90 days. Following such consultations, the President shall immediately impose sanctions unless the President determines and certifies to the Congress that the government has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the foreign person in the activities that resulted in the determination by the President under section 5(a) or 5(b) concerning such person.

(3) ADDITIONAL DELAY IN IMPOSITION OF SANCTIONS.—The President may delay the imposition of sanctions for up to an additional 90 days if the President determines and certifies to the Congress that the government with primary jurisdiction over the person concerned is in the process of taking the actions described in paragraph (2).

(4) REPORT TO CONGRESS.—Not later than 90 days after making a determination under section 5(a) or 5(b), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign government under this subsection, and the basis for any determination under paragraph (3).

(b) DURATION OF SANCTIONS.—A sanction imposed under section 5 shall remain in effect—

(1) for a period of not less than 2 years from the date on which it is imposed; or

(2) until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least 1 year.

(c) PRESIDENTIAL WAIVER.—

(1) AUTHORITY.—The President may waive the requirement in section 5 to impose a sanction or sanctions on a person described in section 5(c), and may waive the continued imposition of a sanction or sanctions under subsection (b) of this section, 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important to the national interest of the United States to exercise such waiver authority.

(2) CONTENTS OF REPORT.—Any report under paragraph (1) shall provide a specific and detailed rationale for the determination under paragraph (1), including—

(A) a description of the conduct that resulted in the determination under section 5(a) or (b), as the case may be;

(B) in the case of a foreign person, an explanation of the efforts to secure the cooperation of the government with primary jurisdiction over the sanctioned person to termi-

nate or, as appropriate, penalize the activities that resulted in the determination under section 5(a) or (b), as the case may be;

(C) an estimate as to the significance—

(i) of the provision of the items described in section 5(a) to Iran's ability to develop its petroleum resources, or

(ii) of the provision of the items described in section 5(b)(1) to the abilities of Libya described in subparagraph (A), (B), or (C) of section 5(b)(1), or of the investment described in section 5(b)(2) on Libya's ability to develop its petroleum resources, as the case may be; and

(D) a statement as to the response of the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or (b).

(3) EFFECT OF REPORT ON WAIVER.—If the President makes a report under paragraph (1) with respect to a waiver of sanctions on a person described in section 5(c), sanctions need not be imposed under section 5(a) or (b) on that person during the 30-day period referred to in paragraph (1).

**SEC. 10. REPORTS REQUIRED.**

(a) REPORT ON CERTAIN INTERNATIONAL INITIATIVES.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the President shall transmit a report to the appropriate congressional committees describing—

(1) the efforts of the President to mount a multilateral campaign to persuade all countries to pressure Iran to cease its nuclear, chemical, biological, and missile weapons programs and its support of acts of international terrorism;

(2) the efforts of the President to persuade other governments to ask Iran to reduce the presence of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran and to withdraw any such diplomats or representatives who participated in the takeover of the United States embassy in Tehran on November 4, 1979, or the subsequent holding of United States hostages for 444 days;

(3) the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran, including those presently under construction; and

(4) Iran's use of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran to promote acts of international terrorism or to develop or sustain Iran's nuclear, chemical, biological, and missile weapons programs.

(b) OTHER REPORTS.—The President shall ensure the continued transmittal to the Congress of reports describing—

(1) the nuclear and other military capabilities of Iran, as required by section 601(a) of the Nuclear Non-Proliferation Act of 1978 and section 1607 of the National Defense Authorization Act for Fiscal Year 1993; and

(2) the support provided by Iran for acts of international terrorism, as part of the Department of State's annual report on international terrorism.

**SEC. 11. DETERMINATIONS NOT REVIEWABLE.**

A determination to impose sanctions under this Act shall not be reviewable in any court.

**SEC. 12. EXCLUSION OF CERTAIN ACTIVITIES.**

Nothing in this Act shall apply to any activities subject to the reporting requirements of title V of the National Security Act of 1947.

**SEC. 13. EFFECTIVE DATE; SUNSET.**

(a) EFFECTIVE DATE.—This Act shall take effect on the date of the enactment of this Act.

(b) SUNSET.—This Act shall cease to be effective on the date that is 5 years after the date of the enactment of this Act.

**SEC. 14. DEFINITIONS.**

As used in this Act:

(1) ACT OF INTERNATIONAL TERRORISM.—The term "act of international terrorism" means an act—

(A) which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(B) which appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Banking and Financial Services, and the Committee on International Relations of the House of Representatives.

(3) COMPONENT PART.—The term "component part" has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(1)).

(4) DEVELOP AND DEVELOPMENT.—To "develop", or the "development" of, petroleum resources means the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources.

(5) FINANCIAL INSTITUTION.—The term "financial institution" includes—

(A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(B) a credit union;

(C) a securities firm, including a broker or dealer;

(D) an insurance company, including an agency or underwriter; and

(E) any other company that provides financial services.

(6) FINISHED PRODUCT.—The term "finished product" has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2410a(e)(2)).

(7) FOREIGN PERSON.—The term "foreign person" means—

(A) an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States; or

(B) a corporation, partnership, or other nongovernmental entity which is not a United States person.

(8) GOODS AND TECHNOLOGY.—The terms "goods" and "technology" have the meanings given those terms in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415).

(9) INVESTMENT.—The term "investment" means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovenmental entity in Iran, or with the Government of Libya or a nongovernmental entity in Libya, on or after the date of the enactment of this Act:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran or Libya (as the case may be), or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.

(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation. The term "investment" does not include the entry into, performance, or financing of a contract to sell or purchase goods, services, or technology.

(10) IRAN.—The term "Iran" includes any agency or instrumentality of Iran.

(11) IRANIAN DIPLOMATS AND REPRESENTATIVES OF OTHER GOVERNMENT AND MILITARY OR QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.—The term "Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran" includes employees, representatives, or affiliates of Iran's—

(A) Foreign Ministry;

(B) Ministry of Intelligence and Security;

(C) Revolutionary Guard Corps;

(D) Crusade for Reconstruction;

(E) Qods (Jerusalem) Forces;

(F) Interior Ministry;

(G) Foundation for the Oppressed and Disabled;

(H) Prophet's Foundation;

(I) June 5th Foundation;

(J) Martyr's Foundation;

(K) Islamic Propagation Organization; and

(L) Ministry of Islamic Guidance.

(12) LIBYA.—The term "Libya" includes any agency or instrumentality of Libya.

(13) NUCLEAR EXPLOSIVE DEVICE.—The term "nuclear explosive device" means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in section 11(aa) of the Atomic Energy Act of 1954) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

(14) PERSON.—The term "person" means—

(A) a natural person;

(B) a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(C) any successor to any entity described in subparagraph (B).

(15) PETROLEUM RESOURCES.—The term "petroleum resources" includes petroleum and natural gas resources.

(16) UNITED STATES OR STATE.—The term "United States" or "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

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

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity. Speaker of the House of Representatives. Vice President of the United States and President of the Senate.

## G. UNITED STATES-HONG KONG POLICY ACT OF 1992

[22 U.S.C. 5721 et seq., P.L. 102–383 as amended by P.L. 104–107]

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "United States-Hong Kong Policy Act of 1992".

**SEC. 2. FINDINGS AND DECLARATIONS.**

The Congress makes the following findings and declarations:

(1) The Congress recognizes that under the 1984 Sino-British Joint Declaration:

(A) The People's Republic of China and the United Kingdom of Great Britain and Northern Ireland have agreed that the People's Republic of China will resume the exer-

cise of sovereignty over Hong Kong on July 1, 1997. Until that time, the United Kingdom will be responsible for the administration of Hong Kong.

(B) The Hong Kong Special Administrative Region of the People's Republic of China, beginning on July 1, 1997, will continue to enjoy a high degree of autonomy on all matters other than defense and foreign affairs.

(C) There is provision for implementation of a "one country, two systems" policy, under which Hong Kong will retain its current lifestyle and legal, social, and economic systems until at least the year 2047.

(D) The legislature of the Hong Kong Special Administrative Region will be constituted by elections, and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong, shall remain in force.

(E) Provision is made for the continuation in force of agreements implemented as of June 30, 1997, and for the ability of the Hong Kong Special Administrative Region to conclude new agreements either on its own or with the assistance of the Government of the People's Republic of China.

(2) The Congress declares its wish to see full implementation of the provisions of the Joint Declaration.

(3) The President has announced his support for the policies and decisions reflected in the Joint Declaration.

(4) Hong Kong plays an important role in today's regional and world economy. This role is reflected in strong economic, cultural, and other ties with the United States that give the United States a strong interest in the continued vitality, prosperity, and stability of Hong Kong.

(5) Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong. This will remain equally true after June 30, 1997.

(6) The human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong. A fully successful transition in the exercise of sovereignty over Hong Kong must safeguard human rights in and of themselves. Human rights also serve as a basis for Hong Kong's continued economic prosperity.

**SEC. 3. DEFINITIONS.**

For purposes of this Act—

(1) the term "Hong Kong" means, prior to July 1, 1997, the British Dependent Territory of Hong Kong, and on and after July 1, 1997, the Hong Kong Special Administrative Region of the People's Republic of China;

(2) the term "Joint Declaration" means the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, done at Beijing on December 19, 1984; and

(3) the term "laws of the United States" means provisions of law enacted by the Congress.

## TITLE I—POLICY

### SEC. 101. BILATERAL TIES BETWEEN THE UNITED STATES AND HONG KONG.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States with respect to its bilateral relationship with Hong Kong:

(1) The United States should play an active role, before, on, and after July 1, 1997, in maintaining Hong Kong's confidence and prosperity, Hong Kong's role as an international financial center, and the mutually beneficial ties between the people of the United States and the people of Hong Kong.

(2) The United States should actively seek to establish and expand direct bilateral ties and agreements with Hong Kong in economic, trade, financial, monetary, aviation, shipping, communications, tourism, cultural, sport, and other appropriate areas.

(3) The United States should seek to maintain, after June 30, 1997, the United States consulate-general in Hong Kong, together with other official and semi-official organizations, such as the United States Information Agency American Library.

(4) The United States should invite Hong Kong to maintain, after June 30, 1997, its official and semi-official missions in the United States, such as the Hong Kong Economic & Trade Office, the Office of the Hong Kong Trade Development Council, and the Hong Kong Tourist Association. The United States should invite Hong Kong to open and maintain other official or semi-official missions to represent Hong Kong in those areas in which Hong Kong is entitled to maintain relations on its own, including economic, trade, financial, monetary, aviation, shipping, communications, tourism, cultural, and sport areas.

(5) The United States should recognize passports and travel documents issued after June 30, 1997, by the Hong Kong Special Administrative Region.

(6) The resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong after June 30, 1997, should not affect treatment of Hong Kong residents who apply for visas to visit or reside permanently in the United States, so long as such treatment is consistent with the Immigration and Nationality Act.

### SEC. 102. PARTICIPATION IN MULTILATERAL ORGANIZATIONS, RIGHTS UNDER INTERNATIONAL AGREEMENTS, AND TRADE STATUS.

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States with respect to Hong Kong after June 30, 1997:

(1) The United States should support Hong Kong's participation in all appropriate multilateral conferences, agreements,

and organizations in which Hong Kong is eligible to participate.

(2) The United States should continue to fulfill its obligations to Hong Kong under international agreements, so long as Hong Kong reciprocates, regardless of whether the People's Republic of China is a party to the particular international agreement, unless and until such obligations are modified or terminated in accordance with law.

(3) The United States should respect Hong Kong's status as a separate customs territory, and as a contracting party to the World Trade Organization whether or not the People's Republic of China participates in the latter organization.

**SEC. 103. COMMERCE BETWEEN THE UNITED STATES AND HONG KONG.**

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, are and should continue after June 30, 1997, to be the policy of the United States with respect to commerce between the United States and Hong Kong:

(1) The United States should seek to maintain and expand economic and trade relations with Hong Kong and should continue to treat Hong Kong as a separate territory in economic and trade matters, such as import quotas and certificates of origin.

(2) The United States should continue to negotiate directly with Hong Kong to conclude bilateral economic agreements.

(3) The United States should continue to treat Hong Kong as a territory which is fully autonomous from the United Kingdom and, after June 30, 1997, should treat Hong Kong as a territory which is fully autonomous from the People's Republic of China with respect to economic and trade matters.

(4) The United States should continue to grant the products of Hong Kong nondiscriminatory trade treatment (commonly referred to as "most-favored-nation status") by virtue of Hong Kong's membership in the General Agreement on Tariffs and Trade.

(5) The United States should recognize certificates of origin for manufactured goods issued by the Hong Kong Special Administrative Region.

(6) The United States should continue to allow the United States dollar to be freely exchanged with the Hong Kong dollar.

(7) United States businesses should be encouraged to continue to operate in Hong Kong, in accordance with applicable United States and Hong Kong law.

(8) The United States should continue to support access by Hong Kong to sensitive technologies controlled under the agreement of the Coordinating Committee for Multilateral Export Controls (commonly referred to as "COCOM") for so long as the United States is satisfied that such technologies are protected from improper use or export.

(9) The United States should encourage Hong Kong to continue its efforts to develop a framework which provides adequate protection for intellectual property rights.

(10) The United States should negotiate a bilateral investment treaty directly with Hong Kong, in consultation with the Government of the People's Republic of China.

(11) The change in the exercise of sovereignty over Hong Kong should not affect ownership in any property, tangible or intangible, held in the United States by any Hong Kong person.

**SEC. 104. TRANSPORTATION.**

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, should be the policy of the United States after June 30, 1997, with respect to transportation from Hong Kong:

(1) Recognizing Hong Kong's position as an international transport center, the United States should continue to recognize ships and airplanes registered in Hong Kong and should negotiate air service agreements directly with Hong Kong.

(2) The United States should continue to recognize ships registered by Hong Kong.

(3) United States commercial ships, in accordance with applicable United States and Hong Kong law, should remain free to port in Hong Kong.

(4) The United States should continue to recognize airplanes registered by Hong Kong in accordance with applicable laws of the People's Republic of China.

(5) The United States should recognize licenses issued by the Hong Kong to Hong Kong airlines.

(6) The United States should recognize certificates issued by the Hong Kong to United States air carriers for air service involving travel to, from, or through Hong Kong which does not involve travel to, from, or through other parts of the People's Republic of China.

(7) The United States should negotiate at the appropriate time directly with the Hong Kong Special Administrative Region, acting under authorization from the Government of the People's Republic of China, to renew or amend all air service agreements existing on June 30, 1997, and to conclude new air service agreements affecting all flights to, from, or through the Hong Kong Special Administrative Region which do not involve travel to, from, or through other parts of the People's Republic of China.

(8) The United States should make every effort to ensure that thenegotiations described in paragraph (7) lead to procompetitive air service agreements.

**SEC. 105. CULTURAL AND EDUCATIONAL EXCHANGES.**

It is the sense of the Congress that the following, which are based in part on the relevant provisions of the Joint Declaration, are and should continue after June 30, 1997, to be the policy of the United States with respect to cultural and educational exchanges with Hong Kong:

(1) The United States should seek to maintain and expand United States-Hong Kong relations and exchanges in culture, education, science, and academic research. The United States

should encourage American participation in bilateral exchanges with Hong Kong, both official and unofficial.

(2) The United States should actively seek to further United States-Hong Kong cultural relations and promote bilateral exchanges, including the negotiating and concluding of appropriate agreements in these matters.

(3) Hong Kong should be accorded separate status as a full partner under the Fulbright Academic Exchange Program (apart from the United Kingdom before July 1, 1997, and apart from the People's Republic of China thereafter), with the continuation or establishment of a Fulbright Commission or functionally equivalent mechanism.

(4) The United States should actively encourage Hong Kong residents to visit the United States on nonimmigrant visas for such purposes as business, tourism, education, and scientific and academic research, in accordance with applicable United States and Hong Kong laws.

(5) Upon the request of the Legislative Council of Hong Kong, the Librarian of Congress, acting through the Congressional Research Service, should seek to expand educational and informational ties with the Council.

## TITLE II—THE STATUS OF HONG KONG IN UNITED STATES LAW

**SEC. 201. CONTINUED APPLICATION OF UNITED STATES LAW.**

(a) IN GENERAL.—Notwithstanding any change in the exercise of sovereignty over Hong Kong, the laws of the United States shall continue to apply with respect to Hong Kong, on and after July 1, 1997, in the same manner as the laws of the United States were applied with respect to Hong Kong before such date unless otherwise expressly provided by law or by Executive order under section 202.

(b) INTERNATIONAL AGREEMENTS.—For all purposes, including actions in any court in the United States, the Congress approves the continuation in force on and after July 1, 1997, of all treaties and other international agreements, including multilateral conventions, entered into before such date between the United States and Hong Kong, or entered into before such date between the United States and the United Kingdom and applied to Hong Kong, unless or until terminated in accordance with law. If in carrying out this title, the President determines that Hong Kong is not legally competent to carry out its obligations under any such treaty or other international agreement, or that the continuation of Hong Kong's obligations or rights under any such treaty or other international agreement is not appropriate under the circumstances, such determination shall be reported to the Congress in accordance with section 301.

**SEC. 202. PRESIDENTIAL ORDER.**

(a) PRESIDENTIAL DETERMINATION.—On or after July 1, 1997, whenever the President determines that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People's Republic of China, the President may issue an

Executive order suspending the application of section 201(a) to such law or provision of law.

(b) FACTOR FOR CONSIDERATION.—In making a determination under subsection (a) with respect to the application of a law of the United States, or any provision thereof, to Hong Kong, the President should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.

(c) PUBLICATION IN FEDERAL REGISTER.—Any Executive order issued under subsection (a) shall be published in the Federal Register and shall specify the law or provision of law affected by the order.

(d) TERMINATION OF SUSPENSION.—An Executive order issued under subsection (a) may be terminated by the President with respect to a particular law or provision of law whenever the President determines that Hong Kong has regained sufficient autonomy to justify different treatment under the law or provision of law in question. Notice of any such termination shall be published in the Federal Register.

**SEC. 203. RULES AND REGULATIONS.**

The President is authorized to prescribe such rules and regulations as thePresident may deem appropriate to carry out this Act.

**SEC. 204. CONSULTATION WITH CONGRESS.**

In carrying out this title, the President shall consult appropriately with the Congress.

## TITLE III—REPORTING PROVISIONS

**SEC. 301. REPORTING REQUIREMENT.**

Not later than March 31, 1993, March 31, 1995, March 31, 1996, March 31, 1997, March 31, 1998, March 31, 1999, and March 31, 2000, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on conditions in Hong Kong of interest to the United States. This report shall cover (in the case of the initial report) the period since the date of enactment of this Act or (in the case of subsequent reports) the period since the most recent report pursuant to this section and shall describe—

(1) significant developments in United States relations with Hong Kong, including a description of agreements that have entered into force between the United States and Hong Kong;

(2) other matters, including developments related to the change in the exercise of sovereignty over Hong Kong, affecting United States interests in Hong Kong or United States relations with Hong Kong;

(3) the nature and extent of United States-Hong Kong cultural, education, scientific, and academic exchanges, both official and unofficial;

(4) the laws of the United States with respect to which the application of section 201(a) has been suspended pursuant to section 202(a) or with respect to which such a suspension has been terminated pursuant to section 202(d), and the reasons for the suspension or termination, as the case may be;

(5) treaties and other international agreements with respect to which the President has made a determination described in

the last sentence of section 201(b), and the reasons for each such determination;

(6) significant problems in cooperation between Hong Kong and the United States in the area of export controls;

(7) the development of democratic institutions in Hong Kong; and

(8) the nature and extent of Hong Kong's participation in multilateral forums.

**SEC. 302. SEPARATE PART OF COUNTRY REPORTS.**

Whenever a report is transmitted to the Congress on a country-by-country basis there shall be included in such report, where applicable, a separate subreport on Hong Kong under the heading of the state that exercises sovereignty over Hong Kong. The reports to which this section applies include the reports transmitted under—

(1) sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (relating to human rights);

(2) section 181 of the Trade Act of 1974 (relating to trade barriers); and

(3) section 2202 of the Export Enhancement Act of 1988 (relating to economic policy and trade practices).

## H. RESTRICTIONS ON TRANSPORT OF MERCHANDISE BY FOREIGN VESSELS

### Section 27 of the Merchant Marine Act, 1920, as amended

[46 App. U.S.C. 883; P.L. 95–410, section 213, as amended by P.L. 96–112, P.L. 97–31, P.L. 97–389, P.L. 100–239, P.L. 100–329, and P.L. 104–324]

**SEC. 27. TRANSPORTATION OF MERCHANDISE BETWEEN POINTS IN UNITED STATES IN OTHER THAN DOMESTIC-BUILT OR REBUILT AND DOCUMENTED VESSELS.**

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by section 13 or 808 of this title: *Provided,* That no vessel "of more than 200 gross tons (as measured under chapter 143 of title 46, United States Code) having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: *Provided further,* That no vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the

United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: *Provided further,* That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Surface Transportation Board for which routes rate tariffs have been or shall hereafter be filed with the Board when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further,* That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Transportation shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further,* That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Board, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: *Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 1322(a) of Title 19, if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of

cargo in foreign trade: *Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: *Provided further,* That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to November 16, 1979, and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 6903(5) of Title 42, from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: *Provided, however,* That the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982, for a corporation wholly owned by a citizen of the United States; the term "citizen of the United States", as used in this proviso, means a corporation as defined in section 802(a) and (b) of this title. The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the

initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States: *Provided further,* That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise: *Provided further,* That for purposes of this section, the term "merchandise" includes valueless material: *Provided further,* That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone: *Provided further,* That the transportation of any platform jacket in or on a launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 1333(a) of Title 43, shall not be deemed transportation subject to this section if the launch barge has a launch capacity of 12,000 long tons or more, was built as of June 7, 1988, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a launch barge of lesser launch capacity that is identified by the Secretary of Transportation and is available for such transportation.

## I. AUTHORITY TO REVIEW CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

### Section 721 of the Defense Production Act of 1950, as amended

[50 U.S.C. App. 2170; P.L. 81–774, as added by P.L. 100–418, sec. 5021, and amended by P.L. 102–558, sec. 163, and P.L. 103–359, sec. 721(k)(1)(B)]

SEC. 721. (a) INVESTIGATIONS.—The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

(b) CONFIDENTIALITY OF INFORMATION.—Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(c) ACTION BY THE PRESIDENT.—Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

(d) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by subsection (c) only if the President finds that—

(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

(e) FACTORS TO BE CONSIDERED.—For purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services, and

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

(f) REPORT TO THE CONGRESS.—If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the Presi-

dent intends to take, including a detailed explanation of the findings made under subsection (d).

(g) REGULATIONS.—The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(h) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

(k) QUADRENNIAL REPORT.—

(1) IN GENERAL.—In order to assist the Congress in its oversight responsibilities with respect to this section, the President and such agencies as the President shall designate shall complete and furnish to the Congress, not later than 1 year after the date of enactment of this section and upon the expiration of every 4 years thereafter, a report which—

(A) evaluates whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

(B) evaluates whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.

(2) DEFINITION.—For the purposes of this subsection, the term "critical technologies" means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976 or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section.

(3) RELEASE OF UNCLASSIFIED STUDY.—The report required by this subsection may be classified. An unclassified version of the report shall be made available to the public.

# Chapter 13: RECIPROCAL TRADE AGREEMENTS

## A. U.S. NEGOTIATING OBJECTIVES

### Section 1101 of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2901; P.L. 100–418]

**SEC. 1101. OVERALL AND PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES.**

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States are to obtain—

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(3) a more effective system of international trading disciplines and procedures.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) DISPUTE SETTLEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement are—

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) IMPROVEMENT OF THE GATT AND MULTILATERAL TRADE NEGOTIATION AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) TRANSPARENCY.—The principal negotiating objective of the United States regarding transparency is to obtain 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 Contracting Parties to the GATT.

(4) DEVELOPING COUNTRIES.—The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible meas-

ure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) CURRENT ACCOUNT SURPLUSES.—The principal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) TRADE AND MONETARY COORDINATION.—The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) AGRICULTURE.—The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) UNFAIR TRADE PRACTICES.—The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade

practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices;

(B) to obtain the application of similar rules to the treatment of primary and nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made,

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) TRADE IN SERVICES.—

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(10) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks,

semiconductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards based on—

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) FOREIGN DIRECT INVESTMENT.—

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) SAFEGUARDS.—The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) SPECIFIC BARRIERS.—The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 181 of the Trade Act of 1974 (19 U.S.C. 2241); and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparities that impede access to particular export markets.

(14) WORKER RIGHTS.—The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) ACCESS TO HIGH TECHNOLOGY.—

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;

(ii) denying equitable access by United States persons to government-held patents;

(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of li-

censes to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

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

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

[22 U.S.C. 5304 and 5304 note; P.L. 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; P.L. 103–465, as amended by P.L. 104–295]

**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 502(a)(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 502(a)(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 most-favored-nation 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 THE 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 108 of the North American Free Trade Agreement Implementation Act

[19 U.S.C. 3317; P.L. 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 coun-

try 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. "Fast Track" Authority (expired)

### Sections 1102, 1103, 1105, and 1107 of the Omnibus Trade and Competitiveness Act of 1988, as amended

[19 U.S.C. 2902, 2903, 2904, and 2906; P.L. 100–418, as amended by P.L. 101–382, P.L. 103–49, and P.L. 103–465]

**SEC. 1102. TRADE AGREEMENT NEGOTIATING AUTHORITY.**

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) 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, and objectives of this title will be promoted thereby, the President—

(A) before June 1, 1993, may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) through (5), 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 he determines to be required or appropriate to carry out any such trade agreement.

(2) No proclamation may be made under subsection (a) 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 enactment of this Act) to a rate which is less than 50 percent of the rate of such duty that applies on such date of enactment; or

(B) increases any rate of duty above the rate that applies on such date of enactment.

(3)(A) 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 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 in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate 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) If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by 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) No reduction in a rate of duty under a trade agreement entered into under subsection (a) on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 1103 and that bill is enacted into law.

(b) AGREEMENTS REGARDING NONTARIFF BARRIERS.—

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

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

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

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

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 1101.

(c) BILATERAL AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with foreign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) 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.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 1101;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 1103(a)(1)(A)—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(C) shall be computed in accordance with section 1103(e).

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

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

(1) Before the President enters into any trade agreement under subsection (b) or (c), 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; and

(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.

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

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

(C) all matters relating to the implementation of the agreement under section 1103.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 1103, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

(e) SPECIAL PROVISIONS REGARDING URUGUAY ROUND TRADE NEGOTIATIONS.—

(1) IN GENERAL.—Notwithstanding the time limitations in subsections (a) and (b), if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b), trade agreements resulting from such negotiations.

(2) APPLICATION OF TARIFF PROCLAMATION AUTHORITY.—No proclamation under subsection (a) to carry out the provisions

regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding nontariff barriers of a trade agreement that is entered into under such paragraph.

(3) APPLICATION OF IMPLEMENTING AND "FAST TRACK" PROCEDURES.—Section 1103 applies to any trade agreement negotiated under subsection (b) pursuant to paragraph (1), except that—

(A) in applying subsection (a)(1)(A) of section 1103 to any such agreement, the phrase "at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993)," shall be substituted for the phrase "at least 90 calendar days before the day on which he enters into the trade agreement,"; and

(B) no provision of subsection (b) of section 1103 other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, "April 16, 1994;" shall be substituted for "June 1, 1991;".

(4) ADVISORY COMMITTEE REPORTS.—The report required under section 135(e)(1) of the Trade Act of 1974 regarding any trade agreement provided for under paragraph (1) 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 1103(a)(1)(A) of his intention to enter into the agreement (but before January 15, 1994).

**SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS.**

(a) IN GENERAL.—

(1) Any agreement entered into under section 1102 (b) or (c) 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 he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

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

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

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(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, and objectives of this title,

(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), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement;

(iii) describing the efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased international monetary stability; and

(iv) describing the extent, if any, to which—

(I) each foreign country that is a party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement, and

(II) the agreement applies to or affects purchases and sales by such enterprises.

(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.

(b) APPLICATION OF CONGRESSIONAL "FAST TRACK" PROCEDURES TO IMPLEMENTING BILLS.—

(1) Except as provided in subsection (c)—

(A) the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) (hereinafter in this section referred to as "fast track procedures") apply to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) after May 31, 1991, and before June 1, 1993, 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 June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 1102 (b) or (c) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, 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) 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 his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

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

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

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

(5)(A) For purposes of this subsection, 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 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.", 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 jointly referred, in the House of Representatives, to the Committee on Ways and Means and 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 the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(c) LIMITATIONS ON USE OF "FAST TRACK" PROCEDURES.—

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 1102 (b) or (c) if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

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

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(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 procedural disapproval resolutions.

(D) 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 the Committee on Rules.

(E) For purposes of this subsection, the term "procedural 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 President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act of 1988, if, during the 60-day period beginning on the date on which this resolution is agreed to by the , the agrees to a procedural disapproval resolution (within the meaning of section 1103(c)(1)(E) of such Act of 1988).", with the first blank

space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) The fast track procedures shall not apply to any implementing bill that contains a provision approving of any trade agreement which is entered into under section 1102(c) with any foreign country if either—

(A) the requirements of section 1102(c)(3) are not met with respect to the negotiation of such agreement; or

(B) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproves of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under section 1102(c)(3)(C)(i) with respect to the negotiation of such agreement.

(d) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsections (b) and (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 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.

(e) COMPUTATION OF CERTAIN PERIODS OF TIME.—Each period of time described in subsection (c)(1) (A) and (E) and (2) of this section shall be computed without regard to—

(1) the days on which either House of Congress 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 of the Congress is not in session.

**SEC. 1105. TERMINATION AND RESERVATION AUTHORITY; RECIPROCAL NONDISCRIMINATORY TREATMENT.**

(a) IN GENERAL.—For purposes of applying sections 125, 126(a), 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 1102 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 1102 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.

(b) RECIPROCAL NONDISCRIMINATORY TREATMENT.—

(1) The President shall determine, before June 1, 1993, whether any major industrial country has failed to make concessions under trade agreements entered into under section 1102 (a) and (b) which provide competitive opportunities for the commerce of the United States in such country substan-

tially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under section 1102 (a) and (b), for the commerce of such country in the United States.

(2) If the President determines under paragraph (1) that a major industrial country has not made concessions under trade agreements entered into under section 1102 (a) and (b) which provide substantially equivalent competitive opportunities for the commerce of the United States, the President shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommend to the Congress—

(A) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under section 1102 (a) and (b) that have been made with respect to rates of duty or other import restrictions imposed by the United States, and

(B) legislation providing that any law necessary to carry out any trade agreement under section 1102 (a) or (b) not apply to such country.

(3) For purposes of this subsection, the term "major industrial country" means Canada, the European Communities, the individual member countries of the European Communities, Japan, and any other foreign country designated by the President for purposes of this subsection.

**SEC. 1107. DEFINITIONS AND CONFORMING AMENDMENTS.**

(a) DEFINITIONS.—For purposes of this part [trade agreement and implementation authorities under sections 1101–1106 of the Omnibus Trade and Competitiveness Act of 1988]:

(1) The term "distortion" includes, but is not limited to, a subsidy.

(2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means the GATT 1947 (as defined in section 2(1)(A) of the Uruguay Round Agreements Act).

(4) The term "implementing bill" has the meaning given such term in section 151(b)(1) of the Trade Act of 1974 (19 U.S.C. 2191(b)(1)).

(5) The term "international trade" includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term "state trading enterprise" means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

## 2. 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, 3521, 3531–3538; P.L. 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 har-

monization 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,

(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 inter-

ested 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.—Amendment to section 135(a)(1)(B) of the Trade Act of 1974.]

**[SEC. 128. ADVISORY COMMITTEE PARTICIPATION.**

[Amendment to section 135(b)(1) of the Trade Act of 1974.]

**[SEC. 129. ADMINISTRATIVE ACTION FOLLOWING WTO PANEL REPORTS.**

[Dispute settlement pertaining to antidumping and countervailing duty actions in Title VII of the Tariff Act of 1930, as amended.]

## C. SPECIFIC TRADE AGREEMENT AUTHORITIES

### 1. Compensation Authority

### Section 123 of the Trade Act of 1974, as amended

[19 U.S.C. 2133; P.L. 93–618, as amended by P.L. 100–418]

**SEC. 123. COMPENSATION AUTHORITY.**

(a) 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)(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) 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) 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) 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; P.L. 93–618]

**SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.**

(a) 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) The President may at any time terminate, in whole or in part, any proclamation made under this Act.

(c) 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) 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) 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) 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.]

## 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; P.L. 100–418, as amended by P.L. 103–465 and P.L. 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 121 of the Trade Act of 1974, as amended

[19 U.S.C. 2131; P.L. 93–618, as amended by P.L. 100–418 and P.L. 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; P.L. 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; P.L. 93–618, as amended by P.L. 100–418]

**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 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, 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 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988, 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 1102(a)(3)(A).

(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 1102 of the Omnibus Trade and Competitiveness Act of 1988, 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 1102 of the Omnibus Trade and Competitiveness Act of 1988, 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 1102 of the Omnibus Trade and Competitiveness Act of 1988, 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 1102 of the Omnibus Trade and Competitiveness Act of 1988, 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 1102 of the Omnibus Trade and Competitiveness Act of 1988, 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; P.L. 93–618]

**SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.**

(a) 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) 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; P.L. 93–618, as added by P.L. 98–573, section 303(a) and amended by P.L. 100–418 and P.L. 103–465]

**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), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;

(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, and

(ii) the value of additional foreign direct investment by United States persons,

that would have been exported to, or invested in, 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, and

(ii) the value of foreign direct investment made in, 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 TO CONGRESS.—

(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.

## 2. Intellectual Property Rights

## Section 182 of the Trade Act of 1974, as amended

[19 U.S.C. 2242; P.L. 93–618, as added by P.L. 100–418, section 1303(b), and amended by P.L. 103–182 and P.L. 103–465]

**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 Commissioner of Patents and Trademarks, 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 semi-annual 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 in to 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 newpapers 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.; P.L. 100–418, as amended by P.L. 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 | 684.67 | 685.28 |
| 684.58 | 684.80 | 685.30 |
| 684.59 | 685.16 | 685.31 |
| 684.65 | 685.24 | 685.33 |
| 684.66 | 685.25 | |

| | | |
|---|---|---|
| 685.34 | 685.48 | 688.41 |
| 685.39 | 688.17 | 707.90. |

**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 multilat-

eral 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 inves-

tigation, 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. MOST-FAVORED-NATION (NONDISCRIMINATORY) TREATMENT

### 1. MFN Principle

### Section 251 of the Trade Expansion Act of 1962

[19 U.S.C. 1881; P.L. 87–794]

**SEC. 251. MOST-FAVORED-NATION PRINCIPLE.**

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; P.L. 93–618]

**SEC. 126. RECIPROCAL NONDISCRIMINATORY TREATMENT.**

(a) 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; P.L. 100–418]

**SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS.**

* * * * * * *

(a)(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 [1]

*Rate of Duty Column 2.*

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 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:

| | | |
|---|---|---|
| Afghanistan | Laos | Vietnam |
| Cuba | North Korea | |

### Title IV of the Trade Act of 1974, as amended

[19 U.S.C. 2431 et seq., P.L. 93–618, as amended by P.L. 96–39, Reorganization Plan No. 3 of 1979, P.L. 100–418, P.L. 101–382, and P.L. 104–295]

**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) 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 (most-favored-nation treatment), such country shall not participate in any program of the

[1] List as printed in the 1997 edition.

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) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), (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)(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)(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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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)(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) 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) 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) 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) 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) 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) 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

## MFN 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

## MFN 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.

## Section 1 of Public Law 102–420

## MFN Withdrawal from Serbia and Montenegro

[19 U.S.C. 2434 note]

**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-Hercegovina.

## Public Law 104–162

[19 U.S.C. 2434 note]

**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 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.

## Public Law 104–171

[19 U.S.C. 2434 note]

**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 non-

discriminatory treatment to the products of Romania, title IV of the Trade Act of 1974 shall cease to apply to that country.

## 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).

# G. TRADE RELATIONS WITH NORTH AMERICA

## North American Free Trade Agreement Implementation Act, as amended

[19 U.S.C. 58c note, 3301, 3311–3317, 3331–3335, 3351–3358, 3371–3372, 3381–3382, 3391, 3421, 3431–3438, 3431 note, 3451, 3461–3463, 3471–3473; P.L. 103–182, as amended by P.L. 104–295]

**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 inter-agency 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(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2)), 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:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

(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:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

(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 compo-

nent 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 most-favored-nation 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, manufacturers, 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 deter-

mined 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.

Wherein 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.

[(b) CONSEQUENTIAL AMENDMENTS WITH DELAYED EFFECT.—Amendments to sections 311–313 of the 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 BENEFITING 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 section 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 provi-

sion 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 dur-

ing 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.

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## 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 104A. Copyright in certain motion pictures**

(a) RESTORATION OF COPYRIGHT.—Subject to subsections (b) and (c)—

(1) any motion picture that is first fixed or published in the territory of a NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act to which Annex 1705.7 of the North American Free Trade Agreement applies, and

(2) any work included in such motion picture that is first fixed in or published with such motion picture,

that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.

(b) EFFECTIVE DATE OF PROTECTION.—The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first fixed or published if, before the end of that 1-year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).

(c) USE OF PREVIOUSLY OWNED COPIES.—A national or domiciliary of the United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion pictures, and works included in such motion pictures, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).]

**[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 Chapter 1 of title 17, United States Code:

**Section 104. Invention made abroad**

(a) IN GENERAL.—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, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the 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 or a NAFTA country. To the extent that any information in a NAFTA 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 Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, 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) DEFINITION.—As used in this section, the term "NAFTA country" has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.]

**[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 of 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 (15 U.S.C. 2003(b)(2):

(b)(1) In calculating average fuel economy under subsection (a)(1) of this section, the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into the following two categories:

(A) Passenger automobiles which are domestically manufactured by such manufacturer and passenger automobiles which are included within this category pursuant to paragraph (3) (plus, in the case of model year 1978 and model year 1979, passenger automobiles which are within the includable base import volume of such manufacturer).

(B) Passenger automobiles which are not domestically manufactured by such manufacturer and which are not included in the domestic category pursuant to paragraph (3) (and which, in the case of model year 1978 and model year 1979, are not within the includable base import volume of such manufacturer).

The EPA Administrator shall calculate the average fuel economy of each such separate category, and each such category shall be treated as if manufactured by a separate manufacturer for purposes of this subchapter.

(2) For purposes of this subsection:

(A) The term "includable base import volume", with respect to any manufacturer in model year 1978 or 1979, as the case may be, is a number of passenger automobiles which is the lesser of—

(i) the manufacturer's base import volume, or

(ii) the number of passenger automobiles calculated by multiplying—

(I) the quotient obtained by dividing such manufacturer's base import volume by such manufacturer's base production volume, times

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) The term "base import volume" means one-half the sum of—

(i) the total number of passenger automobiles which were not domestically manufactured by such manufacturer during model year 1974 and which were imported by such manufacturer during such model year, plus

(ii) 133 percent of the total number of passenger automobiles which were not domestically manufactured by such manufacturer during the first 9 months of model year 1975 and which were imported by such manufacturer during such 9-month period.

(C) The term "base production volume" means one-half the sum of—

(i) the total number of passenger automobiles manufactured by such manufacturer during model year 1974, plus

(ii) 133 percent of the total number of passenger automobiles manufactured by such manufacturer during the first 9 months of model year 1975.

(D) For purposes of subparagraphs (B) and (C) of this paragraph any passenger automobile imported during model year 1976, but prior to July 1, 1975, shall be deemed to have been manufactured (and imported) during the first 9 months of model year 1975.

(E) Except as provided in subparagraph (G), an automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out this subparagraph and subparagraph (G).

(F) The fuel economy of each passenger automobile which is imported by a manufacturer in model year 1978 or any subsequent model year, as the case may be, and which is not domestically manufactured by such manufacturer, shall be deemed to be equal to the average fuel economy of all such passenger automobiles.

(G)(i) In accordance with the schedule set out in clause (ii), an automobile shall be considered domestically manufactured in a model year if at least 75 percent of the cost to the manufacturer of the automobile 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 not imported into the United States prior to the expiration of 30 days following the end of that model year.

(ii) Clause (i) shall apply to all automobiles manufactured by a manufacturer and sold in the United States, wherever assembled, in accordance with the following schedule:

(I) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufacturers, beginning with the model year commencing after the date of such election.

(II) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

(III) With respect to a manufacturer not described by subclause (I) or (II) assembling automobiles in the United States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this subclause shall not apply and the manufacturer shall be subject to clause (II).

(IV) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

(V) With respect to a manufacturer authorized to make an election under subclause (I) or (III) which has not made that election within the specified period, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

(iii) The Secretary shall prescribe reasonable procedures for elections under this subparagraph, and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.]

## 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 submit-

ted 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 in-

cluded 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 re-

quired 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 re-

quest 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 benefiting 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 then 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 recommenda-

tions 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 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 accepted 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; P.L. 93–618, as amended by P.L. 99–47]

**SEC. 102. BARRIERS TO AND OTHER DISTORTIONS OF TRADE.**

(b)(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 chapter will be promoted thereby, the President, during the 13-year period beginning on January 3, 1975, 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; P.L. 98–573, as amended by P.L. 99–47, P.L. 99–514, and P.L. 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.

[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 of 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 arti-

cle results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under 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; P.L. 99–47, as amended by P.L. 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 in-

cluded 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 puposes 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.

## I. BILATERAL TRADE RELATIONS WITH CANADA

### United States-Canada Free-Trade Agreement Implementation Act of 1988, as amended

[19 U.S.C. 2112 note; P.L. 100–449, as amended by P.L. 101–207, P.L. 101–382 and P.L. 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 exer-

cise 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 with-

out appraisement 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 ac-

cordance 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 pe-

riod 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 SECRETARIAT.—

(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 of enactment of this Act.

(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

[19 U.S.C. 2001 et seq.; P.L. 89–283, as amended by P.L. 96–39 and P.L. 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. 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) 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) 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.**

(a) Whenever, after determining that such an agreement will afford mutual trade benefits, the President enters into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products of their respective countries which are motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such agreement.

(b) Whenever, after having entered into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products described in subsection (a), the President, after determining that such further agreement will afford mutual trade benefits, enters into a further agreement with such government providing for the mutual reduction or elimination of the duties applicable to automotive products other than motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such further agreement.

(c) Before the President enters into the negotiation of an agreement referred to in subsection (a) or (b), he shall—

(1) seek the advice of the Tariff Commission as to the probable economic effect of the reduction or elimination of duties on industries producing articles like or directly competitive with those which may be covered by such agreement;

(2) give reasonable public notice of his intention to negotiate such agreement (which notice shall be published in the Federal Register) in order that any interested person may have an opportunity to present his views to such agency as the President may prescribe; and

(3) seek information and advice with respect to such agreement from the Department of Commerce, Labor, State, and the Treasury, and from such other sources as he may deem appropriate.

(d)(1) The President shall transmit to each House of the Congress a copy of each agreement referred to in subsection (a) or (b). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session.

(2) The President is authorized to issue any proclamation to carry out any such agreement—

(A) only after the expiration of the 60-day period following the date of delivery,

(B) only if, between the date of delivery and the expiration of such 60-day period, the Congress has not adopted a concurrent resolution stating in substance that the Senate and House of Representatives disapprove of the agreement, and

(C) in the case of any agreement referred to in subsection (b) with any country only if there is in effect a proclamation implementing an agreement with such country applicable to products described in subsection (a).

(3) For purposes of paragraph (2) in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die.

(e) This section shall cause to be in effect on the day after the date of the enactment of this Act.

**SEC. 203. EFFECTIVE DATE OF PROCLAMATIONS.**

(a) 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) 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) 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) 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) 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.**

(a) After the 90th day after the date of the enactment of this Act and before July 1, 1968, a petition under section 301 of this Act for a determination of eligibility to apply for adjustment assistance may be filed with the President by—

(1) a firm which produces an automotive product, or its representative; or

(2) a group of workers in a firm which produces an automotive product, or their certified or recognized union or other duly authorized representative.

(b) After a petition is filed by a firm or group of workers under subsection (a), the President shall determine whether—

(1) dislocation of the firm or group of workers has occurred or threatens to occur;

(2) production in the United States of the automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the automotive product like or directly competitive therewith, has decreased appreciably; and

(3)(A) imports into the United States from Canada of the Canadian automotive product like or directly competitive with that produced by the firm, or an appropriate subdivision thereof, have increased appreciably; or

(B) exports from the United States to Canada of the United States automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the United States automotive product like or directly competitive therewith, have decreased appreciably, and the decrease in such exports is greater than the decrease, if any, in production in Canada of the Canadian automotive product like or directly competitive with the United States automotive product being exported.

(c) If the President makes an affirmative determination under paragraphs (1), (2), and (3) of subsection (b), with respect to a firm or group of workers, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance, unless the President determines that the operation of the Agreement has not been the primary factor in causing or threatening to cause dislocation of the firm or group of workers.

(d) If the President makes an affirmative determination under paragraph (1) but a negative determination under paragraph (2) or (3) of subsection (b), with respect to a firm or group of workers, the President shall determine whether the operation of the Agreement has nevertheless been the primary factor in causing or threatening to cause dislocation of the firm or group of workers. If the President makes such an affirmative determination, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance.

(e)(1) In order to provide the President with a factual record on the basis of which he may make the determinations referred to in subsections (b), (c), and (d) with respect to a firm or a group of workers, the President shall promptly transmit to the Tariff Commission a copy of each petition filed under such subsection (a) and, not later than 5 days after the date on which the petition is filed, shall request the Tariff Commission to conduct an investigation related to questions of fact relevant to such determinations and to make a report of the facts disclosed by such investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. Upon receipt of the President's request, the Tariff Commission shall promptly institute the investigation and public notice thereof in the Federal Register.

(2) In the course of each investigation conducted under paragraph (1), the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (not later than 10 days after the date of the publication of its notice under paragraph (1)) by the petitioner or any other person showing a proper interest in the subject matter of the investigation, and shall afford interested persons an opportunity to be present, to produce evidence, and to be heard at such hearing.

(3) Not later than 50 days after the date on which it receives the request of the President under paragraph (1), the Tariff Commission shall transmit to the President a report of the facts disclosed by its investigation, together with the transcript of the hearing and any briefs which may have been submitted in connection with such investigation.

(f)(1) The President shall make each final determination under subsection (b), (c), or (d) with respect to a firm or group of workers only after he has sought advice from the Departments of Commerce, Labor, and the Treasury, the Small Business Administration, and such other agencies as he may deem appropriate.

(2) The President shall make each such final determination not later than 15 days after the date on which he receives the Tariff Commission's report, unless, within such period, the President requests additional factual information from the Tariff Commission. In this event, the Tariff Commission shall, not later than 25 days

after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President shall make his final determination not later than 10 days after the date on which he receives such supplemental report.

(3) The President shall promptly publish in the Federal Register a summary of each final determination under this section.

(g) Any certification with respect to a group of workers made by the President under this section shall—

(1) specify the date on which the dislocation began or threatens to begin; and

(2) be terminated by the President whenever he determines that the operation of the Agreement is no longer the primary factor in causing separations from the firm or subdivision thereof, in which case such termination shall apply only with respect to separations occurring after the termination date specified by the President.

(h) Any certification with respect to a firm or a group of workers or any termination of such certification, including the specification of a date in such certification or termination, made by the President under this section shall constitute a certification or termination, including the specification of a date therein, under section 302 of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1902) for purposes of chapter 2 or of title III of that Act.

(i) If a firm which has been certified under this section applies for tax assistance as provided by section 317 of the Trade Expansion Act of 1962, the reference in subsection (a)(2) of such section 317 to a trade or business which was seriously injured by increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements shall be treated as referring to a trade or business which was seriously injured by the operation of the Agreement.

(j) Notwithstanding any provision of chapter 3 of title III of the Trade Expansion Act of 1962 or of this title, applications based on any certification made by the President under this section for—

(1) trade readjustment allowances for weeks of unemployment beginning after January 17, 1965, and before the 90th day after the date of the enactment of this Act, and

(2) relocation allowances for relocations occurring after January 17, 1965, and before such 90th day,

shall be determined in accordance with regulations prescribed by the Secretary of Labor.

(k) The President is authorized to exercise any of his functions under this section through such agency or other instrumentality of the United States Government as he may direct and in conformity with such rules or regulations as he may prescribe.

(l) For purposes of this section—

(1) The term "automotive product" means a motor vehicle or a fabricated component to be used as original equipment in the manufacture of motor vehicles.

(2) The term "dislocation" means—

(A) in the case of a firm, injury to the firm, which may be evidenced by such conditions as idling of productive facilities, inability to operate at a level of reasonable profit,

or unemployment or underemployment and which is of a serious nature; and

(B) in the case of a group of workers, unemployment or underemployment of a significant number or proportion of the workers of a firm or an appropriate subdivision thereof.

(3) The term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustees in bankruptcy, and receivers under decree of any court. A firm, together with any predecessor, successor, or affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

(4) The term "operation of the Agreement" includes governmental or private actions in the United States or Canada directly related to the conclusion or implementation of the Agreement.

**SEC. 303. ADJUSTMENT ASSISTANCE RELATED TO OTHER AGREEMENTS.**

At the time the President transmits to the Congress a copy of any agreement pursuant to section 202(d)(1), he shall recommend to the Congress such legislative provisions concerning adjustment assistance to firms and workers as he determines to be appropriate in light of the anticipated economic impact of the reduction or elimination 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 IV—MODIFICATIONS OF TARIFF SCHEDULES OF THE UNITED STATES

**SEC. 401. ENTRY INTO FORCE AND STATUS OF MODIFICATIONS.**

(a) The modifications of the Tariff Schedules of the United States provided for in this title shall not enter into force except as proclaimed by the President pursuant to section 201(a) of this Act.

(b) The rates of duty in column numbered 1 of the Tariff Schedules of the United States which are modified pursuant to section 201(a) of this Act shall be treated—

(1) as not having the status of statutory provisions enacted by the Congress, but

(2) as having been proclaimed by the President as being required to carry out a foreign trade agreement to which the United States is a party.

**SEC. 402. REFERENCES TO TARIFF SCHEDULES.**

Whenever in this title a modification is expressed in terms of a modification of an item or other provision, the reference shall be considered to be made to an item or other provision of the Tariff Schedules of the United States (19 U.S.C., sec. 1202). Each page reference "(p. )" in this title refers to the page on which the item or provision referred to appears both in part II of the Federal Reg-

ister for August 7, 1963, and in volume 77A of the United States Statutes at Large.

**SEC. 403. DEFINITION OF CANADIAN ARTICLE.**

In general headnote 3 (pp. 11 and 12) redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively, and insert a new paragraph (d) as follows:

[Text of general headnote 3(c).]

**SEC. 404. DEFINITION OF ORIGINAL MOTOR-VEHICLE EQUIPMENT.**

In the headnotes for subpart B, part 6, schedule 6, add after headnote 1 (p. 325) the following new headnote:

[Text of headnote 2, part 6B, schedule 6.]

**SEC. 405. IDENTIFICATION OF AUTOMOTIVE PRODUCTS.**

(a) Redesignate item 692.25 (p. 326) as 692.27; in headnote 1(b) of subpart B, part 6, schedule 6 (p. 325) substitute "item 692.27" in lieu of "item 692.25"; and insert in proper numerical sequence new items as follows:

| | | |
|---|---|---|
| "692.06 | If Canadian article, but not including any electric trolley bus, three-wheeled vehicle, or trailer accompanying an automobile truck tractor (see general headnote 3(d)) | Free |
| 692.11 | If Canadian article, but not including any three-wheeled vehicle (see general headnote 3(d)) | Free |
| 692.21 | Chassis, if Canadian article, except chassis for an electric trolley bus, or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart) | Free |
| 692.23 | Chassis, if Canadian article, except chassis designed primarily for a vehicle described in item 692.15 or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart) | Free |
| 692.25 | If Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart) | Free |
| 692.28 | Automobile truck tractors, if Canadian article: other articles, if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart) | Free" |

(b) Insert in proper numerical sequence new items as follows:

| | | |
|---|---|---|
| "361.90 | Any article described in the foregoing items 360.20 to 360.70, inclusive, 360.80, 361.80, or 361.85, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 516.98 | Any article described in the foregoing items 516.71 to 516.76, inclusive, or 516.94, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 646.79 | Any article described in the foregoing items 646.20 and items 646.78, inclusive (except 646.45 and 646.47), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 652.39 | Any article described in the foregoing items 652.12 to 652.38, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 658.10 | Any article described in the foregoing items 657.09 to 658.00, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 682.65 | Any article described in the foregoing items 682.10 to 682.60, inclusive (except 682.50), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 685.55 | Any article described in the foregoing items 685.20 to 685.50, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free |
| 721.20 | Any article in the foregoing item covering clocks, clock movements, clock cases and dials and parts thereof, plates (720.67), assemblies and subassemblies for clock movements, and other parts for clock movements, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free" |

(c) Insert in proper numerical sequence new items 355.27, 389.80, 728.30, 745.80, and 774.70, each having an article description and rate as follows:

| | |
|---|---|
| "Any article described in the foregoing provisions of this subpart, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free" |

(d) Redesignate item 613.16 as 613.18, item 652.85 as 652.84, item 652.87 as 652.88, item 680.34 as 680.33, item 680.58 as 680.60, item 680.59 as 680.70, item 680.60 as 680.90, and item 711.91 as 711.93; and insert in proper numerical sequence new items as follows:

| | | |
|---|---|---|
| 207.01 | 652.89 | 683.11 |
| 220.46 | 660.43 | 683.16 |
| 357.91 | 660.45 | 683.61 |
| 357.96 | 660.47 | 683.66 |
| 358.03 | 660.51 | 684.41 |
| 517.82 | 660.53 | 684.63 |
| 535.15 | 660.55 | 684.71 |
| 540.72 | 660.86 | 685.71 |
| 544.18 | 660.93 | 685.81 |
| 544.32 | 660.95 | 685.91 |
| 544.42 | 661.11 | 686.11 |
| 544.52 | 661.13 | 686.23 |
| 544.55 | 661.16 | 686.61 |
| 545.62 | 661.21 | 686.81 |
| 545.64 | 661.36 | 687.51 |
| 547.16 | 661.93 | 687.61 |
| 610.81 | 661.96 | 688.13 |
| 613.16 | 662.36 | 688.41 |
| 613.19 | 662.51 | 711.85 |
| 618.48 | 664.51 | 711.91 |
| 620.47 | 678.51 | 711.99 |
| 642.21 | 680.21 | 712.51 |
| 642.86 | 680.23 | 727.07 |
| 642.88 | 680.28 | 772.66 |
| 646.93 | 680.31 | 772.81 |
| 647.02 | 680.34 | 772.86 |
| 647.06 | 680.36 | 773.26 |
| 652.10 | 680.58 | 773.31 |
| 652.76 | 680.91 | 791.81 |
| 652.85 | 682.71 | 791.91 |
| 652.87 | 682.91 | |

each such item having the article description "If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) * * *" subordinate to the immediately preceding article description, and having "Free" in rate of duty column numbered 1.

## TITLE V—GENERAL PROVISIONS

**SEC. 501. AUTHORITIES.**

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.**

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 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).

## TITLE VI—MISCELLANEOUS PROVISIONS

**SEC. 601. JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES.**

Section 601(e) of the Revenue Act of 1941 (55 Stat. 726) (relating to the Joint Committee on Reduction of Nonessential Federal Expenditures) is amended to read as follows:

"(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

## 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.

# Chapter 14: ORGANIZATION OF TRADE POLICY FUNCTIONS

## A. CONGRESS

### 1. Congressional Advisers

### Section 161 of the Trade Act of 1974, as amended

[19 U.S.C. 2211; P.L. 93–618, as amended by P.L. 96–39 and P.L. 100–418]

**SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.**

(a) SELECTION.—

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) BRIEFING.—

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) COMMITTEE CONSULTATION.—The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

## 2. Reports to Congress

## Sections 162 and 163 of the Trade Act of 1974, as amended

[19 U.S.C. 2212 and 2213; P.L. 93–618, as amended by P.L. 100–418 and P.L. 100–647]

**SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.**

(a) As soon as practicable, after a trade agreement entered into under section 123 or 124 or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevent considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

**SEC. 163. REPORTS.**

(a) ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM AND NATIONAL TRADE POLICY AGENDA.—

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this Act during the preceding calendar year; and

(B) the national trade policy agenda for the year in which the report is submitted.

(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

(A) new trade negotiations;

(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;

(C) reciprocal concessions obtained;

(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);

(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;

(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;

(G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;

(H) the measures being taken to seek the removal of other significant foreign import restrictions;

(I) each of the referrals made under section 141(d)(1)(B) and any action taken with respect to such referral;

(J) other information relating to the trade agreements program and to the agreements entered into thereunder; and

(K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

(3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—

(i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;

(ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;

(iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and

(iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.

(B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.

(C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 135 and shall consult with the appropriate committees of the Congress.

(D) The United States Trade Representative (hereafter referred to in this section as the "Trade Representative") and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—

(i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and

(ii) any development which may require, or result in, changes to any of such objectives or priorities.

(b) ANNUAL TRADE PROJECTION REPORT.—

(1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the bal-

ance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the "Committees") on or before March 1 of each year a report which consists of—

(A) a review and analysis of—

(i) the merchandise balance of trade,

(ii) the goods and services balance of trade,

(iii) the balance on the current account,

(iv) the external debt position,

(v) the exchange rates,

(vi) the economic growth rates,

(vii) the deficit or surplus in the fiscal budget, and

(viii) the impact on United States trade of market barriers and other unfair practices,

of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;

(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and

(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

(2) To the extent that subjects referred to in paragraph (1)(A), (B), or (C) are covered in the national trade policy agenda required under subsection (a)(1)(B) or in other reports required by this Act or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion referred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

(c) ITC REPORTS.—The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

## Section 2202 of the Omnibus Trade and Competitiveness Act of 1988

[15 U.S.C. 4711; P.L. 100–418]

**SEC. 2202. COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES.**

The Secretary of State shall, not later than January 31 of each year, prepare and transmit to the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives, to the Committee on Foreign Relations and the Committee on Finance of the Senate, and to other appropriate committees of the Congress, a detailed report regarding the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The Secretary may direct the appropriate officers of the Department of State who are serving overseas, in consultation with appropriate officers or employees of other departments and agencies of the United States, including the Department of Agriculture and the Department of Commerce, to coordinate the preparation of such information in a country as is necessary to prepare the report under this section. The report shall identify and describe, with respect to each country—

(1) the macroeconomic policies of the country and their impact on the overall growth in demand for United States exports;

(2) the impact of macroeconomic and other policies on the exchange rate of the country and the resulting impact on price competitiveness of United States exports;

(3) any change in structural policies (including tax incentives, regulations governing financial institutions, production standards, and patterns of industrial ownership) that may affect the country's growth rate and its demand for United States exports;

(4) the management of the country's external debt and its implications for trade with the United States;

(5) acts, policies, and practices that constitute significant barriers to United States exports or foreign direct investment in that country by United States persons, as identified under section 181(a)(1) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1));

(6) acts, policies, and practices that provide direct or indirect government support for exports from that country, including exports by small businesses;

(7) the extent to which the country's laws and enforcement of those laws afford adequate protection to United States intellectual property, including patents, trademarks, copyrights, and mask works; and

(8) the country's laws, enforcement of those laws, and practices with respect to internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974), the conditions of worker rights in any sector which produces goods in which United States capital is invested, and the extent of such investment.

## 3. Congressional Fast Track Procedures With Respect to Presidential Actions

### Sections 151–154 of the Trade Act of 1974, as amended

[19 U.S.C. 2191–2194; P.L. 93–618, as amended by P.L. 96–39, P.L. 98–573, P.L. 100–418, P.L. 101–382, P.L. 103–465, and P.L. 104–295]

**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 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act 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 re-

spect 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 or section 282 of the Uruguay Round Agreements Act, 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 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 commerical 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, 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 Rep-

resentatives 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 is 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 Representa-

tives 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 is 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) 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 Con-

gress 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) 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.

## 4. Trade Agreement Implementation Authority and Amendment Procedures

### Sections 111(b) and 115 of the Uruguay Round Agreements Act

[19 U.S.C. 3521, 3524; P.L. 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; P.L. 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; P.L. 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.

## B. EXECUTIVE BRANCH

### 1. Interagency Trade Organization

### Section 242 of the Trade Expansion Act of 1962, as amended

[19 U.S.C. 1872; P.L. 87–794, as amended by P.L. 93–618, P.L. 96–39, Reorganization Plan No. 3 of 1979, and P.L. 100–418]

**SEC. 242. INTERAGENCY TRADE ORGANIZATION.**

(a)(1) The President shall establish an interagency organization.

(2) The functions of the organization are—

(A) to assist, and make recommendations to, the President in carrying out the functions vested in him by the trade laws and to advise the United States Trade Representative (hereinafter in this section referred to as the "Trade Representative") in carrying out the functions set forth in section 141 of the Trade Act of 1974;

(B) to assist the President, and advise the Trade Representative, with respect to the development and implementation of the international trade policy objectives of the United States; and

(C) to advise the President and the Trade Representative with respect to the relationship between the international trade policy objectives of the United States and other major policy areas which may significantly affect the overall international trade policy and trade competitiveness of the United States.

(3) The interagency organization shall be composed of the following:

(A) The Trade Representative, who shall be chairperson.

(B) The Secretary of Commerce.

(C) The Secretary of State.

(D) The Secretary of the Treasury.

(E) The Secretary of Agriculture.

(F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 201(d) of the Trade Act of 1974,

(3) advise the President of the results of hearings held pursuant to section 302(b)(2) of the Trade Act of 1974, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional advisers and private sector advisory committees, as well as that of any committee or other body established to advise the department, agency, or office which a member of the organization heads.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 302(b)(2) of the Trade Act of 1974, and for the carrying out of other functions assigned to the organization pursuant to this section.

[Section 1621(b) of the Omnibus Trade and Competitiveness Act of 1988, in referring to section 242(a) as amended by section 1621(a) of that Act, states:

> [It is the sense of Congress that the interagency organization established under subsection (a) should be the principal interagency forum within the executive branch on international trade policy matters.]

## Reorganization Plan No. 3 of 1979

[19 U.S.C. 2171 note]

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code, as amended by P.L. 97–377.

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

**SECTION 1. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.**

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the "Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930;

(E) bilateral trade and commodity issues, including East-West trade matters; and

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

**SEC. 2. DEPARTMENT OF COMMERCE.**

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the "Department") a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(e) There shall be in the Department of Commerce a Director General of the United States and Foreign Commercial Services who shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed by law for level IV of the Executive Schedule.

**SEC. 3. EXPORT-IMPORT BANK OF THE UNITED STATES.**

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

**SEC. 4. OVERSEAS PRIVATE INVESTMENT CORPORATION.**

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

**SEC. 5. TRANSFER OF FUNCTIONS.**

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 215(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 77(1)) of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 et seq.), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;

(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any pro-

test, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979;

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)).

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 et seq.) and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)).

**SEC. 6. ABOLITION.**

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

**SEC. 7. RESPONSIBILITY OF THE SECRETARY OF STATE.**

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade related matters.

**SEC. 8. INCIDENTAL TRANSFERS: INTERIM OFFICERS.**

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held available or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

**SEC. 9. EFFECTIVE DATE.**

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

## Section 306 of the Trade and Tariff Act of 1984

[19 U.S.C. 2114b and 2114c; P.L. 98–573]

**SEC. 306. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.**

(a)(1) The Secretary of Commerce shall establish a service industries development program designed to—

(A) develop, in consultation with other Federal agencies as appropriate, policies regarding services that are designed to increase the competitiveness of United States service industries in foreign commerce;

(B) develop a data base for assessing the adequacy of Government policies and actions pertaining to services, including, but not limited to, data on trade, both aggregate and pertaining to individual service industries;

(C) collect and analyze, in consultation with appropriate agencies, information pertaining to the international oper-

ations and competitiveness of United States service industries, including information with respect to—

(i) policies of foreign governments toward foreign and United States service industries;

(ii) Federal, State, and local regulation of both foreign and United States suppliers of services, and the effect of such regulation on trade;

(iii) the adequacy of current United States policies to strengthen the competitiveness of United States service industries in foreign commerce, including export promotion activities in the service sector;

(iv) tax treatment of services, with particular emphasis on the effect of United States taxation on the international competitiveness of United States firms and exports;

(v) treatment of services under international agreements of the United States;

(vi) antitrust policies as such policies affect the competitiveness of United States firms; and

(vii) treatment of services in international agreements of the United States;

(D) conduct a program of research and analysis of service-related issues and problems, including forecasts and industrial strategies; and

(E) conduct sectoral studies of domestic service industries.

(2) For purposes of the collection and analysis required by paragraph (1), and for the purpose of any reporting the Department of Commerce makes under paragraph (3), such collection and reporting shall distinguish between income from investment and income from noninvestment services.

(3) On not less than a biennial basis beginning in 1986, the Secretary shall prepare a report which analyzes the information collected under paragraph (1). Such report shall be submitted to the Congress and to the President by not later than the date that is 120 days after the close of the period covered by the report.

(4) The Secretary of Commerce shall carry out the provisions of this subsection from funds otherwise made available to him which may be used for such purposes.

(5) For purposes of this section, the term "services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design and engineering, management consulting, real estate, professional services, entertainment, education, health care, and tourism.

**[**(b) Amendments to the International Investment Survey Act of 1976.**]**

(c)(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(c)(2)(A) The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.

[(13) Amendments to section 135 of the Trade Act of 1974 on private sector advisors (reprinted elsewhere).]

## 2. Office of the United States Trade Representative

### Section 141 of the Trade Act of 1974, as amended [1]

[19 U.S.C. 2171; P.L. 93–618, as amended by Reorganization Plan No. 3 of 1979, P.L. 97–456, P.L. 98–573, P.L. 99–272, P.L. 99–514, P.L. 100–203, P.L. 100–418, P.L. 101–207, P.L. 101–382, P.L. 103–465, and P.L. 104–65]

**SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.**

(a) There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) LIMITATION ON APPOINTMENTS.—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

[1] Section 241, Trade Expansion Act of 1962 (P.L. 87–794), was repealed by P.L. 93–618.

[(3) Amendment to title 5, section 5312, United States Code, added the Trade Representative to the list of positions at level I of the Executive Schedule.]

(c)(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representative as of the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

(3) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(d)(1) In carrying out subsection (c) with respect to unfair trade practices, the United States Trade Representative shall—

(A) coordinate the application of interagency resources to specific unfair trade practice cases;

(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 181(b), or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economics and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

(3) For purposes of this subsection, the term "unfair trade practice" means any act, policy, or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

(D) may be an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.

(e) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive schedule in section 5314 of title 5, United States Code;

(2) employ experts and consultants in accordance with section 3109 of Title 5, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of Title 5, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of Title 5 for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of 1342 of title 31, United States Code;

(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of Title 5 [5 U.S.C. § 5701 et seq.] (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(f) The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions not to exceed the following:

(i) $23,250,000 for fiscal year 1991.

(ii) $21,077,000 for fiscal year 1992.

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office;

(ii) not to exceed $2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free Trade Agreement; and

(iii) not to exceed $1,000,000 shall remain available until expended.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970 [5 U.S.C. § 5301 et seq.].

## C. UNITED STATES INTERNATIONAL TRADE COMMISSION

### 1. Organization, General Powers, Procedures

### Sections 330, 331, 333–335, and 339 of the Tariff Act of 1930, as amended

[19 U.S.C. 1330, 1331, 1333–1335, and 1339; P.L. 71–361, as amended by Act of June 25, 1936, Act of June 25, 1948, Act of May 24, 1949, Act of Aug. 7, 1953, P.L. 85–686, P.L. 91–452, P.L. 93–618, P.L. 94–455, P.L. 95–106, P.L. 95–430, P.L. 97–456, P.L. 98–573, P.L. 99–272, P.L. 99–514, P.L. 100–203, P.L. 100–418, P.L. 100–647, P.L. 101–207, P.L. 101–382, and P.L. 102–185]

**SEC. 330. ORGANIZATION OF COMMISSION.**

(a) MEMBERSHIP.—The United States International Trade Commission (referred to in this Act as the "Commission") shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowl-

edge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) TERMS OF OFFICE.—The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c) CHAIRMAN AND VICE CHAIRMAN; QUORUM.—(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph. If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

(B) has the longest period of continuous service as a commissioner,

shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term any Commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member, or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—

(1) In a proceeding in which the Commission is required to determine—

(A) under section 202 of the Trade Act of 1974, whether in-creased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as "serious injury"), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 202(b) or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 202(e)(1) of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 204(a) of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 203(a) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ————, ————, and ————." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

(i) $41,170,000 for fiscal year 1991.

(ii) $44,052,000 for fiscal year 1992.

(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used,

subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

**SEC. 331. GENERAL POWERS.**

(a) ADMINISTRATION.—(1) Except as provided in paragraph (2), the chairman of the Commission, shall—

(A) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(B) procure the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, and

(C) exercise and be responsible for all other administrative functions of the Commission.

Any decision by the chairman under this paragraph shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS–15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matters except to the extent that the Commission has adopted the policy being expressed.

(b) APPLICATION OF CIVIL SERVICE LAW.—Except for employees excepted under civil service rules, all employees of the Commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.

(c) EXPENSES.—All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal

staff of any commissioner, such vouchers may be approved by that commissioner).

(d) PRINCIPAL OFFICE AT WASHINGTON.—The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) OFFICE AT NEW YORK.—The Commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) OFFICIAL SEAL.—The Commission is authorized to adopt an official seal, which shall be judicially noticed.

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**SEC. 333. TESTIMONY AND PRODUCTION OF PAPERS.**

(a) AUTHORITY TO OBTAIN INFORMATION.—For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the Commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the Commission may prescribe, information in their possession pertaining to such investigation. Any member of the Commission may sign subpoenas, and members and agents of the Commission, when authorized by the Commission, may administer oath and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the Commission may 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, and 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 corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.—At the request of the Commission, any such court shall have jurisdiction to issue writs of mandamus command-

ing compliance with the provisions of this part or any order of the Commission made in pursuance thereof.

(d) DEPOSITIONS.—The Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, 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 Commission, as hereinbefore provided.

(e) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the person taking the same, except employees of the Commission, shall severally be entitled to the same fees and mileage as are paid for like services in the court of the United States.

(f) STATEMENTS UNDER OATH.—The Commission is authorized, in order to ascertain any facts required by subdivision (d) of section 332 to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) REPRESENTATION IN COURT PROCEEDINGS.—The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

(h) ADMINISTRATIVE PROTECTIVE ORDERS.—Any correspondence, private letters of reprimand, and other documents and files relating to violations or possible violations of administrative protective orders issued by the Commission in connection with investigations or other proceedings under this title shall be treated as information described in section 552(b)(3) of title 5, United States Code.

**SEC. 334. COOPERATION WITH OTHER AGENCIES.**

The Commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the Commission for the purposes of aiding and assisting in its work, and when directed by the President, shall furnish to the Commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the Commission and shall detail, from time to time, such officials and employees to said Commission as he may direct.

**SEC. 335. RULES AND REGULATIONS.**

The Commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

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**SEC. 339. TRADE REMEDY ASSISTANCE OFFICE.**

(a) There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. Any agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

### Section 603 of the Trade Act of 1974

[19 U.S.C. 2482; P.L. 93–618]

**SEC. 603. INTERNATIONAL TRADE COMMISSION.**

(a) In order to expedite the performance of its functions under this Act, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Commission may exercise any authority granted to it under any other Act.

(c) The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

### Section 175(a)(1) of the Trade Act of 1974

[19 U.S.C. 2232; P.L. 93–618]

**SEC. 175. INDEPENDENT BUDGET AND AUTHORIZATION OF APPROPRIATIONS.**

(a)(1) Effective with respect to the fiscal year beginning October 1, 1976, for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such Act.

## 2. Investigations

### Section 332 of the Tariff Act of 1930, as amended

[19 U.S.C. 1332; P.L. 71–361, as amended by P.L. 93–618, P.L. 96–39, P.L. 100–418, and P.L. 100–647]

**SEC. 332. INVESTIGATIONS.**

(a) INVESTIGATIONS AND REPORTS.—It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) INVESTIGATIONS OF TARIFF RELATIONS.—The Commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, pref-

erential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) INVESTIGATION OF PARIS ECONOMY PACT.—The Commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) INFORMATION FOR PRESIDENT AND CONGRESS.—In order that the President and the Congress may secure information and assistance, it shall be the duty of the Commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the Commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the Commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the Commission deems it advisable;

(4) Ascertain imports costs of such representative articles so selected;

(5) Ascertain the grower's producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) DEFINITIONS.—When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

[(f) Provision directing the Commission to ascertain the cost of crude petroleum during 3 years preceding 1930.]

(g) REPORTS TO PRESIDENT AND CONGRESS.—The Commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives,

and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress. However, the Commission may not release information which the Commission 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 Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the Commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the Commission under such section during such year and the date on which each such investigation was commenced.

## D. PRIVATE OR PUBLIC SECTOR ADVISORY COMMITTEES

### Section 135 of the Trade Act of 1974, as amended

[19 U.S.C. 2155; P.L. 93–618, as amended by P.L. 96–39, P.L. 98–573, P.L. 99–514, P.L. 100–418, and P.L. 103–465]

**SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.**

(a) IN GENERAL.—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 1102 of the Omnibus Trade and Competitiveness Act of 1988;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector

on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 2 years. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including

small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act apply—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

(2) to all other advisory committees which may be established under subsection (c); except that the meetings of advisory committees established under subsections (b) and (c) shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a), and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c).

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) or are designated by the chairmen of either such committee under section 161(b)(3)(A) and staff members of either such committee designated by the chairmen under section 161(b)(3)(A); and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) or designated by the chairman of such committee under section 161(b)(3)(B) and staff members of such committee designated under section 161(b)(3)(B), but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) ADVISORY COMMITTEE SUPPORT.—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NONACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS.—

It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) PRIVATE ORGANIZATIONS OR GROUPS.—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES.—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE.—The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) NON-FEDERAL GOVERNMENT DEFINED.—As used in this section the term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

# APPENDIX

## STATUTORY CITATIONS OF MAJOR U.S. TRADE LAWS [1]

*Andean Trade Preference Act*

Public Law 102–182, title II, approved December 4, 1991, 105 Stat. 1233, 19 U.S.C. 3201 et seq.

Title II of Conference Report on H.R. 1724, House Report 102–391; H.R. 661 reported from House Committee on Ways and Means, November 19, 1991, House Report 102–337.

*Agricultural Act of 1956*

Public Law 84–540, ch. 327, approved May 28, 1956, 70 Stat. 188, codified as amended at various sections of titles 7 and 16.

Conference Report on H.R. 10875, Report No. 2197; H.R. 10875 reported from House Agriculture Committee, April 30, 1956, House Report 84–2077; H.R. 10875 reported from Senate Committee on Agriculture and Forestry, May 11, 1956, Senate Report 84–1966.

*Agricultural Adjustment Act of 1933*

Act of May 12, 1933, ch. 25, 48 Stat. 31, 7 U.S.C. 601 et seq.

H.R. 3835 reported from House Agriculture Committee, March 20, 1933, House Report 73–6; H.R. 3835 reported from Senate Committee on Agriculture and Forestry, April 5, 1933, Senate Report 73–16, and Senate Committee on Banking and Currency, April 21, 1933, Senate Report 73–40.

*Caribbean Basin Economic Recovery Act*

Public Law 98–67, title II, approved August 5, 1983, 97 Stat. 384, 19 U.S.C. 2701 et seq.

Title II of Conference Report on H.R. 2973, House Report 98–325; H.R. 2769 reported from House Committee on Ways and Means, June 24, 1983, House Report 98–226; H.R. 2769 reported from Senate Committee on Finance, October 29, 1983, Senate Report No. 98–285.

*Caribbean Basin Economic Recovery Expansion Act of 1990*

Public Law 101–382, title II, approved August 20, 1990, 104 Stat. 629, 19 U.S.C. 2101 note.

Title I of Conference Report on H.R. 1594, House Report 101–650; H.R. 1594 reported from House Committee on Ways

[1] Does not include subsequent amendments to these laws.

and Means, House Report 101–99; H.R. 1594 reported from Senate Committee on Finance, Senate Report 101–252.

*Comprehensive Anti-Apartheid Act of 1986*

Public Law 99–440, approved October 2, 1986, 101 Stat. 1086, 22 U.S.C. 5001.

H.R. 4868 reported from House Committee on Foreign Affairs and House Committee on Ways and Means, House Report 99–638, pts. I and II; S. 2701 reported from Senate Committee on Foreign Relations, Senate Report 99–370.

*Customs and Trade Act of 1990*

Public Law 101–382, approved August 20, 1990, 104 Stat. 629, 19 U.S.C. 2101 note.

Conference Report on H.R. 1594, House Report 101–650; H.R. 1594 reported from House Committee on Ways and Means, House Report 101–99; H.R. 1594 reported from Senate Committee on Finance, Senate Report 101–252.

*Customs Modernization Act*

Title VI of the Public Law 103–182, approved December 8, 1993, 107 Stat. 2170; codified as amended at various sections of title 19 and various other titles.

H.R. 3450 reported from House Committee on Ways and means, November 4, 1993, House Report 103–159; H.R. 3450 reported from Senate Committee on Finance, November 18, 1993, Senate Rport 103–189.

*Export Administration Act of 1979*

Public Law 96–72, approved September 29, 1979, 93 Stat. 503, 50 App. U.S.C. 2401–2420.

Conference Report on S. 737, House Report 96–482; S. 737 passed House in lieu of H.R. 4034, September 25, 1979 (see House Report 96–200 on H.R. 4034); S. 737 reported from Senate Banking, Housing, and Urban Affairs Committee, May 15, 1979, Senate Report 96–169.

*Export Trading Company Act of 1982*

Public Law 97–290, approved October 8, 1982, 96 Stat. 1233, 15 U.S.C. 4001–4003, 12 U.S.C. 1841–1843, 15 U.S.C. 4011–4021.

Conference Report on S. 734, House Report 97–924; S. 734 passed House in lieu of H.R. 1799 and H.R. 6016, July 27, 1982 (see House Report 97–637 on H.R. 1799 and House Report 97–629 on H.R. 6016); S. 734 reported from Senate Banking, Housing, and Urban Affairs Committee, March 18, 1981, Senate Report 97–27.

*Generalized System of Preferences Renewal Act of 1984*

Public Law 98–573, title V, approved October 30, 1984.

Title V of Conference Report on H.R. 3398, House Report 98–1156; H.R. 6023 reported from House Committee on Ways and Means, September 27, 1984, House Report 98–1090; S. 1718 reported from Senate Committee on Finance, May 24, 1984, Senate Report 98–485.

*International Emergency Economic Powers Act*

Public Law 95–223, title II, approved December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701–1706.

H.R. 7738 reported from House International Relations Committee, June 23, 1977, House Report 95–459; H.R. 7738 reported from Senate Banking, Housing, and Urban Affairs Committee, October 3, 1977, Senate Report 95–466.

*International Trade and Investment Act*

Public Law 98–573, title III, approved October 30, 1984.

Title III of Conference Report on H.R. 3398, House Report 98–1156; H.R. 2848 reported from House Energy and Commerce Committee, May 16, 1983, House Report 98–203, pt. I, and House Committee on Ways and Means, September 22, 1983, House Report 98–203, pt. II. H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98–308; S. 144 reported from Senate Committee on Finance, March 14, 1983, Senate Report 98–24.

*Meat Import Act of 1979*

Public Law 96–177, section 1, approved December 31, 1979, 93 Stat. 1291, 19 U.S.C. 1202.

H.R. 2727 reported from House Committee on Ways and Means, June 6, 1979, House Report 96–238; H.R. 2727 reported from Senate Committee on Finance, December 7, 1979, Senate Report 96–465.

*North American Free Trade Agreement Implementation Act*

Public Law 103–182, approved December 8, 1993, 107 Stat. 2057; codified at various sections of title 19 and several other titles.

H.R. 3450 reported from House Committee on Ways and Means, November 4, 1993, House Report 103–159; H.R. 3450 reported from Senate Committee on Finance, November 18, 1993, Senate Report 103–189.

*Omnibus Trade and Competitiveness Act of 1988*

Public Law 100–418, approved August 23, 1988, 102 Stat. 1107; codified as amended at various sections of title 19 and several other titles.

Conference Report on H.R. 3 (H.R. 4848), House Report 100–576; H.R. 3 reported from House Committees on Ways and Means, Energy and Commerce, Foreign Affairs, Banking, Finance and Urban Affairs, Education and Labor, and Agriculture, April 6, 1987; House Report 100–40, parts 1–6; S. 490 reported from Senate Committee on Finance, June 12, 1987; Senate Report 100–71.

*Reciprocal Trade Agreements Act of 1934*

Public Law 73–316, ch. 474, approved June 12, 1934, 48 Stat. 943, 19 U.S.C. 1001, 1201, 1351–1354.

H.R. 8687 reported from House Committee on Ways and Means, March 17, 1934, House Report 73–100; H.R. 8687 reported from Senate Committee on Finance, May 2, 1934, Senate Report 73–871.

*Tariff Act of 1930*

Public Law 71–361, approved June 17, 1930, ch. 497, 46 Stat. 590, as amended, codified as amended at various sections of titles 6, 19, and 22.

Conference Reports on H.R. 2667, House Reports 71–1326, Senate Doc. Nos. 161 and 162; H.R. 2667 reported from House Committee on Ways and Means, May 9, 1929, House Report 71–7; H.R. 2667 reported from Senate Committee on Finance, September 4, 1929, Senate Report 71–37.

*Trade Act of 1974*

Public Law 93–618, approved January 3, 1975, 88 Stat. 1978 codified as amended at various sections of titles 5, 19, 26 and 31.

Conference Report on H.R. 10710, House Report 93–1644; H.R. 10710 reported from House Committee on Ways and Means, October 10, 1973, House Report 93–571; H.R. 10710 reported from Senate Committee on Finance, November 26, 1974, Senate Report 93–1298.

*Trade Agreements Act of 1979*

Public Law 96–39, approved July 26, 1979, 93 Stat. 144; codified as amended at various sections of titles 5, 13, 19 and 28.

H.R. 4537 reported from House Committee on Ways and Means, July 3, 1979, House Report 96–317; H.R. 4537 reported from Senate Committee on Finance, July 17, 1979, Senate Report 96–249.

*Trade and Tariff Act of 1984*

Public Law 98–573, approved October 30, 1984.

Conference Report on H.R. 3398, House Report 98–1156; H.R. 3398 reported from House Committee on Ways and Means, June 24, 1983, House Report 98–267; H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98–308.

*Trade Expansion Act of 1962*

Public Law 87–794, approved October 11, 1962, 76 Stat. 872, codified as amended at various sections of title 19.

Conference Report on H.R. 11970, Report 2518; H.R. 11970 reported from House Committee on Ways and Means, June 12, 1962; House Report 98–1818; H.R. 11970 reported from Senate Committee on Finance, September 14, 1962, Senate Report 87–2059.

*Trading With the Enemy Act*

Public Law 65–91, approved October 6, 1917, ch. 106, sections 1–31, 40 Stat. 411, 50 App. U.S.C. 1–44.

Conference Report on H.R. 4960, House Report 65–155; H.R. 4960 reported from House Committee on Interstate and Foreign Commerce, House Report 65–85; H.R. 4960 reported from Senate Committee on Commerce, Senate Reports 65–111 and 65–113.

*United States-Canada Free-Trade Implementation Act of 1988*

Public Law 100–449, approved September 28, 1988, 102 Stat. 1851, 19 U.S.C. 2112 note.

H.R. 5090 reported from House Committees on Ways and Means, Interior and Insular Affairs, Foreign Affairs, Judiciary, Banking, Finance and Urban Affairs, Government Operations, Energy and Commerce, and Agriculture, August 3, 1988; House Report 100–816, parts 1–8; H.R. 5090 reported from Senate Committees on Finance, Agriculture, Nutrition, and Forestry, Energy and Natural Resources, and Governmental Affairs, September 15, 1988; Senate Report 100–509.

*United States-Israel Free Trade Area Implementation Act of 1985*

Public Law 99–47, approved June 11, 1985, 99 Stat. 82, 19 U.S.C. 2112 note.

H.R. 2268 reported from House Committee on Ways and Means, May 6, 1985, House Report 99–64; S. 1114 reported from Senate Committee on Finance, May 15, 1985, Senate Report 99–55.

*Uruguay Round Agreements Act*

Public Law 103–465, approved December 8, 1994, 108 Stat. 4809; codified at various sections of title 19 and several other titles.

H.R. 5110 reported from House Committee on Ways and Means, September 27, 1994, House Report 103–316; S. 2467 reported from Senate Committee on Finance, September 29, 1994, Senate Report 103–412.

## DESCRIPTIONS OF MAJOR REGIONAL AND MULTILATERAL TRADE ORGANIZATIONS

### World Trade Organization (WTO)

The agreement establishing the WTO as of January 1, 1995, is a multilateral instrument which creates a permanent organization to oversee the implementation of the Uruguay Round Agreements, including the GATT 1994, to provide a forum for multilateral trade negotiations, and to administer dispute settlements. The WTO operates in a similar manner to the GATT, which it replaces, and is headquartered in Geneva, Switzerland.

*WTO Membership as of February 1, 1997*

Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
European Community
Fiji
Finland
France

Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea Bissau
Guinea, Republic of
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea
Kuwait
Lesotho
Liechtenstein
Luxembourg
Macau
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Rwanda
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom
United States
Uruguay
Venezuela
Zaire
Zambia
Zimbabwe

## Organization for Economic Cooperation and Development (OECD)

Founded in 1961 and based in Paris, the OECD is the primary organization for industralized nations to discuss trade and economic matters. The objectives are to achieve economic growth and employment and a rising standard of living in member countries while maintaining financial stability. The 29 member countries use the OECD and its various committees and working groups to conduct both studies and negotiations on particular economic problems and to coordinate their policies for purposes of international negotiations.

*OECD Membership as of February 1, 1997*

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Korea
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

## United Nations Conference on Trade and Development (UNCTAD)

Based in Geneva and associated with the United Nations system, UNCTAD focuses attention on international economic relations and measures that might be taken by developed countries to accelerate

the pace of economic and industrial development in the developing countries. The conference has met quadrennially since 1964 in various locations throughout the world. UNCTAD committees meet several times each year between the major conferences and is supported by the permanent UNCTAD Secretariat in Geneva, Switzerland.

## World Customs Organization

Established in 1952 as the Customs Cooperation Council, the renamed World Customs Organization is a 93-member international organization with headquarters in Brussels, Belgium. It deals exclusively with customs matters. Its objective is to obtain, in the interest of international trade, the best possible degree of uniformity among the customs systems of member nations. The United States became a member on November 5, 1970.

The Customs Service is the lead government agency in dealing with the various activities of the Council, including the work of the Harmonized System Committee. The Customs Service heads the U.S. delegations to the sessions of the Committee. Generally, the Council studies questions relating to cooperation in customs matters, examines technical aspects of customs systems and furnishes information and advice to member states.

## European Union (EU)

The EU is a union of 15 independent nations and was founded to enhance political, economic and social cooperation. Formerly known as the European Community (EC) or the European Economic Community (EEC), the EU was founded in November 1993, upon ratification of the Maastricht Treaty. The Maastricht Treaty expanded the scope of the EEC and included provisions for an economic and monetary union with a single european currency to begin at the end of the century.

*EU Membership, as of February 1, 1997*

| | | |
|---|---|---|
| Austria | Greece | Spain |
| Belgium | Ireland | Sweden |
| Denmark | Italy | United Kingdom of Great Britain and Northern Ireland |
| Finland | Luxembourg | |
| France | Netherlands | |
| Germany | Portugal | |

## Asia-Pacific Economic Cooperation (APEC)

APEC was formed in 1989 in response to the growing interdependence among Asia-Pacific economies. Initiated as an informal dialogue group with limited participation, APEC has since become the primary regional vehicle for promoting open trade and practical economic cooperation. In 1994, APEC members agreed to attain free and open trade and investment among APEC industrialized nations by the year 2010 and among the developing members by 2020. APEC's 18-member economies possess a combined gross national product of over $13 trillion, about half the world's total annual output.

*APEC Membership, as of February 1, 1997*

| | | |
|---|---|---|
| Australia | Indonesia | Republic of the Philippines |
| Brunei Darussalam | Japan | Singapore |
| Canada | Republic of Korea | Chinese Taipei |
| Chile | Malaysia | Thailand |
| People's Republic of China | Mexico | United States |
| Hong Kong | New Zealand | |
| | Papua New Guinea | |

## MERCOSUR

Mercosur, translated as the Southern Common Market, is composed of Brazil, Argentina, Paraguay, and Uruguay. Mercosur began operating a customs union on January 1, 1995, which binds tariff preferences among the four Mercosur countries and introduces a common external trade policy with non-member countries and economic groups.

The purpose of Mercosur is to create a common market in which goods and services can be freely traded among member countries and to permit the unrestricted movement of labor and capital, the coordination of macroeconomic and sector policies, and the harmonization of national legislation in order to enhance competitiveness. Chile and Bolivia are associate members of Mercosur. Under the terms of their membership, they apply and receive preferential tariffs with respect to countries within Mercosur but do not apply the common external tariff.

### Association of Southeast Asian Nations (ASEAN)

ASEAN was established in August 1967 in Bangkok, Thailand, with the signing of the Bangkok Declaration by the five original member countries: Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined the Association in January 1984, and Vietnam became the seventh member of ASEAN in July 1995.

ASEAN was established with three main objectives: (1) to promote the economic, social and cultural development of the region through cooperative programs; (2) to safeguard the political and economic stability of the region against big power rivalry; and (3) to serve as a forum for the resolution of intra-regional differences.

### Cairns Group

The Cairns Group is a 14-country group, chaired by Australia, which was established just before the Uruguay Round negotiations began. The purpose of the Cairns Group is to encourage reductions in trade-distorting farm subsidies and market access for agricultural products. Aside from Australia, other members are Argentina, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Uruguay. These nations collectively represent approximately 27 million farmers.

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